

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Judge Stothers was a member of the Judges' Retirement System ("JRS"). Judge Stothers died in 1985, while he was still an active judge. His surviving spouse, Gloria Stothers, received a surviving spouse allowance from 1985 until 2000 when she died. Their daughter, Julie Stothers Horner ("Respondent") now claims that she is owed millions of dollars, based on alleged underpayments that were made to her deceased mother between 1985 and 2000. The Proposed Decision properly recommends denial of Respondent's appeal based on well-settled law. Indeed, Respondent's claims are based on legal theories that this Board and the California Courts have already rejected in other cases. There are two separate claims at issue. Each claim is discussed in turn.

### Military Service Claim

Respondent claims that Judge Stothers was entitled to additional service credit in the JRS based on his military service during World War II. Respondent's claim is flawed on its face because there was no provision of law that entitled judges to purchase military service credit in the JRS in effect prior to Judge Stother's death in 1985. The provision of the California Public Employees' Retirement Law that Respondent attempts to rely upon has always only applied to "local members" who are employed by contracting agencies that elect to make that military service credit purchase provision available to their employees. Judges are not such "local members." Further, even if Judge Stothers had the right to purchase military service credit prior to his death, he never paid the required cost.

For these reasons, the Proposed Decision properly recommends denial of Respondent's military service claim. Further, this Board has already rejected the exact same flawed legal theory in the Board's October 15, 2014 Decision in *In the Matter of the Consolidated Statements of Issues Regarding Appeals of Michael J. Joy, Susan M. Canter and J. Barton Phelps*.

### Unlimited Cost of Living Adjustments Claim

Respondent claims that Gloria Stothers was entitled to have her surviving spouse allowance increased by the full cost of living index each year from 1985 until her death in 2000. Her theory was rejected by the California Supreme Court in 1980 and it was rejected again by the Fourth District Court of Appeal in 2014.

As the surviving spouse of a deceased member of the JRS, Gloria Stothers received an allowance that is calculated under a formula that takes account of the salary payable to a currently active judge. In *Olson v. Cory* (1980) 27 Cal.3d 532, members and beneficiaries of the JRS argued that their benefits should not be tied to active judges' salaries, but instead should increase each year by the full amount of the Consumer Price Index. The California Supreme Court rejected that claim and confirmed that JRS allowances are based on active judges' salaries.

Further, in 2012, several dozen retired judges and justices, their surviving spouses and/or their heirs pursued in San Diego Superior Court the very same theory that Respondent pursues in this appeal to the Board. The JRS prevailed in that case, which was entitled *Staniforth v. Judges' Retirement System* (2014) 226 Cal.App.4th 978.

The Proposed Decision correctly applies the *Olson v. Cory* and *Staniforth v. Judges Retirement System* precedents, which directly rejected the same claims that Respondent advances to the Board.

**Conclusion**

The Administrative Law Judge concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff therefore argues that the Board should 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. Respondent may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

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