



Date: August 21, 2024
To: Board of Retirement
From: Doris L. Rentschler, Executive Director
Subject: New Trustee Orientation

Recommended Action:

Adopt the New Trustee Orientation Program as presented, or as modified by the Board.

Fiscal and Financial Impacts:

There would be minor cost associate with implementing the proposed New Trustee Orientation. Due to the length of the orientation, the agenda includes a working lunch sponsored by MCERA where the trustee has an opportunity to network with staff and ask any questions.

Strategic Plan Importance and Risk Assessment:

While not specifically included as an action item, formalizing the New Trustee Orientation supports Goal 3 to improve effectiveness and efficiency through people, processes and technology. It furthers Goal 3's success metrics of having a highly qualified and engaged Board and creating continuity for MCERA by intentionally developing the skills, knowledge and talent of its people.

Background and Discussion:

To fulfill the Board direction given at the November 2023 meeting to improve the induction process for new Trustees, and to meet the requirements of a **formal** orientation program for new trustees per Section V.A. of the Trustee Education and Travel Policy, this comprehensive, more structured, orientation program has been developed. The aim of the orientation program is to ensure that new trustees are in a position to contribute fully to Board and Committee deliberations, and effectively carry out their fiduciary duties as soon as possible upon joining the Board. This proposed New Trustee Orientation is created so onboarding of new trustees can be consistent through different administrations. It incorporates the requirements in section V.B. 1-6 of the policy.

In addition to the information required by the Trustee Education and Travel Policy, the New Trustee Orientation includes general information regarding MCERA and Board operations. As designed, this orientation programs consists of 6 hours of instruction, not including breaks, that can be completed in a full day or over 2 half days.

In the past, under Administrator Richard White, new trustees received a 3-ring binder with copies of pertinent MCERA documents (see attached 2017 Trustee Orientation Agenda). Under Dr. James Wilbanks, new trustees met with him to review the location and contents of MCERA's reports and discuss current Board issues.

Under the new program PowerPoint presentations will be utilized to ensure all of the requirements of the policy are met and to provide consistency in each new trustee's introduction to MCERA. Rather than giving printed copies of documents, the orientation includes a review of the current resources on MCERA's public website and Board SharePoint site, that are regularly updated and maintained, to familiarize new trustees with where materials and resources are located.

Additionally, the PowerPoint presentations, new trustee handbook, member handbook, and other resources used in the orientation program will be available on the Board's SharePoint site for easy on-demand access for all trustees.

Attachment(s):

1. 2017 Trustee Orientation Agenda
2. New Trustee Orientation Materials
 - a. Schedule (Agenda)
 - b. New Trustee Handbook
 - c. New Trustee Orientation Presentations

TRUSTEE ORIENTATION MEETING

AGENDA

History and background of MCERA

Strategic Plan

Audit & Budget Committee

Fiduciary duties, conflict of interest and Brown Act

Form 700

Fiduciary liability insurance

\$10 check made out to MCERA

Tablet

Receive: 37 Act, Brown Act, MCERA By-laws

Other plan documents and financial information

Board Policies

Training Opportunities

Email

Closed session materials

New Trustee Orientation Schedule

Topic #	Topic	Presenter	Length	Begin	End
Welcome	Meet and Greet Staff / Office Tour	Doris	0:05	9:00 AM	9:05 AM
1	MCERA Board Administration		0:30	9:05 AM	9:35 AM
	Meet with the Chair (for briefing per policy)	Chair			
	Board Calendar and Agenda	Doris / Judy			
	Travel Reimbursement and Per Diem	Judy			
	Board Policies and Strategic Plan (Website Overview)	Doris			
2a	Board Governance Overview - Regulations, Charters, & Policies	Doris / Jeff	0:25	9:35 AM	10:00 AM
2b	Brown Act Compliance	Jeff	0:20	10:00 AM	10:20 AM
2c	Public Records Act	Jeff	0:15		
Break	Break		0:10	10:20 AM	10:30 AM
3	Board Consultants and Service Providers	Doris, Robert, or Judy	0:30	10:30 AM	11:00 AM
4	Benefits Overview / Member Outreach	Judy or Nora	0:20	11:00 AM	11:20 AM
5	Disability Retirement	Jeff or Judy	0:25	11:20 AM	11:45 AM
Lunch	Lunch with staff provided by MCERA		0:40	12:00 PM	12:40 PM
6	Accounting, Budget, & Financial Statements	Robert	0:40	12:40 PM	1:20 PM
7	Actuarial Processes - valuation, experience study, and risk rpt	Doris/Robert	0:50	1:20 PM	2:10 PM
Break	Break		0:10	2:10 PM	2:20 PM
8	Investment Program Overview	Robert/Doris			
	Asset Allocation Review - Consultant & Managers	Robert/Doris	0:50	2:20 PM	3:10 PM
	Quarterly Investment Performance Report Review	Robert/Doris	0:50	3:10 PM	4:00 PM
	6 hrs of content		7:00		
	two 10 minute breaks and a 40 minute lunch				



MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

New Trustee Handbook

Issue Date: July 2024

Adapted in part from SACRS Trustee Handbook

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retirementassociation@mendocinocounty.org



MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

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I. Intent

Congratulations on your new role as a Mendocino County Employees Retirement Association Board Trustee.

This New Trustee Handbook is intended to provide trustees with an introduction and summary of responsibilities and an overview of the fundamentals for pension trustees; it is not intended to answer every question or provide you with everything you will need to know. MCERA has outside counsel and investment consultants who provide advice and assist trustees in the execution of their duties.

II. Introduction

I hope you find this handbook educational and a handy reference tool. As MCERA's Executive Director, I look forward to collaborating with you and supporting your continuing education to make your job easier and more fulfilling. There are many resources linked in throughout this handbook that you will find useful as you grow into your role as an MCERA Board of Retirement trustee. MCERA's 5-Year [Strategic Plan](#) reflects the shared vision of the Board and the goals and objectives for the coming years.

This handbook works in conjunction with, and augments, the [Trustee Education and Travel Policy](#).

III. History of MCERA

The Mendocino County Employees Retirement Association (MCERA) was established January 1, 1948, by the County of Mendocino. MCERA is a public retirement association organized under and governed by the [County Employees Retirement Law of 1937](#) (CERL or 1937 Act), codified as California Government Code §31450 et seq. Under provisions of the 1937 Act, management of MCERA, including general administration, disability matters and control of investment assets, is vested with the Board of Retirement (Board). The California Constitution, Article XVI Section 17 grants the retirement board plenary authority and fiduciary responsibility for the investment of moneys and administration of the system.

The 1937 Act provides for a defined benefit retirement system; benefits are set by statute. The types of benefits provided to members are service retirement, disability retirement (both service and non-service connected), death benefits, and survivor's benefits.

The Board is composed of nine members and an alternate: the County Treasurer, four members appointed by the Mendocino County Board of Supervisors, two general members and one safety member elected by the active membership, and one member and the alternate elected by retirees.

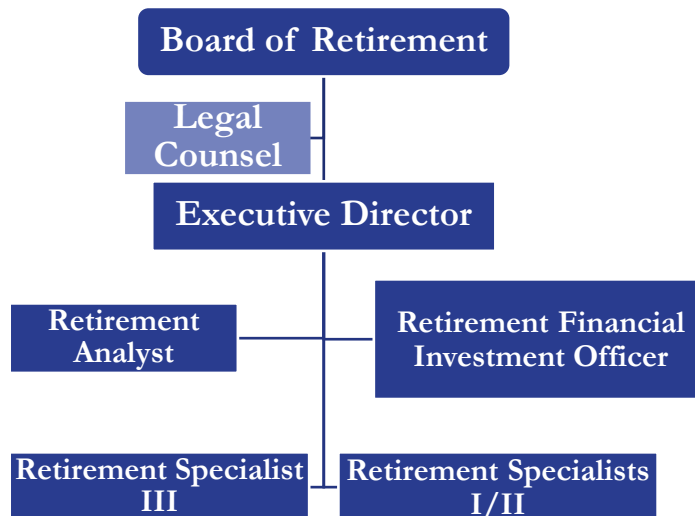
MCERA's funding is generated from three sources: employer contributions, employee contributions, and earnings on investments.

Mendocino County Employees Retirement Association is the smallest of the 20 CERL retirement plans. While the CERL governs all twenty county plans, there is a wide variation of administration of benefits between plans due to the number of CERL provisions that are applicable to only certain systems, optional provisions that only apply if adopted in the County and the multitude of interpretations by boards, administrators, legal counsel, and the courts.

IV. Plan Staff

MCERA's staff serve our members and execute the direction of the Board of Retirement. The Executive Director is hired by, works for, and reports to the Board. The Executive Director is your main link between the Board and MCERA staff, consultants, and plan participants. As the plan's chief administrator, the Executive Director ensures the plan is run efficiently, and is responsible for the implementation of the provisions of the retirement statutes in accordance with the policies prescribed by the Board. The Executive Director is responsible for the oversight and evaluation of staff.

MCERA's accounting, budgeting, financial reporting, and investment monitoring are the responsibility of the Retirement Financial Investment Officer. Member services are the responsibility of MCERA's Retirement Analyst and three Retirement Specialists.



V. Role of a Trustee

A. Fiduciary Duty

The voters passed Proposition 162 in 1992, at which time it became part of the California Constitution. Proposition 162 provides the framework and rules that guide and explain the duties of public pension trustees in California. As a pension trustee, you have become a fiduciary, who is required to discharge your duties solely in the interest of the plan participants for the exclusive purposes of providing benefits and defraying reasonable plan expenses. You have sole and exclusive authority over administration of the plan, investments, and other aspects of the plan's operations.

You are a fiduciary for benefit administration and disability determinations. You and your fellow trustees are the ones ultimately responsible for seeing that the plan operates in accordance with its governing documents and that provisions are applied consistently with all applicable local, state, or federal laws. Although day-to-day responsibility for plan administration and investment activities is delegated to staff and consultants, their performance of certain roles does not permit you to avoid your trust duties. You cannot simply rely upon them as a means of satisfying your obligation as a trustee. You act as a fiduciary for your plan when you hire executive staff and consultants, and your fiduciary duties include the active monitoring and review of their performance.

As a fiduciary, the law holds you to the highest standards. You must take your fiduciary duties seriously. This means you have a duty to put the members and beneficiaries' interests before your own interests or those of anybody else. Generally, pension experts divide the fiduciary duties of trustees into three broad categories:

- Duty of Loyalty – the obligation to act for the exclusive benefit of the plan participants
- Duty of Prudence – the obligation to act prudently in exercising power or discretion over the interests that are subject of the fiduciary relationship
- Duty of Care – the responsibility to administer the pension plan efficiently and properly

The best ways a trustee can satisfy these duties is to attend meetings, read the materials, ask questions, and attend trainings and conferences. The CERL requires trustees receive a minimum of 24 hours of board member education within the first two years of assuming office and for every subsequent two-year period the board member continues to hold office.

MCERA's Board Counsel is available to assist trustees with any questions regarding fiduciary duties.

In addition to the CERL and other Federal and State regulations, MCERA is governed by the policies and charters adopted by the Board of Retirement. MCERA's web pages house all of the [Board of Retirement Policies and Charters](#). The Board routinely reviews and then adopts updated policies. The Board [Communication Strategy](#) and [Board Communications Policy](#) will help you navigate communication with stakeholder groups.

B. Conflicts of Interest

There are two main conflict of interest laws: the Political Reform Act of 1974 and Government Code section 1090. The first law precludes trustees from having a financial interest in actions taken by the Board and second precludes trustees from approving contracts that the Board is considering entering into if they have a financial interest. It is important to recognize that when agenda items come to the Board for consideration that trustees consider whether they may have a conflict of interest that precludes them from participating in the item. In some rare cases, the conflict may prevent the full Board from acting. MCERA's [Conflict of Interest Policy](#) addresses these issues in more detail. If you have any concerns about whether you may have a conflict on an item, it is best to talk with the Executive Director and counsel.

C. Brown Act and Public Records Act

There are two laws that govern all public agencies in California that trustees should have some familiarity with: the Ralph M. Brown Act and the Public Records Act ("PRA").

The Brown Act is California's "sunshine law" ([Gov. Code 54950-54963](#)) and it requires all governmental agencies like MCERA to conduct its meetings in a manner that is open for the public to be able to participate. Each month the Executive Director, in consultation with the Board Chair, prepares an agenda, whose purpose is to advise the public of what items will be discussed. The Brown Act provides for a limited number of matters to be discussed in "closed session," which are not public.

The Public Records Act is a California law that says, generally, all documents created by a public entity are public information, with certain specified exceptions. It is important for trustees to understand that anything they communicate in writing to any person related to MCERA business could be considered a public record and subject to disclosure under the Act. This is true even if that writing was prepared using the trustee's personal phone or computer. Please familiarize yourself with MCERA's [PRA Policy](#).

D. Statement of Expectations

As fiduciaries of the System, the MCERA Board members commit, individually and collectively, to keep these expectations in mind when performing their duties as a trustee. These expectations apply equally to all Board members.

- To welcome new members to the Board and demonstrate the collegial culture of Board meetings.
- To assist new members in understanding the wide range of issues that come before the Board.
- To support one another as partners in carrying out our fiduciary duties, always acting in the best interests of MCERA's participants and beneficiaries.
- To regularly prepare for and attend the Board and their respective committee meetings
 - 12 Retirement Board meeting
 - 2 Audit Committee meetings
 - Strategic Planning special meeting (offsite)
 - Ad hoc committees, as needed
- To actively participate by listening and questioning in a respectful manner.
- To stay engaged during meetings by arriving on time and avoiding distractions such as using cell phones during meetings, engaging in side conversations with other members, or stepping away from meetings for an extended period.
- To strive for consensus, but expect and accept diversity of opinion.
- To treat each other and staff with respect, dignity, sensitivity, and civility at all times.
- To willingly share the reasons for differences, seek to understand each other, and where differences remain, to respectfully reserve the right to agree to disagree.
- If serving as a Board or Committee Chair, endeavor to provide leadership and set the tone to ensure all members can voice their respective view.
- To understand that the most effective and efficient role of the Board is policy setting and that implementation should be delegated to staff with the expertise to execute the Board's policies.
- To work in good faith with MCERA leadership and other staff, and support their endeavors, which, in turn, promotes staff stability and excellence.
- To maintain confidences and ensure that what is discussed confidentially within the Boardroom remains in the Boardroom.
- To foster a culture of high ethical integrity and avoid even the appearance of conflicts.

- To identify and implement best practices in everything the Board does, consistent with our Strategic Plan.
- To operate in a transparent manner that provides comfort and assurance to MCERA members and stakeholders.
- Consistent with the trustee’s fiduciary duty and requirements in the County Employees Retirement Law, trustees shall complete 24 hours of education every two years related to governing a pension system, and complete Sexual Harassment Prevention and Ethics training.

E. Robert’s Rules of Order

MCERA uses a modified, less formal, version of Robert’s Rules of Order. These Rules are designed for assemblies that are not legislative in their character. The following are general rules regarding business in front of the Board.

- Before a subject is open to debate, a motion should be made (to approve or deny, etc.) and seconded. The Chair (presiding officer) usually requests the responsible staff member to introduce the item, at which point, a motion is made and seconded before the item is open for debate by the trustees.
- Once an item has a motion and second, the Chair should state the question that is before the board for consideration and action. Such as, “It is moved and seconded that ...” before recognizing public comment and then assigning the floor to trustees wishing to address the board on the matter at hand.
- A board member wishing to make a motion, or address the board in debate, should “obtain the floor” – by “raising the hand” icon when participating remotely in the web meeting or by asking the Chair if in person. The Chair will typically recognize trustees in the order the trustees indicated a desire to have the floor.
- When a trustee has been assigned the floor (acknowledged that it’s their turn to speak), the trustee should be allowed to make their statement without interruption.
- Motions should start with the phrase “I move that” then state the proposed action. (Or Chair _____, I move that...”)
- A motion is seconded by a member saying, “I second the motion” (or “I second it”). A trustee does a second without obtaining the floor.

If a trustee has a topic that they would like added to a future agenda for board discussion, the topic may be mentioned during the General Board Member Discussion or provided to the Chair

or Executive Director (in person, phone, or email) for inclusion. Acceptance of agenda topics is generally at the discretion of the Chair.

VI. Membership and Benefit Administration

Members of MCERA are retired and active employees of the County of Mendocino, the Superior Court, and the Russian River Cemetery District, and are classified as either General or Safety.

MCERA membership is mandatory for all permanent employees who work at least 32 hours a week (80% of full time). Employees who are age 60 or over at their date of hire may opt out of participation in the plan.

In addition to service retirement benefits, MCERA provides service-connected and non-service-connected disability retirement benefits, active member death survivor benefits.

MCERA has multiple benefit tiers, there are three tiers for safety and three tiers for safety probation membership groups and four tiers for general members. An individual who first became a member on or after January 1, 2013, is subject to the Public Employees' Pension Reform Act of 2013 (PEPRA).

As a defined benefit plan, MCERA provides a benefit to employees who meet certain age and service requirements based on a formula in the CERL/PEPRA and adopted by the board. Benefit formulas utilize average final salary, years of credited service, and a benefit factor.

VII. Investments and Actuarial Practices

MCERA uses an investment consultant to assist the Board with the selection of qualified investment managers and oversight of existing managers. The investment consultant, through the triennial Asset Liability Study, develops and implements the asset allocation plan adopted by the Board. The Asset Liability Study is available in the board meeting materials for the month adopted or by request from MCERA. The asset allocation adopted from the asset liability study sets the allocation for the coming 3-year period and should only be reviewed "off-cycle" during the 3-year period if there is a significant change to circumstances – like a change in benefit structure - impacting the plan.

MCERA's Investment Policy Statement provides a framework for the management of MCERA assets. The purpose of the Investment Policy Statement (IPS) is to assist the Board with effectively establishing, monitoring, evaluating, and revising the investment program. It includes

the goals of the investment program, MCERA’s investment beliefs, policies, and procedures for management of investments, specific asset allocations, rebalancing procedures and investment guidelines and performance objectives. While the Board of Retirement oversees and directs the investment of MCERA assets, the retirement staff, as designated by the Board, carries out the day-to-day management and oversight of the plan.

Per Article XVI of the California Constitution, the Board of Retirement has the sole and exclusive power to provide for actuarial services to assure the competency of the assets of the system. The Actuarial Practices and Funding Policy establishes the Board’s funding objectives, policies, and other actuarial practices to help ensure the future benefits for MCERA members.

The annual actuarial valuation is the basis for determining required contributions and the funded status of the plan. MCERA’s annual funding requirement is comprised of a payment of the Normal Cost and a payment of the Unfunded Actuarial Accrued Liability (UAAL). The actuarial cost method, asset smoothing, and amortization policy affect the determination of the annual require contribution.

In addition to an annual actuarial valuation, the plan has an experience study completed every three years. The experience study looks at the difference between plan assumptions and the actual experience – i.e., inflation rate, rate of return on investments, wage growth, retirement and disability rates and mortality. The experience study often results in changes in actuarial assumptions to better align projections to expectations.

VIII. Service Providers

MCERA’s Board of Retirement will appoint or ratify the appointment of service providers, as needed, per the Board Charter.

- | | |
|--------------------------------|---|
| 1. Actuarial firms | Segal |
| 2. Financial auditor | Brown Armstrong Accountancy |
| 3. Legal counsel | Jeff Berk, Board Counsel
Nossaman, LLP, Fiduciary Counsel
Hanson Bridgett, LLP, Tax Counsel |
| 4. Investment consultant | Callan |
| 5. Custodial bank | State Street |
| 6. Investment managers | See monthly investment report |
| 7. Securities lending managers | none at this time |
| 8. Directed commission brokers | none at this time |

- | | |
|-----------------------------|----------------------------|
| 9. Proxy-voting advisors | none at this time |
| 10. Other service providers | as determined by the Board |

IX. Resources

MCERA's web presence is hosted by, and is part of, the County of Mendocino web site. You may familiarize yourself with current topics facing MCERA and Board processes by watching past Board of Retirement meetings on the [County's YouTube Channel](#). MCERA Board meetings are currently conducted both in-person and via web conference which not only allows live streaming of meetings but offers remote public participation.

A wealth of current and historical information regarding MCERA is available on our website including Board of retirement agendas and meeting materials, policies and charters, member forms and publications, investment performance, actuarial reports, and financial reports.

- [MCERA home page](#)
- [Agenda and Minutes](#)
- [Board of Retirement Policies and Charter](#)
- [Actuarial Reports](#)
- [Annual Comprehensive Financial Reports](#)
- [Independent Financial Audit reports](#)
- [Investment Performance Reports](#)
- youtube.com/mendocinocountyvideo

Educational opportunities are available through our consultants and industry organizations:

- | | |
|---|---|
| State Association of County Retirement Systems | SACRS.org |
| California Association of Public Retirement Systems | CALAPRS.org |
| Callan (MCERA's Investment Consultant) | Callan.com/ondemand-webinars |
| Segal (MCERA's Actuary) | Segalco.com |

It is recommended that new trustees attend the CALAPRS Principles of Pension Governance for Trustees at Pepperdine University. Past attendees highly recommend this program.

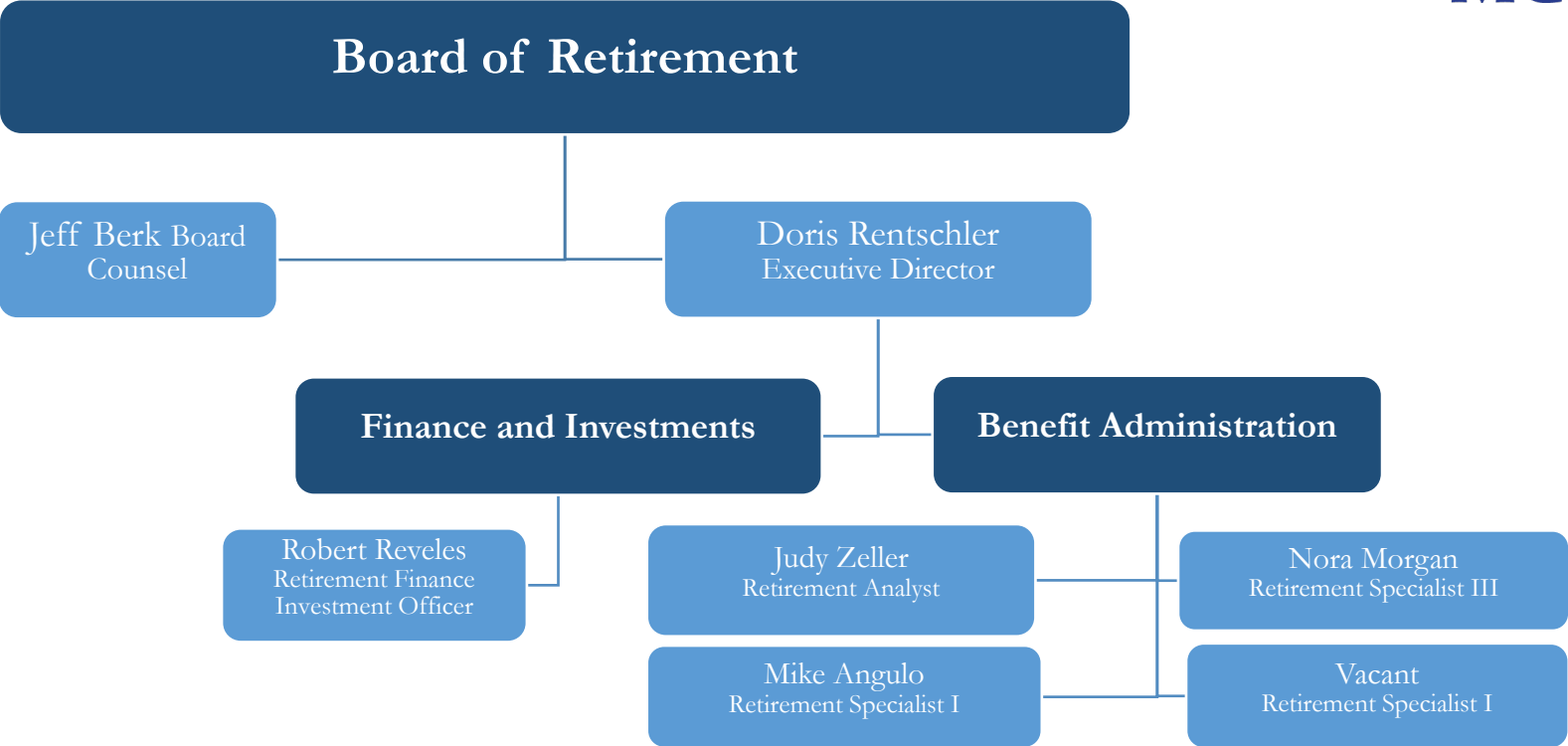


MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Board Administration

New Trustee Orientation

MCERA Org Chart



Board Administration



Retirement staff serve as the Clerk to the Board (currently Judy).

The Clerk is responsible for:

- Maintaining the records of the Board of Retirement, including Agendas, Minutes, and Resolutions.
- Posting of the Meeting Notice and Agenda.
- Roll Call and recording all action of the Board.
- Tracking Board Training Requirements and Form 700 submissions.
- Conference and travel registration, claims and reimbursements.
- Trustee Elections and Appointments.

Meeting Schedule



- Board meetings are generally scheduled for the 3rd Wednesday of each month, unless otherwise directed by the Board.
- Board meetings start at 8:30 a.m., unless otherwise directed by the Board.
- Agenda Review Meetings with the Chair and/or Vice-Chair, Board Counsel, Executive Director, and the Clerk of the Board occur the Wednesday of the week prior to the Board meeting.
- Meeting materials are generally distributed by noon on the Friday preceding the Board meeting.
- Agendas and meeting materials are posted to the **Board's SharePoint** site. The Agenda and public materials are posted to MCERA's webpage.
- Submit agenda items through the Chair or ED at least 10 days prior to meeting.

Email Notifications



- The Clerk of the Board emails Trustees once the meeting materials have been posted to the Board's SharePoint site. Confidential materials are only available via the SharePoint site. Sample email notification:

May 15, 2024 Meeting Agenda and Supporting Documents

Good afternoon,

The meeting materials are available for your review. Please login to Share Point to review the closed session documents. The Callan monthly investment performance report will be posted as soon as it becomes available.

- All MCERA business shall be conducted using official Mendocino County issued email addresses. Personal email should not be used for Board business.
- Trustees are responsible for checking their official Board email and the Board SharePoint site.

Per Diem, Training, & Travel Reimbursement



- Appointed and Retired Trustees receive \$100 per diem for every Board meeting that they attend.
- Training opportunities are included in the quarterly Trustee training report and notices of upcoming events are emailed to Trustees.
- Contact Judy if you are interested in attending a training event.
- Travel receipts are submitted to the Clerk of the Board.
- The Clerk of the Board will complete the travel claim for your signature.
- Trustees need 24 hrs. of education every 2-years.
- [Online Education and Training Report Form](#)

MCERA Travel



- All Trustees receive reimbursement for travel for Board Business
- Travel can be booked directly by Trustees and reimbursed by MCERA, or MCERA can book on behalf of Trustees using MCERA's credit card.
- Administrative staff will handle Conference registrations (e.g. SACRS)
 - Includes conferences and trainings
 - No allowance for “entertainment” or “hosting”
 - Claims are processed through the County Auditor-Controller's Office.
 - Claims must adhere to County rules (e.g. no reimbursement for alcohol, tips, or personal expenses)
 - General rule: Keep receipts, Mileage logs (google maps), Conference Agendas
 - COB/Staff will prepare the Travel Reimbursement Claim form. You will be asked to review and sign the form.

MCERA Associations and Memberships



Trustees typically are expected to attend at least one of the following conferences a year.

- SACRS
 - Only county systems under the CERL
 - Conferences in May and November
 - Offers Trustee training curriculum
- CALAPRS
 - All California public systems
 - Annual conference in March
 - Quarterly Round Table sessions
 - Offers Trustee training curriculum

Memberships:

- SACRS: State Association of County Retirement Systems
- CALAPRS: California Association of Public Retirement Systems
- NCPERS: National Association of Public Employee Retirement Systems
- GFOA: Government Finance Officers Association

Board Policies and Charters



- Available at:
<https://www.mendocinocounty.gov/government/affiliated-agencies/retirement-association/board-policies-and-charters>
 - Available from MCERA's home page click the Board Governance and Policies link in the left-side navigation pane.
- Charters: Define roles and responsibilities of the Board, Board Officers, Board Committees and Executive Director.
- Board Regulations: Adopted regulations of the Board of Retirement.
- Policies: Establish policy for consistent operation.
 - Reviewed at least every three years or as needed.



MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Board Governance and Fiduciary Duties

New Trustee Orientation

The CERL



- County Employees Retirement Law of 1937, Gov. Code § 31450 et seq. (the “CERL”)
- Provides a governance model for the creation of defined benefit plans for County employees.
- Mendocino County adopted in 1948.
- There are 20 counties operating plans under the CERL

The PEPRA



- Public Employees' Pension Reform Act of 2013, Gov. Code § 7522 - et seq. ("PEPRA")
- Created new (lower) defined benefit formulas for employees who became members on or after January 1, 2013.
- Applies to all California public retirement plans.
- When Mendocino County adopted PEPRA provisions, a Cost of Living (COLA) benefit was **not** included.

Board Composition



- The Board of Retirement has nine members (GC § 31520.1).
- First – County Treasurer.
- Second and Third – Elected by general members.
- Fourth, Fifth, Sixth, and Ninth – Electors in the County not connected with County Government, but one may be a Board of Supervisor.
- Seventh – Elected by safety members.
- Eighth – Elected by retired members.

Alternate Members



- Alternate retiree member – Elected separately from retired member (tenth seat).
- Alternate safety member – Runner up candidate for safety member of service not represented by safety member (could have one member from safety and one member from probation, but not two from either category). Although permitted, MCERA has never had a safety alternate sit on the Board.
- Alternates may participate in deliberations and be appointed to committees.
- An alternate may only vote as a member of the Board when others are absent.

Alternate Voting Rights



- Retiree Alternate may vote when retired member is absent.
- Pursuant to GC § 31520.6, Retiree Alternate may vote when BOTH general elected members (Second and Third seats) are absent or when the safety member (Seventh seat) and one general elected member (Second or Third seat) are absent.

Treasurer Alternate



- The CERL does not expressly provide for an Alternate to the Treasurer.
- An opinion from the Attorney General holds that a Deputy County Treasurer may act in place of the Treasurer in his or her absence.
(52 Op.Att.Gen.75 (May 1, 1969))
- The authority of a Deputy is limited to acting in place of the Treasurer when absent. Unlike, safety and retiree alternates, the Deputy does not have statutory authority to have independent access to Closed Sessions and or serve on committees.

Board Regulations and Policies



- In addition to the CERL, the Board of Retirement is governed by Regulations approved by the Board of Retirement and the Board of Supervisors.
- The Board of Retirement also maintains charters defining the role of the Board, its officers, committees and its Executive Director, and policies governing its operations.
- Charters and most policies are reviewed every 3 years, or sooner if needed.
- Board Regulations, Charters and Policies may be accessed on MCERA's [Board Governance and Policies](#) web page.

Board Quorum and Voting



- Per Board Regulations, a minimum of five voting members are required for a quorum. (Board Regulation 2.6.3.)
- Any motion passed requires a majority of the quorum. (Board Regulation 2.6.3.)
- Robert's Rules serve as a guide for Board proceedings except as otherwise provided in the Board Regulations. (Board Regulation 2.6.4.)

Standing Board Committees



- Currently the only standing committee is the Audit Committee.
- Audit Committee's responsibilities include approving the objectives and scope of the annual financial audit.
- Review the findings or comments from any regulatory agency concerning financial statements or operational controls.
- Recommend the audited annual financial statement to the Board of Retirement.
- Audit Committee meetings are public under the Brown Act.

Board Ad Hoc Committees



- May be established by the Board for a particular purpose.
- May be as few as two or as many as four members.
- Committee Members are appointed by the Board Chair.
- Not subject to the Brown Act – may communicate and deliberate without public notice.

Association Management



- For many years, MCERA operated through the Office of the County Treasurer.
- In 2007, MCERA commenced operations under direction of an independent administrator (Retirement Administrator, aka Executive Director). (GC § 31522.2)
- MCERA employees are County employees, most subject to County Civil Service Rules, but serve by authority of the Board (GC § 31522.1)
- Respective roles of the Board and the Executive Director (ED) are set forth in the Board and ED Charters.

Board's Fiduciary Oversight Responsibility



Article XVI, Section 17 of California Constitution, amended in 1992 to ensure independence of public retirement boards, provides:

- Retirement Boards shall have sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system.
- Duties be discharged “solely in the interest of, and for the exclusive purpose of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.”
- “A retirement board’s duty to its participants and their beneficiaries shall take precedence over any other duty.”

Board's Fiduciary Oversight Responsibility (Cont'd)



- “The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.”
- “The members of the retirement board of a public pension or retirement system shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.”

Board's Fiduciary Oversight Responsibility (Cont'd)



- All Board members have the same duties of independence and responsibility, regardless of appointing authority.
- Board may delegate duties to staff and consultants but have overriding duty to ensure that duties are fulfilled.
- Duties are as a prudent expert, not just a prudent person – there is a duty to be informed.

Board's Fiduciary Oversight Responsibility (Cont'd)



Board members have a wide range of responsibilities:

- Prompt delivery of benefits
- Fiscal soundness of system
- Minimize employer contributions
- Ensure administrative expenses are reasonable
- Prudent investment
- Fairly adjudicating disputed claims

Mandatory Fiduciary Education



- The CERL mandates trustee education. (GC § 31522.8)
- 24 hours in the first two years of service and in each 2-year period thereafter.
- A wide variety of educational activities are available to satisfy the requirement.

Approved Education Topics



Board Fiduciary Education includes the following topics:

1. Fiduciary Responsibilities
2. Ethics
3. Pension fund investments and investment program management
4. Actuarial matters
5. Pension funding
6. Benefits Administration
7. Disability Evaluation
8. Fair hearings
9. Pension fund governance
10. New Board Member Orientation

Ethics & Anti-Harassment Training



Within the 24-hour education requirement,

- Two hours must be in ethics training. (GC § 53234-53235.2; AB 1234)
 - Applies to all local agency officials.
 - Must be certified educational program.
 - May be completed online <https://localethics.fppc.ca.gov/login.aspx>
- Per Board Policy, two hours must be in anti-harassment (harassment prevention) training (GC § 12950.1; AB 1825)

Fiduciary Insurance



- System maintains insurance for errors & omissions, including those of Trustees.
- Current level of insurance is \$5 million.
- Trustees are required to pay a nominal portion of annual premiums to ensure no “recourse” liability.

Questions



The End

The Ralph M. Brown Act

Jeff Berk
MCERA Legal Counsel



The Intent of the Brown Act

- Government officials are elected by the people and govern on behalf of the people.
- Legislative bodies must discuss, deliberate and act on the public's business openly.
- The public needs to have access and be able to observe, monitor, and evaluate its legislative bodies.

When Does the Brown Act Apply?

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting.

Government Code Sec. 54953.

What is a Legislative Body?

The Brown Act broadly defines a “legislative body” to include:

“A commission, committee, board, or other body of a local agency whether **permanent or temporary, decision making or advisory**, created by charter, ordinance, resolution or formal action of the legislative body.” Government Code Sec. 54952(b).

What is a Legislative Body?

- If a legislative body takes action to create a subcommittee or advisory body, that subcommittee or advisory body becomes its own legislative body.

Government Code Sec. 54952(b)

What is NOT a Legislative Body?

An advisory committee **created by a single officer** is not subject to the Brown Act. This committee would not have authority to take action or advise a legislative body. It would exist solely to make recommendations to be considered by a single officer.

California Attorney General Opinion 72-67.

Ad Hoc Committees

Ad Hoc Committees do not need to comply with the Brown Act's notice and open meeting. Ad Hoc Committees are limited to committees that meet both requirements below:

- * The committee is comprised solely of less than a quorum of the legislative body which created it; and
- * The committee meets for a short duration to gather information about a single subject.

What Type of Committee?

Standing Committees

- Ongoing or indefinite term
- Continuing subject matter
- Subject to Brown Act requirements, even if less than a quorum.

Ad Hoc

- * Temporary committee
- * Less than a quorum
- * Single/limited purpose
- * Dissolved when done
- * Not subject to Brown Act requirements

What is a Meeting

- * Deliberations or actions by a majority;
and
- * Series of communications involving a majority of members.

Serial Meetings

A majority of members of a legislative body shall not, outside of an open and public meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business.

[Government Code Sec. 54952.2(b).]

Email or Text Chain

- Trustee A texts Trustee B to chat about agenda item #7. Trustee B emails trustees C and D about the same issue. The group may be forming a serial meeting if the series of communications involves a quorum.



Hub and Spoke



- Trustee A calls Trustee B to discuss agenda item #3. Next, A texts C and D to get their thoughts too.

What is NOT a Serial Meeting?

- Individual contacts between trustees and staff, counsel or others, e.g. staff meeting with a trustee to answer questions or provide information. Government Code Sec. 54952.2(c)(1)
- Staff should not ask and trustees should not answer questions about concerns or positions of other trustees.

NOT a Meeting

- Attendance at social or ceremonial events where no business of the Commission is discussed. Government Code Sec. 54952.2(c)(5).
- Community forums and meetings of other government bodies.

NOT a Meeting

- Attendance at conferences if trustees do not discuss among themselves the business of their jurisdiction. Government Code Sec. 54952.2(c)(2)(3) and (4).

Social Media

Trustees may post on social media regarding MCERA business. However, trustees may not engage in discussions, comment or “like” a fellow trustee’s social media posts. GC section 54952.2(b)(3)

Other best practices:

- Not texting, emailing or engaging in other forms of electronic communication during meetings.
- Do not send “reply all” texts or emails.

Notice & Posting Agendas

- Agenda must be posted 72 hours in advance (if a special meeting is called by the Commission, 24-hour notice must be given)
- Brief description of items of business
- Agendas must be publicly accessible and distributed in advance to those who request copies

Items Not on Agenda



- No discussion or decision on items not on the posted agenda

Items Not on Agenda

- Members or staff may briefly respond to questions posed by the public.
- Members may ask staff a question, make a brief announcement or make a brief report on his or her own activities.
- Members may ask staff to report back to the body at a subsequent meeting or take action to direct staff to place a matter on a future agenda.

Public Comment

- Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject area of the legislative body.
- Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.

Remote Attendance

- Allowed if provide location and permit public access
- AB 2449 created exceptions for “just cause” and “emergencies” (GC section 54953)
- MCERA Remote Attendance Policy

Closed Sessions



Closed Sessions – General Principles

Closed sessions are narrow exceptions to the open meeting rule. Standard is NOT whether the subject is sensitive, embarrassing or controversial.

- Permitted only where specifically available by statute (e.g. litigation, personnel, real estate negotiations)
- Each closed session exception has detailed requirements.

Brown Act Violations: Civil Action

- Any individual or the District Attorney may file a civil lawsuit for injunctive relief or to void action taken in violation of the Brown Act. Government Code Sec. 54960.
- Attorneys' fees are available to prevailing plaintiffs. Government Code Sec. 54959.

Brown Act Violations: Criminal Penalties

- Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of the Brown Act and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled to, is guilty of a misdemeanor. Government Code Sec. 54959.

Questions?

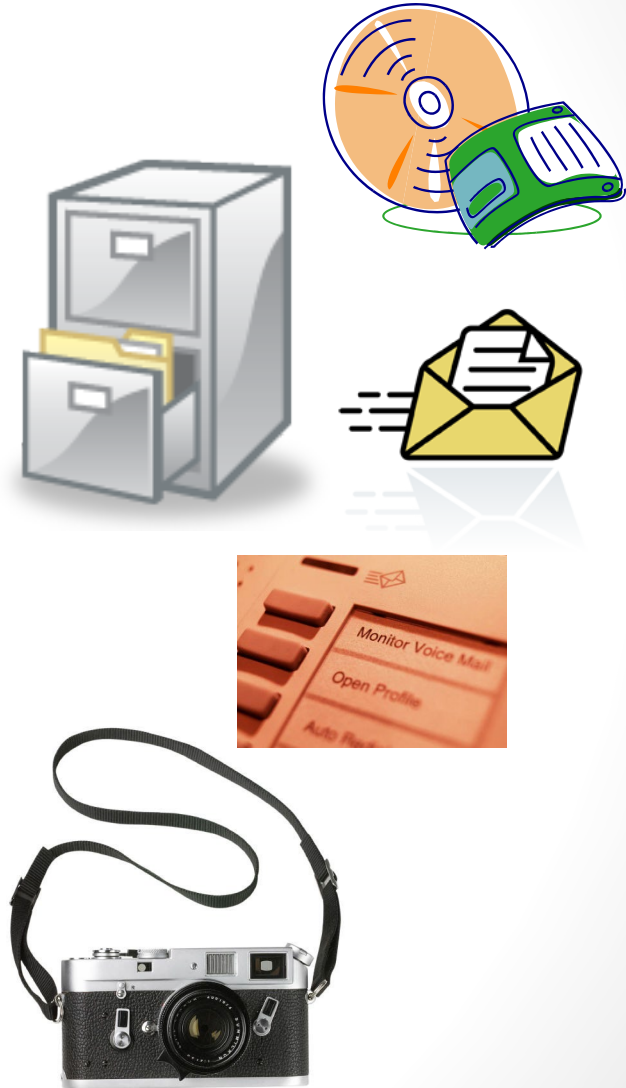


Public Records Act (PRA)

What is a Public Record?

“any writing containing information relating to the conduct of the public’s business prepared, owned, used or retained by any state or local agency, **regardless** of physical form or characteristics.”

- Government Code §6252 -



“Any Writing”

- Emails (including personal accounts; i.e. Gmail/Yahoo/etc.)
- Social media (including personal accounts; i.e. Facebook, Twitter, blogs)
- Text messages (including personal devices) – consider using TEAMS
- TEAM chats (“Transitory”) (kept 30 days)



Best Practices:

- Don't use personal email or other personal accounts to communicate.
- Use County platforms for MCERA communications.
- As with any other MCERA communication, if you must text on your personal cell phone for business purposes:
 - (1) be professional;
 - (2) understand it is a public record; and
 - (3) the County’s retention schedule applies to MCERA communications on your personal device.



“Information relating to the conduct of the public’s business”

- Any document/record containing information relating to MCERA’s business.
- In possession of, or controlled by, MCERA
- Possession does not make a public record – must be kept because record necessary or convenient to discharge of official duties – but, if you have it. . .
(how do you know if it should be kept)

Public Documents

- Contracts
- Request for Proposal (RFP) (after contract)
- Settlement Agreements



Public Records Practices After the San Jose Court Decision

Ruling in favor of the requestor: “[W]e hold that when a city employee uses a **personal account** to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act....”

BEST PRACTICES:



- Use County accounts and platforms
- Always be professional



Background of the San Jose Case

Request targeted “emails and text messages ‘sent or received on private electronic devices used by’ the mayor, two city council members and their staffs.”



All Requests Require Searches of Employees Personal Devices

- Determine which trustee(s) have duties relevant to the PRA request.
- Ask trustee(s) to conduct a search of their personal files, accounts, and electronic devices for writings responsive to PRA request.
- If these writings contain substantive information relating to the conduct of the MCERA's business, they are subject to disclosure under the PRA.





Any questions?



MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Board Consultant and Service Providers

New Trustee Orientation

Board Appointment



Per the Board Charter, appointment or ratification of the following service providers rests with the Board:

- Actuarial firms
- Financial auditor
- Outside legal counsel
- Investment consultants
- Custodial Bank
- Other service provides as determined by the Board

Consulting Actuary



- MCERA uses Segal Consulting for actuarial services.
- Segal's services include annual valuations, triennial experience study recommending actuarial assumptions adopted by the Board, GASB reports, and other ad hoc consulting.
- Consulting Actuary and Actuarial Auditors are selected through a periodic competitive bid (Request for Proposals "RFP") process.

Financial Auditor



- MCERA uses Brown Armstrong as its financial auditor.
- Brown Armstrong's services include performance of the annual financial audit and issuance of the related reports, assistance with the ACFR, GASB pronouncements, assistance on technical matters.
- Financial Auditor is selected through a periodic competitive bid (Request for Proposals "RFP") process.

Investment Consultant



- MCERA uses Callan Consulting as its investment consultant.
- Callan’s services include, asset-liability study completed every 3-years, asset allocation modeling, investment manager searches, recommendations regarding investment structure evaluation, portfolio/manager monitoring and evaluation, and board education.
- Investment Consulting is selected through a periodic competitive bid (Request for Proposals “RFP”) process.

MCERA Legal Advisors



MCERA contracts with several entities for legal services depending on the type of service.

- Board Counsel
- Fiduciary Counsel
- Tax Counsel
- Disability Hearing Counsel

Because MCERA primarily invests in comingled funds, and does not utilize separate accounts, MCERA has not engaged:

- Securities Litigation Monitoring Counsel
- Investment counsel

Counsel Responsibilities



Board Counsel, Jeff Berk – private practice

- Advises the Board on policies and fiduciary duty
- Reviews and presents recommendations of disability retirement applications
- Provides general guidance with contracts, personnel and benefits administration

Fiduciary Counsel, Ashley Dunning, Nossaman LLP

- Advises on complex legal matters impacting Board policies and fiduciary duties
- Advises regarding the CERL and compliance with regulatory requirements
- Representation in litigation

Disability Hearing Counsel, Sonoma County Counsel Office

- Represents MCERA in disability hearings

Tax Counsel, Judith Boyette & Mikaela Habib, Hanson Bridgett

- Advises on tax compliance issues and regulatory requirements
- Contact point for MCERA's IRS Voluntary Compliance Application

Litigation Prevention



- Litigation can be expensive and has inherent risks
- Goal to minimize exposure to litigation risk
- As a public board that makes independent decisions, litigation cannot be entirely avoided – no compromise of principle to avoid litigation
- Board decisions must be defended
- A duty to pursue litigation where harm to system

Pending/Potential Litigation



MCERA as a Defendant:

- Disability adjudication challenges – none pending
- Disputes with members over benefit issues – potential claim pending relating to VCP corrections

MCERA as a Plaintiff:

- Vendor/Consultant litigation – none pending
- Member collection litigation – none pending
- Potential litigation with defaulting tenant(s) – none pending
- Investment litigation – loss recovery – none pending

Other Consultants



- MCERA contracts with other consultants and service providers, as needed.
- Past engagements include:
 - Strategic Plan Consultant to facilitate the development of the Board's 5-year Strategic Plan
 - Opinion Research firm to perform a survey of MCERA membership
 - Risk Assessment Consultant to perform an enterprise-wide risk assessment
 - Information Technology consultant
 - Architect & contractor for accessibility improvements to MCERA's building
- Future/anticipated engagements include:
 - Internal Auditor for a review of internal controls, practices and policies separate from the annual financial audit

Questions



The End



MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Benefits Overview

New Trustee Orientation

What We Do



- Deliver promised benefits through attentive and timely assistance to members and beneficiaries.
- Enable smart retirement planning choices by educating members on the options available to them.
- Partner with Plan Sponsors, voluntary retirement savings plans, and community partners to serve our members (pre- and post-retirement).
- Provide benefits to past, present and future employees of:
 - County of Mendocino
 - Superior Court of Mendocino County
 - Russian River Cemetery District

Types of Benefits



- MCERA is a defined benefit plan that provides:
 - Retirement,
 - Death, and
 - Disability benefits
- Defined Benefit plans provide retirement benefits that:
 - Are guaranteed for life
 - Are determined by law (formulas in the CERL)
 - Do not vary with movement in the financial markets.
- Death Benefits may be available to a member's designated beneficiary(ies) or eligible survivors - qualify spouse, registered domestic partner or minor child(ren).
- Disability Retirement Benefits include service-connected disability benefits and nonservice-connected disability benefits.

Retirement Eligibility



Date of Membership	General Members	Safety & Probation Members
On or after January 1, 2013 (PEPRA*)	<ul style="list-style-type: none"> • Minimum 5 years of service • Minimum age 52 	<ul style="list-style-type: none"> • Minimum 5 years of service • Minimum age 50
Prior to January 1, 2013 (Legacy)	<ul style="list-style-type: none"> • Minimum 5 years of service • At least 10 years since membership date • Minimum age 50 • 30 years of service, regardless of age 	<ul style="list-style-type: none"> • Minimum 5 years of service • At least 10 years since membership date • Minimum age 50 • 20 years of service, regardless of age

*PEPRA – California Public Employees’ Pension Reform Act of 2013

7/23/2024

The Benefit Formula



- Benefit Tier depends on the membership category (General, Safety or Safety Probation) and the date of membership.
- Benefit formulas for each tier are specified in the CERL, and are based on **Final Average Salary**, **Years of Credited Service**, and a **Benefit Multiplier** based on age at retirement.
- Final Average Salary is average highest 12 or 36 consecutive months of pensionable salary during your career. The Benefit Tier determines whether a one year or a three year average salary is used.
- Years of Credited Service is the total amount of service credit including any purchased service. The service amount may not be the same as the number of years with the Employer.

Membership Tiers - Legacy



Tier	Final Average Salary	Max COLA	Benefit Formula	Gov. Code Section (§)
General Tier 1	1 year	3%	2% @ 58.50	§ 31676.11
General Tier 1 (Enhanced*)	1 year	3%	2%@57	§ 31676.12
General Tier 3	3 years	3%	2% @ 61.25	§ 31676.1
General Tier 3 (Enhanced*)	3 years	3%	2%@57	§ 31676.12
Safety Tier 2 (Enhanced)	3 years	3%	3% @ 55	§ 31664.2
Safety Probation Tier 2 (Enhanced)	3 years	3%	2% @ 50	§ 31664

Legacy employees are membership tiers prior to implementation of PEPRA

* Enhanced – Improved Retirement Benefit Formulas

Membership Tiers - PEPRA



Benefit Tier	Final Average Salary	Max COLA	Benefit Formula	Gov. Code Section (§)
General Tier 4 (PEPRA*)	3 years	N/A	2.5%@67	§ 7522.20
Safety Tier 3 (PEPRA*)	3 years	N/A	2.7%@57	§ 7522.25(d)
Safety Probation Tier 3 (PEPRA*)	3 years	N/A	2.7%@57	§ 7522.25(d)

*PEPRA – California Public Employees’ Pension Reform Act of 2013

General Tiers 1 & 3 Benefit Calculation Example



Enhanced Benefit Formula

Final Average Salary (FAS)

- Social Security Integration Factor (SSIF)
- X Benefit Multiplier (age factor * benefit %)
- X Years of Service
- = Benefit Amount

- Tier 1 FAS is the highest 1 year.
- Tier 2 and 3 FAS is the highest 3 consecutive years.
- Benefit multipliers are based on age at retirement.

Section 31676.12

Item	Calculation	Amount
FAS - SSIF	\$3,000 - \$116.67	\$2,883.33
Age 62 Benefit Multiplier	1.3093 x 0.02	x 2.6186%
Years of Service	10	x 10
Benefit Amount		\$ 755.03

General Tier 4 Benefit Calculation Example



PEPRA* Benefit Formula

Final Average Salary (FAS)
 x Benefit Multiplier (Age based)
 x Years of Service

 Unmodified Benefit

- PEPRA FAS is the highest 3 consecutive years.
- Benefit multipliers are based on age at retirement.
- The multiplier changes with age.

*PEPRA – California Public Employees’ Pension Reform Act of 2013

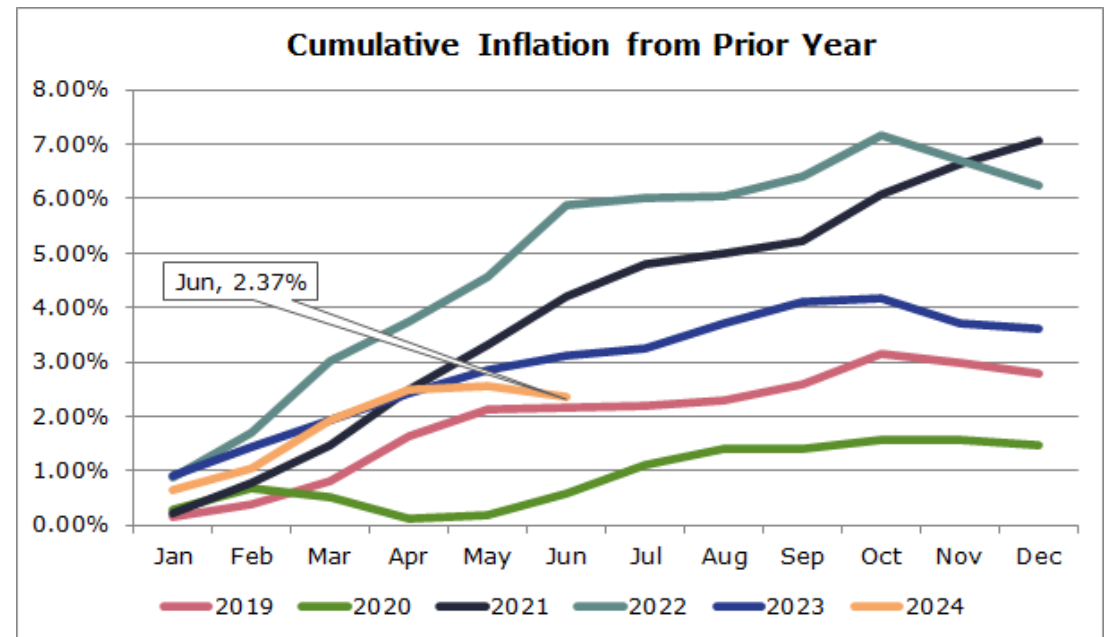
Section 7522.20(a)

Item	Amount
FAS	\$3,000
Multiplier (at age 62)	x 2.00%
Years of Service	x 10
Benefit Amount	\$ 600.00

Cost of Living Adjustments*



- Based on the Consumer Price Index (CPI) for the Bureau of Labor Statistics West Region
- Must be retired as of April 1st of a year to receive that year's COLA
- Is applied effective April 1st and is in the benefit payment issued at the end of April.
- COLA is capped at 3%, rounded to the nearest 1/2%. CPI over the cap is banked for future years.
- ***Only applicable to legacy members, NOT PEPRA members.**



Retirement Benefit Options



Option	Benefit	Continuance	Remaining Contributions?
Unmodified	Highest benefit to member	60% continuance to qualifying spouse or domestic partner	If member dies before receiving benefit payments equal to or greater than contribution account balance
Option 1	Slightly reduced benefit to member	None	If member dies before receiving annuity payments equal to or greater than contribution account balance
Option 2	Reduced benefit to member	100% continuance to named beneficiary	No
Option 3	Reduced benefit to member	50% continuance to named beneficiary	No
Option 4	Reduced benefit to member	Custom % continuance to one or more beneficiaries	No

Other Notable Items



- Reciprocity coordinates benefits between California retirement systems
 - Service time from all linked reciprocal systems counts towards each systems vesting requirements in each system.
 - The highest Final Average Salary from any reciprocal system is used for benefit calculations.
- Pensionable Pay
 - Whether a pay type is pensionable may differ between Legacy and PEPRA tiers.
 - Includes some (not all) premium pay types.
 - Does NOT include overtime pay or pay for activities outside of normal shift hours (like stand-by or on-call pay).
- Death Benefits
 - Pre-retirement death benefits depend on length of service and whether there is a qualifying spouse, domestic partner or minor child.
 - Post-retirement death benefits depend on the benefit option elected by the member at retirement.

Questions



The End



MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION

Disability Retirement Trustee Training

Jeff Berk

The Board has a Duty to:

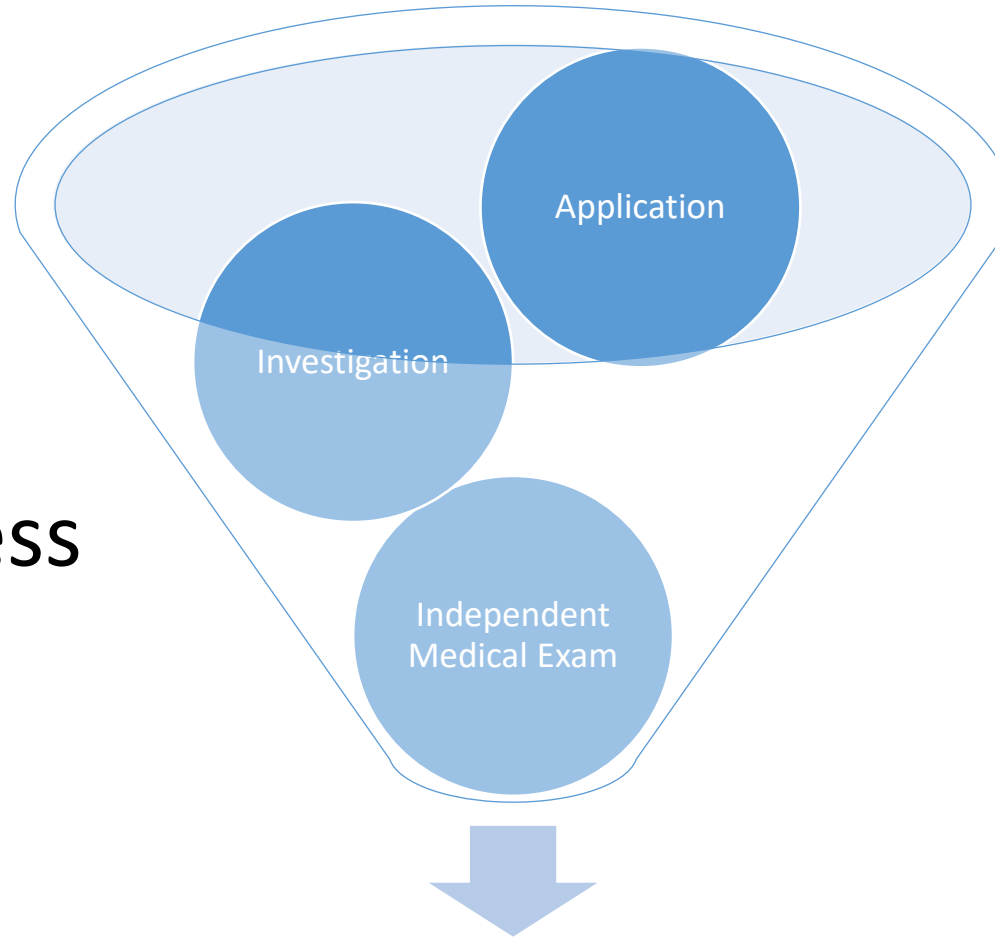


- Manage the assets of the fund to enable the provisions of benefits to members.
- Investigate claims for disability benefits and to give those benefits where the statutory criteria are met.
- Provide due process and to act as a neutral decision-maker on disability claims.

Part I



The Process



Determination

The Application



- The application consists of the following documents:
 - Application
 - Authorizations for Use & Disclosure of Information
 - Attending Physician's Report
- Applications will not be accepted without a completed Attending Physician's Report supporting the claim.
- The applicant may submit forms in person or by mail.

Filing the Application



- Staff reviews the application and counsels the member.
- All forms must be completed properly.
- Confirmation of accepted application is sent to the applicant.
- Employer filed applications require member notification and involvement.

Deadlines for Submitting Application



- While a member is in service; or
- Within 4 months after discontinuance of service; or
- Any time after the date of discontinuance of service to the time of application, but the member must have been continuously incapacitated.
- Special rules for "presumptions."

Evidence Gathering



- The CERL allows the Board to secure medical, investigatory and other services and advice as necessary.
- Information gathered includes:
 - Personnel and Medical files.
 - Worker's Compensation file.
 - Employer Risk Management & Supervisor's statements.
 - Additional medical records are requested, as needed, from the applicant's personal physicians.
- Additional inquiries and follow-up requests may be made.

Witness Statements



- Immediate Supervisor's Statement:
 - Knowledge about “the injury”.
 - Ability to perform duties.
 - “Actual duties” performed.
 - Frequency of movements.
 - Physical requirements and equipment used.
 - “Modified duties” performed.
 - Changes in processes or equipment to assist employee.
- Return-to-Work statements from employer regarding accommodation.

Board Ordered Examination



- Independent Medical Examination (IME).
- Medical records and other relevant documents are provided to the IME.
- The IME report addresses specific questions.
- Staff reviews the IME report. Supplemental reports can be requested, if necessary.
- The IME report and other medical information is provided to the Medical Advisor, who addresses specific questions and prepares a report.

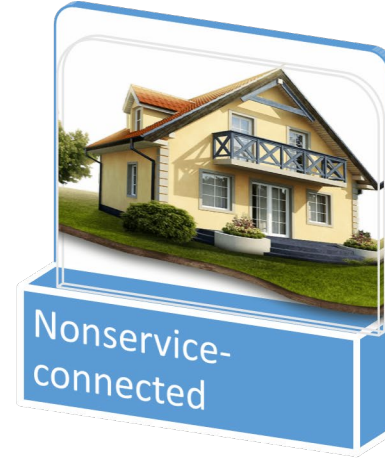
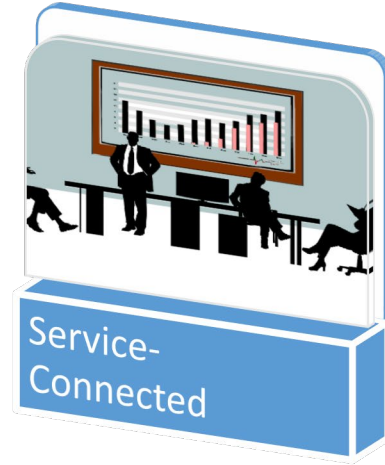
Board Action



- Staff and Counsel review the file.
- The application is placed on the Board agenda as a closed session item.
- The Board receives the file and counsel's confidential memo, which summarizes the information and addresses the legal issues for the Board to consider.
- The Board can grant, deny, or send the case back for more information.
- If denied, the applicant is advised that they can request a hearing.

Part II

The Legal Standard



Service-Connected Disability Retirement Criteria



- Eligible from first day of employment.
- Must be “permanently disabled”.
- Must be “work-related”.
- Benefit: 50% of Final Average Salary (FAS) (tax free) or service retirement, if higher (taxable in excess of the 50% FAS).
- Spouse/partner eligible for a 100% continuance as long as legally married or registered partnership from date of application.

Nonservice-Connected Disability Retirement Criteria



- Must have at least 5 years of service.
- Must be “permanently disabled”.
- Disability is not “work-related”.
- Spouse/partner eligible for continuance as long as legally married/registered partnership one year prior to date of application for unmodified option.
- Benefit: up to 33% of FAS or service retirement, if higher. Benefit is taxable.

Permanency



- Further change is not medically anticipated (maximum medical improvement).
- Has exhausted standard medical treatment.
- Has not unreasonably refused medical treatment.
- No available reasonable accommodation.

Incapacity



- Cannot perform the essential functions of their job (own occupation, not *any* occupation)
- Performing the function creates high probability of further injury, or discomfort so severe as to preclude further effective performance.
- CERL Transfer Provision:
 - Transfer or reassignment to a different position – applicant must agree to the transfer. The system pays the difference if the new position pays less. (Rare.)

Service Connection



Disability is service connected (work-related) if:

- There is “substantial evidence” of a “real and measurable” link between the job and the incapacity.
 - Real and Measurable means:
 - Material and traceable connection
 - Greater than infinitesimal or inconsequential connection
 - More than “any” but may be less than “principal” cause
 - Less than 50%, but more than 10%
- Job aggravated a condition causing incapacity
 - Pre-existing condition aggravated by job duties is deemed work related
 - Employer takes the employee as they find them

Service Connection



Disability is NOT service connected if:

- The link between the job and the incapacity is speculative or incapable of being quantified or measured.

OR

- Job merely caused a temporary flare-up of the pre-existing condition, or the pre-existing condition would have progressed and resulted in permanent incapacity absent the employment.

Presumptions for Safety Members of service-connectedness



- Heart Trouble §31720.5
- Cancer §31720.6
- Blood-borne Infectious Disease §31720.7
- Biochemical Substance §31720.9
- Safety members with the conditions noted above are relieved of the burden of proving their illness arose out of and in the course of employment, but permanent incapacity must still be proved.
- Presumptions are rebuttable. This means MCERA has the burden to prove that work did not cause it.

Cancer



- 5 or more years of service
- Develops cancer
- Exposure to known carcinogen on the job
- Presumption applies and cannot be attributed to pre-existing condition
- Can be rebutted by establishing site of cancer and that carcinogen is not reasonably linked to that cancer

Heart



- 5 or more years of service
- Develops heart trouble
- Presumption applies and cannot be attributed to pre-existing disease
- Non-industrial exertion may rebut presumption

Rebuttable Presumption



Once the facts giving rise to the presumption are established, the burden of proof shifts to the system to prove the non-existence of the presumed fact by a preponderance of evidence.

Shifts the burden of proof to MCERA.

Post-approval Considerations



- The CERL allows the Board to require any disability beneficiary under age 55 to undergo medical examination to determine whether the recipient is still incapacitated.
- The CERL does not prohibit the member from working while receiving a disability benefit.
- If the member is deemed to be no longer disabled AND the employer reinstates the member, the benefit ends.

Determine the Effective Retirement Date



- The retirement date is determined based on the date of the application, but no earlier than the last day in paid status.
- Staff determines the last day in paid status from payroll records.
- Delay exception – the applicant must show that the filing of their application was delayed by administrative oversight or by inability to ascertain the permanency of their incapacity.

Applicant Appeals Board Determination



- If the Board determination is to deny an application for disability retirement, the applicant may appeal the Board's decision.
- In 2013, the Board adopted Procedures for conducting hearings.
- Consistent with the CERL and according to the Procedures, a Hearing Officer is selected, and a hearing is held.
- The Hearing Officer prepares proposed findings of fact and a recommended decision.

Hearing Officer's Recommended Decision



- Upon receiving the Recommended Decision, the Board may:
 - a) Approve and adopt the proposed decision; or
 - b) Require a transcript of summary of all the testimony, plus all other evidence received by the referee and the Board shall take such action as in its opinion is indicated by such evidence; or
 - c) Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 - d) Set the matter for hearing before itself. As such hearing, the Board shall hear and decide the matter as if it had not been referred to the Hearing Officer.

Applicant Appeals Final Decision



- Writ of Mandate
 - Superior Court decides based on “the record.” No live testimony.
 - Fair Trial / Due Process
 - Prejudicial abuse of discretion
 - Did not proceed in a manner required by law,
 - Decision not supported by findings, or
 - Findings not supported by evidence.

Questions?



The End