

1 Harvey L. Leiderman (SBN 55838)
Email: hleiderman@reedsmith.com
2 Jeffrey R. Rieger (SBN 215855)
Email: jrieger@reedsmith.com
3 REED SMITH LLP
101 Second Street, Suite 1800
4 San Francisco, CA 94105-3659
Telephone: +1 415 543 8700
5 Facsimile: +1 415 391 8269

6 Attorneys for Petitioner
The Judges' Retirement System
7

8 BOARD OF ADMINISTRATION
9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
10

11 In re the Matter of the Recalculation of Benefits
of

12 PAUL G. MAST,

13 Respondent.
14
15
16

AGENCY CASE NO. 2010-0825

OAH NO. 2015030996

DECLARATION OF JEFFREY R. RIEGER

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

17
18
19 I, Jeffrey R. Rieger, declare as follows:

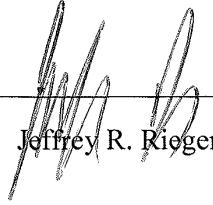
20 1. I am an attorney admitted to practice law in California, and I am Counsel with Reed
21 Smith LLP, counsel of record for the Judges' Retirement System ("JRS") in the above-captioned
22 matter. I have personal knowledge of all facts stated in this Declaration.

23 2. A true and correct copy of an April 6, 2012 email exchange, in which Respondent
24 Paul G. Mast and I agreed to put the administrative proceedings in the above-captioned matter on
25 hold pending resolution of the *Staniforth v. JRS* litigation, is attached hereto as Exhibit A.

26 3. A true and correct copy of an April 11, 2013 Judgment in *Staniforth v. JRS*, which
27 shows that the San Diego Superior Court rejected Respondent Paul G. Mast's theory of *Olson v.*
28 *Cory* in a November 30, 2012 ruling, is attached hereto as Exhibit B.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed in San Francisco, California, on June 8, 2016.



Jeffrey R. Rieger

EXHIBIT A

Rieger, Jeffrey R.

From: Paul Mast <[REDACTED]>
Sent: Friday, April 06, 2012 3:25 PM
To: Rieger, Jeffrey R.
Subject: Re: Personal Claim Of Retired Judge Paul Mast

THAT'S FINE

On Apr 6, 2012, at 3:19 PM, Rieger, Jeffrey R. wrote:

Mr. Mast,

Based on your statement below that it is your intention to allow your claim to remain on hold until the resolution of the Petitioners' claims, I will not serve any statement of issues to commence your administrative appeal, at least for the time being. If either you or JRS determines that commencing those proceedings is appropriate in the future, I expect that one of us will raise that issue with the other and we will start a dialogue to determine the appropriate next step at that time.

Jeff Rieger

From: Paul Mast [mailto:[REDACTED]]
Sent: Friday, April 06, 2012 2:24 PM
To: Rieger, Jeffrey R.
Subject: Re: Personal Claim Of Retired Judge Paul Mast

Hi Jeff,

Thank you for your email.

I am not a Petitioner in the Superior Court case as the issues in my matter are entirely different and unrelated to those of the Petitioners in that case.

It was my intention to allow my claim to remain on hold until the resolution of the Petitioners claims. That is still satisfactory with me.

I know you have an overwhelming amount of work to do and may not have fully analyzed my claim. With all respect, I will point out what is in issue there.

Regarding the right to cola benefits as provided for in Olson v. Cory, 1, that is not in issue. That was decided and resolved in 1996. From the date of the resolution (the Settlement Agreement) until 2002, there was no problem. In 2002 the annual adjustment was not made. The reason for this was solely a change in personnel at JRS who did not know what to do. The result was that no adjustments were made, despite my requests for a number of years. When Ms. Montgomery became Manager of JRS, she took a different approach and tried to find reasons to avoid the requirements of the Settlement Agreement altogether. Eventually she agreed that she had to follow the Settlement Agreement, but then undertook calculations that I do not agree with. She did cause a back payment of about \$10,000 to be made, and adjustments were made in the amount of retirement benefits, and have been made thereafter (I believe the adjustments were in a lesser amount than the law required.

The principal area of disagreement is that Ms. Montgomery claimed that in 1996, JRS in applying the Settlement Agreement, made a mistake in the calculations of the cola percentages to be applied. I took no part

in the calculations of the cola percentages, and had no knowledge of this possibility until she told me in approximately 2010 (by memory, I have not looked up the exact date).

My position is that the Settlement Agreement is binding and cannot be changed. That the calculations as applied are an integral part of the Settlement Agreement. It should be noted that I did not draft the Settlement Agreement, nor did I take part in any of the calculations. I would also observe that the Settlement is a very meager document, however I did not even pay attention to that at the time it was drafted. It contained the necessary terms, as far as I was concerned, and I was happy to have the matter resolved.

I have looked into Ms. Montgomery's position that there was an error in the calculations. It appears to me there was an error, but not as extensive as Ms. Montgomery stated. That is a mathematical issue, however, and is something that could be resolved by agreement after the legal issue is resolved.

If you wish to research and brief the issue of the binding nature of a settlement agreement, I would then prepare a response brief, and if we did not agree, we could discuss and perhaps resolve the issue.

There is a smaller issue, that is the date used for adjustments. JRS has used September, the legislature changed the date to July. This legislative change was valid and binding, but JRS never understood it. This change is mentioned in the Points and Authorities in the Superior Court Case.

I do not want to tell you what to do, but I would be happy to have you put this aside until at least after you filed your demurrer or response in the Superior Court case.

With respect,

Paul

On Apr 6, 2012, at 1:47 PM, Rieger, Jeffrey R. wrote:

Mr. Mast,

We had anticipated serving a statement of issues relating to your personal administrative appeal by now. We have not done so, because on March 2, we raised the possibility of taking all of the *Olson v. Cory* claims directly to superior court, and we were awaiting a response to that suggestion before serving a statement of issues on your personal claim. You and Mr. Rossi then filed a Petition/Complaint on behalf of the other retired judges and justices in superior court on March 8, and served JRS with the Petition/Complaint on March 16. We recently noticed that the superior court Petition/Complaint does not name you as a Petitioner/Plaintiff.

I'd like to know whether you have any proposals regarding your personal claims. It seems to me that there are two potentially reasonable alternatives under all the existing circumstances.

(1) Staying your administrative appeal pending resolution of the *Olson v. Cory* claims in superior court (and on appeal, as necessary).

(2) Naming you as a Plaintiff/Petitioner in the *Olson v. Cory* claims in superior court. I do not have authority to agree to any particular approach at this time, and I assume that some details would have to be worked out before we might reach agreement on any particular approach. This e-mail is sent solely in the interests of identifying an issue for discussion, so that we

can try to efficiently manage your claim, in the context of all of the other claims. Please let me know what your procedural expectations are with respect to your personal claim.

Mr. Rossi previously authorized me to communicate with you directly regarding your personal claim, but I will copy him on all written communications on this subject and I welcome his participation in any telephone calls we might have.

Jeff Rieger

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

* * *

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Disclaimer Version RS.US.1.01.03
pdc1

EXHIBIT B

1 Harvey L. Leiderman (SBN 55838)
Email: hleiderman@reedsmith.com
2 Jeffrey R. Rieger (SBN 215855)
Email: jrieger@reedsmith.com
3 REED SMITH LLP
101 Second Street, Suite 1800
4 San Francisco, CA 94105
Telephone: 415 543 8700
5 Facsimile: 415 391 8269

6 Attorneys for Defendant and Respondent
The Judges' Retirement System

7 *Exempt From Filing Fees -- Gov't Code §6103*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11
12 FAY STANIFORTH and MARK STANIFORTH,
heirs of ROBERT STANIFORTH, et al.,

13 Plaintiffs and Petitioners.

14 vs.

15 THE JUDGES' RETIREMENT SYSTEM,
16 administered by the BOARD OF
17 ADMINISTRATION OF THE PUBLIC
EMPLOYEES RETIREMENT SYSTEM OF
18 THE STATE OF CALIFORNIA, and DOES 1-
30,

19 Defendants and Respondents,

20 JOHN CHIANG, CONTROLLER OF THE
STATE OF CALIFORNIA,

21 Real Party In Interest.
22
23
24
25
26
27
28

F I L E D
Clerk of the Superior Court
APR 11 2013
By: L. Urie, Deputy

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

Case No: 37-2012-00093475-CU-MC-CTL

JUDGMENT

Honorable Joel M. Pressman

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 The above-captioned action was bifurcated into two phases. The Court entered Orders on the
2 two bifurcated phases as follow:

3 (1) On November 30, 2012, the Court entered an Order on phase one of this action. A
4 true and correct copy of the Court's November 30, 2012 Order is attached hereto as Exhibit A.

5 (2) On March 22, 2013, the Court confirmed its tentative ruling on phase two of this
6 action. A true and correct copy of the Court's tentative ruling, which became an Order of the Court
7 on March 22, 2013, is attached hereto as Exhibit B.

8 The two above-referenced Orders resolve all claims by and among all parties to this action
9 and, therefore, it is now appropriate to enter Judgment. Thus, for the reasons set forth in Exhibit A
10 and Exhibit B, it is hereby ORDERED, ADJUDGED AND DECREED that:

11 (1) The Court denies all relief Plaintiffs/Petitioners seek in this action; and

12 (2) The Court enters Judgment in favor of Defendant/Respondent The Judges'
13 Retirement System and Real Party In Interest John Chiang, Controller of the State of California, and
14 against Plaintiffs/Petitioners.

15 (3) Plaintiffs/Petitioners shall take nothing by this action.

16 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

17 APR 11 2013

18 DATED: _____, 2013 JOEL M. PRESSMAN

The Honorable Joel M. Pressman

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 11/30/2012 TIME: 10:30:00 AM DEPT: C-66

JUDICIAL OFFICER PRESIDING: Joel M. Pressman

CLERK: Lori Urie

REPORTER/ERM: Katie Langgle CSR# 8637

BAILIFF/COURT ATTENDANT: A. Quidilla

CASE NO: 37-2012-00093475-CU-MC-CTL CASE INIT.DATE: 03/08/2012

CASE TITLE: Fay Staniforth and Mark Staniforth heirs of Robert Staniforth vs. The Judges' Retirement System Administered by the Board of Administration of the Public Employees Retirement System of the State of California [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Demurrer / Motion to Strike

EVENT TYPE: Civil Case Management Conference

EVENT TYPE: Motion Hearing (Civil)

Additional events listed on last page.

APPEARANCES

JORN STEFAN ROSSI, counsel, present for Plaintiff(s).

Jeffrey Rieger, specially appearing for counsel HARVEY L LEIDERMAN, present for Defendant(s).

Michael Wilmet is appearing telephonically for Real Party in Interest, State Controller.

William Reppy Jr. addresses the court in proper

The Court hears oral argument and confirms the tentative ruling as follows:

The Judges' Retirement System's ("JRS") Demurrer to the Amended Petition and Complaint is sustained without leave to amend.

Plaintiffs and Petitioners ("Plaintiffs") are retired judges or justices who performed judicial service between January 1, 1970 and December 31, 1976, and their alleged heirs. Plaintiffs allege that JRS has underpaid allowances owed to retired judges who provided judicial service between January 1, 1970 and December 31, 1976. Specifically, plaintiffs allege that the Court decision of Olson v. Cory (1980) 27 Cal. 3d 532 requires the JRS to apply each year's increase to the Cost of Living Index ("CPI") directly to

DATE: 11/30/2012

MINUTE ORDER

Page 1

DEPT: C-66

Calendar No. 27

CASE TITLE: Fay Staniforth and Mark Staniforth heirs of Robert Staniforth vs. The Judges' Retirement System CASE NO: 37-2012-00093475-CU-JC-CTL

retired judges' allowances, thereby decoupling retired judges' allowances from active judges' salaries. Plaintiffs allege in their petition:

"Petitioners are entitled to receive retirement pay, including accrued arrearages, with their benefits adjusted July of each year, in accordance with the [full CPI] each year for the service with the adjustments being calculated each year from 1970 forward." (Paragraph 40)

The Petition and Complaint seek writ of mandate and declaratory relief. [1]

The Petition and Complaint present a question of law that the Court can determine by demurrer. [*Wilson v. Civil Service Com.* (1964) 224 Cal.App.2d 340, 344, "Where a complaint sets forth a good cause of action for declaratory relief regarding a disputed question of law, the court should make a declaration thereon, rather than to enter a mere order of dismissal, even though the declaration is not in accord with the declaration sought by the plaintiff."]]

Based upon Govt Code §§ 75032, 75033.5, 75076, a retired judge who is a member of JRS receives an allowance that is calculated under a formula that takes account of the salary payable to a currently active judge.

From January 1, 1970 through December 31, 1976, under Government Code section 68203, active judges were entitled to annual salary increases based on the full annual increases to the CPI. This changed in January, 1977, when the California Legislature amended section 68203 to include a 5% cap on those annual salary increases. The Court in *Olson v. Cory* (1980) 27 Cal.3d 532 held that the Legislature could not lawfully apply the new 5% cap to salaries paid during judicial terms that began before January 1, 1977. *Id.* at 537-40. The Court also held, however, that the salary for any judge who began a new judicial term after January 1, 1977, was properly subject to the 5% cap. Since a retired judge's allowance is based on a fixed percentage of an active judge's salary, the Court also held that imposing the 5% cap on judicial terms that began before January 1, 1977 impaired the rights of retired judges as well.

The Supreme Court stated: "Vested or not, a pensioner's right entitles him or her to benefits based on the prevailing salary for the judge or justice occupying the particular judicial office, regardless of the date of termination of judicial services giving rise to the pension." *Id.* at 542 [emphasis added]. The opinion does not change the law that retired judges' allowances are derivative of active judges' salaries.

Plaintiffs argue that, under *Olson v. Cory*, their retirement allowances must not be based on active judges' salaries. Rather, Plaintiffs claim that the JRS must each year apply the full annual increase to the CPI directly to Plaintiffs' retirement benefits.

This argument is not supported by *Olson v. Cory*. The Court specifically ruled that a judicial pensioner could claim impairment of a vested right out of the 1976 Amendment "except when the judge holding the particular judicial office could also claim such an impairment." The resolution of pensioner vested rights, then, is dependent on the foregoing resolution of judges' vested rights left unimpaired by the 1976 amendment." *Olson, supra*, 27 Cal.3d at 541-42. To reiterate: "Vested or not, a pensioner's right entitles him or her to benefits based on the prevailing salary for the judge or justice occupying the particular judicial office, regardless of the date of termination of judicial services giving rise to the pension." *Id.* at 542.[2]

CASE TITLE: Fay Staniforth and Mark Staniforth heirs of Robert Staniforth vs. The Judges' Retirement System CASE NO: 37-2012-00093475-CU-MC-CTL

Plaintiffs are getting what they were promised in retirement. To understand a pensioner's vested rights, a court must carefully analyze exactly what the pensioner was promised during employment. See, e.g., Intl Assn of Firefighters v. City of San Diego (1983) 34 Cal.3d 292. Plaintiffs were promised that their pensions would be based on active judges' salaries, but they were not promised that active judges' salaries would forever be determined in the same method as when Plaintiffs provided their service. The Legislature always had the authority to change the method of setting judicial salaries for judicial terms beginning after the legislative change.

The Court thus sustains the demurrer and issues a judicial declaration that a retired judge's allowance must be calculated as a percentage of an active judge's salary in accordance with the law. Further, writ of mandamus relief is not available to plaintiffs based upon Olson v. Cory.

/s/

[1] Plaintiffs' Amended Complaint asserts Plaintiffs' Olson v. Cory claim on behalf of all Plaintiffs and also asserts five other unrelated claims on behalf of some Plaintiffs. The JRS also contends that Plaintiffs failed to exhaust their administrative remedies on those other five claims. At the October 19, 2012 Case Management Conference, the parties agreed and the Court ordered that the JRS' demurrer to Plaintiffs' Amended Complaint would be bifurcated such that the Court would first rule on the correct reading of Olson v. Cory.

[2] As discussed in the demurrer, it appears that the Appellate District directly addressed petitioners' argument in Olson v. Cory (1979) 93 Cal.App.3d 942 vacated, (1980) 27 Cal.3d 203.

"[W]e conclude that the promise made by the Judges' Retirement Law to judicial pensioners is that their pensions will vary in specified direct proportions with the salaries payable to active judges." Put another way: "The pensioner floats in water whose origin is the current judicial office, and like water his rights cannot rise above their source." *Id.* While the Supreme Court did not expressly address this portion of the Appellate Opinion, based on the Supreme Court's rationale and holding, however, the court rejected Plaintiffs' theory.

The Court sets a motion to dismiss on 3/22/13 at 10:30 am. Parties stipulate to the motion to dismiss prior to the pleading being adjudicated. This stipulation allows counsel to file any factual issues they need to support their issues.

The Motion Hearing (Civil) is scheduled for 03/22/2013 at 10:30AM before Judge Joel M. Pressman.



Judge Joel M. Pressman

CASE TITLE: Fay Staniforth and Mark Staniforth heirs of Robert Staniforth vs. The Judges' Retirement System CASE NO: 37-2012-00093475-CU-MC-CTL

ADDITIONAL EVENTS:

EVENT TYPE: Motion Hearing (Civil)

DATE: 11/30/2012
DEPT: C-66

MINUTE ORDER

Page 4
Calendar No. 27

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - March 21, 2013

EVENT DATE: 03/22/2013 EVENT TIME: 10:30:00 AM DEPT.: C-66
JUDICIAL OFFICER: Joel M. Pressman

CASE NO.: 37-2012-00093475-CU-MC-CTL

CASE TITLE: FAY STANIFORTH AND MARK STANIFORTH HEIRS OF ROBERT STANIFORTH VS.
THE JUDGES' RETIREMENT SYSTEM ADMINISTERED BY THE BOARD OF

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

Respondent The Judges' Retirement System's Phase Two General Demurrer is sustained without leave to amend.

At the October 19, 2012 Case Management Conference, the parties agreed and the Court ordered that the JRS' general demurrer to Petitioners' First Amended Petition and Complaint ("First Amended Petition") would be bifurcated such that the Court would first rule on the correct reading of *Olson v. Cory*. By Order dated November 30, 2012, the Court sustained the IRS' general demurrer to Petitioners' *Olson v. Cory* claims, without leave to amend, and further ordered that phase two of the JRS' general demurrer would be heard on March 22, 2013.

On the face of the First Amended Petition, Petitioners have failed to exhaust their administrative remedies for claims other than those based upon *Olson v. Cory*. Those claims are remanded back to the administrative appeal process, so that an evidentiary record can be developed and the CalPERS Board can exercise its constitutional and statutory authority to render a final administrative decision. Once the CalPERS Board has rendered a final administration decision, any Petitioner who is dissatisfied with that final decision may seek relief in superior court, under Code of Civil Procedure section 1094.5.

Petitioners' Motion to Vacate November 30, 2012 Order in Part is denied.

The Petition was primarily based upon the interpretation of *Olson v. Cory* (1980) 27 Cal.3d 532. The basis for the Court's November 30, 2012 order is sound. Petitioners now focus on ten judges that were allegedly not paid what were due and owing under *Olson v. Cory*, which was decided in 1980. This issue is not clearly part of the petition and the Court denies leave to amend the pleading to assert these separate claims. Any claims by these 10 judges for benefits under *Olson v. Cory* would have expired 10 years after *Olson v. Cory* decision, decided in 1980. (CCP 337.5(b)) Further, Govt Code 20164 provides that the obligations of CalPERS and the JRS apply only to retired members throughout their lives and thereafter until obligations to their respective beneficiaries under optional settlements have been discharged. The declaration of Jennifer Watson provided indicates that all individuals died by 2005 and the one beneficiary claiming an optional settlement died in 1986. Thus, there does not appear to be a viable claim.