

**ATTACHMENT C**

**RESPONDENT(S) ARGUMENT(S)**

Dwight Evans



December 27<sup>th</sup>, 2021

Attn: Cheree Swedensky, Assistant to the Board  
CalPERS, Executive Office  
P.O. Box 94229  
Sacramento, CA 94229-2701  
e: [board@calpers.ca.gov](mailto:board@calpers.ca.gov)

Ref. No.: 2020-1476

Subject: In the Matter of the Appeal to Change the Retirement Option Election of Melinda J. Evans, Deceased, by DWIGHT A. EVANS, Respondent.

Re: Respondent's Argument

Dear Madams and Sirs of the Board,

Please accept this letter as my formal request to the Board to decline the adoption of Administrative Law Judge Michael C. Starkey's decision. In lieu of adopting the judge's decision, I want to clearly request that the Board transfer to me all my mother's unused retirement contributions. As noted in the evidence submitted, my mother wanted all her assets to go to me - this includes her unused retirement contributions. She used her will and testament to state her wishes, invoking comprehensive and concise language. In her will she states: "I leave ALL my access to Dwight who will oversee EVERYTHING." Her will and testament may not have the sophistication of an Estate Plan document, but that is only because she was not an estate-plan attorney. She expressed her wishes to me verbally and her will provides official confirmation of what she wanted.

Also noted in the evidence submitted are excerpts from my mother's medical charts, which show that her cognitive abilities were impaired at the time of her retirement selection. The medical charts make clear diagnosis of "altered mental state", "forgetfulness" and "depression" from June of 2018 through July 2019. All these medical issues caused my mother to make a retirement selection that was incongruent with her actual wishes and impacted her ability to follow-up to correct it.

In addition to the medical charts, my mother's cognitive impairment is also demonstrated by the fact that she did not complete her retirement paperwork herself. Rather, a CalPERS employee did this as evidenced by differences in penmanship; misspelling my mother's name; not writing the middle initial when printing my mother's name (something she always did);

switching between social security and CalPERS ID numbers for identification purposes; and making other mistakes throughout, including filling in the wrong date on the signature line.

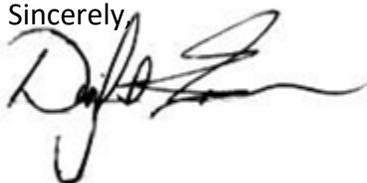
It is for these reasons that the Board should decline adoption of the judge's decision and transfer to me the unused balance of my mother's retirement contributions.

I must also share that the administrative hearing was not fair in all aspects. I state this because the CalPERS witness list was not shared with me prior to the administrative hearing as it should have been. In a letter addressed to me by Staff Attorney Helen Louie, dated May 25<sup>th</sup>, 2021, Ms. Louie asked that I provide her a witness list within 30 days so that she may have ample time to depose/interview my witnesses. However, this courtesy was not extended to me by her as opposing counsel. During the hearing Ms. Louie relied heavily on the testimony of Jon Ball, but she never once mentioned to me beforehand that Mr. Ball would be a CalPERS witness – I only learned of her witness the morning of my hearing. I continued with the hearing and argued my case despite this hinderance because the same letter sent by Ms. Louie clearly states that continuances are disfavored by the law and by CalPERS. This is yet one more reason why the judge's decision should not be adopted by the Board.

Regarding precedent, I do not wish these findings or this case to be used as precedent for any future CalPERS cases. Based on the judge's ruling, I "failed to prove that [my mother's] decedent's retirement option election can be modified, after her death." There is no significant legal or policy determination of general application connected to the judge's ruling. Hence, there is no reason, according to CalPERS's criteria, to support this case being labeled precedent.

Moreover, the judge's decision simply pertains to if the retirement election "CAN" be modified. This issue of "CAN" is not the focal point here and it does not address the matter at hand. As the Board, you are empowered to ameliorate this grievance and you have the autonomy to decide what to do with my mother's remaining retirement contributions. As such, I urge you all to make the decision that coincides with my mother's wishes (confirmed by her will); to understand the multitude of complex medical issues that she was experiencing and return to me her unused retirement funds. Thank you for your time and your consideration.

Sincerely,



Dwight A. Evans,  
Son of Melinda J. Evans