Judge Paul G. Mast (Ret.)
[redacted]

August 5, 1996

Maureen Reilly
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Legal Office
California Pers
Box 942707
Sacramento, CA 94229-2707

Re: In the Matter of the Application for Retirement from JRS of Paul G. Mast, Respondent, and Central Orange County Judicial District, Municipal Court, Respondent, Case No. [redacted]

Dear Ms. Reilly:

Pursuant to our recent telephone conversation, I am writing at this time in order to attempt to resolve this matter. I have received the Statement of Issues and the Notice of Hearing. I recognize the fact that it is possible for a party to lose in any litigation regardless of how strong that party's position is. Even though it is clear to me that my position is correct, I can recognize the possibility that an Administrative Law Judge could rule adversely to me and that the matter would have to be taken to the court system. This is not what I want. I recognize that it would be burdensome to me as well as very devastating to CalPers. It is clear that it is in the interest of both sides to resolve the matter now. In that spirit I am writing this letter.

In reading your statement of issues, you make two points:

First, *Government Code Section 75033.5* does not change the arguments at all. That section must be interpreted with section *68203*, as you state, but it must be interpreted as it existed at the time I took office, not after *Section 68203* was later changed. The contractually vested rights were as they existed at the time of entering into the contract. I.e. when I took office. This was confirmed in *Olson v. Cory*.

Second, the *Neeley* and *City of Sacramento* cases gives power to the agency to make interpretations when there are ambiguities. They do not give power to the agency to interpret contrary to the established rule of law. The rule of law is clearly and cogently set forth in *Olson v. Cory*, wherein it states:

> A judge entering office is deemed to do so in consideration of -- at least in part -- salary benefits then offered by the state for that office. If salary benefits are diminished by the Legislature during a judge's term, or during the unexpired term of a predecessor judge [citations omitted], the

> judge is nevertheless entitled to the contracted-for benefits during the remainder of such term. The right to such benefit accrues to a judge who served during the period beginning 1 January 1970 to 1 January 1977, whether his term of office commenced prior to or during that time period. [bold type added]

As you know, the term of office from which I retired began on January 1, 1976, which was during the period specified in the above case.

In accordance with *Olson v. Cory*, as stated above, *Section 68203* provided for unlimited cost of living increases throughout my then-existing term. This was confirmed by the State Controller's office which paid me the balance of the salary due me in accordance with *Olson v. Cory*.

Olson v. Cory further states:

> Judicial pensioners whose benefits are based on **judicial services terminating while *section 68203* provided for unlimited cost of living increases in judicial salaries**, acquired a vested right to a pension benefit based on some proportionate share of the salary of the judge or justice occupying the particular judicial office **including the incumbent judge's or justice's unlimited cost-of-living increases.** [bold type added]

After reading the Statement of Issues and the appropriate sections of *Olson v. Cory*, it seems to me that it is very certain that I will prevail on the claim.

As you very cogently pointed out in our telephone conversation, the only way to resolve this matter is for CalPers to change their position on the claim. What then can I give as an inducement to resolve the claim? What I can give is complete and total confidentiality.

At the present time, except for my wife, no one knows that I have made this claim. I have not discussed it with friends, judges, former judges, or anyone else. As part of a settlement, I would commit to never discuss or disclose the claim or settlement with anyone.

I first assumed judicial office when I was 33 years old, and retired when I was 46, in 1979. It is most unlikely that there is anyone who took deferred retirement when the law was as it was when I retired, that has not already begun receiving their retirement benefits. In other words, I am the last, and resolving this claim in a confidential manner can be expected to completely end the issue for CalPers.

If the claim goes to hearing and decision with the Office of Administrative Hearings (OAH), one of two things will happen, neither of which will be in the best interests of CalPers or the State of California. If I win the decision, the decision will be a matter of public knowledge; a copy will be sent to the other respondent, my former court; and the personnel of the OAH will be aware of the decision. Although I have no intention of publicizing any such decision, through one of the other sources, some lawyer or lawyers will undoubtedly become aware of the decision and of the need to pursue the rights of the other judges, widows of judges, and estates of judges who retired during the requisite time period.

If I lose at the hearing, I will be forced to take the matter to the appropriate court, which will have the same effect in regard to public knowledge and further claims as if I win at the hearing.

The window of opportunity to resolve the claim is therefore very short and is now. In resolving the claim, CalPers is not acceding to my position and is not agreeing that my claim is valid. What CalPers is doing is recognizing the economic facts of the case and the possibility that they could lose. In effect it is like resolving a $100,000 lawsuit for $100. This is something that no reasonable litigator could turn down regardless of how strong he or she thought their position to be.

Very truly yours,

Paul G. Mast