

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

The Judges' Retirement System (the "JRS") is a retirement plan for retired judges and justices in California who were appointed or elected before November 9, 1994. The Judges' Retirement Law, found in Government Code sections 75000 *et seq.*, governs the calculation of a JRS retirement allowance.

Respondent Judge Phelps is a member of the JRS. Respondent Canter is the surviving spouse of Judge Riley, who was a member of the JRS before he died in February 2000. Respondent Joy is the alleged heir of Judge Joy, who was a member of the JRS before he died in May 1989. The Office of Administrative Hearings consolidated the matters since all pertain to the same issue. The parties agreed the legal issues would be decided on briefs. The matter was submitted and closed on July 1, 2014.

Respondents claim that the JRS failed to advise Judge Phelps, Judge Riley and Judge Joy of their alleged rights to purchase service credit under California Public Employees' Retirement Law (PERL) section 21024. Respondents seek millions of dollars in alleged underpaid benefits and accrued interest. Respondents' calculations of their alleged damages are grossly overstated. In fact, because the purchase price for service credit under section 21024 is designed to cover the full cost of the additional projected benefits, Respondents would have *no damages at all*, even if their claims otherwise had merit. That point is moot, however, because their claims do not otherwise have merit.

Under Government Code section 75005, some (but not all) provisions of the PERL apply to members of the JRS. This case relates to a section of the PERL that, by its plain terms, does not apply to members of the JRS.

Government Code section 21024 (previously codified as section 20930.3), entitles some CalPERS members to purchase service credit based on their military service prior to membership in CalPERS. Section 21024 is an optional provision of the PERL that applies only to the employees of a contracting agency that has elected to make section 21024 available to its employees who are "local members" of CalPERS. By definition, this optional provision of the PERL cannot apply to judges, because judges are not employees of an agency that contracts with CalPERS; they are employees of the State of California. Further, judges are not "local members" of CalPERS; they are members of the JRS.

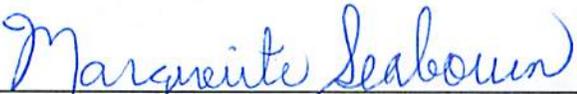
Respondents' claims lack merit for several reasons, but the most fundamental reason is that, as a matter of law, section 21024 does not apply to members of the JRS. As explained in the Administrative Law Judge's (ALJ) Proposed Decision, judges who are members of the JRS clearly do not fall under the definition of "local member," which is defined by Government Code sections 20370, 20383 and 20420. Further, because judges are employees of the State of California, they clearly are not employed by a "contracting agency," as defined by section 20022. As such, they could not ever be employed by any particular contracting agency which has elected to make section 21024 available to its employees.

Because the ALJ agreed with CalPERS staff that members of the JRS are not entitled to purchase service credit under section 21024, the ALJ did not need to address the other reasons that Respondents' claims lack merit. Rather, the ALJ summarily denied Respondents' claims based on well-settled rules of statutory construction, which require the ALJ, this Board and the courts to apply the plain language of the applicable statutes. The plain language of the applicable statutes in this case does not support Respondents' claims.

The ALJ concluded that Respondents' appeals should be denied. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. If the Board adopts the proposed decision as its own, the Respondents may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

October 15, 2014


for JEANLAURIE AINSWORTH
Senior Staff Attorney