ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Elsie Smith (Decedent) was employed by the San Diego Community College District as a Senior Clerical Assistant. Respondent Alfred Smith was married to, but estranged from, Decedent at the time of her death on April 10, 2010.

Respondent June Collins is the daughter of Alfred and Elsie Smith, who was designated the sole beneficiary of the $2,000 Retired Death Benefit. There are four natural born children of the marriage: June Collins, Glenn Smith, Ginger Smith and Marie Smith. All four children are parties to this appeal.

The issue in this case is whether Respondent Alfred Smith should be recognized as the sole beneficiary of the $2,000 Retired Death Benefit, and/or the sole beneficiary to the $25,118.62 Option 1 Death Benefit, both payable at Decedent's death.

RETIRED DEATH BENEFIT: Decedent executed a Service Retirement Election Application on June 1, 2005, naming Respondent June Collins as beneficiary for this benefit. This designation was never changed or revoked. The Administrative Law Judge (ALJ) found that the Retired Death Benefit was Decedent's sole and separate property and not derived from community property proceeds. For those reasons, the ALJ ruled that Respondent Alfred Smith had no right to collect any portion of the $2,000 Retired Death Benefit.

OPTION 1 DEATH BENEFIT: On the same Service Retirement Election Application, executed on June 1, 2005, Decedent designated the four children as beneficiaries to the Option 1 Death Benefit. Respondent Alfred Smith signed the section entitled "Spouse's Acknowledgement." On March 15, 2006, Decedent and Respondent Alfred Smith executed a second Post Retirement Lump Sum Beneficiary Designation, with the four children named as beneficiaries to "various lump sum benefits that may be payable." Respondent Alfred Smith also signed the section entitled "Spouse's Acknowledgement."

Government Code section 21261 provides that by signing the "Spouse's Acknowledgement," Respondent did not waive his community property interest in the Option 1 benefit. His signature was an acknowledgement that he was aware of Decedent's designation.

CalPERS relied on the fact that both Decedent and Respondent Alfred Smith signed the forms naming the four children beneficiaries of the Option 1 benefit. CalPERS was also provided a copy of a Marital Settlement Agreement (MSA) where Respondent Alfred Smith waived any interest in his wife's retirement funds. CalPERS determined that the MSA operated as a valid alternative disposition for division of the community property.

The ALJ disagreed, and ruled that the MSA did not operate as an alternate order for division. The MSA was never filed in court and never made part of any court order relating to division of community property share of any retirement plan. Government Code section 21490(b) provides that distributions cannot be done in "derogation of the

community property share of any non-member spouse when any benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the non-member spouse has previously obtained an alternative order for division pursuant to Section 2610 of the Family Code." The California Public Employees' Retirement Law (PERL) further provides that where parties rely upon an MSA in other circumstances, the member must sign a declaration under penalty of perjury that either the non-member spouse has no identifiable community property interest in the benefit, or that the MSA makes the community property law inapplicable to the marriage. (Gov. Code section 21261 (b) and (f).) Taken together, the ALJ found that one of CalPERS' important obligations is to ensure that community property interests are protected prior to making any lump sum distribution of benefits.

The ALJ reasoned there was no dissolution of marriage in this case, so the MSA was never filed in court. And, although the MSA contained express language confirming the retirement benefits as the parties' separate property, other language provided that "there is a community property interest in our pension plans." The MSA also presumed good faith disclosure of all property assets.

Respondent Alfred Smith argued that Decedent did not disclose a life insurance policy of $100,000, and did not disclose her mutual fund holding of $54,000. Proceeds from both accounts were split equally among the four children. He claims that Decedent knowingly withheld this financial information to coerce him to change the beneficiary for lump sum benefits. The ALJ did not rule on the issue of fraud, but did find there was a dispute over whether good faith disclosure was made at the time the MSA was executed.

Following hearing, the ALJ found that Respondent Alfred Smith had no right to collect any portion of the $2,000 Retired Death Benefit. The ALJ also found that Respondent Alfred Smith had a community property interest to half of the Option 1 Balance of Contributions ($12,559.31). The balance of the Option 1 benefit was Decedent's separate property, and could properly be paid to the four children ($12,559.31).

The ALJ concluded that Respondent's appeal should be granted in part and denied in part. The Proposed Decision is supported by the law and the facts. Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

April 17, 2013

Marguerite Seabourn

for ELIZABETH YELLAND
Senior Staff Attorney