

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

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

Lois M. Gabrilski ("Decedent") was a local miscellaneous member of CalPERS, employed by Madera County. Decedent retired from the County in 1997. In her Retirement Election and Beneficiary Designation form, dated March 31, 1997, Decedent elected Option 1 and designated her son, Respondent Michael J. Gabrilski ("Respondent Gabrilski"), as her sole beneficiary for the Option 1 Balance and the lump-sum Retired Death Benefit.

Decedent signed the form in the presence of a notary public, and no subsequent beneficiary designation was filed with CalPERS by or on behalf of Decedent.

Decedent died on September 19, 2014. She was survived by her children Respondent Gabrilski and Respondent Roberta M. Knudsen ("Respondent Knudsen").

Respondent Knudsen applied for Retired Member/Payee Survivor Benefits on September 30, 2014. Respondent Gabrilski applied for Retired Member/Payee Survivor Benefits on October 2, 2014. CalPERS advised Respondents of a dispute regarding Decedent's beneficiary designation by letter dated November 6, 2014.

CalPERS requested Respondents to submit additional information regarding Decedent's eligible beneficiary. Respondent Gabrilski submitted a copy of Decedent's Will and Trust. Respondent Knudsen submitted a letter dated November 30, 2014, alleging that Decedent had "disowned" Respondent Gabrilski because he, "embezzled" roughly \$70,000.00 from Decedent while she was still alive.

CalPERS reviewed the documentation submitted by Respondents and found no evidence that Decedent intended to change her designation for the CalPERS death benefits. CalPERS determined that Respondent Knudsen is not an eligible beneficiary to receive Member/Payee Survivor benefits on Decedent's CalPERS account.

CalPERS notified Respondent Knudsen of its determination and her right to appeal by letter dated January 19, 2015. Respondent Knudsen appealed by letter dated February 15, 2015.

Prior to the hearing, CalPERS explained the hearing process to Respondent Knudsen and the need to support her case with witnesses and documents. CalPERS provided Respondent Knudsen with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Knudsen's questions and clarified how to obtain further information on the process.

At the hearing, CalPERS presented the testimony of a staff member regarding the case review process and the basis for CalPERS' determination.

Respondent Knudsen testified that Decedent verbally told her that Decedent "disowned" Respondent Gabrilski; however, Decedent did not change her CalPERS beneficiary

designation, Will and Trust or otherwise put in writing her intent to disown her son, Respondent Gabrilski.

Respondent Knudsen also questioned the authenticity of Decedent's signature on the CalPERS beneficiary designation form asserting that it did not match her signatures on the Will and Trust.

The Administrative Law Judge (ALJ) found that the Decedent executed and filed a valid CalPERS Beneficiary Designation form in which she named Respondent Gabrilski as the sole beneficiary for both the balance of her member contributions and the retired death benefit. That designation was never revoked nor was a subsequent designation ever filed with CalPERS.

When all of the evidence was considered, the ALJ found that Respondent Knudsen did not meet her burden. The ALJ upheld CalPERS' determination finding that Respondent Gabrilski is the proper beneficiary to receive Decedent's death benefits.

The ALJ concluded that Respondent Knudsen's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent Knudsen may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 21, 2016

  
\_\_\_\_\_  
AUSTA WAKILY  
Senior Staff Attorney