

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The Honorable Richard Sims III (Decedent) became a member of the Judges' Retirement System (JRS) on May 1, 1980, by virtue of his appointment to the Placer County Superior Court. He was later elevated to the Third District Court of Appeal.

Decedent was married to Georgiana Sims (Respondent Sims) prior to his appointment to the Placer County Superior Court in 1980. Decedent and Respondent Sims divorced on September 15, 2003. As part of the divorce settlement, Respondent Sims was awarded one-half interest in Decedent's pension earned during the marriage.

Decedent married Linda H. Wallihan (Respondent Wallihan) on May 22, 2004. Decedent and Respondent Wallihan entered a prenuptial agreement before they were married acknowledging that each had vested retirement benefits, he in JRS and she in CalPERS, and that contributions would be made during their marriage. Each waived their respective community interest in the other's retirement benefits. Justice Sims and Respondent Wallihan's prenuptial agreement provides:

However, nothing in this agreement shall prevent [Decedent] or [Respondent Wallihan] from voluntarily designating the other to receive retirement benefits upon the death of [Decedent] or [Respondent Wallihan], provided such designation is in writing and filed with the party's retirement system.

On June 21, 2004, Decedent signed a Survivor and Beneficiary Information (Beneficiary Information) form designating Respondent Sims as his beneficiary "in accordance with the provisions for Government Code Sections 75104 and 75104.5 (Judges' Retirement Law.)"

The next day, Decedent signed a Special Beneficiary Designation (Special Beneficiary) form naming Respondent Sims his "beneficiary for the Optional Settlement that may be payable."

On May 29, 2009, the Court in Decedent and Respondent Sims' divorce signed a Recitals, Stipulations, and Orders (RSO). The RSO provides in relevant part:

Should [Decedent] die before [Respondent Wallihan], [Respondent Wallihan] would be entitled to receive a monetary allowance for surviving spouse from JRS pursuant to Government Code §§ 75077 and 75077.5. [Respondent Sims] may have a community property interest in said allowance for surviving spouse, and one purpose of these stipulations and orders it [sic] to settle any community property interest of [Respondent Sims] in the aforementioned allowance for surviving spouse.

Should [Decedent] die while [Respondent Sims] and [Respondent Wallihan] are alive, and should [Respondent Wallihan] be entitled to receive an allowance for surviving spouse as the spouse of [Decedent], as described above, then JRS shall pay said allowance for surviving spouse to [Respondent Sims] while both [Respondent Sims] and [Respondent Wallihan] are alive and if [Respondent Sims] dies before [Respondent Wallihan] then the allowance for surviving spouse shall be paid thereafter to [Respondent Wallihan] during her lifetime.

Decedent signed a Judge's Retirement Application on September 7, 2010, requesting a service retirement date of November 30, 2010. In the application, Decedent named Respondent Wallihan as the beneficiary for surviving spouse allowance and Respondent Sims as the Option 2 beneficiary. Respondent Wallihan signed the application as Decedent's current spouse.

Decedent died December 17, 2020. Following his death, JRS reviewed the file to determine beneficiary information.

On February 26, 2021, JRS notified Respondent Wallihan that, as surviving spouse, she was entitled to one-half of the allowance Justice Sims had been receiving. The notice cited the May 29, 2009 RSO, where the parties stipulated that the surviving spouse allowance was to be paid to Respondent Sims during Respondent Wallihan's lifetime. JRS asked Respondent Wallihan to sign a disclaimer form before it could pay the surviving spouse allowance to Respondent Sims. Respondent Wallihan did not sign the disclaimer form.

Approximately five months later, JRS notified Respondent Wallihan that Respondent Sims was entitled to the surviving spouse allowance pursuant to the May 29, 2009 RSO and that her disclaimer was not required.

Respondent Wallihan appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on July 18 and 20, 2022. Respondent Wallihan was represented by counsel at the hearing. Respondent Sims represented herself. The record was reopened by the ALJ, and a Telephonic Status Conference was held on October 19, 2022, giving the parties an opportunity to submit supplemental briefs.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ granted Respondent Wallihan's appeal. The ALJ reasoned that Respondent

Wallihan is the surviving spouse entitled to the allowance under Government Code section 75077. Decedent and Respondent Wallihan were married more than six years prior to his retirement on December 1, 2010, and they remained continuously married until his death on December 17, 2020. Decedent designated Respondent Wallihan as his beneficiary of the surviving spouse allowance on his retirement application. Their Prenuptial Agreement expressly allowed him to do so.

The ALJ explained that the surviving spouse allowance provided by Government Code section 75077 is based in statute and by the statute's express terms must be awarded to the surviving spouse. The ALJ found that neither Respondent Sims nor Respondent Wallihan had a right to the surviving spouse allowance in 2009 when the RSO was entered. Respondent Sims did not have a community property interest in the surviving spouse allowance and Respondent Wallihan could not waive or disclaim her right to receive an interest that she did not have in 2009.

The ALJ concluded that Respondent Wallihan is the surviving spouse entitled to the surviving spouse allowance and granted Respondent Wallihan's appeal.

The Proposed Decision is supported by the law and facts. For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

February 14, 2023

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