

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

From March 4, 1969, through May 31, 2011, Cecil C. Flournoy, Jr. (Member), was employed as an Industrial Waste Inspector by the Sanitation District of the County of Los Angeles. By virtue of his employment, Member was a local miscellaneous member of CalPERS. Member retired for service on June 1, 2011, and passed away on January 19, 2012.

On April 19, 2011, Member filed his service retirement application with CalPERS at the Glendale Regional Office. On the top of the application, he wrote "Emergency Retirement". Member elected an unmodified allowance as his service retirement option. The unmodified allowance provides a retiree with the highest monthly allowance for his or her lifetime but does not provide for a return of unused contributions upon death or any monthly allowance payable to a beneficiary such as a spouse. Member further indicated on the application that he was married to Respondent Shirley A. Flournoy (Respondent Shirley) since September 14, 1968, and designated his son, Cecil C. Flournoy III (Respondent Cecil), as the person to receive his lump-sum retired death benefit.

Pursuant to Government Code section 21624, a survivor continuance benefit could be paid to a qualifying survivor upon Member's death. Based on the service retirement application in which Member identified Respondent Shirley as his spouse and Member's death certificate that indicated Respondent Shirley as the surviving spouse, at the time of Member's death CalPERS determined Respondent Shirley to be eligible to receive the survivor continuance and began paying her.

In June, 2012, CalPERS received a letter from Corey W. Flournoy, who asserted that he was also Member's son, and that Respondent Shirley was not married to Member at the time of his death. Corey Flournoy provided a copy of a Final Judgment of Dissolution of Marriage in the matter of the *Marriage of Shirley A. Flournoy, Petitioner and Cecil C. Flournoy, Respondent*, from October 28, 1981.

CalPERS notified Respondent Shirley that additional information had recently been provided that showed she and Member were not legally married when he retired and that because she was not Member's spouse when he died, she was not entitled to receive the survivor continuance benefit. Respondent Shirley timely appealed.

Respondent Shirley was represented by counsel and offered witness and documentary evidence in support of her position that she should be considered the putative spouse of Member and eligible for survivor continuance benefits. Respondent Cecil did not appeal but did testify as a witness in favor of his mother, Respondent Shirley.

Respondent Shirley testified that she believed herself to be married to Member until the day that he died. Respondent Cecil corroborated Respondent Shirley's testimony as did a life-long friend.

CalPERS presented evidence that Respondent Shirley acquired real property as an "unmarried woman" and that during periods of separation from Member, she would date other people.

The Administrative Law Judge (ALJ) described the putative spouse doctrine as an equitable doctrine that will entitle an innocent party to relief where a marriage is invalid due to some legal infirmity. That, the essential basis of a putative marriage is a belief in the existence of a valid marriage.

The ALJ found that Respondent Shirley did not demonstrate, by a preponderance of the evidence, that she had a good faith belief that she was always married to Member. The ALJ noted, "if the only evidence suggesting that respondent was not married to the member at the time of his death was the final judgment of divorce entered in October 1981, then the inquiry could perhaps have stopped there and respondent might be classified as a putative spouse." However, the ALJ went on to note that "the objective circumstances include the fact that respondent bought and took ownership of her Village Green condominium in May 1991 by a grant deed that described her as 'an unmarried woman.' Respondent offered absolutely no explanation for the unmarried woman description on the grant deed." At the time Respondent Shirley acquired the property as an unmarried woman, she had attained a doctorate from University of Southern California and should have understood the import of taking title in that manner.

The ALJ concluded that Respondent'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.

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