

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 18, 2016

9:01 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President

Mr. Henry Jones, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Grant Boyken, Mr. Eric
Lawyer

Mr. Richard Costigan

Mr. Richard Gillihan, represented by Mr. Ralph Cobb

Ms. Dana Hollinger

Mr. J.J. Jelincic

Mr. Ron Lind

Ms. Priya Mathur

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Anne Stausboll, Chief Executive Officer

Ms. Cheryl Eason, Chief Financial Officer

Mr. Ted Eliopoulos, Chief Investment Officer

Mr. Douglas Hoffner, Deputy Executive Officer

Mr. Matthew Jacobs, General Counsel

Ms. Donna Lum, Deputy Executive Officer

Mr. Doug McKeever, Deputy Executive Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Alan Milligan, Chief Actuary

Mr. Brad Pacheco, Deputy Executive Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

Ms. Preet Kaur, Senior Staff Attorney

Ms. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT:

Mr. Ian Barlow, Kershaw, Cook & Talley, representing Ms. Lee Turner Johnson

Ms. Lee Turner Johnson

Mr. Kent McKinney

Mr. Chirag Shah, Shah and Associates

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1 P R O C E E D I N G S

2 PRESIDENT FECKNER: Good morning, everyone. We'd
3 like to call the Board of Administration meeting to order.
4 Welcome. The First order of business will be to call the
5 roll.

6 BOARD SECRETARY BUCHANAN: Good morning.

7 PRESIDENT FECKNER: Good morning.

8 BOARD SECRETARY BUCHANAN: Rob Feckner.

9 PRESIDENT FECKNER: Good morning.

10 BOARD SECRETARY BUCHANAN: Henry Jones?

11 VICE PRESIDENT JONES: Here.

12 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

13 BOARD MEMBER BILBREY: Good morning.

14 BOARD SECRETARY BUCHANAN: Grant Boyken for John
15 Chiang?

16 ACTING BOARD MEMBER BOYKEN: Here.

17 BOARD SECRETARY BUCHANAN: Richard Costigan?

18 BOARD MEMBER COSTIGAN: Here.

19 BOARD SECRETARY BUCHANAN: Ralph Cobb for Richard
20 Gillihan?

21 ACTING BOARD MEMBER COBB: Here.

22 BOARD SECRETARY BUCHANAN: Dana Hollinger?

23 BOARD MEMBER HOLLINGER: Here.

24 BOARD SECRETARY BUCHANAN: J.J. Jelincic?

25 BOARD MEMBER JELINCIC: Here.

1 BOARD SECRETARY BUCHANAN: Ron Lind?

2 BOARD MEMBER LIND: Here.

3 BOARD SECRETARY BUCHANAN: Priya Mathur?

4 BOARD MEMBER MATHUR: Here.

5 BOARD SECRETARY BUCHANAN: Bill Slaton?

6 BOARD MEMBER SLATON: Here.

7 BOARD SECRETARY BUCHANAN: Theresa Taylor?

8 BOARD MEMBER TAYLOR: Here

9 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
10 Betty Yee.

11 ACTING BOARD MEMBER PAQUIN: Here.

12 PRESIDENT FECKNER: Thank you.

13 Next order of business will be Pledge of
14 Allegiance. I've asked Lynn Paquin, representative of the
15 Controller's office to please lead us in the pledge. If
16 you'll all please rise.

17 Hand over your heart and begin.

18 (Thereupon the Pledge of Allegiance was
19 recited in unison.)

20 PRESIDENT FECKNER: Thank you. Agenda Item 3 is
21 Board President's report. Well good morning, everyone.
22 Nice to see you here.

23 We'd like to start by giving you an update on our
24 recruitment efforts for the new Chief Executive Officer.
25 The CEO subcommittee of the Board, along with some of the

1 Board colleagues who observed the process, conducted the
2 first round of interviews during the two weeks -- two days
3 of last week. We've narrowed the field to our top three
4 finalists and will be conducting second round interviews
5 in person for the full board on Wednesday of the Board
6 meeting in June, with the goal of selecting an individual
7 and having that person in place, or at least named, by the
8 end of June. We'll continue to keep you updated on our
9 progress as we go forward.

10 Now, let me turn to a topic that's very personal
11 to me. I want to start by thanking all of the CalPERS
12 employees and their supporters who participated in the
13 annual Susan K. Komen Race for the Cure on May 7th. As
14 many of you know, as a breast cancer survivor myself, I
15 feel very strongly about the causes behind this event,
16 finding a cure for cancer, especially breast-related
17 cancer.

18 Over the past several years, CalPERS Jammin For
19 the Cure team has shown up in full force. This year was
20 no exception. We had more than 70 team members, including
21 my daughter-in-law and my six month old grandson, who
22 stayed on my shoulder the entire time. We want to thank
23 you all for your generous support for this very worthy
24 cause.

25 Finally, a reminder that we'd like you to join

1 the CalPERS Board and staff on Tuesday, June 14th for our
2 annual CalPERS Night at the Sacramento River Cats. The
3 River Cats are going to be taking on the Fresno Grizzlies.
4 To add to the festivities, our very own CalPERS Patriot
5 Chorus will kick off the evening with their melodic
6 rendition of the National Anthem. So we hope to see many
7 of you there as possible, \$19 tickets. It's dollar hot
8 dog and dollar dessert night, so it's a good time to take
9 the family out.

10 So thank you very much and thanks for being here
11 also.

12 That brings us to Item 4, Chief Executive
13 Officer's report. Ms. Stausboll.

14 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.
15 Good morning, Mr. President, and Board members.

16 BOARD MEMBER MATHUR: Your mic.

17 CHIEF EXECUTIVE OFFICER STAUSBOLL: Oh, I thought
18 I pressed it.

19 Good morning again, Mr. President and Board
20 members. This morning, I'll update you on some of our
21 important current priorities, our out -- ongoing outreach
22 activities and then I'll take a moment for some important
23 employee recognition.

24 I'd like to start with updates on the shareholder
25 proxy season and the health rate negotiations, starting

1 with the proxy season. As we move towards June, proxy
2 season is going to start winding down, and we've had a lot
3 of success this season. That's been very gratifying. In
4 the past two months alone, our staff has voted at over
5 3,200 individual meetings on over 32,000 individual
6 proposals.

7 In addition, we filed four shareholder proposals
8 this season calling for climate risk disclosure and proxy
9 access. We're also running about 25 campaigns in support
10 of climate resolutions and resolutions in support of proxy
11 access. Our success is thanks to the hard work of our
12 global governance team, of course, and also to the
13 communication work of our Public Affairs Office, and our
14 excellent partnerships with several external
15 organizations.

16 On Monday, we continued, as you know, our Global
17 Governance strategic review. We covered to the G part of
18 the ESG, which, of course, stands for governance. Now
19 that we've completed the review of that segment in each of
20 the three ESG segments, we look forward to future
21 discussions and finalizing the ESG strategy over the next
22 couple of months.

23 I'm also proud to share that CalPERS has once
24 again earned a AAA grade from the Asset Owners Disclosure
25 Project. We're one of 12 organizations to do so ranking

1 9th on the index of the world's 500 largest asset owners.
2 This ranking is an assessment of our capability to manage
3 portfolio climate risk in three areas: Engagement
4 portfolio, carbon risk management, and low carbon
5 investments.

6 Turning now to health rates. Yesterday, the
7 Pension and Health Benefits Committee heard the
8 presentation on the status of the negotiations on the 2017
9 premiums. These negotiations are, of course, still
10 continuing. The rates shown yesterday to the Committee
11 and stakeholders are still preliminary. So we've got some
12 work to do before we bring the final rates back to you for
13 next month.

14 We've got several other important topics on the
15 June agenda. The Investment Committee will be looking at
16 a very important issue, the mid-cycle review of our
17 interim asset allocation targets, and we'll be presenting
18 to you the outlook for capital markets.

19 We'll also be presenting at the Pension and
20 Health Benefits Committee the plan for our new Financial
21 Literacy Project This project is designed to improve our
22 member's understanding of financial concepts to help them
23 better plan and save for retirement, especially important
24 after the PEPRA implementation.

25 And we're planning to launch the Financial

1 Literacy Project at the beginning of the upcoming fiscal
2 year. Also in June, we'll be kicking off our strategic
3 planning with the Board. We've done quite a bit of work
4 on this internally with the executive team and with our
5 stakeholders.

6 So next month, we'll be presenting a workshop to
7 you to update you on the input we've received and key
8 themes that are emerging.

9 Turning to some of our outreach activities. This
10 Friday, members of the executive team are going up to
11 Redding -- it might be hot -- to meet --

12 (Laughter.)

13 CHIEF EXECUTIVE OFFICER STAUSBOLL: -- to meet
14 with key employer leaders. This is part of our executive
15 employer visits program that we've been working on for
16 about a year. We kicked it off last April. And since
17 then, we've met with leaders from about 60 different
18 employers that contract with CalPERS. And it's been a
19 very successful program. So in Redding next week, we'll
20 be meeting with representatives from the counties of
21 Shasta, Tehama, and Yolo, the City of Redding and the
22 Shasta Union High School District.

23 And the feedback we've gotten from these visits
24 has been really positive and a really good way to
25 strengthen relationships with the executives at these

1 different employers.

2 We'll also be in Redding on Friday and Saturday,
3 May 20 and 21, for the next Benefits Education Event.
4 We've got over 33,000 active CalPERS members living in
5 this area. It covers 11 counties. So we're looking
6 forward to meeting and talking with many of them and
7 perhaps some of you will be there.

8 After Redding, we head to Los Angeles where the
9 next CBEE will be July 22 and 23. And the full schedule
10 for the year is on the website. Finally, in terms of
11 events, internally we're gearing up for the CalPERS
12 technology innovation showcase. This is the second time
13 we've done this. It's for our staff. It will be on June
14 9th and 10th across the street in our West building.

15 And finally this morning, I wanted to talk to you
16 about the winners of the annual CalPERS APEX award
17 program. This is our formal award program. It celebrates
18 employees who demonstrate our core values and display a
19 commitment to our overall success. And one of the really
20 special things about this program is that those who
21 receive the award are nominated by their peers. It's
22 truly a peer-driven award.

23 So in a couple of weeks, we'll be honoring this
24 year's recipients - there are 45 of them - at a ceremony
25 here in the auditorium, which is always a lot of fun. So

1 I'd like to take a moment to recognize their
2 accomplishments and ask them all to stand and be
3 recognized.

4 (Applause.)

5 CHIEF EXECUTIVE OFFICER STAUSBOLL:

6 Congratulations to all of you.

7 Thank you, Mr. President. That concludes my
8 report and I'm happy to answer any questions.

9 PRESIDENT FECKNER: That's very good. Thank you.
10 Seeing no requests. On behalf of the Board,
11 congratulations to all of you out there. Excellent job.

12 That brings us to Item 4b, Chief Investment
13 Officer's report. For that, I call on Mr. Eliopoulos.

14 CHIEF INVESTMENT OFFICER ELIOPOULOS: Good
15 morning, Mr. President and members of the Board. I have a
16 brief update on the performance of the Public Employees'
17 Retirement Fund as of the quarter ending March 31st, 2016.
18 The total fund performance for the fiscal year to that
19 date is a negative 1.3 percent.

20 As we've discussed in previous months, this
21 reflects a challenging period for the global public equity
22 markets. As a result, our CalPERS global equity
23 portfolio, our largest asset class, has returned a
24 negative 4.6 percent for the fiscal year to that March
25 date.

1 We like to look at much longer periods, as they
2 are more meaningful for measuring our performance. And in
3 that regard, the flat to negative total fund returns over
4 the course of the past two years has certainly had an
5 impact on our longer term total fund performance.

6 The three-year return is 6.4 percent. The
7 five-year return is 6.7 percent. The ten-year return is
8 4.8 percent. And the 20-year return of the total fund is
9 7.1 percent.

10 The total fund assets are valued as of March
11 31st, 2016 at \$289.9 billion.

12 Mr. President, that is my report.

13 PRESIDENT FECKNER: Thank you. Seeing no
14 requests to speak, moves on to Agenda Item 5, the Board
15 consent calendar. Two action items, the minutes and the
16 Board travel approvals.

17 What's the pleasure of the Board?

18 VICE PRESIDENT JONES: Move it.

19 BOARD MEMBER MATHUR: Second.

20 PRESIDENT FECKNER: Moved by Jones, seconded by
21 Mathur.

22 Seeing no discussion on the item.

23 All in favor say aye?

24 (Ayes.)

25 PRESIDENT FECKNER: Opposed, no?

1 Motion carries.

2 Item 6 is the information consent items. Having
3 no requests to remove anything off of there, it brings us
4 to Agenda Item 7, Committee Reports and Actions.

5 I do want to say -- further down on the agenda, I
6 do want to say now that Item 11, full board hearing, we'll
7 move to the end of the agenda after the closed session
8 litigation matter, which will only be a five-minute tops
9 presentation. So we will recess the agenda at the end, go
10 into the closed session, come back five minutes later and
11 reopen and do the full Board hearing, just for planning
12 purposes.

13 So Item 7a is the Investment Committee Report.
14 For that, I call on the chair, Mr. Jones.

15 VICE PRESIDENT JONES: Thank you, Mr. President.

16 The Investment Committee met on May 16, 2016.

17 The Committee approved the following:

18 Agenda Item 9a, the engagement of Pension
19 Consulting Alliance for the role of real estate Board
20 consultant pending a 15 percent reduction in proposed fees
21 and successful contract negotiations.

22 Agenda Item 5a, to express support with
23 amendments for Assembly Bill 2833, Cooley, Public
24 Retirement Alternative Investment Disclosure.

25 Agenda Item 5b, to express support and to request

1 an expanded definition of diversity for U.S. House
2 Resolution 4718, Maloney - New York, Gender Diversity
3 Advisory Group.

4 The Committee also received reports on the
5 following topics:

6 A second review of the plan to revisit the
7 tobacco investment, a review of the current state of the
8 Investment Office Roadmap and Targeted Operating Model,
9 the Global Governance Program governance portion of the
10 ESG priorities with an emphasis on alignment of interests
11 and an update on proxy voting activities, and an overview
12 of the Investment Office's continued progress in cost
13 saving initiatives presented by staff and CEM Benchmarking
14 Incorporated.

15 The Chair directed staff to, one, return with an
16 updated analysis of the tobacco investment in six to nine
17 months; and two, include information on the tobacco
18 holdings by our external managers and other asset classes
19 within the updated study.

20 The Committee heard public comments on the
21 following: The Investment Office's cost-savings
22 initiative, the amendments to Assemble Bill 2833, the plan
23 to re-examine the tobacco investment, and a labor dispute.

24 At this time, I would like to share some
25 highlights of what to expect at the June Investment

1 Committee meeting: A review of the interim asset
2 allocation targets, and the 2015 CalPERS for California
3 Report.

4 The next meeting of the Investment Committee is
5 scheduled for June 13, 2016 in Sacramento, California.
6 And that concludes my report, Mr. President.

7 PRESIDENT FECKNER: Thank you.

8 That brings us to Agenda Item 7b, Pension and
9 Health Committee report. For that, I call on the Chair,
10 Ms. Mathur.

11 BOARD MEMBER MATHUR: Thank you, Mr. President.

12 The Pension and Health Benefits Committee meeting
13 was yesterday, May 17th, 2016.

14 The Committee recommends and I move the Board
15 approve on Agenda Item 8, a neutral, if amended, position
16 on Assembly Bill 1878 to include State miscellaneous plan
17 members and identify an appropriate funding source.

18 PRESIDENT FECKNER: On motion by Committee.

19 Any discussion on the motion?

20 Mr. Cobb.

21 ACTING BOARD MEMBER COBB: Just please show CalHR
22 as abstaining.

23 PRESIDENT FECKNER: Thank you. I believe CalHR
24 is going to abstain on all three items, correct?

25 ACTING BOARD MEMBER COBB: On the --

1 PRESIDENT FECKNER: Just on the --

2 ACTING BOARD MEMBER COBB: Eight and nine.

3 PRESIDENT FECKNER: Eight and nine. Okay. Very
4 good.

5 Seeing no other requests.

6 All in favor say aye?

7 (Ayes.)

8 PRESIDENT FECKNER: Opposed, no?

9 Motion carries.

10 Please note the CalHR as abstaining.

11 BOARD MEMBER MATHUR: The committee further
12 recommends and I move the Board approve on Agenda Item 9,
13 a support, if amended, position on AB 2028. To apply the
14 bill to all active California Public Employees' Retirement
15 System school and local agency members consistent with the
16 treatment of all retired CalPERS members reinstated to
17 active service, following an involuntary termination as
18 provided under existing law.

19 PRESIDENT FECKNER: On motion by Committee.

20 Any discussion on the motion?

21 Seeing none.

22 All in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries.

1 Please note for the record CalHR as abstaining.

2 BOARD MEMBER MATHUR: The Committee further
3 recommends and I move that the Board approve on Agenda
4 Item 10, after consideration of the cumulative results for
5 all firms that participated in Solicitation number
6 2015-7755, and from such results select OptumRX, whose
7 submission response best demonstrates the ability to offer
8 pharmacy benefit manager services in terms of customer
9 service, pricing, and the ability to fulfill contractual
10 terms and conditions for calendar years 2017 through 2021.

11 PRESIDENT FECKNER: On motion by Committee.

12 Any discussion on the motion?

13 Seeing none.

14 All in favor say aye?

15 (Ayes.)

16 PRESIDENT FECKNER: Opposed say no?

17 Motion carries.

18 BOARD MEMBER MATHUR: The Committee also received
19 several reports, including the preliminary 2017 health
20 plan rates, information on health care cost trends, and an
21 update on customer service and support performance.

22 Some highlights of what to expect in June are, of
23 course, the final health plan rates, as well as the review
24 of additional legislation. The Committee will also
25 receive the State annuitant contribution formula and

1 information on the Financial Literacy Initiative.

2 The next meeting of the Pension and Health
3 Benefits Committee is scheduled for June 14th, 2016 in
4 Sacramento, California.

5 That concludes my report, Mr. President.

6 PRESIDENT FECKNER: Thank you.

7 Moves us to Agenda Item 7c, Finance and
8 Administration Committee. There was no meeting, no
9 report.

10 7d Performance, Compensation and Talent
11 Management Committee. For that, I call on the Chair, Mr.
12 Bilbrey.

13 BOARD MEMBER BILBREY: Thank you, Mr. President.
14 The Performance, Compensation and Talent Management
15 Committee met on May 17, 2016. The Committee received a
16 report on the Compensation Review Project. And we did not
17 have a first read. So in lieu of a first reading, we went
18 over the revised compensation policy and program elements.

19 The Committee received the compensation project
20 update from Grant Thornton on a phased-in implementation
21 strategy and timeline of activities to occur during the
22 remainder of the project. They'll continue through
23 December of this year.

24 At this time, I would like to share some
25 highlights of what to expect at the June Performance,

1 Compensation and Talent Management Committee meeting. The
2 Committee will receive recommendations for implementation
3 of performance metrics in Fiscal year 2016-17, and staff
4 will present the 2016-17 performance plan of the Chief
5 Investment Officer.

6 The next meeting of the Performance, Compensation
7 and Talent Management Committee is scheduled for June 14,
8 2016 in Sacramento, California.

9 PRESIDENT FECKNER: Thank you.

10 Item 7e, Risk and Audit Committee. There was no
11 meeting, no report.

12 7f, Boar Governance Committee. No meeting, no
13 report.

14 Moves us to Agenda Item 8, Approval of the
15 Committee delegations.

16 Mr. Jacobs.

17 GENERAL COUNSEL JACOBS: Good morning, Mr.
18 President, and Board members.

19 PRESIDENT FECKNER: Morning.

20 GENERAL COUNSEL JACOBS: Ms. Ratto will be
21 handling this item this morning.

22 PRESIDENT FECKNER: Very good.

23 DEPUTY GENERAL COUNSEL RATTO: Good morning,
24 everyone.

25 PRESIDENT FECKNER: Good morning.

1 DEPUTY GENERAL COUNSEL RATTO: Gina Ratto with
2 the Legal Office staff. This is an action item. In
3 accordance with the Board's Governance Policy, this is the
4 Board's annual review of the Board's delegations to its
5 committees.

6 Staff recommends that the Board approve the
7 changes to the Committee delegations reflected in
8 attachments 1 through 6 of the agenda item; and further,
9 the changes to the Board governance policy, which will
10 conform the policy to the delegations, and that's found in
11 Attachment 7.

12 All of the revisions to the Committee delegations
13 were revisions that were approved at the Committee level,
14 either at their March or April meetings. There is one
15 exception to that, and that is with respect to one power
16 that was previously delegated to the Performance,
17 Compensation and Talent Management Committee, which is the
18 power to hire and fire the Chief Executive Officer.

19 That power was removed from the Performance and
20 Compensation, Talent Management Committee delegation at
21 the Board Governance Committee meeting. And that change
22 has been reflected both in the delegation and in the
23 powers reserved to the Board in Attachment 7, which is the
24 Governance Policy.

25 One thing, just a ministerial matter that I want

1 to point out to the Board just so that there's no
2 confusion. If you look at Attachment 7, which is the
3 Board Governance Policy, Appendix A to the policy recites
4 all of the powers reserved to the Board and also recites
5 the powers that have been delegated to the Committee.

6 Through this process this year, we realized that
7 we had not updated the Board Governance Policy last year
8 to reflect the changes that were made to the Committee
9 delegations last year. So you'll see in Attachment A the
10 markings reflect the changes that were made to the
11 Committee delegations this year. Of course, the changes
12 that were made last year are reflected, but the changes
13 aren't marked.

14 That concludes my presentation and ask for the
15 Board's approval of those two items.

16 PRESIDENT FECKNER: Thank you.

17 Ms. Mathur.

18 BOARD MEMBER MATHUR: Thank you. I move that the
19 Board approve revisions to the Board Administration
20 delegations to the Board Committees and Appendix A to the
21 Board Governance Policy to reflect the revisions
22 associated with the Committee delegations.

23 BOARD MEMBER TAYLOR: Second.

24 PRESIDENT FECKNER: It's been moved by Mathur,
25 seconded by Taylor.

1 Any discussion on the motion?

2 Seeing none.

3 All in favor say aye?

4 (Ayes.)

5 PRESIDENT FECKNER: All opposed, no?

6 (No.)

7 PRESIDENT FECKNER: Motion carries.

8 Brings us to Agenda Item 9, proposed decisions of
9 Administrative Law Judges. First, before we begin, I want
10 to note that Chirag Shah, the Board's independent counsel
11 for administrative law decisions is with us today, so if
12 anybody has any questions, you certainly can pose them to
13 Mr. Shah.

14 I will now call on Mr. Jones.

15 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
16 President. I move to adopt the proposed decisions at
17 Agenda Items 9a through 9w as the Board's own decisions,
18 with the minor modification to Agenda Item 9s as argued by
19 staff.

20 PRESIDENT FECKNER: Very good.

21 BOARD MEMBER MATHUR: Second.

22 PRESIDENT FECKNER: It's been moved by Jones
23 seconded by Mathur.

24 Any discussion on the motion?

25 Mr. Costigan.

1 BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

2 I just want to note for 9h, while the State
3 Personnel Board is referenced, it was before I was on the
4 Board, so I will not be recusing on that. Thank you.

5 PRESIDENT FECKNER: Very good. Thank you for the
6 clarification.

7 Any other questions or comments on the motion?

8 Seeing none.

9 All in favor say aye?

10 (Ayes.)

11 PRESIDENT FECKNER: Opposed, no?

12 Motion carries. Thank you.

13 That brings us to Agenda Item 10, Petitions for
14 Reconsideration. Mr. Jones.

15 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
16 President. I move to deny the petition for
17 reconsideration at Agenda Item 10a.

18 BOARD MEMBER LIND: Second.

19 PRESIDENT FECKNER: It's been moved by Jones,
20 seconded by Lind.

21 Seeing no discussion on the motion.

22 All in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed, no?

25 Motion carries. Thank you.

1 Moving to Item 12, Slate Legislative Update. Ms.
2 Ashley.

3 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Good
4 morning, Mr. President and members of the Board.

5 PRESIDENT FECKNER: Good morning.

6 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Mary
7 Anne Ashley, CalPERS staff. I'm here to present a
8 legislative update.

9 In your Board materials is the updated summary of
10 legislation that notes CalPERS sponsored measures, as well
11 as other measures that we're tracking that have potential
12 impact to CalPERS.

13 Legislative Affairs staff continues to monitor
14 the bills as they are amended and moved in and out of
15 committees as important deadlines are quickly approaching.
16 CalPERS' two sponsored measures, AB 2404, which is the
17 Retirement Option Simplification Measure, and AB 2375,
18 which is our annual housekeeping bill have both passed the
19 policy and fiscal committees.

20 AB 2404 is now assigned to the Senate PERS
21 Committee. We do anticipate that there will be further
22 amendments to the bill to address some stakeholder
23 concerns. And we will keep the Board updated as those
24 amendments are made.

25 AB 2375, the housekeeping bill, is currently on

1 the consent calendar for the Assembly floor. So we
2 anticipate that that will be moved to the Senate shortly.

3 May 27th is the last day for fiscal committees to
4 hear and report fiscal bills of their house of origin to
5 the floor. And June 3rd is the last day for bills to be
6 passed out of their house of origin.

7 The legislative highlights page that's included
8 in your Board materials notes some changes to bills since
9 my last update. And I would like to highlight just a few
10 of those bills.

11 AB 2348 by Assembly Member Levine. Amendments
12 were made on April 28th removing references to CalSTRS and
13 Counties '37 Act systems, so that now the bill only makes
14 reference to investments made in infrastructure projects
15 in California made by CalPERS.

16 AB 2650 by Assembly Member Nazarian. Amendments
17 were made April 26th that specify that CalPERS and CalSTRS
18 shall liquidate investments in Turkey as specified within
19 six months of passage of a federal law imposing sanctions
20 on Turkey. We're currently analyzing that bill and
21 anticipate bringing it to the Investment Committee in
22 June.

23 AB 2833 by Assembly Member Cooley requires
24 specified disclosures regarding fees and expenses in
25 connection with limited partner agreements was amended

1 April 12th. CalPERS staff has committed to work with the
2 Treasurer's office on this measure and any additional
3 amendments that are necessary to address any remaining
4 concerns.

5 Staff is going to continue monitoring all bills
6 and will engage with stakeholders and update the Board as
7 appropriately. And one last note, there was a joint
8 Senate and Health Committee hearing to talk about the Drug
9 Price Relief Act held on May 10th. And Staff is currently
10 completing their analysis of that and will be bringing the
11 information on that initiative to the Pension and Health
12 Benefit Committee in June.

13 Thank you. That concludes my report, and I'm
14 happy to answer any questions.

15 PRESIDENT FECKNER: Thank you.

16 We do have a request. Mr. Jelincic.

17 BOARD MEMBER JELINCIC: I'm sorry. Oh, I
18 think I -- well, as long as I got called. 28 -- or 2628,
19 the Levine bill, it says next to it that it was -- there's
20 a date, is that the date of the last amendment?

21 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Yes.

22 BOARD MEMBER JELINCIC: Thank you.

23 PRESIDENT FECKNER: That's all we see.

24 Thank you. Appreciate it.

25 LEGISLATIVE AFFAIRS DIVISION CHIEF ASHLEY: Thank

1 you.

2 PRESIDENT FECKNER: Brings us to Agenda Item 13,
3 Summary of Board Direction. Ms. Stausboll.

4 CHIEF EXECUTIVE OFFICER STAUSBOLL: None so far.

5 PRESIDENT FECKNER: I didn't think so.

6 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

7 PRESIDENT FECKNER: Item 14, Public Comment. I
8 do have one request to speak from the public. Kent
9 McKinney, please come down on my left, your right. The
10 microphone is already on. You have up to three minutes.
11 Please speak your name for the record.

12 MR. MCKINNEY: Thank you, Mr. President and Board
13 members. My name is Kent McKinney. I'm a CalPERS retired
14 member speaking on behalf of myself. But also on behalf
15 of several thousand members whose families are required to
16 enroll in combination health plan arrangements.

17 The combination health plan enrollment occurs
18 when family members enroll in both CalPERS Medicare and
19 CalPERS basic health plans based on each family member's
20 Medicare or non-Medicare status. In 2012 and early 2013,
21 the Board discussed and adopted regulations, which became
22 effective in July 2013. These regulations, among other
23 provisions, allow the Medicare plan and the basic plan
24 chosen by members in these combination circumstances to be
25 offered by two different carriers.

1 A presentation by CalPERS staff to the Pension
2 and Health Benefits Committee of the Board when proposing
3 these adopted regulations described the section relating
4 to Medicare basic enrollments in this manner, the
5 supplemental plan can be offered by the same or different
6 carrier than what is offered for the basic plan for these
7 enrollments.

8 Despite the adopted regulations, CalPERS
9 apparently never made any corresponding adjustments to
10 forms, procedures, systems, rate tables, et cetera, which
11 would allow the multi-carrier option to be selected by the
12 member.

13 It's now three years later. The Board is now in
14 the planning cycle for the fourth annual open enrollment
15 since adopting these regulations. It has become more
16 important than ever to allow combination plan members to
17 choose two different carriers, since some contracted
18 carriers now only offer one of the two plan types. Most
19 of my career has been spent in managing information
20 technology and systems.

21 I understand the magnitude of system changes and
22 the workload involved. I know it's not just add a line
23 here on a form in this case, but this implementation is
24 also not a gigantic project relative to projects CalPERS
25 has successfully completed before.

1 However, it appears without a priority direction,
2 it will never happen. Therefore, I would like to ask that
3 the Board direct the full implementation of procedures and
4 systems and rate plans that will allow combination plan
5 members the choices of plans and carriers that the Board's
6 regulations already provide. Maybe this year, maybe next
7 year.

8 Thank you.

9 PRESIDENT FECKNER: Thank you for your comments.
10 Appreciate that.

11 All right. Seeing no other public comment. At
12 this point, we're going to recess the open session to go
13 into a closed session to discuss litigation matters. We
14 will be back in open session at 9:45.

15 Open session is in recess.

16 (Off record: 9:31 a.m.)

17 (Thereupon a recess was taken.)

18 (On record: 9:46 a.m.)

19 PRESIDENT FECKNER: I call the open session back
20 to order. We're on Agenda item the full Board hearing.

21 Mr. Shah, I see you keep looking around. Are we
22 missing someone?

23 MR. SHAH: Yeah, we're missing the respondent and
24 her counsel. He's outside getting coffee. I just went
25 out there and he said he's on his coffee break and he'll

1 be back in two hours.

2 (Laughter.)

3 BOARD MEMBER HOLLINGER: Well, this is going to
4 go fast.

5 MR. SHAH: I'll go outside.

6 PRESIDENT FECKNER: It will be a lot quicker now.

7 (Laughter.)

8 PRESIDENT FECKNER: So while we wait, can we
9 please call roll again now that we've reconvened the open
10 session.

11 BOARD SECRETARY BUCHANAN: Rob Feckner?

12 PRESIDENT FECKNER: Good morning.

13 BOARD SECRETARY BUCHANAN: Henry Jones?

14 VICE PRESIDENT JONES: Here.

15 BOARD SECRETARY BUCHANAN: Michael Bilbrey?

16 BOARD MEMBER BILBREY: Good morning.

17 BOARD SECRETARY BUCHANAN: Eric Lawyer for John
18 Chiang?

19 ACTING BOARD MEMBER LAWYER: Here.

20 BOARD SECRETARY BUCHANAN: Richard Costigan?

21 BOARD MEMBER COSTIGAN: Here.

22 BOARD SECRETARY BUCHANAN: Ralph Cobb for Richard
23 Gillihan?

24 ACTING BOARD MEMBER COBB: Here.

25 BOARD SECRETARY BUCHANAN: Dana Hollinger?

1 BOARD MEMBER HOLLINGER: Here.

2 BOARD SECRETARY BUCHANAN: J.J. Jelincic.

3 PRESIDENT FECKNER: He's excused. He recused
4 himself from the full Board hearing.

5 BOARD SECRETARY BUCHANAN: Ron Lind?

6 BOARD MEMBER LIND: Here.

7 BOARD SECRETARY BUCHANAN: Priya Mathur?

8 BOARD MEMBER MATHUR: Here.

9 BOARD SECRETARY BUCHANAN: Bill Slaton?

10 BOARD MEMBER SLATON: Here.

11 BOARD SECRETARY BUCHANAN: Theresa Taylor?

12 BOARD MEMBER TAYLOR: Here.

13 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
14 Betty Yee?

15 ACTING BOARD MEMBER PAQUIN: Here.

16 PRESIDENT FECKNER: Thank you, Mr. Shah.

17 Good morning, everyone. We now turn to Agenda
18 Item 11, and open the record for the full Board hearing in
19 the appeal of Dr. Lee Turner Johnson, CalPERS case number
20 2015-0373.

21 Let us first take roll, which we've already done.

22 Thank you. Now, let the record reflect that Mr.
23 Jelincic has recused himself from this matter. The
24 proposed decision in this case was originally considered
25 by the Board at the March 2016 Board meeting. At that

1 meeting, the Board rejected the proposed decision and
2 scheduled this matter for a full Board hearing. I note
3 for the record that all parties have received notice of
4 this full Board hearing along with copies of the Statement
5 of Policy and Procedures for Board Hearings before the
6 Board.

7 In addition, all parties have been informed in
8 writing that oral argument will be limited to ten minutes
9 for each position, and rebuttal will be limited to three
10 minutes for each position.

11 Would counsel please take a moment to introduce
12 themselves starting with staff counsel and then Dr.
13 Johnson's counsel.

14 SENIOR STAFF ATTORNEY KAUR: Preet Kaur, staff
15 attorney for CalPERS>

16 ASSISTANT CHIEF COUNSEL SEABOURN: Marguerite
17 Seabourn, attorney for CalPERS.

18 PRESIDENT FECKNER: Thank you.

19 MR. BARLOW: Ian Barlow attorney for respondent.

20 PRESIDENT FECKNER: Please turn on your
21 microphone.

22 There you go.

23 MR. BARLOW: Ian Barlow, attorney for respondent
24 Lee Turner Johnson.

25 PRESIDENT FECKNER: Thank you.

1 So let the record reflect that Chirag Shah from
2 the Los Angeles based law firm of Shah & Associates, the
3 Board's independent counsel on full Board hearings and
4 proposed decisions from the Office of Administrative
5 Hearings is here now and will be in attendance throughout
6 the hearing. Mr. Shah will be advising members of the
7 Board on procedural as well as substantive issues that
8 arise in this proceeding, should Board members have
9 questions. Mr. Shah will also provide a brief summary of
10 the case before we begin oral arguments.

11 Now, as stated previously, each position will
12 have ten minutes for oral argument. Ms. Kaur will first
13 have ten minutes to present staff's argument. After that
14 Mr. Barlow will have ten minutes to present argument on
15 behalf of Dr. Johnson. Neither side is compelled to use
16 the full ten minutes. However, if a party concludes
17 argument in less than that time allotted, it will not be
18 permitted to carry over any remaining time to any other
19 portion of this proceeding.

20 After both sides have presented oral arguments,
21 each side will be given three minutes for rebuttal
22 arguments in the same order as the original presentation,
23 first Ms. Kaur then Mr. Barlow. Here too, a party may,
24 but does not have to, use the entire time allocated to
25 them for rebuttal. But if a party decides not to -- or

1 decides to use less time, there will not be an opportunity
2 to use any of the remaining time.

3 There's a timer in the room which will be set for
4 10 minutes for initial argument and three minutes for
5 rebuttals. The timer will begin when you first start to
6 speak. Please pay close attention to the timer as you
7 make your presentations, in order to avoid getting over
8 you're allotted time. When the timer's light turns red,
9 your time will have expired.

10 After all sides' arguments and rebuttals are
11 concluding, the Board may ask questions of any of the
12 parties to this proceeding, as well as our independent
13 counsel.

14 Any questions so far, do the parties understand
15 the procedure?

16 Ms. Kaur?

17 SENIOR STAFF ATTORNEY KAUR: Yes Mr. President.

18 PRESIDENT FECKNER: Mr. Barlow.

19 MR. BARLOW: Yes, Mr. President.

20 PRESIDENT FECKNER: Thank you. Now, then, Mr.
21 Shah, please provide a brief summary of the case.

22 MR. SHAH: Thank you, Mr. President. Good
23 morning to you and good morning to the members of the
24 Board.

25 PRESIDENT FECKNER: Good morning.

1 MR. SHAH: As you said, my name is Chirag Shah.
2 I'm the Board's independent counsel on full Board
3 hearings. The case that the Board will hear this morning
4 involves a proposed decision in which the administrative
5 law judge finds that Dr. Lee Turner Johnson is not
6 entitled to lifetime option 2 survivor benefits under
7 section 21454 and section 21462 of the Public Employees'
8 Retirement Law or employer sponsored health and dental
9 benefits under the Public Employees Medical and health
10 hospital -- Medical and Hospital Care Act.

11 The material facts, as found by the
12 administrative law judge in the proposed decision are as
13 follows:

14 Grantland Lee Johnson served in various
15 capacities at the local, State, and federal levels of
16 government during the course of his remarkable and
17 distinguished career in public service. Mr. Johnson
18 retired from the State of California on November 16th,
19 2003. At the time of his retirement, Mr. Johnson elected
20 an option 2 survivor annuity and named his then wife
21 Charlot Bolton as his life option beneficiary, despite the
22 fact that they had been living separate and apart since
23 April 1 of 2002.

24 Mr. Johnson received payment for his first
25 monthly retirement benefit around January 1, 2004 and

1 continued to receive such payments until his untimely and
2 unfortunate death on August 19, 2014.

3 At the beginning of 2003, Mr. Johnson filed a
4 petition for dissolution of his marriage to Ms. Bolton
5 and, on October 21st, 2013, in a bifurcated trial, the
6 family court law court entered a judgment terminating the
7 marriage effective November 9, 2013, but reserved
8 distribution of the community estate for a later date.

9 After that, Mr. Johnson and Dr. Lee Turner
10 Johnson were married on November 15, 2013. Within a month
11 after their marriage, Dr. Johnson was added to Mr.
12 Johnson's health coverage as a dependent, as permitted by
13 HIPAA special enrollment rules.

14 In the months following his marriage to Dr.
15 Johnson, Mr. Johnson communicated with CalPERS on several
16 occasions to inform CalPERS that he wished to replace Ms.
17 Bolton, his prior spouse, with Dr. Johnson as his
18 beneficiary for all benefits. At that time, Mr. Johnson
19 had not made a new life option election, because he had
20 not secured total interest in his pension benefits.

21 Approximately one month after Mr. Johnson passed
22 way on August 19th, 2014, Dr. Johnson executed a marital
23 settlement agreement with Ms. Bolton as Mr. Johnson's
24 attorney in fact. That marital settlement agreement,
25 which was actually executed by Ms. Bolton, Mr. Johnson's

1 former spouse, two weeks after his death awarded Mr.
2 Johnson his entire CalPERS pension.

3 Now, this happened only two weeks after his
4 death. Since the proposed decision is consistent with
5 staff's initial determination, staff argues that the Board
6 should adopt it. Dr. Johnson, on the other hand, argues
7 that the Board should reject the proposed decision, and
8 in it -- instead issue its own decision awarding Dr.
9 Johnson the option 2 benefit, as well as continued
10 enrollment in health and dental benefits and dental
11 coverage.

12 In taking this position, Dr. Johnson relies on
13 the well established doctrine of substantial compliance.
14 Alternatively, Dr. Johnson argues that section 21 -- 20160
15 of the Public Employees's Retirement Law, which is also
16 known as the mistake statute -- section 20160 is known as
17 the mistake statute -- should be applied by the Board to
18 rule in her favor and estop staff applying the doctrine of
19 equitable estoppel from denying the benefits that she
20 seeks here today.

21 The details and the merits of each party's
22 position are found in Agenda Item 11. With that, Mr.
23 President, I conclude my brief summary of the case.

24 PRESIDENT FECKNER: Thank you.

25 Let us now turn to the preliminary evidentiary

1 issues. As all parties are aware, we are not here to
2 relitigate factual issues or resubmit evidence into the
3 administrative record. However, in rare circumstances, in
4 the interests of achieving a just result, may require
5 consideration of newly discovered, relevant documentary
6 evidence which could not, with reasonable diligence, have
7 been discovered and produced at the hearing before the
8 administrative law judge, and which therefore is not part
9 of the administrative record.

10 The Board's procedures made it clear under no
11 circumstances may the Board accept new testimonial
12 evidence, witness testimony, or any kind of examination or
13 cross-examination of anyone, including Board members, in
14 today's proceeding.

15 Under the Board's procedure, requests to
16 introduce newly discovered documentary evidence must be
17 submitted in writing to the Board secretary no later than
18 the due date for written argument, which, in this case,
19 was May 6th, 2016. Dr. Johnson has submitted a timely
20 request for introduction of evidence not contained in the
21 administrative record.

22 The evidence that Dr. Johnson seeks to introduce
23 at this stage constitutes four witness declarations.
24 Staff has submitted a written opposition to Dr. Johnson's
25 request. I have decided to accept brief oral arguments on

1 Dr. Johnson's request. I will give each party two minutes
2 to briefly state its position on Dr. Johnson's request.

3 Mr. Barlow, would you like to present a brief two
4 minute argument on the request

5 MR. BARLOW: Yes, Mr. President.

6 PRESIDENT FECKNER: Please do.

7 MR. BARLOW: Mr. President and Board members,
8 we're submitting the attached declarations to the request
9 for submitting additional evidence to the extent it
10 provides the Board with assistance on the legitimacy and
11 validity of Grantland Johnson and Lee Turner Johnson's
12 marriage. This was raised in direct response to the
13 specter of this being somehow a death-bed election or a
14 death-bed marriage. And that term was used for the first
15 time in these proceedings in CalPERS' closing brief.

16 We didn't have an opportunity to address that
17 during the hearing, because it was never really at issue.
18 So to the extent that introducing that term and that
19 connotation insinuates that this somehow was not a valid
20 marriage, we felt compelled to respond to it.

21 Accordingly, and with a short amount of time, we
22 set out to collect statements from people who were closest
23 to Grantland Johnson and Lee Turner Johnson, including, by
24 way of having to subpoena a federal judge, Kimberly
25 Mueller who presided over Grantland Johnson and Lee Turner

1 Johnson's marriage. We received declarations from a
2 witness to his marriage, long-time friend Bill Camp, Leron
3 Lee. All of these declarations speak directly to the
4 validity of that marriage and the fact that what Grantland
5 Johnson wanted to achieve was to bestow dental, health,
6 option 2 benefits as part of that marriage.

7 These issues are directly relevant to Grantland
8 Johnson's intent. And accordingly, that is -- would
9 constitute admissible evidence to the extent that he's
10 unavailable. This goes to his state of mind. It goes to
11 what he intended for the respondent Grantland Johnson to
12 receive by way of his CalPERS benefits. So it was an
13 issue that we couldn't sort of leave hanging out there in
14 the way that it was introduced in closing papers before
15 the Board, and we wanted to make sure that we had a chance
16 to clear the air, and make sure that it wasn't an issue or
17 a concern for the Board.

18 PRESIDENT FECKNER: Thank you.

19 Ms. Kaur, would you like to present a two minute
20 brief on behalf of your point?

21 SENIOR STAFF ATTORNEY KAUR: Yes, Mr. President.

22 PRESIDENT FECKNER: Please talk into the
23 microphone. Thank you.

24 SENIOR STAFF ATTORNEY KAUR: Good morning. The
25 declarations should not be admitted or considered by the

1 Board for several reasons.

2 First, the declarations are testimonial evidence,
3 not documentary evidence. Board rules specifically state
4 under no circumstances will the Board accept new witness
5 testimony at full hearing.

6 Second, the admission of the declarations will be
7 prejudicial to CalPERS, because CalPERS has not had the
8 opportunity to cross-examine the witnesses or provide
9 counter-testimony to rebut the statements made in the
10 declarations.

11 The third reason is the declarations are not --
12 they are irrelevant and speculative. The declarants
13 merely state their impression of what they thought Mr.
14 Johnson may have intended. The declarant's impression is
15 irrelevant to the issues here.

16 And lastly, respondent fails to demonstrate good
17 cause why the evidence could not, with reasonable
18 diligence, be presented at the hearing. Respondent
19 actually states no reason why the declarations were not
20 presented at the hearing. Respondent states CalPERS did
21 not raise issues relating to the validity of the marriage
22 or death-bed election until CalPERS filed its closing
23 brief. Both assertions are incorrect.

24 First, CalPERS never questioned the validity of
25 the marriage itself or the marriage license. And second,

1 the issue of death-bed elections and that the member must
2 be living on the effective date of the election was raised
3 at the hearing. So respondent had opportunity to present
4 rebuttal testimony, but she didn't.

5 And then when CalPERS filed its brief after the
6 record was closed, respondent had an opportunity to
7 request the ALJ reopen the record and take in the
8 testimony of the witnesses, but she failed to do so.

9 So for these reasons, the testimonial evidence
10 should not be considered by the Board.

11 PRESIDENT FECKNER: Thank you.

12 As stated previously, the Board's procedures do
13 not permit testimonial evidence, which include witness
14 declarations of the kind that Mr. -- Dr. Johnson seeks to
15 introduce. In addition, there has not been an adequate
16 showing that the evidence sought to be introduced could
17 not, with reasonable diligence, have been produced at the
18 hearing.

19 Therefore, having reviewed both Dr. Johnson's
20 request and staff's opposition paper, and upon considering
21 the oral arguments presented today, unless there's an
22 objection from a Board member, I hereby deny Dr. Johnson's
23 request to introduce the four declarations into the
24 administrative record. Board members are instructed to
25 disregard the declarations in their evaluation of the

1 administrative record.

2 Now, on that basis, Ms. Kaur, please present
3 staff's argument. Please start the clock for ten minutes.
4 And make sure you pull the microphone directly in front of
5 you.

6 SENIOR STAFF ATTORNEY KAUR: Thank you, Mr. --

7 PRESIDENT FECKNER: Microphone in front of you,
8 please. Thank you.

9 SENIOR STAFF ATTORNEY KAUR: Thank you, Mr.
10 President. Respondent argues that this matter is a form
11 over substance, that CalPERS determination was based on a
12 technicality. Let's discuss that form over substance
13 argument and look at the form.

14 This, the PERL, is the form that respondent
15 refers to. Each section in this form contains the
16 substance. So let's look at the relevant sections. Upon
17 review of the relevant sections, you will see that CalPERS
18 determination was not merely a formality, but was based on
19 expressed requirements of the PERL. You will also see why
20 the Legislature imposed those requirements.

21 We begin with section 21451, which allows the
22 member to take a reduction to his own monthly retirement
23 allows and select an optional settlement. So in 2003, Mr.
24 Johnson elected option 2. Pursuant to section 21456, this
25 option provides a monthly retirement allowance to him

1 until his death and then after his death a monthly
2 retirement allowance to his beneficiary for the rest of
3 her life.

4 Once Mr. Johnson elected the option 2 benefit,
5 he -- and received his first retirement allowance, he was
6 locked in, because section 21453 says the election cannot
7 be changed. Why? Is this just a formality? No, optional
8 settlements require actuarial assumptions.

9 And the member's own monthly retirement allowance
10 is reduced to provide for the beneficiary. The monthly
11 lifetime benefit received by the beneficiary is tied to
12 the member's monthly allowance. This is why the election
13 is irrevocable. But, of course, the legislature
14 understood the complexities of human relationships, so
15 they provided for exceptions.

16 21462 in relevant part provides that if a member
17 elected option 2, named a spouse, but then divorces that
18 spouse, the member may change his option settlement.
19 21462 sets out specific requirements that must be met to
20 select another optional settlement. Let's look at the
21 requirements in 21462. The text of that statute is on
22 page seven of CalPERS staff argument if the Board would
23 like to follow along.

24 214612 is very specific, and only authorizes the
25 member to make an election. Section (a)(1) provides the

1 member may elect. The second sentence in section (d)
2 reiterates this requirement. It states, "An optional
3 settlement shall be selected by the member...". This is
4 important because the legislature wanted the member to
5 erect an option. Why? Because when the member elects an
6 option settlement and signs the election, he is agreeing
7 that CalPERS may reduce his hard earned monthly benefits
8 to provide for the new beneficiary. This is an agreement
9 between the member and CalPERS to adjust his monthly
10 allowance.

11 Here, this requirement is not met, because Mr.
12 Johnson never elected an option. He wrote to CalPERS
13 saying he wants Mrs. Johnson to get all his death
14 benefits. He filed an application with CalPERS initiating
15 the process, but he never made an election.

16 So staying with this section, (a)(1), the member
17 may elect. Looking at that notion, what is he electing?
18 He's electing to change his option settlement, so he's not
19 just naming a new beneficiary. He has to select a new
20 option. It's like selecting a new policy, if you will.

21 This triggers a new actuarial calculation. His
22 own retirement benefit will be recalculated to fund for
23 the new beneficiary, taking into consideration his age,
24 life expectancy, the age of the new spouse, her life
25 expectancy, and other factors. So basically, he's

1 starting from scratch. He's redoing his policy.

2 This is not a situation where the policy has
3 already been purchased and the member dies, and then we're
4 deciding who gets that money. Here, the member failed to
5 change his policy. He died, and now the beneficiary is
6 attempting to change his policy after his death.

7 So clearly, it's the member who can elect. But
8 what members? Section (a)(1) states only certain members
9 have that right to elect, only those who have a judgment
10 awarding them the entire interest in their retirement
11 benefits. Here, Mr. Johnson separated from his first wife
12 in 2002. In 2003 he named her the beneficiary. He gave
13 her the benefits and never obtained a judgment that
14 awarded him the full interest in this CalPERS benefits, so
15 he didn't even have the authority to change his election
16 and give the benefits to another beneficiary during his
17 life.

18 Yes, Mrs. Johnson presented a judgment awarding
19 him -- awarding Mr. Johnson the entire interest in his
20 benefits, but that was issued and became effective after
21 Mr. Johnson's death. That judgment never existed while he
22 was alive giving him the right to change his selection.
23 As the ALJ pointed out, the judgment is a conditioned
24 precedent. One must have the judgment awarding him the
25 entire interest in his retirement benefits to be able to

1 make an election. Mrs. Johnson is asking us to work
2 backwards. This is in direct conflict with expressed
3 provisions of the statute.

4 Looking at this statute, let's look at section
5 (b), which states, "The election shall be effective on the
6 date specified in the election". The effective date of
7 what? It's the date the member -- the member's prior
8 retirement allowance changes and the new option settlement
9 he elected goes into effect. This is when he gets a
10 reduction to his retirement allowance to pay for the new
11 beneficiary.

12 The statute here is very specific and goes on to
13 say the effective date cannot be prior to the receipt of
14 the election. Well, Mr. Johnson never made an election,
15 so we don't have an effective date that has been
16 specified. Because there's no effective date here, we
17 don't know when he would take a reduction to his own
18 retirement benefit to pay for Mrs. Johnson's benefit, as
19 specified by the statute. This whole process where the
20 member must elect, and the election date must be
21 specified, is not a mere formality, but was set up by the
22 legislature to protect the System from after-the-fact
23 selections.

24 These requirements prevent members and
25 beneficiaries from making sections with the benefit of

1 hindsight, and additional information that would
2 subvertical CalPERS calculations of members' benefits. To
3 allow the change without requiring Mr. Johnson to take a
4 reduction of his benefits, as required by the Legislature,
5 creates an unanticipated loss to the fund that cannot be
6 recovered.

7 And looking at the last section, section (d),
8 this is another requirement that the legislature imposed,
9 and it also touches on the substantial compliance argument
10 raised by respondent. Section (d) states, "This section
11 shall not be construed to mean that designation of a new
12 beneficiary causes selection of an optional settlement".
13 This is the legislature once again telling us you're not
14 changing your beneficiary here. You must select another
15 optional settlement. You're changing your policy here.

16 Mrs. Johnson points to the June 23rd, 2014 letter
17 sent by Mr. Johnson, which says he designates her as a
18 beneficiary. So she tells us you know his intent, you
19 know what he wanted to do, you have the letter, he
20 substantially complied, so make me the beneficiary like
21 you did for the lump sum benefits.

22 We cannot. The legislature specifically
23 prohibits us from doing what Mrs. Johnson is asking. The
24 beneficiary designation is not enough. We need the member
25 to elect an optional settlement. Designating a new

1 beneficiary works for lump sum benefits under section
2 21490, but it's not enough for monthly optional
3 settlements.

4 So now we see the strict requirements imposed by
5 the legislature in section 21462 were not merely a
6 formality or a technicality. They were designed to
7 protect the fund and the members. These requirements
8 create a process that is fair and equally applicable to
9 all members who qualify to change their optional
10 settlement.

11 CalPERS must comply with expressed provisions of
12 this statute. To move away from those provisions is not
13 only a violation of the law, but it also leaves us too
14 many what-if's and how's. What is the effective date?
15 What option would Mr. Johnson have chosen, option 2,
16 option 3, option 4? What about an unmodified option that
17 would raise his monthly allowance, if we chose not to
18 elect a beneficiary at all?

19 And statistically half of the members who file an
20 application to modify their option settlement end up not
21 electing a new option. So we would be further assuming he
22 would actually go through with his application, after
23 seeing the different options and electric one of those
24 options.

25 Failure to follow the requirements of this

1 statute leads us to a road of uncertainty, guesswork and
2 inconsistency. It leads to the CalPERS staff and the
3 beneficiary making the election, not the member.

4 Let's steer clear of that path. Let us not bog
5 down with assuming the intent of the member and forget the
6 intent of the legislature.

7 Thank you.

8 PRESIDENT FECKNER: Thank you.

9 Please start the clock for ten minutes for Mr.
10 Barlow to present Dr. Johnson's argument.

11 MR. BARLOW: Thank you, Mr. President and members
12 of the Board.

13 This is not a case of what if's and how's. One
14 of the members of the Board had it correct at the March
15 16th meeting, when it was stated that this seemed to be an
16 issue of form over substance. It is. Grantland Johnson's
17 intents -- intentions and his hopes for his wife,
18 respondent, Lee Turner Johnson, are being denied, because
19 of his inability to submit a final form before he died.

20 The administrative law judge and CalPERS are
21 attempting thwart Grantland Johnson's efforts to designate
22 Lee Turner Johnson as a beneficiary for his option 2
23 benefits, based essentially on a literal application of
24 State law.

25 But we know that literal compliance wasn't

1 accomplished year. Rather, what we're contending, and
2 what the record demonstrates, is that Grantland Johnson
3 satisfied the objectives of that statute, and that a rigid
4 application of it would be manifestly unjust here.

5 Such a mechanical and non-common sensical
6 approach on the legal theories of our case here are
7 unnecessary. Here, we are arguing legal theories based on
8 intent, for example, substantial compliance, excusable
9 negligent. Even cases that CalPERS cites call for an
10 examination of the member's intent and what he did in
11 furtherance of his intent. Here, the administrative law
12 judge simply got it wrong.

13 When he found that whether Grantland Johnson
14 clearly intended to designate Lee as his life option
15 beneficiary was not the issue, but it is exactly the
16 issue. Examining Grantland Johnson's intent and the steps
17 that he took to effectuate it are critical to a proper
18 Application of the law and the facts to the law.

19 We know from the record that his intent was
20 unequivocal and unwavering. First, CalPERS brought up his
21 December 4th, 2003 retirement allowance letter. It's
22 clear from that letter that he selected an option 2
23 benefit, and designated his former wife Charlot Bolton his
24 beneficiary for that option 2 benefit.

25 February 2013, he contacted CalPERS to inquire

1 about changing that designation. He divorced his former
2 wife two months later and a marital property settlement
3 that was prepared, although not yet signed, had
4 allocated -- awarded Grantland Johnson full interest in
5 his CalPERS pension.

6 On November 13th, Grantland Johnson sent -- sends
7 a letter to CalPERS requesting that it remove his former
8 wife from the CalPERS health plan and informs CalPERS of
9 the divorce. And after a 17-year friendship and a nine
10 year relationship, Grantland Johnson and Lee Turner
11 Johnson got married. They got married on November 15th,
12 2013. And as part of that marriage, they discussed what
13 Grantland Johnson wanted for her, which was to take care
14 of her through his medical, dental, and option 2 benefits.

15 The following month, he wrote CalPERS a letter
16 informing CalPERS of the marriage and that he wanted to
17 add Lee as -- to his health plan, which happened. Lee was
18 added to his dental plan and four months later was added
19 to his medical plan.

20 And CalPERS references the June 23rd, 2014
21 letter. And this is a critical letter. In that letter,
22 he requests expressly that Lee Turner Johnson be added as
23 beneficiary for all retirement benefits, not just death
24 benefits, but all retirement and death benefits that were
25 previously designated for his former wife. What were

1 those benefits? Those were the option 2 benefits, as we
2 mentioned in reference to the 2003 letter.

3 Next, in that letter, Grantland Johnson then
4 stated that he wanted the designation to take place
5 immediately after receipt of the marital property
6 settlement, the when.

7 Then, for a second time in that letter, Grantland
8 Johnson reiterates that he wants to change his beneficiary
9 to Lee Turner Johnson as beneficiary for all the benefits,
10 all the retirement benefits that were awarded to his
11 former spouse. Those benefits were an option 2 benefit.

12 In August 2014, Grantland Johnson told Lee and
13 CalPERS that he wanted to complete the appropriate forms
14 to effectuating this -- for effectuating this, for
15 designating her as beneficiary for his option 2 benefits.
16 He expressed this by telephone to CalPERS saying option 2
17 from the ICU at Kaiser Hospital. This is corroborated by
18 both Lee, and his life-long friend, Herb Anderson who was
19 with him at the ICU at the time.

20 He signed and submitted the application to modify
21 his life option benefit, sent it to CalPERS, signed it, it
22 clearly shows that Lee Turner Johnson is the new
23 beneficiary. And that form was filled out consistent with
24 selecting an option 2 benefit.

25 By this time, CalPERS had also had relevant birth

1 certificates, they had the dissolution papers, although
2 not the marital property settlement, and a copy of
3 Grantland Johnson and Lee's marriage certificate.

4 Grantland Johnson died August 19th, 2014. Two
5 weeks later, his former wife signs the marital property
6 settlement agreement. And Lee Turner Johnson submits a
7 file stamped copy of that judgment as soon as it's
8 available, sends it to CalPERS to let them know of the
9 marital property settlement being executed.

10 The only step that Grantland Johnson was not able
11 to complete, and CalPERS points to the entire code book as
12 the relevant form here, the only step that didn't complete
13 was submitting an election form. However, his intent was
14 clear, uncontroverted. No one except CalPERS is
15 contesting whether or not Grantland Johnson's intent
16 should be effectuated.

17 Indeed, the only person who would be remotely at
18 issue in asserting an interest here is Grantland Johnson's
19 former wife, but she signed off on the marital property
20 agreement that awarded Grantland Johnson full interest in
21 his CalPERS benefits.

22 CalPERS notes that the purpose and objective of
23 the finally election form is to reconfirm the what option
24 is being selected, and the who that's being selected as
25 the new beneficiary. Well, those objectives are being --

1 have been satisfied based on the process that I just
2 described. He also described the when, immediately upon
3 CalPERS receipt of the marital property settlement
4 agreement.

5 Furthermore, for the purpose of the requirement
6 that the member and the beneficiary both be alive on the
7 effective date is to prevent death-bed elections as
8 CalPERS has insinuated and stated in its closing brief.
9 That concern is no way implicated here by the underlying
10 facts, which show that Grantland Johnson and Lee had a
11 loving, legitimate marriage based on long-standing
12 relationship.

13 And there's also nothing in this case to suggest
14 that Grantland Johnson was somehow inclined to all of a
15 sudden reverse course and make an election or designate a
16 beneficiary that's directly contrary to everything that he
17 had sought to accomplish before he died.

18 CalPERS warning that not adopting the proposed
19 decision in this matter would somehow be at odds with the
20 matter of Jolie Caughey. First, it's unclear whether or
21 not that's even a precedential decision. Second, the
22 member in that case communicated inconsistent option
23 benefits, option 1 and option 2, to CalPERS. And the ALJ
24 found that he had gone -- the member in that matter had
25 gone 13 years at a higher unmodified rate without

1 inquiring even about how to change it, suggesting that he
2 may not ultimately want to change it. Those are not the
3 facts implicated here. That wasn't Grantland Johnson's
4 situation.

5 It's also critical for the Board to understand
6 what Grantland Johnson and Lee were enduring during the
7 time that he was attempting to complete this process.
8 Grantland Johnson had kidney failure in 2010, followed by
9 a series of annual surgeries.

10 The month after Grantland Johnson and Lee were
11 married, he underwent a serious diabetes related surgery
12 to save one of his legs, which left him bedridden in a
13 wheelchair for following -- for several months.

14 Between March 2014 and May 2014, he had a series
15 of wound debridement procedures that left him dependent on
16 a wound debridement machine 24/7. Between June and July
17 2014, he was in the hospital due to a decline in heart and
18 kidney functions. He was undergoing dialysis four times a
19 week.

20 It would have been reasonable for anybody in his
21 situation to just stop, to not do anything. Yet,
22 throughout all of this, he still incredibly worked
23 diligently through the process to make sure that his wife
24 Lee Turner Johnson was taken care of through his benefits.
25 He called CalPERS from the ICU to make sure that he was

1 filling out forms correctly.

2 It's also noteworthy that his former spouse did
3 not sign the marital property agreement until nearly a
4 year and a half after they divorced, and two weeks after
5 he passed away. This was completely out of his control.
6 He was acting more than reasonably while navigating a
7 complex process under extremely difficult circumstances.

8 Board members, it is clear what Grantland Johnson
9 would have done had he survived. And I don't think
10 there's any question what he would express to you today if
11 he were sitting here with us. There's no question what he
12 would express to you in terms of what he would want for
13 Lee Turner Johnson. His intent was unmistakable, his
14 efforts were herculean under the circumstances.

15 But his intent should not be denied and benefits
16 that he sought for Lee should not be rejected simply
17 because he was unable to cross the finish line by not
18 submitting one form, after an extended process, or because
19 certain parts of the process were completed out of order.

20 At this point, CalPERS has everything that it
21 needs to effectuate the change. CalPERS now is only
22 saying that it can't guess what option he wanted and who
23 he wanted to designate as his beneficiary, but we know
24 that.

25 PRESIDENT FECKNER: Your time is up, Mr. Barlow.

1 Thank you.

2 So Mr. Kaur, would you like to offer rebuttal?

3 SENIOR STAFF ATTORNEY KAUR: Yes, Mr. President

4 PRESIDENT FECKNER: Please set the clock for
5 three minutes as soon as you begin.

6 SENIOR STAFF ATTORNEY KAUR: Thank you.

7 There's much talk about Mr. Johnson's intent.

8 First, his intent was not that clear in terms of CalPERS
9 being able to change his settlement option. We don't have
10 enough information about what option he would want. He
11 never sent anything in writing to CalPERS telling --
12 informing CalPERS which option he would want to elect.

13 The letter that he sent and the application he
14 filed with CalPERS to change his benefits do not state
15 what option he would select. Also, we don't know what the
16 effective date would be as well.

17 And aside from his intent being unclear, intent
18 is not enough. We need more. We need the member to be
19 entitled to change his benefits. Yes. He may have wanted
20 to rename his beneficiary, but he would not be able to do
21 that until he's entitled. And he was not entitled during
22 his lifetime, because he did not have that marital
23 settlement agreement which gave him the authority to
24 change his beneficiary. He gave that away to his former
25 spouse. Even though he had separated from her, he gave

1 her the benefits. He made her the beneficiary, and he
2 never obtained the marital settlement agreement which
3 awarded him the full interest allowing him to name a new
4 beneficiary.

5 So intent, like the ALJ says, is almost
6 irrelevant here. It's not enough. We need more. We
7 need, as the statute requires, the marital settlement
8 agreement during his lifetime, which allows him to make an
9 election, which he never made.

10 And as to the mistakes issue, we -- the Board
11 cannot grant relief under the mistake statute, because
12 there was no error here. If you look at the record, Mr.
13 Johnson clearly knew what the requirements were. He was
14 informed several times. The publication for changing your
15 beneficiary was sent to him. Mrs. Johnson called CalPERS.
16 They were provided information on how to change the
17 beneficiary and select another option, but he never went
18 through and actually elected an option.

19 Thank you.

20 PRESIDENT FECKNER: Thank you.

21 Mr. Barlow, would you like to offer rebuttal?

22 MR. BARLOW: Yes, Mr. President.

23 PRESIDENT FECKNER: Please begin.

24 MR. BARLOW: We think, based on the record, that
25 it is entirely clear what his intent was. If you take a

1 look at the totality of the facts in this case, and not a
2 myopic view of one sentence in one letter, although you
3 can do that, or one statement, taking a step back and
4 looking at this -- at these circumstances, it's clear what
5 he wanted.

6 That June 23rd, 2014 letter states that he wanted
7 Lee Turner Johnson to be designated as his new beneficiary
8 for the retirement benefits that were previously
9 designated for his former wife. We know that in 2003
10 those benefits were option 2 benefits. CalPERS also
11 doesn't mention the telephone call that Grantland Johnson
12 had with CalPERS during which it was expressly mentioned
13 that he wanted to designate her for option 2 benefits.
14 Everything that he had done up until the point his death
15 is consistent with an election of option 2 benefits.
16 There is nothing contrary to that.

17 And to also state that he is somehow not entitled
18 now to designate Lee Turner Johnson as his beneficiary for
19 health, dental, and option 2 benefits is simply not true.
20 He has been awarded now although posthumously complete
21 interest in his pension benefits. So we know that he has
22 that, and we know that CalPERS has been informed of that.

23 And that's all I have for you right now.

24 PRESIDENT FECKNER: Thank you.

25 So at this time, it's time for questions from the

1 Board members. Do Board members have any questions of
2 this process?

3 Mr. Lind.

4 BOARD MEMBER LIND: Just a quick one, I guess,
5 for staff. Are notes in a file somewhere regarding his
6 alleged call from the ICU regarding his intent?

7 SENIOR STAFF ATTORNEY KAUR: There actually are
8 notes. They're in the CalPERS -- I believe they're in the
9 CalPERS exhibits. They're the CPT notes that were
10 recorded when he called.

11 And there's also a testimony in the record by
12 CalPERS staff who answered that call and who spoke to Mrs.
13 Johnson, because Mrs. Johnson was given authority to speak
14 to the CalPERS staff. So there are notes, and those notes
15 don't reflect that Mr. Johnson was -- those notes don't
16 reflect Mr. Johnson telling us he wants the option 2
17 benefits.

18 Him wanting to elect the option 2 benefits, that
19 comes from testimony from Mrs. Johnson. And that
20 testimony was considered hearsay as to the intent of Mr.
21 Johnson, so that's why CalPERS staff didn't even mention
22 it.

23 BOARD MEMBER LIND: Thank you.

24 PRESIDENT FECKNER: Mr. Slaton.

25 BOARD MEMBER SLATON: Thank you, Mr. President.

1 So I want to come back to the June 23rd letter.
2 And let me get it in front of me here. The first sentence
3 in that letter, and this is for staff, effectively says
4 assign -- I want all the retirement benefits that formerly
5 went to my ex-wife to now go to my current wife. So I
6 want to understand how you cannot reach the conclusion
7 that if the former wife has option 2 benefit and the
8 letter says what went to my former wife goes to my new
9 wife? Why is that not an interpretation of an option 2
10 selection?

11 SENIOR STAFF ATTORNEY KAUR: I think you would
12 making -- you would be making an assumption that he wants
13 it to all stay the same. If you look at the statute, and
14 partly maybe because I've looked at the statute, read over
15 the statute, the statute says a beneficiary designation is
16 not enough. So we want the member to make an informed
17 decision, we want him to look at his different election
18 options, and then we want him to elect what he wants.

19 We don't just look at letters that are sent to us
20 and assume, okay, he says he wants to keep what he has, so
21 he's going to just keep his option 2 benefits, and that's
22 what he wants, because -- and even his option 2 benefits
23 that he previously had would not stay the same. They
24 would change. He would take a reduction. He's naming a
25 new beneficiary. They're completely recalculated.

1 BOARD MEMBER SLATON: But that's the math, so --
2 but the benefit, the option 2 selection, the words say,
3 "Previously named for Charlot Bolton, and Patrice
4 Bolton-Johnson. So the words, "previously named", doesn't
5 that pretty well imply that what was previously named he
6 wants to move to the new beneficiary?

7 SENIOR STAFF ATTORNEY KAUR: That may, but in
8 light of this statute that we have and we -- that we look
9 at, we wouldn't make that assumption.

10 BOARD MEMBER SLATON: Okay. But that's a --
11 that's a staff interpretation of the statute, is that
12 correct?

13 SENIOR STAFF ATTORNEY KAUR: It's an
14 interpretation after reading the statute and looking at
15 this letter, we wouldn't make that assumption.

16 BOARD MEMBER SLATON: All right. Next question.
17 So the June 23rd letter, and then the next communication
18 that's in writing is the July 25th letter from CalPERS to
19 Mr. Johnson, is that correct? Am I seeing the record
20 correct?

21 SENIOR STAFF ATTORNEY KAUR: Yes, yes.

22 BOARD MEMBER SLATON: Okay.

23 SENIOR STAFF ATTORNEY KAUR: And you're looking
24 at exhibit -- CalPERS Exhibit 9L.

25 BOARD MEMBER SLATON: Well, it says F at the top.

1 It's Respondent's Exhibit F is where I'm looking at page
2 it. Page one of one.

3 SENIOR STAFF ATTORNEY KAUR: Okay.

4 BOARD MEMBER SLATON: The July 25th to Grantland
5 Johnson. And it says, "An incorrect or invalid form was
6 submitted. Please complete the enclosed form and
7 re-submit". So here's the question I have for staff. I
8 assume that the records that CalPERS had with this member,
9 we knew that there was already an option 2 benefit
10 selected for the former spouse. Did we not have that in
11 our system?

12 SENIOR STAFF ATTORNEY KAUR: Yes, we would have
13 that in our system.

14 BOARD MEMBER SLATON: Okay. So my question is
15 what is staff's -- what's our responsibility to help guide
16 a member who has indicated a desire to make a change? In
17 other words, what I don't see here is the communication
18 that, well, you have to do a couple of things. You've got
19 to do the form, and because you had a prior option two
20 designation, that you need to provide evidence that it has
21 been -- that you've recovered that right to make that
22 assignment?

23 So why didn't we do that?

24 SENIOR STAFF ATTORNEY KAUR: Okay. We actually
25 did do that. So there is a lot of communication, of

1 course, in this case. We're in communication by CalPERS
2 to the member. First, the member is made aware that his
3 election is irrevocable when he signs that application
4 when he retires and elects a beneficiary. So he knows
5 it's irrevocable.

6 So when Mr. Johnson signed that application, he
7 was made aware. It's on that application that he signed.
8 And after he elected an option and named his first wife
9 the Beneficiary, despite having been separated, he
10 received a letter from CalPERS in November 2003, which
11 said -- explained to him -- there's a full paragraph that
12 explains to him you need to go through these steps. If
13 you divorce, then you can change your election, but these
14 are the steps you need to go through. So that letter was
15 sent in 2003.

16 Time passes, maybe he forgets about. Then he
17 calls in February 2013. So on February 15, 2013, he calls
18 us and he's asking about changing his beneficiary. The
19 notes entered by CalPERS state that he's asking about
20 changing his beneficiary. And then we see -- we sent out
21 several documents. We sent out the publication, which is
22 Publication 98. It provides step by step, very simple,
23 lays out the procedure of how you change your beneficiary,
24 what documents you need, and it has the application in
25 there.

1 So it includes the application. In addition to
2 providing that pamphlet, which notifies him of all the
3 requirements, we also gave him an application -- a
4 separate application to modify his benefit and change the
5 life option. We gave him another application, which
6 allows him to receive the pop-up option, which is he just
7 divorces. He doesn't want to name another beneficiary.
8 He wants to increase his benefits. So that application
9 was included in there too. But the pamphlet explains the
10 whole procedure. It's very simple and lays it all out for
11 him. So we gave him that information.

12 And then he -- when Mrs. Johnson called, the
13 staff person testified, he provided step-by-step
14 instructions on how to fill out the application to modify
15 the option benefit, and also provided -- he testified it's
16 his practice to provide the time limits associated with
17 that application.

18 So if you look at the record, CalPERS has
19 provided all the information Mr. Johnson needed to have to
20 change his option benefit. And actually, if you look at
21 Mr. Johnson's letter that he sent to us, he states in
22 there that a marital settlement agreement will be
23 forthcoming. He knew he needed to turn that in. He knew
24 that. He was aware of that. And he knew that, because we
25 provided that information to him.

1 BOARD MEMBER SLATON: So let me just now take
2 that line of thought about the marital settlement. So I
3 know we don't like to do things based on hypotheticals,
4 but I'll just give you this hypothetical. So the former
5 spouse signed it on -- what was the date she signed it?
6 August --

7 SENIOR STAFF ATTORNEY KAUR: Are you referring to
8 the marital settlement agreement?

9 BOARD MEMBER SLATON: That's correct, yes.

10 SENIOR STAFF ATTORNEY KAUR: So the marital
11 settlement agreement is -- it says it's effective on the
12 second of the individual sign it. So that's
13 the -- Mrs. --

14 BOARD MEMBER SLATON: It was the 14th or
15 something like that.

16 Go ahead.

17 SENIOR STAFF ATTORNEY KAUR: The marital
18 settlement agreement was signed by Mrs. Johnson, I
19 believe, on the 29th, so that's when it becomes effective.
20 And I think that was September. So it was not effective
21 until after Mr. Johnson died.

22 BOARD MEMBER SLATON: Okay. But the operative
23 signature was the former spouse's signature, because
24 that's the one that was, I assume, prevented that document
25 from being perfected and coming through. It's ministerial

1 the other signature, but the first signature has to
2 happen, otherwise you don't have an agreement. That was
3 the one that was two weeks after -- two and a half weeks
4 after.

5 SENIOR STAFF ATTORNEY KAUR: So that particular
6 reasoning is not -- was not testified to. But just by
7 looking at the marital settlement agreement, the marital
8 settlement agreement says its effective when the second
9 spouse signs it.

10 BOARD MEMBER SLATON: Okay. I understand. But
11 the signature came on, I think, September 4th. Mr.
12 Johnson died on August 19th.

13 SENIOR STAFF ATTORNEY KAUR: It was --

14 BOARD MEMBER SLATON: At least in looking at the
15 signature blocks on it.

16 SENIOR STAFF ATTORNEY KAUR: Yeah, it was after
17 Mr. Johnson died, that's correct.

18 BOARD MEMBER SLATON: Right. So if Mr. Johnson
19 had died on September 5th, rather than September 4th -- or
20 let's even go further. Let's say by the -- the day after
21 the second signature had been applied, even though he made
22 the election before he had the document, if you assume
23 that his June 23rd letter was, in fact, an election, which
24 is subject to question, and you've questioned that, would
25 we have a different result?

1 SENIOR STAFF ATTORNEY KAUR: His letter that was
2 sent to us in June was not an election. He's not making
3 an election. He's not signing anything. He's not saying
4 look --

5 BOARD MEMBER SLATON: I agree -- I understand the
6 position you have taken on that as staff. What I'm saying
7 is if the death circumstances had been different and he
8 had died the day after the second signature on that
9 agreement, on the marital settlement agreement, would we
10 then be down to the single issue of whether that June 23rd
11 letter represents an election?

12 SENIOR STAFF ATTORNEY KAUR: The scenario you're
13 providing, it would meet more requirements of the statute
14 than Mr. Johnson was able to meet. Whether it's enough to
15 change the election, I don't know. That was not an issue
16 here in this case. It was not litigated. It's not part
17 of the record. I don't have any testimony on it either,
18 so I really can't answer that. But it definitely meets
19 more requirements than Mr. Johnson was able to meet.

20 BOARD MEMBER SLATON: Okay. Thank you.

21 PRESIDENT FECKNER: Mr. Costigan.

22 BOARD MEMBER COSTIGAN: So just a few questions.
23 A follow up to Mr. Slaton's. If the document -- if Mr.
24 Johnson had died the day after the document was signed by
25 the ex-wife but had not yet been filed by CalPERS or had

1 been filed with CalPERS, would that have been sufficient
2 to transfer to the respondent? I know it's a
3 hypothetical, but I'm just trying from a process. So the
4 document is signed and then he dies, would that have been
5 sufficient for CalPERS?

6 SENIOR STAFF ATTORNEY KAUR: Sufficient for
7 CalPERS to do what, to --

8 BOARD MEMBER COSTIGAN: That the election would
9 have taken place. If all we were waiting on was the
10 settlement agreement -- I'm just -- I know it's a
11 hypothetical. If she had signed the settlement agreement
12 and he died the next day, would Mr. Johnson's intent have
13 been met, even though the document was not filed with
14 CalPERS.

15 SENIOR STAFF ATTORNEY KAUR: Well, the statute --
16 if you look at the statute, it also says it's -- the
17 election is effective on the date specified in the
18 election. So it also depends on when the election would
19 be effective, and --

20 BOARD MEMBER COSTIGAN: And what -- I just want
21 to make sure and then I've got a few other questions -- is
22 that the record is not clear as to what the effective
23 date -- the effective date that Mr. Johnson would have
24 chosen?

25 SENIOR STAFF ATTORNEY KAUR: We don't have --

1 yeah, we don't have an effective date. And it --

2 BOARD MEMBER COSTIGAN: So even with the
3 document, if Mr. Johnson passed away the day after the
4 document had been signed by his ex-wife, we still had
5 nothing in the record to show an effective date of which
6 Mr. Johnson had chosen?

7 SENIOR STAFF ATTORNEY KAUR: That's correct.

8 BOARD MEMBER COSTIGAN: Okay. So the other
9 argument, and I just want to -- and this may be -- and if
10 it's not in the record, please tell me, I mean -- or that
11 it's not appropriate. I just want to -- in our background
12 document, it talks about Decedent Johnson had already
13 died, creates an unanticipated cost to the System. When I
14 look at Mr. Johnson's information, his highest salary was
15 a monthly of 10,951. He had 5.17 years of service credit,
16 which is roughly \$1,300 a month. The triggering mechanism
17 is an actuarial assumption between wife number one and
18 wife number two, is that what the anticipated cost is?
19 I'm just trying to figure out are we talking about de
20 minimis cost here or are we talking about substantial
21 cost?

22 SENIOR STAFF ATTORNEY KAUR: We actually didn't
23 do the calculations. Since we didn't know the effective
24 date, we don't even know what the difference would be.
25 I'm not quite sure exactly what the difference would be.

1 But it would -- it would -- he wouldn't take a reduction
2 to his retirement allowance, because the effective date
3 could not be before his death.

4 BOARD MEMBER COSTIGAN: Well, I guess I just --
5 I'm just trying to understand, because the documents talk
6 about an unanticipated cost. I'm trying to determine what
7 that unanticipated cost is. So just so I can understand
8 it, the monthly benefit is based upon an actuarial
9 assumption of the second wife's life. I mean, so that's
10 just a calculation based upon a five-year -- benefits of
11 about \$1,300 a month.

12 The true cost here is the cost of the vesting of
13 the life-time health care, is that correct? Because the
14 option that he was seeking was actually not the imposition
15 of pension benefit, but was the granting of the lifetime
16 of health benefits?

17 SENIOR STAFF ATTORNEY KAUR: I'm not clear.

18 BOARD MEMBER COSTIGAN: Okay. I'm sorry.

19 So the whole fight here is, is whether or not he
20 transferred his ownership interest in his pension benefit
21 and his health benefits to his second wife. Our
22 argument -- or CalPERS argument is the document was not
23 signed. It was not executed prior to his death. There
24 was no option selected. Therefore, what's in effect is
25 the original document, and the original selection with the

1 first wife?

2 SENIOR STAFF ATTORNEY KAUR: I'm sorry. The
3 original document in the --

4 BOARD MEMBER COSTIGAN: Mr. Johnson when he
5 retired made a selection for wife number one.

6 SENIOR STAFF ATTORNEY KAUR: Yes.

7 BOARD MEMBER COSTIGAN: Okay. As it relates to
8 wife number two, the document was not executed -- the
9 document this whole matter turns on, the settlement
10 agreement, until two weeks after his death, right?

11 SENIOR STAFF ATTORNEY KAUR: Yes.

12 BOARD MEMBER COSTIGAN: Okay. What I'm trying to
13 get at is the assets that we're talking about, there are
14 two. There's the pension benefit. Okay. That -- and
15 then there's the health benefit.

16 SENIOR STAFF ATTORNEY KAUR: Yes.

17 BOARD MEMBER COSTIGAN: The pension benefit is de
18 minimis, because it's \$1,300 a month, give or take, but
19 it's an actuarial. It's running her lifestyle out -- or
20 her lifetime out. I'm just asking is what would the
21 change have been -- and if you don't have the answer,
22 that's fine. It's just referenced in the documents as an
23 unanticipated cost. What was the cost -- what is the cost
24 to the System, if this change were to be made? Because
25 it -- I mean, there's a cost associated with it, because

1 we're now looking at, assuming intent, making the
2 assumption a document execution took place prior to death,
3 and now we're granting a benefit. We're going to give an
4 asset.

5 And so -- and that's fairly weighted, because
6 we're implying a lot of things here is -- I just want to
7 make sure what it is, is there is a cost between wife
8 number one and wife number two on the health benefits
9 side, but we don't have that calculation in the file.

10 SENIOR STAFF ATTORNEY KAUR: We don't.

11 BOARD MEMBER COSTIGAN: Okay. All right. Thank
12 you, Mr. Feckner.

13 PRESIDENT FECKNER: Mr. Lind.

14 BOARD MEMBER LIND: Just real quickly on the math
15 issue. I know, you know, our position is that intent is
16 not good enough, and that the 20 -- June 23rd letter that
17 they're claiming the intent was there, it's not signing
18 the document. But if it was, there would have had to have
19 been an actuarial calculation for the new wife. But could
20 not that actuarial calculation, if you accepted the June
21 23rd letter as clear intent and said that was good enough,
22 could that not be retroactively calculated and applied to
23 the surviving spouse benefit -- applied against it?

24 SENIOR STAFF ATTORNEY KAUR: It doesn't provide
25 us the effective date. We're guessing the effective date.

1 And also, at that time, on June -- in June 23rd, he didn't
2 have the right to make an election, so we can't
3 retroactively back-date it to a date where he doesn't even
4 have the right to pick that election or change the
5 election. He's not entitled to do that.

6 BOARD MEMBER LIND: No, I got that. I was just
7 talking about if his intent was effective the date he sent
8 the letter, you could make that actuarial calculation
9 though, right?

10 SENIOR STAFF ATTORNEY KAUR: If he met all the
11 requirements, but he doesn't meet any -- most of the
12 requirements.

13 BOARD MEMBER LIND: Okay. Thanks.

14 PRESIDENT FECKNER: Ms. Hollinger.

15 BOARD MEMBER HOLLINGER: Yeah. My question is
16 for Mr. Shah. Having a little bit of background in this,
17 I understand -- I kind of view this a little bit more like
18 community property, and that until you have the marital
19 settlement signed, the pension was not his to give,
20 because -- I get that as part of estate planning.

21 But my question to you is this, it's clearly made
22 the intention, or am I missing something regarding that
23 pension and health while he was alive? His wife got -- or
24 participated on his health care benefits, is that correct?

25 MR. SHAH: Mrs. Johnson?

1 BOARD MEMBER HOLLINGER: Yes.

2 MR. SHAH: Yeah. Well, I think that he
3 did express his intent --

4 BOARD MEMBER HOLLINGER: He did name her.

5 MR. SHAH: -- in letters saying that he wanted
6 her to be his beneficiaries for all benefits.

7 BOARD MEMBER HOLLINGER: Right, but did she --
8 was she on the health care plan while they were married?

9 MR. SHAH: (Nods head.)

10 BOARD MEMBER HOLLINGER: She was.

11 MR. SHAH: As soon as they got married within a
12 month, I believe Mrs. Johnson was added to --

13 BOARD MEMBER HOLLINGER: Oh. Okay.

14 MR. SHAH: -- the health and dental benefits.

15 BOARD MEMBER HOLLINGER: So an argument -- and my
16 other question is this, can it be bifurcated? Could we
17 say, you know what, regarding health, it's clear she
18 contributed. I mean, it's kind of clear at that point in
19 time. That was something he could give to her, correct?
20 We acknowledge she was part of the System on the --

21 MR. SHAH: No. The health coverage is contingent
22 upon being an annuitant and receiving the survivor
23 annuity.

24 BOARD MEMBER HOLLINGER: Okay. So you can't --

25 MR. SHAH: That's the only thing that makes her

1 eligible after he passes away is her capacity to receive
2 the survivor --

3 BOARD MEMBER HOLLINGER: Got it. It cannot be
4 split.

5 MR. SHAH: That's right.

6 BOARD MEMBER HOLLINGER: Okay. Thank you.

7 PRESIDENT FECKNER: Mr. Lawyer.

8 ACTING BOARD MEMBER LAWYER: So this is a
9 question for CalPERS staff. So if Decedent Johnson had
10 adequately indicated the change in his life option
11 benefits, the effective date and the option selected, but
12 as in this case did not have the court order or marital
13 settlement agreement at the time of his death, would you
14 reach the same conclusion?

15 SENIOR STAFF ATTORNEY KAUR: So that's not an
16 issue we looked at, and those were not the circumstances
17 in this case, but we do have an example in the Caughey
18 matter that was adopted by the Board in February 2016. In
19 that case, the -- those were the facts. The member sent
20 three letters to CalPERS. One of the letters he said I
21 want to keep option 2, and I want to name my wife as --
22 the new wife as the beneficiary.

23 And CalPERS disagreed with that, and the ALJ
24 upheld CalPERS determination saying he never made an
25 election. The beneficiary designation, that letter, was

1 not enough. He never made an election. So pursuant to
2 the statute, no, that cannot be accepted, and the Board
3 upheld that determination.

4 ACTING BOARD MEMBER LAWYER: Thank you.

5 PRESIDENT FECKNER: Ms. Mathur.

6 BOARD MEMBER MATHUR: Yes. I mean, it seems that
7 this is not that unusual in the sense that we have members
8 who unfortunately pass away before they're able to make an
9 election about their retirement benefits. This happens
10 not infrequently. Now, this is unique in that there was
11 one election made, and then because of divorce there was
12 the desire to make a separate election.

13 But we really -- I really -- it seems clear to me
14 from the statute and the PERL that we -- you know, there
15 is no election that was made and there could not be an
16 election made because he was not eligible to make an
17 election. And It's very unfortunate. It's -- you know,
18 it's -- it's a sad circumstance, but I don't see how
19 CalPERS can insert our own determination of what an
20 appropriate election date might have been.

21 His benefits were never reduced as a result, or
22 changed, or altered in any way as a result of a new
23 election, because he was not eligible to make said
24 election and didn't success -- didn't meet all of the
25 requirements, whether he intended to or wished to, but

1 that is the law as it stands. And I just don't see
2 how -- I don't see how that can be subverted.

3 SENIOR STAFF ATTORNEY KAUR: I --

4 MR. BARLOW: If -- I'm sorry.

5 PRESIDENT FECKNER: Mr. Barlow.

6 MR. BARLOW: If I could address some of those
7 comments. We're not arguing here that there was strict
8 compliance with the statute. We know that. What we're
9 arguing are -- based on legal theories and principles,
10 that allow you to look at the member's intent and the
11 manifestations of those intent. And in those cases, where
12 the objective and the purpose of that statute is satisfied
13 by the steps taken and what was communicated to CalPERS to
14 the Board, in those cases, it is sufficient -- principles
15 of equity, fairness, justice allow you, under your broad
16 discretion, to award benefits under those circumstances.

17 So we're not pretending that there wasn't every
18 "T" that was crossed and every "I" dotted.

19 BOARD MEMBER MATHUR: But let's just say, in this
20 case, the actual agreement -- the marital separation
21 agreement, or whatever it was called, that was completed
22 at the end of September. So if that was to be accepted,
23 then his election date would have been after his death,
24 which I just don't see as a practical matter is something
25 that can be -- that can be accepted. It's as I -- I guess

1 I'm arguing -- I'm unclear as to how we could set
2 somebody's election date to be subsequent to their
3 passing.

4 SENIOR STAFF ATTORNEY KAUR: And we -- sorry.

5 MR. BARLOW: Well, you know, in terms of whether
6 or not the effective date is ambiguous or up in the air,
7 there was a statement of intent in terms of what he did
8 want that effective date to be. In that June 23rd letter
9 he states, "Immediately upon receipt of the marital
10 property agreement, please change my beneficiary".

11 And under the statute, he retains the right to
12 make that election, if he doesn't make it, and that that
13 election can take place no earlier than 12 months after
14 it's filed with the Board.

15 So I don't read the statute as precluding an
16 award of benefits here, and especially when -- you know,
17 base on the legal theories that we're talking about
18 certainly does preclude an award of benefits.

19 BOARD MEMBER MATHUR: Ms. Kaur, do you have
20 any...

21 SENIOR STAFF ATTORNEY KAUR: So it's kind of a
22 circular argument, because we can't -- we don't have the
23 effective date. One, we'll be assuming the effective
24 date, and two, what will the effective date be?

25 And Mr. Barlow is saying that Mr. Johnson told us

1 the effective date will be after -- when we get the
2 marital settlement agreement, which is after he dies,
3 which means he doesn't take a reduction.

4 And in terms of substantial compliance, we don't
5 have compliance at all in this case. We don't have the
6 marital settlement agreement. We don't have an election,
7 where he makes -- he elects an option. So there -- there
8 is no substantial compliance here. The purpose and the --
9 the purpose of this statute is not met.

10 BOARD MEMBER MATHUR: And the legislature must
11 have understood that with any marital separation
12 agreement, it requires both parties to sign -- or all
13 parties to sign. And so they anticipated that it could be
14 held up by the other -- the other party.

15 SENIOR STAFF ATTORNEY KAUR: So if you -- and
16 just commenting on that. When I was looking at the
17 statute and I thought a judgment, so you need a judgment.
18 The former spouse can't even write a letter saying I don't
19 want this anymore. I don't want it. CalPERS, take it
20 away. We need a judgment. We want something that is very
21 clear. It's the court telling us these are the interests
22 of the parties. This individual, this member has these
23 interests. He has full ownership, and he has a right to
24 give that away again to another beneficiary. So the
25 legislature made it very clear. There's no guesswork

1 here.

2 BOARD MEMBER MATHUR: Thank you.

3 PRESIDENT FECKNER: Mr. Slaton.

4 BOARD MEMBER SLATON: So let's come back to this
5 issue of the marital judgment. His June 23rd letter said
6 this is coming. So it was clearly understood by Mr.
7 Johnson that that needed -- that step needed to occur, but
8 he stated his intent on June 23rd. And to build on what I
9 think the issue that Mr. Costigan raised, the calculation
10 to the fund -- and correct me if I'm wrong, if there's
11 a -- first of all, prior to reelection, the first election
12 stays in place, is that correct? So the election for the
13 first spouse, option 2, stays in place until he changes
14 it.

15 SENIOR STAFF ATTORNEY KAUR: Yeah, until he
16 changes it, it's --

17 BOARD MEMBER SLATON: Right.

18 SENIOR STAFF ATTORNEY KAUR: -- until we get that
19 marital settlement agreement that says -- because
20 Government Code section -- it is 21456, that's another
21 code section. So if the member divorces and he gets the
22 settlement agreement that gives him 100 percent interest
23 in those benefits, we don't do any -- we can't do anything
24 until that 100 percent interest comes in.

25 BOARD MEMBER SLATON: I understand. Right.

1 SENIOR STAFF ATTORNEY KAUR: So he just sends us
2 those documents. He says, here -- here are the documents,
3 here is the divorce papers, here is the marital settlement
4 agreement, he sends those to us. He files that with the
5 Board. That's all he needs to do under 21456. We -- he
6 will automatically -- if he has option 2 benefits, he'll
7 automatically receive a pop-up. So we remove the old
8 spouse and he automatically his allowance goes up.

9 BOARD MEMBER SLATON: Okay.

10 SENIOR STAFF ATTORNEY KAUR: If he wants to name
11 a new beneficiary, then he needs to make an election. He
12 needs to go through that process.

13 BOARD MEMBER SLATON: Right. Okay. I get that.
14 So on the 23rd of June, option 2 for the former spouse was
15 in effect.

16 SENIOR STAFF ATTORNEY KAUR: Yes, at that time.

17 BOARD MEMBER SLATON: And therefore for his
18 retirement calculation was based on the former spouse's
19 option 2.

20 SENIOR STAFF ATTORNEY KAUR: Yes.

21 BOARD MEMBER SLATON: Okay. So now, he wants to
22 change it. When you could make that change, the
23 actuarial -- the actual change in his benefit, correct me
24 if I'm wrong, would be the present -- the actuarial
25 calculation based on the difference of ages between the

1 two spouses.

2 SENIOR STAFF ATTORNEY KAUR: It's based on
3 several factors. We don't really have testimony to that,
4 but it would be --

5 BOARD MEMBER SLATON: But it's our calcu -- we're
6 the ones who do the calculations.

7 SENIOR STAFF ATTORNEY KAUR: Life expectancy and
8 other factors as well. It's not just the age.

9 BOARD MEMBER SLATON: Well, okay, but age has a
10 lot to do with life expectancy, I think so. I think
11 they're tied together. In other words, all I'm saying is,
12 is that -- that if, for example, you had two spouses, the
13 former spouse and the new spouse that were the same age,
14 the same exact birth date, would the calculation -- would
15 the pension calculation be unchanged?

16 SENIOR STAFF ATTORNEY KAUR: I can't answer that,
17 there's no testimony to that. And also, like I said,
18 there are a lot of different factors. It would depend on
19 other factors as well, like his age as well. He's -- he's
20 gotten older, and his life expectancy as well. So I can't
21 sit here and say, no, it would be the same, and there's no
22 testimony to that either.

23 BOARD MEMBER SLATON: Right. Okay. All right.
24 So -- but I think that there's at least -- it seems
25 obvious, at least to me, that the change would be rather

1 minor if on one day it's the former spouse, the next day
2 it's the new spouse, if the spouse's have similar
3 characteristics for an act -- from an actuarial
4 standpoint.

5 SENIOR STAFF ATTORNEY KAUR: But we can't just
6 look at this case only. We have to look at the other
7 cases. Let's say he marries a spouse who's 20 years
8 younger than the other spouse. It's --

9 BOARD MEMBER SLATON: Of course. A different set
10 of circumstances.

11 SENIOR STAFF ATTORNEY KAUR: Yes, but we have to
12 apply the same standard fairly, so it would --

13 BOARD MEMBER SLATON: Okay. Let's come back to
14 the date for a minute. So there's only two dates that we
15 have kind of in the record. The one is the post-death
16 date, when the settlement agreement was finalized, was
17 finally signed by both parties.

18 SENIOR STAFF ATTORNEY KAUR: Yes.

19 BOARD MEMBER SLATON: And then we have the June
20 23rd intent date, which was prior to death.

21 SENIOR STAFF ATTORNEY KAUR: The beneficiary
22 designation date? The letter?

23 BOARD MEMBER SLATON: The June 23rd letter --

24 SENIOR STAFF ATTORNEY KAUR: Okay.

25 BOARD MEMBER SLATON: -- which stated intent. So

1 one could make an argument that the June 23rd date, for
2 purposes of recalculation, is not an unreasonable date to
3 use, because -- given that you don't have the signed
4 document. I grant you that, that you don't have the
5 settlement agreement. But in terms of statement of intent
6 of when to change it, from his viewpoint seems to me June
7 23rd. And we could make that calculation -- we could
8 physically make that calculation. Whether we think it
9 meets the rules or not, that's another story, but we would
10 mathematically do that calculation, is that correct?

11 SENIOR STAFF ATTORNEY KAUR: I don't know. We've
12 never looked into that, because according to 214621, that
13 letter is not sufficient. It's just a beneficiary
14 Designation. We're not allowed to use that. And two,
15 he'd didn't even have the entitlement. He didn't have the
16 right to elect, at that time. So we can't use it as an
17 election document.

18 BOARD MEMBER SLATON: All right. Thank you.

19 PRESIDENT FECKNER: Mr. Costigan.

20 BOARD MEMBER COSTIGAN: I appreciate we're
21 putting you in a difficult spot, speculating. You know,
22 you've got to argue your case. So I'm going to throw one
23 more hypothetical out at you. All right. I just want to
24 make sure I understand this. It's a little different what
25 Mr. Slaton -- I'll say it.

1 So I file the paperwork today changing -- today
2 is my 25th wedding anniversary. I decided to chose
3 somebody else as my beneficiary.

4 (Laughter.)

5 BOARD MEMBER COSTIGAN: I walk across the
6 street --

7 PRESIDENT FECKNER: You won't have a 26th.

8 (Laughter.)

9 BOARD MEMBER COSTIGAN: And I won't have a 26th.

10 (Laughter.)

11 MR. BARLOW: Happy Anniversary.

12 BOARD MEMBER COSTIGAN: -- but I'm hit crossing
13 the street coming back. Okay, cause -- so I've not
14 elect -- so there's been no change. I'm a retiree. And I
15 just want to make sure I understand this. And I know it's
16 a little bit of a facetious question. But at least what I
17 heard you said is part of the problem is, is that Mr.
18 Johnson did not take a reduction in his benefits, by -- I
19 just want to make sure I heard this right. Because the
20 election never took place, we didn't make the
21 recalculation, which resulted in a reduction of his
22 benefits, and sort of going back to Mr. Slaton's question,
23 even if we pick the June date?

24 I'm just trying to understand is a reduction in
25 benefits on changing to an option 2 also sort of a

1 condition precedent, or is it not relevant? Because I may
2 have misunderstood you. Because what I thought you had
3 said is because he didn't take a reduction in benefits,
4 that's one of the things to consider.

5 And I'm just saying is if I hand the paperwork to
6 Anthony and he -- hasn't filed it, and I'm struck before
7 there's any change in my benefit, and then the paperwork
8 is filed, I know we're still having the question about the
9 actual execution of the agreement, but I'm just trying to
10 figure out these costs -- and then it's filed, so there's
11 been no reduction in my benefit. Is that a condition?

12 SENIOR STAFF ATTORNEY KAUR: In this case, that's
13 something we definitely look at, because we're trying to
14 determine the effective date. In other situations, is
15 that something we always look at? I can't speak to that.
16 I don't know in terms of other situations. But here,
17 we -- it definitely comes into play, because we're looking
18 at what is the effective date.

19 BOARD MEMBER COSTIGAN: Okay. Thank you.

20 PRESIDENT FECKNER: Mr. Jones.

21 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
22 President. My one question -- but before I ask my
23 question, I think it's pretty clear that certain
24 requirements were not met. And I don't think we can skip
25 the requirements being met to start calculating until we

1 have certainty on requirements. And it's obvious, at that
2 time, that he did not have full control over his pension,
3 because he was waiting for the court case, and he did not
4 comply with the requirements of, I guess you'd call it,
5 section 21462 to change his life option.

6 So, for me, those target dates were not met, so
7 why would you go about calculating something when you're
8 not qualified at that point.

9 The only question I do have, however, it does
10 state that Mrs. Johnson attempted to change the
11 beneficiary on her -- by herself. So does she have some
12 kind of power of attorney to make those changes? And the
13 second part of that question, is that permissible if a
14 person has the power of attorney of a spouse to make
15 changes like that?

16 SENIOR STAFF ATTORNEY KAUR: She sent us the
17 marital settlement agreement after Mr. Johnson's death,
18 and she requested that she be provided the benefits. I
19 think that's what you may be referring to in her attempt
20 to change the election. But those are the actions she had
21 taken. She said here's the marital settlement agreement.
22 You have it now. You have that letter which designates me
23 the beneficiary, so change the settlement option.

24 And that is what CalPERS determined we
25 cannot -- we can't change it after the fact. And there's

1 no testimony in the record concerning the power of
2 attorney. But my understanding is that ceases once the
3 member dies, so she probably wouldn't have that authority
4 after he's dead. And we don't have anything in the record
5 of her trying to use that authority to change the benefits
6 while he was alive in his capacity.

7 VICE PRESIDENT JONES: Okay.

8 SENIOR STAFF ATTORNEY KAUR: He's the one who
9 signed the documents.

10 MR. BARLOW: Just to provide some clarity on that
11 issue, she was also designated as executor of his will, as
12 well, so it wasn't limited to power of attorney.

13 VICE PRESIDENT JONES: Say that again?

14 MR. BARLOW: In terms of the -- her ability to
15 sign Grantland -- Lee's ability to sign on Grantland
16 Johnson's behalf, she was also designated as executor, not
17 just -- so it wasn't just limited to a power of attorney
18 authority, and that is in the record.

19 VICE PRESIDENT JONES: Thank you.

20 PRESIDENT FECKNER: Ms. Taylor.

21 BOARD MEMBER TAYLOR: Yes. I just had one
22 question. While I acknowledge this is a difficult
23 situation, did I read correctly that not only do these
24 requirements need to be met, such as the election made and
25 the full ability to have the marriage settlement, but

1 doesn't it say in the law that he has to be alive at the
2 time that we grant the change, is that correct, did I read
3 that correctly?

4 SENIOR STAFF ATTORNEY KAUR: That was the intent
5 of the legislature that the member be alive on the
6 effective date. And if you look at the legislative
7 intent, it's clear in there also.

8 BOARD MEMBER TAYLOR: Which would answer to Mr.
9 Costigan's question, which is since it never got
10 processed, his futuristic issue with his supposition was
11 that his never got processed before he died, so it would
12 be the same situation, basically?

13 SENIOR STAFF ATTORNEY KAUR: I suppose. The way
14 CalPERS interprets the statute is you both have to be
15 alive on the date -- the effective date of the election.
16 And we send out the publication, which clearly states
17 that.

18 BOARD MEMBER TAYLOR: Okay. Thank you.

19 PRESIDENT FECKNER: Mr. Slaton.

20 BOARD MEMBER SLATON: Yeah. Just one quick
21 follow up, and not to beat a horse, but on this issue of
22 calculating -- re-calculating Mr. Johnson's benefits. And
23 I'm not asking you to do the calculations, but I'm asking
24 you could there be a set of circumstances where the change
25 from one spouse, from the former spouse to the new spouse,

1 depending on their actuarial calculations, it is possible
2 that Mr. Johnson actually would have gotten an increased
3 benefit by the change, is that correct?

4 SENIOR STAFF ATTORNEY KAUR: So the scenario
5 you're asking is -- actually was discussed during
6 testimony. That question was asked of, I believe, by the
7 ALJ maybe to CalPERS staff. And CalPERS staff
8 testified -- and she's the one who does the calculation
9 and so forth, she testified she's never seen that scenario
10 where there's not a reduction, but an increase when you
11 choose another beneficiary. And that's the best -- the
12 closest I can come to that answer.

13 BOARD MEMBER SLATON: But that wasn't really my
14 question. My question is, is it possible, not whether
15 we've seen it before? Whether if -- if one spouse -- if
16 the former spouse is 30 years old, and the new spouse is
17 70 years old, it just seems to me that the actuarial
18 calculation would result in a increase rather than a
19 decrease. Am I missing something?

20 SENIOR STAFF ATTORNEY KAUR: Whether that is
21 possible, I can't provide 100 percent accurate answer, but
22 all I can give you is what was in the testimony.

23 BOARD MEMBER SLATON: Okay. Thank you.

24 PRESIDENT FECKNER: All right. Seeing no other
25 requests, now is the opportunity for the Board, if any

1 Board member wishes to go into closed session to ask
2 clarifying questions of our independent counsel, we can do
3 so, or we can take a motion out here. Does anyone wish to
4 go into closed session?

5 Seeing no requests, I have Mr. Jones, however.

6 VICE PRESIDENT JONES: Yeah --

7 PRESIDENT FECKNER: Just a second. Mr. Costigan,
8 did you have a.

9 BOARD MEMBER COSTIGAN: I was asking Mr. Slaton
10 about closed session. I'll move we do it in closed
11 session.

12 BOARD MEMBER SLATON: Yeah.

13 PRESIDENT FECKNER: All right. We will go into
14 closed session. So the Board and Mr. Shah will move to
15 the back room. We'll be back out shortly. So we -- this
16 is in recess.

17 (Off record: 11:05 a.m.)

18 (Thereupon a recess was taken.)

19 (On record: 11:18 a.m.)

20 PRESIDENT FECKNER: We're calling the Board
21 meeting back to order, please.

22 Mr. Jones.

23 VICE PRESIDENT JONES: Thank you, Mr. President.

24 We believe that the statutes are very clear in
25 this case. And with that, I move to adopt the proposed

1 decisions in its entirety as the Board's own decision.

2 BOARD MEMBER MATHUR: Second.

3 PRESIDENT FECKNER: It's been moved by Jones,
4 seconded by Mathur.

5 Any discussion the motion?

6 Mr. Slaton.

7 BOARD MEMBER SLATON: Thank you, Mr. President.

8 I will be voting against the motion, because I believe, as
9 I look at this, that there is, in this case, substantial
10 compliance. I know we have a set of statutes that are
11 pretty clear. But I also think that judgment is required.
12 And in this particular case the intent was expressed, the
13 divorce settlement agreement was worked on, was created,
14 and ultimately executed. So I'll be voting against the
15 motion.

16 PRESIDENT FECKNER: Thank you.

17 Motion being before us. Seeing no other
18 discussion.

19 All in favor say aye?

20 (Ayes.)

21 PRESIDENT FECKNER: Opposed no?

22 (Noes.)

23 PRESIDENT FECKNER: Motion carries.

24 That concludes our open session for today. Thank
25 you for testifying in front of us.

1 We will now move into closed session to discuss
2 the CEO search process. We thank you all for coming.
3 We'll see you next month. The open part of the agenda is
4 now closed.

5 (Thereupon the California Public Employees'
6 Retirement System, Board of Administration
7 open session meeting adjourned at 11:19 a.m.)
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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of May, 2016.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063