

**ATTACHMENT B**

**MARCH 21, 2016 REQUEST FOR PUBLIC COMMENTS RE: DESIGNATION OF BOARD DECISION IN PHILLIP D. MACFARLAND MATTER AS PRECEDENTIAL**



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## Memorandum

March 21, 2016

To: ALL CALPERS CONTRACTING AGENCIES

From: PREET KAUR  
 Senior Staff Attorney

*PKK for PPK*

CalPERS Legal Office  
 400 Q Street, Lincoln Plaza North Room 3340  
 P.O. Box 942707  
 Sacramento, CA 94229-2707

Subject: REQUEST FOR PUBLIC COMMENTS RE DESIGNATION OF BOARD  
 DECISION IN THE PHILLIP D. MACFARLAND MATTER AS PRECEDENTIAL

On October 7, 2015, an Administrative Law Judge (ALJ) issued a Proposed Decision after a public hearing in an administrative appeal before the CalPERS Board of Administration (Board) entitled, "In the Matter of Accepting the Application for Industrial Disability Retirement of PHILLIP D. MACFARLAND, Respondent, and CALIFORNIA STATE PRISON, SACRAMENTO, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Respondent." A copy of the Proposed Decision is attached.

The Proposed Decision determined that Respondent Phillip D. MacFarland (respondent MacFarland) was not entitled to file an application for industrial disability retirement. Respondent MacFarland's employment relationship with Respondent California State Prison, Sacramento, California Department of Corrections and Rehabilitation was permanently severed, despite the fact that respondent MacFarland retired for service prior to the issuing of the Decision on his appeal of the Notice of Adverse Action. CalPERS correctly determined that *Haywood, Smith, and Vandergoot* bar respondent MacFarland's eligibility to apply for industrial disability retirement.

On November 18, 2015, the Board adopted the Proposed Decision of the ALJ as its final Decision. The Board determined at its meeting on March 16, 2016, to consider the question of whether its Decision in this matter should be designated as precedential and directed staff to take public comments about whether the Decision should be made precedential.

This Request for Public Comments has been issued to solicit your written comments on the question of whether the Board's final Decision in this matter should be made precedential. (Please note: the Board is not requesting comments or arguments on the merits or correctness of its final Decision, which is not up for reconsideration; any such comments or arguments will not be considered.)

In deciding whether to designate a decision as precedential, the Board's policy is to consider the following questions:

- Does the decision contain a significant legal or policy determination of general application that is likely to recur?
- Does it include a clear and complete analysis of the issues in sufficient detail so that interested parties can understand why the findings of fact were made, and how the law was applied?

If you are interested in commenting on whether the Board's final Decision should be precedential, please address the questions above, along with any other questions or considerations, and mail, fax or deliver your written comments to:

CalPERS Legal Office  
Attn: Preet Kaur, Senior Staff Attorney  
400 Q Street, Rm LPN 3340  
Sacramento, CA 95811  
Fax No. (916) 795-3659

Comments must be received in the CalPERS Legal Office no later than April 20, 2016, 5:00 p.m. PDT. Comments should not exceed six pages in length (single spaced). Late comments will not be considered.

The Board will consider all comments received at a future Board public meeting, on a date to be announced, and determine whether to make its final Decision in the Phillip D. MacFarland matter precedential.

CalPERS staff will provide copies and a summary of the comments received to Board members. CalPERS staff will also provide its written recommendations to the Board. Oral comment or argument will not be received at the Board meeting.

Questions concerning this notice may be directed to Preet Kaur in the CalPERS Legal Office at (916) 795-1054.

Attachment