

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 84 MAGISTRATE RETIREMENT**  
**PART 700 RETIREMENT**

**2.84.700.1 ISSUING AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.84.700.1 NMAC – Rp, 2.84.700.1, 10/10/2023]

**2.84.700.2 SCOPE:** This rule affects the members, former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.  
[2.84.700.2 NMAC – Rp, 2.84.700.2, 10/10/2023]

**2.84.700.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12C-3, 10-12C-8, and 10-12C-9 NMSA 1978, as amended.  
[2.84.700.3 NMAC – Rp, 2.84.700.3, 10/10/2023]

**2.84.700.4 DURATION:** Permanent.  
[2.84.700.4 NMAC – Rp, 2.84.700.4, 10/10/2023]

**2.84.700.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited as the end of a section.  
[2.84.700.5 NMAC – Rp, 2.84.700.5, 10/10/2023]

**2.84.700.6 OBJECTIVE:** The objective of this rule is to establish standards and procedures for the payment, of pensions of retired members.  
[2.84.700.6 NMAC – Rp, 2.84.700.6, 10/10/2023]

**2.84.700.7 DEFINITIONS:** [RESERVED]  
[2.84.700.7 NMAC – Rp, 2.84.700.7, 10/10/2023]

**2.84.700.8-9 [RESERVED]**

**2.84.700.10 PROCEDURE FOR RETIREMENT:**

**A.** The following procedure governs the process for retirement:

(1) The member shall request an application for retirement from PERA. To ensure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

**B.** Documentation: The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age 18 years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the Magistrate Retirement Act.

(4) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final decree is required, but no marital property settlement is required. If the member was divorced more than once prior to becoming a member, then only the most recent final decree is required.

(5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. In addition to any other vesting provided by state law, a magistrate's normal retirement benefit is non-forfeitable when the magistrate reaches normal retirement age, which is age 65, with five or more years of credited service, whichever is later for an individual who was a member on June 30, 2014 and age 65 with eight or more years of credited service, whichever is later for an individual who initially became a member on or after July 1, 2014. A magistrate is also vested in his or her accrued benefits when the magistrate reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the magistrate retirement system, or if employer contributions to the magistrate retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[2.84.700.10 NMAC – Rp, 2.84.700.10, 10/10/2023]

**2.84.700.11 DISABILITY RETIREMENT:** A magistrate who becomes disabled prior to retirement can make application for benefits in accordance with 2.80.1000 NMAC.

[2.84.700.11 NMAC – Rp, 2.84.700.11, 10/10/2023]

**2.84.700.12-19 [RESERVED]**

**2.84.700.20 BENEFIT PAYMENT:** The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the Magistrate Retirement Act and regulations, all benefits paid from the magistrate retirement trust fund shall be distributed in accordance with the requirements of Internal Revenue Code section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the magistrate shall:

(1) be completely distributed to the magistrate not later than the required beginning date; or  
(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of the magistrate or the life expectancy of the magistrate and a designated beneficiary.

**B.** For the purposes of this section, “required beginning date” shall be defined in the same manner as the term “required beginning date” is defined in the Internal Revenue Code Section 401 (a)(9) and the regulations under that section.

**C.** The life expectancy of the magistrate or the magistrate’s beneficiary may not be recalculated after the benefits commence.

**D.** If a magistrate dies before the distribution of the magistrate’s benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the magistrate died.

**E.** The amounts payable to a magistrate’s beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the magistrate’s pension payable to a non-spouse survivor beneficiary who is more than 10 years younger than the magistrate at the time of the magistrate’s retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[2.84.700.20 NMAC – Rp, 2.84.700.20, 10/10/2023]

## **2.84.700.21-29 [RESERVED]**

**2.84.700.30 ANNUAL COMPENSATION:** Notwithstanding any provision of the of the Magistrate Retirement Act and regulations, the annual compensation of each magistrate that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).

[2.84.700.30 NMAC – Rp, 2.84.700.30, 10/10/2023]

### **HISTORY of 2.84.700 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

MRA Rule 400.00, Normal and Deferred Retirement, filed on 12/29/1989;

MRA Rule 700, Retirement, filed on 7/1/1992;

MRA Rule 700, Retirement, filed on 11/1/1994.

### **History of Repealed Materials:**

2 NMAC 84.700, Paragraph 10.1.5 - Repealed 11/15/1997.

2 NMAC 84.700.20 - Repealed, 11/15/1997.

### **Other History of 2.84.700 NMAC:**

2.84.700 NMAC, Retirement, filed 11/1/1994 and renumbered 12/28/2000.

2.84.700 NMAC, Retirement, filed 12/28/2000 was repealed, and replaced with 2.84.700 NMAC, Retirement, effective 10/10/2023.