

Judge Paul G. Mast (Ret.)



January 7, 2009

Office of the Attorney for
Judges and Legislative Retirement
Judges Retirement System
Public Employees System of the State of California

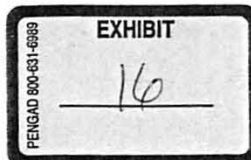
Re: Retirement Pension – Paul G. Mast

Dear Madame or Sir:

I have been asked to address this letter to you in regard to the failure of the Judges Retirement System to make Cost of Living Adjustments to my Retirement Pension since 2002/2003. Before addressing the specific questions posed by Pamela Montgomery, I will give you a history of this matter. I will explain the law that led up to the original claim, which was the subject of Administrative Proceedings leading to the Settlement Agreement. I do this as a courtesy, even though the matter is clearly *Res Judicata*. The Settlement Agreement was entered into as part of the settlement of the litigation and although it was entered into in accordance with the law, even if it were not it would still be binding.

I became a Judge in Orange County in 1965. I regularly ran for reelection and began my final term on January 6, 1975. In 1976, subsequent to my last election, the method by which Judges were paid was changed by the legislature. Subsequent to the change in the law there was litigation to determine the rights of judges who had been sitting prior to the passage of the law. It was determined by the California Supreme Court that the pay and entitlements of judges could not be changed during their term of office. As a result at one point there were three classifications of Judges, each receiving pay in a different amount.

There were several cases litigated and on which there are appellate decisions. They are all entitled "Olson v. Cory". The citations and references are all in my Brief and the



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other documents from the Administrative Proceedings, which I assume you have. The primary case is at 27 Cal 3rd 532 (1980), wherein it states:

The 1976 limitation on increases in judicial salaries is, in turn, calculated to diminish benefits otherwise unavailable to those judicial pensioners. Such modification of pension benefits works to the disadvantage of judicial pensioners by reducing potential pension increase and provides no comparable new benefit. Again, we conclude that defendants have failed to demonstrate justification for impairing these rights or that comparable new advantages were included and that section 68203 as amended is unconstitutional as to certain judicial pensioners.

Prior to the 1976 amendment the law called for Cost of Living Increases applied not only to salary, but to pension payments. Therefore, pursuant to Olson v. Cory, I was entitled to COLA each year thereafter, *ad infinitum*, based on the last salary I received prior to my retirement.

The Judicial Retirement System is again raising certain issues raised prior to the Settlement Agreement. I will address them even though any discussion of such issues is moot as all issues were merged in the Settlement Agreement, which now stands as the law of the case.

One prior issue is the claim that I was overpaid from the beginning because the beginning salary was wrong. This position of JRS was incorrect and I explained it at the time Ms. Montgomery brought it up. At the time of my retirement there were three pay classifications for Judges determined by the date their term of office started. I was receiving pay in the highest classification, having been in office before the passage of the amended law. JRS was using the lowest classification, and apparently did not know there was more than one classification.

Again, this is moot.

Another prior issue was the COLA date that was to be used in the calculation. The law as it was prior to 1976 calls for the calculation to be made based on the September COLA and the payment to start January 1. JRS has always had a problem implementing its duties as set forth in the Settlement Agreement. This was because I was the only retired Judge receiving these COLA adjustments. As such, the adjustments were always made late, usually in April or May, and JRS based them on the January COLA. A lump sum catch up payment was made each year. There came a time in 2002 when there was a change of personnel, and since then I have not been able to cause JRS to abide by the Settlement Agreement, which leads to the present controversy.

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On my Calculations of the Arrearages from June 2006, I used the September COLA date. I believe that part of the discrepancy is that JRS is still using the January COLA date. I do not care which date is used, as with the passage of this many years the difference is *de minimus*.

The interesting question is why I am the only retired judge receiving these automatic adjustments. The apparent reason is almost unbelievable to me. The Judicial Retirement System did not know about or understand the law as stated in Olson v. Cory and did not understand its duties. At the same time, it appears that among all the judges who retired during the requisite window of approximately 8 to 11 years I was the only one who read and understood the law.

At the time of the settlement negotiations relating to the Administrative Proceedings, it came down to the fact that JRS refused to go ahead with the settlement unless I would agree to a non-disclosure agreement. When we discussed why, it was explained to me that JRS would have a liability in excess of \$400,000,000. If this were applied to all the judges who were entitled to it. I will confess that at this time I did an immoral act that I still regret, by putting my interests ahead of other judges and agreeing to the non-disclosure agreement.

In regard to specific questions from Pamela Montgomery:

Ms. Montgomery indicates that the Settlement Agreement is vague as it does not outline what COLA index is to be used. This is not the case.

The Settlement Agreement was based on Olson v. Cory and its interpretation of Government Code Section 68203 as it was on the date my last term of office began on January 6, 2005, which was before the 2006 Amendment. Government Code Section 68203 lays out specifically which index was to be used. In addition, there was precedent: For a substantial number of years before 1976 it was applied annually to adjustments for all judges and after 1976 it was applied to those judges whose terms began before the effective date of the 1976 Amendment to GC 68203.

The fact that now there are other legislative uses of COLA and that JRS has been using other COLA indexes is immaterial.

Ms. Montgomery asks what I am bound to do and what JRS is bound to do.

I am bound to abide by the non-disclosure agreement and to not litigate further, but to abide by the Settlement Agreement.

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JRS is bound to make COLA adjustments beginning in January of each year based upon the COLA Index (previously described) of September, as called for in the Settlement Agreement.

Ms. Montgomery has asked that I include a copy of Anne Woodward's October 24, 2003 letter. I have attached it. This letter was sent to me and I may be entitled to the benefits therein (but my pension was not adjusted that year for this or any other amount), although I recognize that I may not be entitled to it, as my pension has a different basis than other pensions.

PLEASE NOTE: The Salary increase referred to in the October 24, 2003 letter was NOT included in the "Calculation of Deficiency" that I prepared and sent to JRS in June 2006.

Please contact me at your earliest convenience.

Sincerely,



Paul G. Mast

Attachment: Letter from Anne Woodward dated October 24, 2003

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