

Paul Mast, Judge (Ret.)



3-3
DDC-5

September 1, 2010

Pamela Montgomery
Judges and Legislators Retirement System
Box 942705
Sacramento, CA 94229-2705

Re: Unpaid retirement benefits for Paul Mast

Dear Ms. Montgomery:

I have your letter of August 9, 2010 written in response to my many communications with you. Again your calculations are erroneous. In 2010 as in 2006 you proceeded on the wrong premise and therefore came up with a completely wrong conclusion. The current calculations are very much the same as the calculations you came up with in 2006.

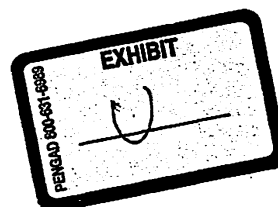
In 2006 I explained the errors in a letter to you. You have ignored the law and the facts as stated in that letter and as they exist. You have stalled for four additional years while making one excuse after another. During that time the underpayment and therefore the problem has increased exponentially.

Computation of my retirement benefits was resolved in 1996 when The Judges Retirement System (JRS) and I entered into a Settlement Agreement.

As you did in 2006, you have again insisted in recalculating the retirement increases from 1979. As I did in my letter of 2006, I will again explain why recalculating the retirement increases from 1979 is not legal and is not acceptable.

I have submitted the calculation to my accountant, using your figures for the COLA adjustments as well as your figures for the amounts that have been paid. The summary of those calculations is attached.

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Brief history of Settlement Agreement

When I became eligible to receive retirement benefits in May 1995, your office began the payments incorrectly. You applied the law as it applied to retirees in 1995. The law that should have been applied was the law that prevailed when I retired in January 1979. That law provided that the amount to be paid be adjusted annually from the date of my retirement, in accordance with the COLA for the respective time periods. When I objected to application of the incorrect law, and when discussion was to no avail, I filed for an Administrative Proceeding.

The attorney representing your office in that proceeding was Maureen Reilly, Senior Staff Counsel of the Board of Administration of the Public Employees' Retirement System. I represented myself.

During that proceeding, after the case was briefed on each side and before a hearing, it was determined by your office, with the advice of counsel, that I was correct, and that I was entitled to my benefits being adjusted for COLA from the date of my retirement, January 1979. This was pursuant to the three *Olson v. Cory* cases, particularly, *Olson v. Cory*, (1980) 27 Cal 3d. 532.

The administrative matter was fully resolved by the Settlement Agreement dated October 22, 1996 between JRS and me, a copy of which is attached.

Recalculating the retirement from 1979 is not legal and is not acceptable.

First: Government Code Section 20160 (b) does not apply

No error was made. You are making the error in your calculations.

However, even if an error had been made, it would not be a clerical error to which the Code Section refers. The amount due is based upon a settlement of litigation and a written Settlement Agreement.

Second: Settlement Agreement

You have proceeded on the wrong premise when you completely ignored the Settlement Agreement. I direct your attention particularly to paragraphs 2 and 3.

Paragraph 2 of the Agreement states:

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Using that formula, JRS will re-calculate Mast's allowance based on the definition in former Government Code section 68203, as in effect on January 6, 1975, the date his last term began, and based on the compensation he was entitled to on the date of his retirement, January 15, 1979, pursuant to *Olson v. Cory*, (1980), 27 Cal. 3d 532.

Paragraph 3 of the Agreement states, in part: "Said recalculated retirement allowance"

"Said recalculated retirement allowance" are the key words showing you are in error in attempting to recalculate the amount of the retirement allowance *ab initio*.

When the Settlement Agreement says "Said recalculated retirement allowance" it is referring to Paragraph 2. It is not a qualified statement. It does not say, "if that calculation is correct." It does not say that the calculation made may be modified in the future by another calculation. It says that the calculation made by JRS at that time is that which will be used as the basis for the retirement allowance.

It should also be noted that I took no part in the calculation. I was not contacted or consulted and had no input into it. I relied on JRS to do it correctly and they did. I was not privy to the worksheets. They were never furnished to me.

The computed amount corresponded to the amount I expected to receive. If there was any miscalculation, the amount of the error was not significant enough to put me on notice that an error was made. If there was any miscalculation, the amount of the error was not significant enough to put anyone in your office on notice that the computed amount was unreasonable and therefore incorrect. The calculated amount is the recalculated retirement allowance as called for in paragraph 3 of the Settlement Agreement.

The Settlement Agreement was drafted by JRS, either by staff or by counsel. I took no part in its drafting or preparation. Although I do not see any ambiguities, any such that there may be would be construed in my favor and against yours, according to law.

The validity or finality of the Settlement Agreement is not affected by any subsequent dissatisfaction you may have with how it was drafted. The law favors settlements. The finality of a settlement must be honored. If there is any ambiguity in a settlement statement due to deficient drafting, the ambiguity must

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be resolved in favor of the non-drafting party. The best indicator of the meaning of the Settlement Agreement is the behavior of JRS immediately after entering into the Agreement. You are estopped from changing the Agreement. Further, laches applies. The original calculation was made by your office in 1996. Even if it could be changed, it is too late to do so now.

What the Agreement says can best be determined by reading the Agreement itself. I realize that this Settlement Agreement was entered into before you were in the office. You cannot as a staff member review, revise, or otherwise alter the Agreement or the calculations.

Calculation of Benefits and Arrearages

I have submitted the calculation to my accountant, using your figures for the COLA adjustments as well as your figures for the amounts that have been paid. The summary of those calculations is attached.

I presented the question of my underpayment to my accountant for a correct determination of the amount due. I did not in any way speak to him ahead of time about what I thought was owed. He used the CPI table given to me by the Judges Retirement System, and took as correct the amount of the monthly payment for the last period that a proper adjustment and calculation was made. The first new adjustment being effective 9/1/99, the time your office stopped making proper adjustments.

The amounts determined to be unpaid and therefore due through October 2010 total \$152,269, consisting of unpaid retirement allowance of \$101,219 and interest of \$51,050.

The amount of the monthly pension, beginning September 2010, is \$8,550.59. A copy of the calculation is attached.

My accountant was not given your letter, and did not consider the additional payments JRS is making pursuant to that letter. Thus from the accountant's calculated amount must be deducted the following: \$10,088.90 in unpaid retirement allowance that JRS is making on 9/1/10, the \$317.85, adjustment for 9/1/10, and the \$509.16 adjustment to be made 10/1/10. In addition, \$86.33

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interest must be deducted for the amount that has been paid and adjusted on 9/1/10.

The current unpaid amount due totals \$141,775.55, consisting of unpaid retirement allowance of \$90,812.25 and interest of \$50,963.30. In addition the monthly pension must be adjusted to \$8,550.59.

Confidentiality

I now direct your attention to Paragraph 5 of the Agreement, which states:
"Each party will keep the terms of this agreement confidential."

I have not paid attention to the wording of Paragraph 5 until now, as I knew what the concerns of JRS were.

At the time of the settlement I was the only Retired Judge to have called this error to the attention of your office, and thus I am the only Retired Judge to have ever been paid in accordance with this law as far as I know.

I asked during the final discussion of the settlement why JRS wanted a confidentiality agreement. I was told that no retired judge was paid in accordance with the dictates of *Olson v. Cory*; that some 1,000 to 1,500 retired judges had been receiving retirement pay in violation of the dictates of that case; and that if JRS had to adjust the amounts previously paid, JRS would be paying out about four hundred million dollars. This discussion was held in 1996. Since then these retirees have accrued additional amounts they are owed. In addition, 15 additional years of interest has also accrued.

I have been writing to you and your predecessor for ten years to have you calculate my retirement benefits correctly. The time is up. If the Retirement System does not pay the amount due and adjust the amount payable each month by the October 1 payment, I will submit it to an attorney. I cannot wait another four years for another response. I also cannot wait indefinitely and allow this problem to outlive me.

As you well know, I have out of my respect for the State of California, not taken my underpayment issue to an attorney previously, as I believe that doing so would have a disastrous effect on the State. I believe that your office is well aware of the consequences of my seeking legal assistance.

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After Michael Priebe left your office, his successor Steve Benitez did not know what to do. For three years Mr. Benitez delayed the question and did nothing, despite my repeated requests and directions. Then you came into the office. Since then you have repeatedly delayed the resolution of the matter and diverted the resolution by coming up with various claims and positions.

I urge you to resolve this matter now.

I am sending a copy of this letter to the Members of the Board of the Public Employees Retirement Board and separately to John Chiang, the Controller of the State of California (who is also a Member of the Board).

The best way to contact me is by email at [REDACTED].

I will be moving from my temporary residence in La Quinta to a permanent residence in Laguna Woods by the end of September.

Thank you for your consideration.

Respectfully,

/s/
Paul Mast, Judge (Ret.)

Enclosures as stated

Copies as stated

Paul Mast, Judge (Ret.)



September 1, 2010

The Honorable John Chiang
California State Controller
Box 942850
Sacramento, CA 94250-5872

Re: Unpaid Retirement Benefits for Judges and
Potential One Billion Dollar Cost to State of California

I am a Retired Judge who has been attempting for the past ten years to have the Judges Retirement System (JRS) properly adjust my retirement pay in accordance with the law and a 1996 Settlement Agreement between the JRS and me.

A historical summary is included in my letter to Pamela Montgomery, Judges and Legislators Retirement System, dated September 1, 2010. Enclosed is a complete copy, including a copy of the Settlement Agreement.

I retired on January 15, 1979. When I became eligible to receive retirement benefits in May 1995, JRS began the payments incorrectly by applying the law as it applied to retirees in 1995 rather than the law that prevailed when I retired in January 1979. That law provided that the amount to be paid be adjusted annually from the date of my retirement, in accordance with the COLA for the respective time periods. When I objected to application of the incorrect law, and when discussion was to no avail, I filed for an Administrative Proceeding. After the case was briefed on each side, the attorneys representing JRS concluded that I was correct, and a settlement agreement was entered into on October 22, 1996. The Settlement Agreement settled all issues concerning proper retirement benefit adjustments pursuant to the three *Olson v. Corey* cases, particularly *Olson v. Cory*, (1980) 27 Cal 3d. 532. Adjustments were made as agreed through 1999.

Letter to California State Controller
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Ten years has passed. For the first three of those years the Director did not know what to do. For the past seven years the adjustment has been delayed by avoidance and obfuscation. The amount presently in arrears on my account is \$141,775.55. The correct monthly pension amount beginning September is \$8,550.59.

Despite my personal frustrations, I ordinarily would not bring the issue of retirement pay adjustment to the State Controller and each Member of the Public Employees Retirement Board as I do today. In this instance the matter concerns proper judicial retirement pay adjustments pursuant to *Olson v. Corey*.

At the time of the settlement I was the only Retired Judge to have called the error in judicial retirement adjustment pursuant to *Olson v. Corey* to the attention of JRS, and thus I am the only Retired Judge to have ever been paid in accordance with this law as far as I know. JRS wanted a confidentiality agreement in the Settlement Agreement.

At the time of the 1996 Settlement I asked a representative of JRS why JRS wanted a confidentiality agreement. I was told that no Retired Judge was paid in accordance with the dictates of *Olson v. Cory*; that 1,000 to 1,500 retired judges had been receiving retirement pay contrary to the dictates of those cases; and that if JRS had to adjust the amounts previously paid, JRS would be paying out about four hundred million dollars.

Since 1996 the entitled retirees have accrued additional amounts of unpaid retirement benefits and interest.

Based upon the 1996 estimate that the cost would be four hundred million dollars, I estimate a current potential liability of one billion dollars.

Out of my respect for the State of California, I have not taken the underpayment issue to an attorney previously, as I believe that doing so would have a disastrous effect on the State. I believe that JRS is well aware of the consequences of my seeking legal assistance.

I present my issue to you and urge you to help me to resolve this matter now as I do not want to consult an attorney. I have no doubt that if I do nothing, the Director of JRS will delay more. I cannot wait indefinitely and allow this problem to outlive me.

Letter to California State Controller
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I do not want to consult an attorney. I have no doubt that if I do nothing, the Director of JRS will delay more. I cannot wait indefinitely and allow this problem to outlive me.

I wish to thank you in advance for your consideration of this matter.

The best way to contact me is by email at [REDACTED] I will be moving from my temporary residence in La Quinta to a permanent residence in Laguna Woods by the end of September.

Respectfully,

Paul G. Mast, Judge (Ret.)
[REDACTED]

Enclosures as stated

Paul Mast, Judge (Ret.)

[REDACTED]

[REDACTED]

September 1, 2010

Hon. John Chiang, California State Controller
Box 942850
Sacramento, CA 94250-5872

Members of the Public Employees Retirement Board

Hon. Rob Feckner, President
Hon. George Diehr, Vice President
Hon. John Chiang
Hon. Patricia Clarey
Hon. Dan Dunmoyer
Hon. Debbie Endsley
Hon. J.J. Jelincic
Hon. Henry Jones
Hon. Bill Lockyer
Hon. Priva Sara Mathur
Hon. Louis F. Moret
Hon. Tony Oliveira
Hon. Kurato Shimada

Box 942701
Sacramento, CA 94229-2714

Re: Unpaid retirement benefits for Judges and potential one billion dollar cost

Dear Controller Chiang and Members of the Public Employees Retirement System Board:

I am bringing this matter to the State Controller and each Member of the Public Employees Retirement Board not only because the unpaid judicial retirement benefits to myself have been delayed for ten years, but because of a potential cost to the State of California for unpaid retirement benefits to other judges of approximately one billion dollars.

I detail the facts in my letter to Pamela Montgomery, Judges and Legislators Retirement System, dated September 1, 2010. Enclosed is a copy with attachments.

Hon. John Chiang, California State Controller
Members of the Public Employees Retirement Board
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I am a Retired Judge who for the past ten years has been attempting to have the Judges Retirement System properly adjust my retirement pay in accordance with the law and a 1996 Settlement Agreement between the JRS and me. A copy of that Settlement Agreement is attached to my letter to Ms. Montgomery.

For three of those years the Director did not know what to do. For the past seven years the adjustment has been delayed by avoidance and obfuscation. The amount presently in arrears on my account is \$141,775.55. The correct monthly pension amount beginning September is \$8,550.59.

At the time of the 1996 Settlement I asked a representative of JRS why JRS wanted a confidentiality agreement. I was told that no Retired Judge was paid in accordance with the dictates of *Olson v. Cory*; that 1,000 to 1,500 retired judges had been receiving retirement pay contrary to the dictates of those cases; and that if JRS had to adjust the amounts previously paid, JRS would be paying out about four hundred million dollars. This discussion was held in 1996. Since then these retirees have accrued additional amounts they are owed. In addition 15 years of interest has also accrued.

Based upon the representation by a JRS representative that the State of California underpaid retired judges 400 million dollars in 1996, then I estimate the current underpaid amount including interest is one billion dollars.

I do not want to consult an attorney, which is why I am submitting this to you. I have no doubt that if I do nothing that the Director of JRS will delay more.

I wish to thank you in advance for your consideration of this matter.

The best way to contact me is by email at [REDACTED].

I will be moving from my temporary residence in La Quinta to a permanent residence in Laguna Woods at the end of September.

Respectfully,

Paul G. Mast, Judge (Ret.)
[REDACTED]

Paul Must, Judge (Ret.)

[REDACTED]

September 1, 2010

The Honorable Bill Lockyer
Public Employees Retirement Board Member
Box 942701
Sacramento, CA 94229-2714

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Potential One Billion Dollar Cost to State of California

Dear Sir:

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Despite my personal frustrations, I ordinarily would not bring the issue of retirement pay adjustment to the State Controller and each Member of the Public Employees Retirement Board as I do today. In this instance the matter concerns proper judicial retirement pay adjustments pursuant to *Olson v. Corey*.

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Since 1996 the entitled retirees have accrued additional amounts of unpaid retirement benefits and interest.

Based upon the 1996 estimate that the cost would be four hundred million dollars, I estimate a current potential liability of one billion dollars.

Out of my respect for the State of California, I have not taken the underpayment issue to an attorney previously, as I believe that doing so would have a disastrous effect on the State. I believe that JRS is well aware of the consequences of my seeking legal assistance.

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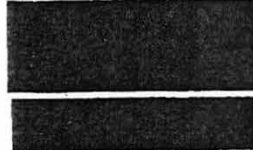
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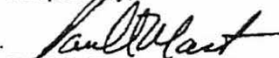
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