

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

### STAFF'S ARGUMENT TO DENY PETITION FOR RECONSIDERATION

Respondent David L. Wheeler (Respondent Wheeler) was employed by Alameda County Fire Department as an Assistant Fire Chief. By virtue of this employment, Respondent Wheeler is a local safety member of CalPERS. On or about October 30, 2006, Respondent Wheeler signed an application for service retirement. Respondent Wheeler retired for service effective December 27, 2006, and has been receiving his retirement allowance since then.

On or about September 1, 2007, Respondent Wheeler applied for and was hired by the Loomis Fire Protection District (Respondent District, or "District") as a Fire Chief pursuant to a series of written agreements. The District is a public agency which contracted with CalPERS for retirement benefits for its eligible employees effective September 11, 2010. Respondent Wheeler continued working as the Fire Chief for the District until his resignation, effective December 31, 2013.

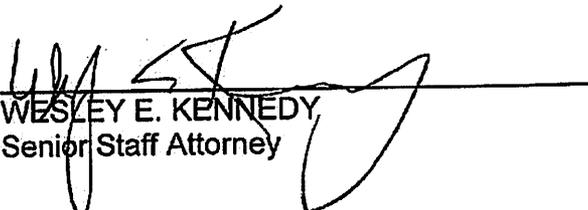
On January 8, 2014, CalPERS notified Respondent Wheeler and the District that Respondent Wheeler had been unlawfully employed from the date the District initially contracted with CalPERS until the date of Respondent Wheeler's separation. Respondent Wheeler and the District were notified of their appeal rights. The District and Respondent Wheeler filed timely appeals and requested an administrative hearing.

Respondent Wheeler was represented by legal counsel at all times prior to and during the five days of hearing before an Administrative Law Judge (ALJ) of the Office of Administrative Hearings. After conclusion of the hearing and full written briefing by the parties, the ALJ submitted a Proposed Decision in which she found, *inter alia*, that there was a knowing and intentional violation of the provision prohibiting post-retirement employment.

The Proposed Decision was submitted to the Board on October 21, 2015, along with written argument by both parties. The Proposed Decision was adopted by the Board because it is supported by the law and the evidence, and properly applied the law to the salient facts of this case.

In Respondents' Petition for Reconsideration, no new evidence or facts have been presented for consideration. Because the Decision applies the law to the salient facts of this case, the risks of denying the Petition for Reconsideration are minimal. Respondents may file a writ petition in Superior Court seeking to overturn the decision of the Board.

December 16, 2015

  
WESLEY E. KENNEDY,  
Senior Staff Attorney