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**IDAPA 59
TITLE 02
CHAPTER 01**

59.02.01 - RULES FOR THE JUDGES' RETIREMENT FUND

**SUBCHAPTER A -- GENERAL PROVISIONS
Rules 001 Through 099**

000. LEGAL AUTHORITY (RULE 0).

The Rules for the Judges' Retirement Fund rules are adopted under the legal authority of Section 1-2012, Idaho Code. (7-1-14)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is IDAPA 59.02.01, "Rules for the Judges' Retirement Fund." (7-1-14)

02. Scope. This chapter relates to retirement under the Judges' Retirement Fund. (7-1-14)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

Written interpretations of these rules, to the extent they exist, are available from PERSI (Public Employee Retirement System of Idaho), at the locations listed in Rule 4 of these rules. (7-1-14)

003. ADMINISTRATIVE APPEAL (RULE 3).

Administrative appeals are conducted pursuant to IDAPA 59.01.01, "Rules of Administrative Procedure," Rules 101 through 104 and 150 through 789. (7-1-14)

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 4).

Office hours are 8 a.m. to 5 p.m. Monday through Friday. PERSI's mailing and street addresses, telephone numbers, and fax numbers are as follows:

Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-4026

Pocatello Office
1246 Yellowstone Ave, Suite A5
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

Coeur d'Alene Office
2005 Ironwood Parkway, Suite 226
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476 (7-1-14)

005. PUBLIC RECORDS ACT COMPLIANCE (RULE 5).

All rules required to be adopted by this chapter are public records. (7-1-14)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 59.02.01.000, et seq. For example, this section's citation is IDAPA 59.02.01.006. In documents submitted to the Board or issued by the Board these rules may be cited as Rules for the Judges' Retirement Fund and section number less leading zeros. For example, this rule may be cited as Rules for the

Judges' Retirement Fund Rule 7. (7-1-14)

007. EFFECTIVE DATE (RULE 7).

Unless otherwise indicated in the bracketed material following each rule, the effective date of every rule in this chapter is July 1, 2014. (7-1-14)

008. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

The following definitions shall apply to this chapter: (7-1-14)

01. Accrued Benefit. The actuarial value of the retirement benefit to which the Member is entitled under the Judges' Retirement Fund upon attainment of Normal Retirement Age. (7-1-14)

02. Active Member. Each justice or judge who participates in the Judges' Retirement Fund as provided by Idaho Code. (7-1-14)

03. Administrator. The Board. (7-1-14)

04. Annual Additions. Annual additions are the total of all after-tax Member contributions in a year (not including rollovers) and forfeitures allocated to a Member's account under the Judges' Retirement Fund and all other qualified plans to which contributions are made based on the Member's service with the Employer. (7-1-14)

05. Beneficiary. The designated person (or, if none, the Member's estate) who is entitled to receive benefits under the Plan after the death of a Member. (7-1-14)

06. Board. The retirement board established in Section 59-1304, Idaho Code. (7-1-14)

07. Code. The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. (7-1-14)

08. Compensation. All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Member's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Member's gross income for the calendar year but for a compensation reduction election under sections 125, 132(f), 401(k), 403(b), or 457(b) of the Code. (7-1-14)

09. Contingent Annuitant. The person designated by a Member under certain retirement options to receive payments upon the death of the Member. The person so designated must be born and living on the effective date of retirement. (7-1-14)

10. Designated Beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4, Q&A-4, of the Treasury regulations. (7-1-14)

11. Differential Wage Payments. Differential Wage Payments as defined in 26 U.S.C. 3401(h). A differential wage payment generally refers to an employer payment to an employee called to active duty in the uniformed services for more than thirty (30) days that represents all or a portion of the compensation he would have received from the employer if he were performing services for the employer. (7-21-15)

12. Employer. The common law employer of a Member. (7-1-14)

13. Judges' Retirement Fund. The Judges' Retirement Fund established under Title 1, Chapter 20, Idaho Code, and rules applicable to the Judges' Retirement Fund. The Judges' Retirement Fund is intended to satisfy Code section 401(a) as applicable to governmental plans described in Code section 414(d). It is maintained for the exclusive benefit of Members and their beneficiaries. (7-1-14)

- 14. Member.** An individual who is currently accruing benefits or who has previously accrued benefits under the Plan and who has not received a distribution of his entire benefit under the Plan. (7-1-14)
- 15. Normal Retirement Age.** The age (or combination of age and years of service) at which a Member is entitled to an actuarially unreduced retirement benefit under the Plan. A Member will be fully vested upon attainment of Normal Retirement Age. (7-1-14)
- 16. Plan.** The plan of benefits under the Judges' Retirement Fund. (7-1-14)
- 17. Required Beginning Date.** The date specified in Rule 100 of these rules. (7-1-14)
- 18. Severance from Employment.** The date that the Member dies, retires, or otherwise has a separation from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). (7-1-14)
- 011. -- 099. (RESERVED)**

SUBCHAPTER B -- DISTRIBUTIONS
Rules 100 Through 250

100. REQUIRED MINIMUM DISTRIBUTIONS (RULE 100).

- 01. Default Application of Federal Requirements.** With respect to distributions under the Judges' Retirement Fund, and except as provided in Subsection 100.06, the Judges' Retirement Fund will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with a good faith interpretation of section 401(a)(9), notwithstanding any provision of the Judges' Retirement Fund to the contrary. (7-21-15)
- 02. Required Beginning Date.** Except as otherwise provided in Subsections 100.03 through 100.06, distributions under the Judges' Retirement Fund shall begin not later than April 1 following the later of: (7-21-15)
- a.** The calendar year (hereinafter referred to as the "Commencement Year") in which the member reaches age seventy and one half (70 ½); and (7-21-15)
- b.** The year in which he retires. (7-21-15)
- 03. Lifetime Distributions.** Distribution shall be made over the life of the Member or the lives of the Member and his beneficiary; or over a period certain not extending beyond the life expectancy of the member or the joint life and last survivor expectancy of the member and his beneficiary. (7-21-15)
- 04. Timing of Required Distributions.** A required distribution shall be deemed to have been made during the Commencement Year if actually made by the following April 1, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the Commencement Year. (7-21-15)
- 05. Adjustment of Required Distributions.** Benefits paid prior to the Commencement Year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein. (7-21-15)
- 06. Annuity Benefits Payable on Death of a Member.** All death benefits payable in the form of an annuity will begin to be paid as soon as administratively practicable after the member's death, but must in any event begin to be paid before the end of the calendar year following the calendar year in which the member died. (7-21-15)
- 07. Death Benefits.** All death benefits payable in a lump sum will be distributed as soon as administratively practicable after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identity of the beneficiary is not ascertainable. (7-21-15)

101. MAXIMUM LIMITATIONS ON BENEFITS (RULE 101).

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 101.01 and, if applicable, in Subsections 101.02 through 101.04).

(7-21-15)

01. Less Than Ten Years of Service. If the Member has fewer than ten (10) years of participation in the Judges' Retirement Fund, the defined benefit dollar limitation shall be multiplied by a fraction: (7-21-15)

a. The numerator of which is the number of years (or part thereof) of participation in the Judges' Retirement Fund; and (7-21-15)

b. The denominator of which is ten (10). (7-21-15)

02. Benefit Begins Prior to Age Sixty-Two. If the benefit of a Member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the Member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Member at age sixty-two (62) (adjusted under Rule 101.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)

03. Benefit Begins at Age Sixty-Five. If the benefit of a Member begins after the Member attains age sixty-five (65), the defined benefit dollar limitation applicable to the Member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Member at age sixty-five (65) (adjusted under Rule 101.01, if required.) The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (7-21-15)

04. Transition. Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former Members (with benefits limited by section 415(b)) who have an accrued benefit under the Judges' Retirement Fund immediately prior to the effective date of this Rule (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b).) (7-21-15)

102. MAXIMUM LIMITATION ON ANNUAL ADDITIONS (RULE 102).

01. Annual Additions Limitation. Effective January 1, 2002, annual additions shall not exceed the lesser of: (7-1-14)

a. Forty thousand dollars (\$40,000); or (7-1-14)

b. One hundred percent (100%) of the Member's compensation. (7-1-14)

02. Annual Adjustments. As of January 1 of each calendar year on and after January 1, 2002, the dollar limitation in Subsection 102.01 of these rules, with respect to both active and retired members, shall be adjusted for increases in the cost of living, taking into consideration applicable guidelines. (7-1-14)

03. Other Qualified Plans. To the extent that any Member of the Judges Retirement Plan is also a member of any other qualified plan, and annual additions to all plans covering the Member would otherwise exceed the limits set forth above, annual additions to such other qualified plan shall be reduced to the extent necessary to avoid exceeding the limitations on annual additions. (7-1-14)

103. ROLLOVER DISTRIBUTIONS (RULE 103).

01. Direct Rollovers. A Member of the Judges' Retirement Fund or a beneficiary of a Member (including a Member's former spouse who is the alternate payee under an approved domestic relations order) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover. Effective January 1, 2006, in the event of a mandatory distribution greater than one thousand dollars (\$1,000), if the Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. (7-1-14)

02. Eligible Rollover Distribution Defined. For purposes of this Rule, an eligible rollover distribution means any distribution of all or any portion of a Member's account balance, except that an eligible rollover distribution does not include (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in section 408A of the Code. (7-1-14)

03. After-Tax Contributions. For purposes of the direct rollover provisions in Rule 103.01, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (7-21-15)

04. Alternate Payees. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Rule 402 are distributees with regard to the interest of the spouse or former spouse. (7-21-15)

05. Transfers to Non-Spouse Beneficiaries. This Rule 103.05 applies to distributions made on or after July 1, 2008. Notwithstanding any provision of the Judges' Retirement Fund to the contrary that would otherwise limit the options of the Beneficiary of a deceased Member who is not the Member's spouse, the administrator shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Code in accordance with the provisions of Code section 402(e)(11). (7-21-15)

104. -- 251. (RESERVED)

SUBCHAPTER C -- ASSUMPTIONS
Rules 251 Through 299

251. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED (RULE 251).
Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in a manner that precludes employer discretion. (7-1-14)

252. ACTUARIAL TABLES (RULE 252).
The actuarial tables used for determining optional retirement benefits are set forth in Appendix A, which is hereby incorporated by reference and made a part hereof. (7-1-14)

253. -- 299. (RESERVED)

SUBCHAPTER D -- CONTRIBUTION RATES
Rule 300 Through 349

300. EMPLOYER CONTRIBUTION RATE (RULE 300).

The employer contribution rate shall be fifty-five point twenty-eight percent (55.28%) of salaries until next determined by the Board. Beginning July 1, 2017, the employer contribution rate shall be sixty-two point fifty-three percent (62.53%) of salaries until next determined by the Board. (12-1-15)T

301. EMPLOYEE CONTRIBUTION RATE (RULE 301).

The employee contribution rate shall be ten point twenty-three percent (10.23%) of salary until next determined by the Board. Beginning July 1, 2017, the employee contribution rate shall be eleven point fifty-seven percent (11.57%) of salaries until next determined by the Board. (12-1-15)T

302. VACATION AND CONTRACTUAL PAYMENTS SUBJECT TO CONTRIBUTIONS (RULE 302).

Compensation paid for vacation is salary subject to employee and employer contributions. (7-1-14)

303. REPORTS (RULE 303).

The Employer shall provide to the Board such reports, including compensation and contribution reports, as are required by the Board to verify contributions benefits required or provided and unless extended in writing by the executive director such reports shall be provided no later than five (5) business days after each pay date. (7-1-14)

304. -- 349. (RESERVED)

SUBCHAPTER E -- DISABILITY RETIREMENT
Rules 350 Through 399

350. APPLYING FOR DISABILITY RETIREMENT (RULE 350).

Eligible members may apply for disability retirement, as provided for in Section 1-2001(4)(a), Idaho Code, by completing a required form available from any PERSI office. The application process may include an interview by a Board representative. Applicants must release all medical records and information to the Board or its agent. (7-1-14)

351. INITIAL APPLICATION REVIEW (RULE 351).

Applications will first be reviewed to determine whether the applicant meets applicable eligibility requirements. If eligibility requirements are met, the application will proceed to disability assessment review. If all eligibility requirements are not met, the applicant will be notified in writing. (7-1-14)

352. DISABILITY ASSESSMENT REVIEW (RULE 352).

An applicant will be assessed to determine whether he qualifies for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by the Board. Failure to timely comply with any request made by the Board during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, the Board will notify the applicant in writing whether or not he qualifies for disability retirement. (7-1-14)

353. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION (RULE 353).

Applicants, who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing to the applicant. (7-1-14)

354. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION (RULE 354).

A reconsideration decision shall be considered a final decision, and may be appealed to the Board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available in the

reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. (7-1-14)

355. DELEGATION (RULE 355).

The Board may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "Board" includes those third parties. Where such delegation has been made, the term "Board" includes those third parties. (7-1-14)

356. REASSESSMENT OF DISABILITY RETIREES (RULE 356).

A disability retiree is subject to reassessment of his disability at any time to determine whether he continues to be disabled under the standard in Section 1-2001(4)(a), Idaho Code. However, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. A disability retiree notified that he has been selected for reassessment is under the same obligation as applicants to supply information. (7-1-14)

357. BURDEN ON APPLICANT (RULE 357).

Applicant must demonstrate that, on or before applicant's last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. (7-1-14)

358. STATUTORY STANDARD (RULE 358).

In applying the disability standard in Section 1-2001(4)(a), Idaho Code, the applicant is prevented from further performance of the duties of his office if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of his office. (7-1-14)

359. ATTORNEY'S FEES AND COSTS (RULE 359).

Attorney's fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by the Board except for fees related to judicial review for which applicant is found to be entitled under applicable law. (7-1-14)

360. -- 399. (RESERVED)

SUBCHAPTER F - MISCELLANEOUS PROVISIONS
Rules 400 Through 999

400. ADMINISTRATIVE PROCEDURE -- CROSS REFERENCE (RULE 400).

See IDAPA 59.01.01, "Rules of Administrative Procedure of PERSI," concerning rules for administrative procedure. (7-1-14)

401. POST RETIREMENT ALLOWANCE ADJUSTMENTS (RULE 401).

01. Adjustments Under Section 59-1355, Idaho Code. For those retirees whose post retirement allowance adjustment is to be determined in accordance with Section 59-1355, Idaho Code, the Board shall annually consider the post retirement cost of living adjustment (COLA) pursuant to Section 59-1355, Idaho Code. The Board has the discretion afforded under Section 59-1355, Idaho Code, related to a discretionary and/or retro-active COLA. The Board shall annually consider the COLA no later than the December Board meeting of each year with an effective date of July 1 of the next year. (7-1-14)

02. Adjustments Under Section 1-2001(2)(a)(ii). For those retirees whose COLA is to be determined in accordance with Section 1-2001(2)(a)(ii), Idaho Code, the COLA, if any, shall have an effective date of July 1 of the applicable year. (7-1-14)

402. APPROVED DOMESTIC RETIREMENT ORDERS (RULE 402).

As permitted under Code section 414(p)(11), the Plan shall recognize and give effect to domestic retirement orders that have been approved in accordance with Plan procedures. An order shall be approved only if it substantially meets the requirements for a qualified domestic relations order under Code section 414(p), except for subsection (9) thereof, as determined by the Administrator or its agent. Amounts segregated for the accounts of alternate payees pursuant to a Plan approved domestic retirement order shall be available for immediate distribution to the alternate payee. Distributions pursuant to a domestic retirement order to an alternate payee who is a spouse or former spouse of the Member shall be taxable to the alternate payee rather than the Member to the extent permitted under Code Section 414(p)(12). Distributions pursuant to a qualified domestic relations order to an alternate payee who is not a spouse or former spouse of the Member shall be taxable to the Member. (7-1-14)

403. RETIREMENT APPLICATION AND SPOUSAL CONSENT (RULE 403).

A member is required to complete and submit a retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying he understands and consents to the election made by the member. The spouse's signature must be notarized. If an inactive member reaches service retirement age, or an active member who has reached service retirement age separates from service, and has failed to complete and submit an approved retirement application and select either a regular or optional retirement allowance within ninety (90) days thereafter, the member shall be deemed to have selected a regular retirement allowance and no other selection shall be required or permitted. (7-1-14)

404. FORFEITURES (RULE 404).

Forfeitures will not be applied to increase the benefits any member would otherwise receive. (7-1-14)

405. PRE-ERISA VESTING (RULE 405).

Upon any termination of the Plan or upon any complete discontinuance of contributions under the Plan, the rights of all Members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall become one hundred percent (100%) vested. (7-1-14)

406. EXCLUSIVE PURPOSE (RULE 406).

The Board shall hold the assets of the Judges' Retirement Fund in trust for the exclusive purpose of providing benefits to Members and Beneficiaries and paying reasonable expenses of administration. It shall be impossible by operation of the Judges' Retirement Fund, by termination, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Judges' Retirement Fund, or any funds contributed thereto, to inure to the benefit of any Employer or otherwise be used for or diverted to purposes other than providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Judges' Retirement Fund. (7-21-15)

407. BENEFITS DURING MILITARY SERVICES (RULE 407).

01. Death Benefits. (7-21-15)

a. This subsection 407.01 applies to a member of the Judges' Retirement Fund who dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. (7-21-15)

b. The period of military service that results in the member's death will be counted in the determination of whether the member qualifies for the death benefit described in section 2009-1(b) to the extent required by Code Section 401(a)(37), (7-21-15)

02. Determination of Return to Employment for Benefit Accrual Purposes. (7-21-15)

a. This subsection 407.02 applies to a member of the Judges' Retirement Fund who becomes disabled or dies on or after January 1, 2007, while performing qualified military service as defined in Chapter 43, Title 38 of the United States Code. (7-21-15)

b. For benefit accrual purposes, a member of the Judges' Retirement Fund shall be treated as having

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