

Judge Paul G. Mast (Ret.)



June 11, 2006

Judges Retirement System
Box 942705
Sacramento, CA 94229-2705

By Mail and Fax: 916-795-1500

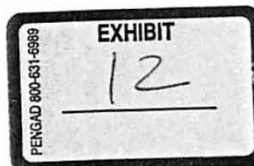
Attn: Pamela Montgomery, Manager
Re: Retirement Allowance

Dear Pamela:

Thank you for finally sending me the numbers on my retirement allowance so that I could intelligently determine what problems arose over the past several years. I have been trying to get this for years, and you are the first person, of several, who has delivered on the promise to send the information.

Unfortunately, your calculations are in error in two minor points and two major areas. Starting with the minor areas:

1. The Cost of Living Adjustment table you used is wrong. You used the U.S. Department of Labor table for the Bay Area. The table used by your office in 1996, and the one referred to in your letter, is the California Department of Industrial Relations table, which is the California Consumer Price Index, and is the weighted average for the three major metropolitan areas in California, and which is based on the U. S. Department of Labor figures. I have attached the California Department of Industrial Relations table.
2. The date of calculation and adjustment is wrong. Your office has not understood the law in this regard from the beginning, and your letter indicates that you also do not have it correct. When the legislature passed the law from which these adjustments stem, they recognized that the adjustments could not be made on the same date as the payments began.



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Therefore, they decreed that the adjustments be made on the basis of COLA in September and the payments based on these figures would begin the following January first. The delay was four months, not the year that you indicate in your letter.

For some reason, the California Department of Industrial Relations stopped calculating the numbers for September in 1998. In my calculations I have therefore used the August numbers after that date.

- 3. Getting to the major points, you have seen fit in your calculations to go back to my retirement date and recalculate what has been done before. This is unacceptable and I cannot accept it. I do not know for certain why your numbers differ with the numbers previously calculated by your own office, but I suspect you used the wrong starting amount. In 1979, three different groups of Municipal Court Judges were receiving three different rates of pay. I was in the group receiving the highest pay, as I was in the group with the longest service. Your figures on your calculations indicate an annual salary of \$51,192.98 for 1979. I have a memo in my file indicating one of the groups annual salary was \$54,861, and that I was not certain that this was the highest. I attach a copy of that memo. I believe that this memo was part of my communications with your office. By using the salary of one of the lower salaried groups, all of your figures are incorrect.**

In 1998 I was unable to work out the problem with your office by letter and so I started legal proceedings. The litigation was handled by your office. A settlement was entered into in 1998. Your attorney was Maureen Reilly, Senior Staff Counsel of the Board of Administration of the Public Employees' Retirement System. The settlement agreement was signed by Michael Prieba, Manager, Judges Retirement System. The person in your

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office handling the matter was Jim Niehaus, Retirement Program Specialist II. Last I heard Jim was working with the Judicial Counsel.

At the time of the settlement, your office did all the calculations without participation by me. Right or wrong, I accepted them without question. Upon my accepting them, as part of the settlement, those figures became set in stone and were the basis from which all future adjustments were to be made. Neither you nor I can go back before October 8, 1996 and change things. The starting point must be the amount set by the settlement, which is reflected in the numbers for the retirement allowance paid the end of 1996. It should also be recognized that right from the beginning, the increase based upon September 1, 1996 was not calculated in time for the adjustment to be made on January 1, 1997. This failure was understandable and did not upset me, as this was a unique situation in your office. After that, the adjustments were usually made late, as Jim tended to forget to get it done, as the situation was an anomaly and it certainly was not the only thing for which he was responsible.

I also have to mention, I guess because I have a very guilty conscience and it has bothered me since entering into the settlement agreement, that I agreed to a confidentiality clause prohibiting me from disclosing the settlement. I have lived up to this. You will note that I called this to the attention of your office when nothing was done to provide the figures that you just provided to me. At that time I suggested you were in breach of the agreement and therefore the confidentiality clause was abrogated. There were and are a huge number of retired judges - I believe around a thousand - who are entitled to these COL adjustments and who have never received them. Someone in your office, perhaps Jim, told me in 1996 that the amount your office would have to pay at that time in back benefits was \$400,000,000. It is a sad reflection on the state of our judiciary that of all these many judges I was the only one to read the law.

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4. The final point is that I am entitled to interest at 10 percent from the time each payment is due. The law is in the Civil Code as follows:

3287. (a) Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any such debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

3289. (a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

(b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach.

For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.

I am attaching the calculations of cost of living increases and balances, as well as the interest that has accrued.

The amount due is \$22,057.74, including interest through June 2008.

Thank you very much for your courtesy.

Sincerely,


Paul G. Mast