

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

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Decedent Larrie K. Ciano (Decedent) was a member of CalPERS by virtue of her employment with California Polytechnic State University of San Luis Obispo (CalPoly). Decedent died on June 13, 2014. Decedent was married to David Ciano, also a member of CalPERS by virtue of his employment with CalPoly, from 1968 until 2011. Pursuant to a Stipulated Domestic Relations Order (DRO), Decedent was awarded a 50 percent community property interest in David Ciano's monthly retirement allowance. Decedent's 50 percent community property interest in David Ciano's retirement is at issue in this appeal.

Respondent Timothy Stadler (Respondent Stadler) is Decedent's cousin, the trustee of the Larrie K. Ciano Family Trust (Ciano Trust) and the executor of Decedent's Last Will and Testament.

Respondent Rodger Ciano (Respondent Ciano) is Decedent's only son.

At the time of her passing, Decedent had not filed with CalPERS a beneficiary designation for her community property interest in David Ciano's CalPERS retirement allowance. Both Respondent Ciano and Respondent Stadler submitted applications for survivor benefits with CalPERS after Decedent's death.

By letter dated November 21, 2014, CalPERS notified Respondent Stadler that based on a review of Decedent's testamentary documents, as well as correspondence from Decedent's attorney and court documents, that Decedent's community property interest in David Ciano's CalPERS retirement would be distributed in accordance with Government Code section 21493 – namely, that Respondent Ciano was the statutory beneficiary. CalPERS determined that the documents were not sufficient to prove that Decedent intended to designate the Ciano Trust as the primary beneficiary of her community property interest in David Ciano's CalPERS retirement. Respondent Stadler timely filed an appeal.

At the hearing, Respondent Stadler was represented by counsel. Two witnesses and documentary evidence were offered. Respondent Stadler testified about his relationship with Decedent and her alleged desire to designate the Ciano Trust as the beneficiary of her community property interest in David Ciano's CalPERS retirement. Decedent's former attorney also testified on Respondent Stadler's behalf. He discussed the DRO and two letters, one drafted by Decedent and one that he drafted. The DRO indicates Decedent's community property interest in David Ciano's CalPERS retirement is to be payable to the beneficiary designated in writing on file with CalPERS, or if no designation is filed, then a beneficiary is to be determined pursuant to Government Code section 21493.

The two letters discussed by Decedent's former attorney are conflicting. The first is a letter drafted by Decedent and addressed to her attorney. It confirms her wishes

regarding the disposition of the community interest at issue. She indicated that *any* of the following options were acceptable and added "I presume CalPERS will choose one appropriate to the situation, and that is acceptable to me." The letter then identifies three options by bullet-points. The first is to the Ciano Trust, the second is to her former husband, David Ciano, and the third is to her son, Respondent Ciano. The second letter, drafted by Decedent's attorney and addressed to an actuary, contains all of the same information except the three bullet points were changed into numbers and a preference was given to the Ciano Trust as first option, David Ciano as second option and Respondent Ciano as third option.

Additional documents were offered into evidence, such as three letters from Decedent's friends that indicate the Ciano Trust was Decedent's preferred designation. The Administrative Law Judge (ALJ) indicated that the letters had little persuasive effect or evidentiary value because they did not corroborate direct evidence, were conclusory and contained double hearsay.

The ALJ found that there was much factual uncertainty regarding Decedent's wishes and in the absence of a valid designation of beneficiaries, CalPERS was correct in utilizing Government Code section 21493 to determine the beneficiary.

The ALJ concluded that Respondent Stadler's appeal should be denied. The Proposed Decision is supported by the law and the facts. 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. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 18, 2016



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Senior Staff Attorney