

1 PAUL G. MAST (CA Bar No. 28390)

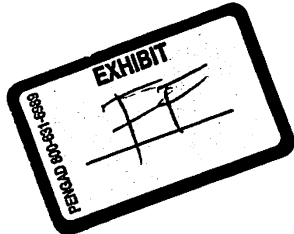
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**BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

In the matter of the Amount of Proper ) AGENCY CASE NO. 2010-0825  
Benefits Payable to )  
PAUL G. MAST, Judge, Ret. ) OAH NO. 2015-030996  
) **RESPONDENT'S REPLY TO JRS'**  
) **RESPONDSE TO MAST'S REQUEST**  
) **FOR PAYMENTS FROM 1992 TO 1995**  
) Hearing Date: November 30, 2015  
) Hearing Location: Los Angeles, CA  
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**RESPONDENT'S REPLY TO JRS' RESPONSE TO MAST'S REQUEST  
FOR PAYMENTS FROM 1992 TO 1995**

Petitioner's attorney once again takes a phrase out of context, this time from a statute, and falsely states the meaning of the phrase to give it an errant application.

Respondent's rights to receive deferred retirement benefits on his 60<sup>th</sup> birthday was a deferred retirement pursuant to Government Code section 75025 (GC §75025), attached as Exhibit B to Respondent's Trial Brief, not pursuant to Government Code section 75033.5 (GC §75033.5). The retirement would be pursuant to GC §75025, attached as Exhibit A to Respondent's Trial Brief, as stated in GC §75033.5. This is set forth in Respondent's Trial Brief, page 4: "In accordance with GC §75025 (Exhibit B), provided for in GC §75033.5 (Exhibit A), Respondent was eligible to begin receiving retirement benefits on his 60<sup>th</sup> birthday, May 28, 1992."

The deferred retirement was pursuant to GC §75025 is further confirmed by Exhibit E to Respondents Trial Brief at page 7, which shows the notation by The Judges' Retirement System "\$75025 5/28/92;" the quotation from GC §75033.5 in Petitioner's Statement of Issues in the 1996 Administrative Hearing which states: "may retire, . . . (and) after reaching the age which would have permitted him or her to retire for age and length of service under section 75025;" and the worksheet (Exhibit H to Respondent's Trial Brief) which states: that Judge London was retiring pursuant to GC §75025 (another worksheet states he was retiring pursuant to GC §75033.5.)

The right of Respondent to have received retirement benefits beginning on his 60<sup>th</sup> birthday is set forth on pages 2 through 15 of Respondent's Trial Brief and incorporated herein as if fully set forth. The following analysis of GC §75033.5 expands some of the discussion in Respondent's Trial Brief.

Government Code §75033.5 applies to retirement benefits which are deferred, meaning that a judicial officer retires from active service prior to the time he or she is entitled to receive retirement benefits. In some cases deferred retirement benefits are authorized by GC 75033.5. In other cases, such as the

one at bar, GC §75033.5 provides for and authorizes deferred retirement benefits pursuant to GC §75025.

In understanding the meaning of any statute in which there are seemingly conflicting provisions, we must look at the intent of the Legislature. The relevant portion of GC §75033.5 states:

**Notwithstanding any other provisions of this chapter, any judge with at least five years of service, may retire, upon his or her application therefor to the Judges' Retirement System after reaching the age which would have permitted him or her to retire for age and length of service under section 75025 had he or she remained continuously in service as a judge up to that age, receive a retirement allowance based upon the judicial service as a judge of a court of record, with which he or she is credited, in the same manner as other judges, except as otherwise provided by this section the retirement allowance is an annual amount equal to 3.75 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office which the retired judge last held prior to his or her discontinuance of his or her service as judge, multiplied by the number of years and fractions of years of service with which the retired judge is entitled to be credited at the time of his or her retirement, not to exceed 20 years. (Emphasis added.)**

GC §75033.5 begins by stating: "Notwithstanding any other provisions of this chapter." This phrase makes it clear that the phrase quoted by Petitioner, establishing an age to begin deferred retirement benefits pursuant to GC §75033.5 not earlier than at age 63 does not apply to the above quoted provision, which specifically provides for beginning benefits at age 60 pursuant to GC §75025. Government Code §75025(h) which states that benefits begin at "Age 60, with an aggregate of 20 years of service as a judge."

If the retirement pursuant to the first paragraph of GC §75033.5 were not pursuant to GC §75025 then the specific statement "Notwithstanding any other provisions of this chapter" would prevail over the general statement put forth by Petitioner, which occurs directly after the above quoted part of GC §75033.5.

Petitioner excerpts one sentence from GC §75033.5. To understand said section it is essential to begin with the opening phrase: "Notwithstanding any other provisions of this chapter."

The intent of the Legislature was to provide for those judicial officers who would have served an aggregate of 20 years of service "had he or she remained continuously in service as a judge up to that age" to receive benefits "in the same manner as other judges," which pursuant to GC §75025(h) would have been at age 60.

The Legislature specifically provided that if a judicial officer "would have served an aggregate of 20 years of service," as Respondent would have served had he remained continuously in service up to age 60, then his benefits would receive a retirement allowance "in the same manner as other judges" (beginning at age 60, pursuant to GC §75025 (h)).

When interpreting statutes, the rule of law is that the specific provision always takes precedence over the general provision. The only rational conclusion is that when the Legislature stated "permitted him or her to retire for age and length of service under section 75025 had he or she remained continuously in service as a judge up to that age" that the retirement in accordance with that provision would be a retirement pursuant to GC §75025(h) not GC §75033.5.

Government Code §75025 provides subsections (a) through (h). All of the subsections except for (h) relate to retirement at ages above 63 years.

Respondent will, for illustrative purposes, show an example of how GC §75025 and GC §75033.5 relate to each other.

Government Code §75025 (c) provides that a judge may receive retirement benefits as follows: "Age 68, with an aggregate of 14 years of service as a judge within the 18 years immediately preceding the effective date of retirement." The phrase "effective date of retirement" used in GC §75025 means the date of receiving retirement benefits, not the date of retiring from judicial service.

Therefore, a judicial officer whose judicial service began when he or she

was 51 years of age and left judicial service 14 years later at age 65, would have the option of receiving retirement benefits when he or she left the bench at age 65 at a benefit rate of 52.5% pursuant to GC §75033-5, or receiving benefits at age 68 at the benefit rate of 65% pursuant to GC §75025 (c). The Judge's Retirement System would have the duty, pursuant to *Hittle* (see Respondent's Trial Brief) to advise the judicial officer of his or her options pursuant to the two code sections.

Respondent's assertions are consistent with the Outline prepared by Justice Lui and approved by JRS, Exhibit C to Respondent's Trial Brief.

Respondent's claim is consistent with Petitioner's payment of deferred retirement benefits to Judge London (see Respondent's Trial Brief).

The provision of GC §75033-5 put forth by Petitioner in its Response does not apply to this case.

Respectfully submitted,  
November 27, 2015

*Paul G Mast*  
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**PROOF OF SERVICE**

**In the matter of the Amount of Proper Benefits Payable to PAUL G. MAST, Judge, Ret.  
AGENCY CASE NO. 2010-0825 OAH NO. 2015-030996**

**I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is [REDACTED]**

**On Nov 27 2015 I served the following document(s) by the method indicated below:**

**RESPONDENT'S REPLY TO JRS' RESPONSE TO MAST'S REQUEST FOR PAYMENTS FROM 1992 TO 1995**

**by placing the document(s) listed above in a sealed envelope(s) with postage fully prepaid and deposited it with the United States Postal Service at Irvine, California addressed as set forth below.**

**Jeff Rieger  
Harvey L. Leiderman, Esq.  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105**

**By email to JRieger@ReedSmith.com**

**I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 27, 2015 at Irvine, CA.**

Marci G. Mast  
Marci G. Mast