

**ATTACHMENT A**  
**THE PROPOSED DECISION**

BEFORE THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

In the Matter of the Appeal of Death Benefits  
Payable Upon the Death of Larrie K. Ciano,  
by

Case No. 2015-0080

TIMOTHY C. STADLER,

OAH No. 2015060066

Respondent,

and

RODGER D. CIANO,

Respondent.

**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on November 23, 2015, in Sacramento, California.

Christopher C. Phillips, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Richard P. Fisher, Goyette & Associates,<sup>1</sup> represented Timothy C. Stadler (respondent Stadler), who was present.

Rodger D. Ciano (respondent Ciano) appeared on his own behalf.<sup>2</sup>

Evidence was received, the record was closed, and the matter submitted for decision on November 23, 2015.

<sup>1</sup> Goyette & Associates, Inc., 2366 Gold Meadow Way, Suite 200, Gold River, CA, 95670.

<sup>2</sup> Respondent Ciano did not file an appeal. He appeared as an interested party and potential statutory beneficiary of the CalPERS retirement allowance at CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

## ISSUE

Whether the documents submitted by respondent Stadler are sufficient to designate a beneficiary for payment of decedent Larrie K. Ciano's (Ms. Ciano) community property share of David Ciano's CalPERS monthly retirement allowance.

## FACTUAL FINDINGS

1. The Statement of Issues was made and filed on June 1, 2015, by Anthony Suine, Chief of the Benefit Services Division of CalPERS, in his official capacity.

### *Background*

2. Ms. Ciano and her former spouse, David Ciano, both retired, became members of CalPERS through their employment with California Polytechnic State University of San Luis Obispo.

3. Ms. Ciano and David Ciano, were married to each other on December 28, 1968. They separated on March 14, 2008, and their marriage was dissolved by order of the San Luis Obispo County Superior Court on March 28, 2011. On July 10, 2012, pursuant to a Stipulated Domestic Relations Order of the San Luis Obispo County Superior Court, Ms. Ciano was awarded a community property interest consisting of 50 percent of David Ciano's monthly CalPERS retirement allowance.

4. Ms. Ciano died on June 13, 2014. She did not file with CalPERS a beneficiary designation for her community property interest in David Ciano's CalPERS retirement allowance. Ms. Ciano is survived by her son, respondent Ciano, her former husband, David Ciano, and numerous cousins.

5. On July 9, 2014, respondent Ciano submitted to CalPERS an application for survivor benefits. Respondent Ciano, an adult, is Ms. Ciano's only child.

6. On July 17, 2014, respondent Stadler, submitted to CalPERS an application for survivor benefits. Respondent Stadler is Ms. Ciano's cousin, the trustee of the Larrie K. Ciano Family Trust (Ciano Trust) executed on August 23, 2011, and the First Amendment to the Ciano Trust (Ciano Trust Amendment) executed on February 20, 2014, and the executor of Ms. Ciano's Last Will and Testament (Ciano Will) executed on February 20, 2014.

7. The documents included copies of the Ciano Will; the Ciano Trust; the Ciano Trust Amendment; a letter dated October 19, 2011, from Ms. Ciano to her attorney, Daniel Helbert; a letter dated November 1, 2011, from Mr. Helbert to an actuary consultant, George McCauslan; and the July 10, 2012 Stipulated Domestic Relations Order (Stipulated Order) by which Ms. Ciano was awarded a community property interest of 50 percent of David Ciano's monthly CalPERS retirement allowance.

8. By letter dated November 21, 2014, CalPERS notified respondent Stadler that the correspondence and documents he submitted were not sufficient to prove that Ms. Ciano intended to designate the Ciano Trust as the primary beneficiary of her community property share of David Ciano's CalPERS retirement allowance, and that CalPERS intended to issue payment to the statutory beneficiary in accordance with Government Code section 21493. The letter set forth the order of statutory beneficiaries as follows:

1. Spouse or registered domestic partner; or, if none,
2. Natural or adopted children; or, if none,
3. Parents; or, if none,
4. Brothers and sisters; or, if none,
5. Estate, if probated; or, if none
6. Trust

9. Respondent Stadler timely filed an appeal. This hearing followed.

*Evidence and Argument at Hearing*

10. Respondent Stadler introduced into evidence a letter dated November 1, 2011, from Mr. Helbert to an actuary consultant, George McCauslan. Mr. McCauslan was retained in the matter of the Ciano's marital dissolution to prepare a proposed order to divide David Ciano's CalPERS retirement allowance. Mr. Helbert's letter to Mr. McCauslan states as follows:

With respect to my client's election for distribution of survivor benefits in the event of her death under Mr. Ciano's retirement plan, her preference is as follows:

1. Remaining benefits be awarded to her estate via the Larrie Kay Ciano Family Trust dated August 23, 2011.
2. Alternatively, the remaining benefits be awarded to David Ciano.
3. Alternatively, the remaining benefits be awarded to Rodger D. Ciano, the parties' adult son.

11. The purpose of Mr. Helbert's letter to Mr. McCauslan was to prioritize the designation of beneficiaries identified in a letter from Ms. Ciano to Mr. Helbert, dated October 19, 2011. Ms. Ciano's did not explicitly rate or prioritize the beneficiaries, but listed them by bullet points, stating that any of the options would be acceptable to her. The letter stated in pertinent part, as follows:

This letter is to confirm my wishes regarding the disposition of any benefits that may be available from my half of David

Ciano's pension should I predecease Mr. Ciano. I will accept any of the following options. I presume CalPERS will choose one appropriate to the situation, and that is acceptable to me.

- My remaining benefits may be awarded to my estate via my trust, the Larrie K. Ciano Family Trust dated 8/23/2011.
- My remaining benefits may be awarded to David Ciano.
- My remaining benefits may be awarded to Rodger D. Ciano (son).

Please let me know if I need to provide further information in the matter finalizing the splitting of this pension or my own two small (Pers and STRS) pensions. As it has been seven months since the divorce was final, I am naturally eager to get this last matter of the pensions finalized also.

12. Mr. Helbert does not recall discussing his or Ms. Ciano's letter with her. His normal practice would be to call the client into his office to discuss and clarify her intent before preparing his own letter stating his client's intent. He believes he followed this practice, and would not have sent his letter to Mr. McCauslan without receiving clarifying instructions from Ms. Ciano.

13. Mr. Helbert sent the Stipulated Order to CalPERS on July 12, 2012. The Stipulated Order states in pertinent part, as follows:

If the Nonmember Spouse [Ms. Ciano] dies prior to Member [David Ciano] and if benefits are payable to or on behalf of the Member at any time in the future, the Administrator [CalPERS] shall pay the monthly benefit otherwise payable to Nonmember Spouse pursuant to . . . this Order to the beneficiary designated in writing on file with the System or if none then to the beneficiary determined in accordance with section 21493 of the California Government Code . . . .

14. In Mr. Helbert's experience, a party or her attorney will file a designation of beneficiary with CalPERS following the filing of the Stipulated Order. A designation of beneficiary was never sent to CalPERS by or on behalf of Ms. Ciano.

15. Respondent Stadler argued that Mr. Helbert's letter of November 1, 2011, to Mr. McCauslan, clearly expresses Ms. Ciano's wishes following consultation with Mr. Helbert, and should be accepted by CalPERS as a writing sufficient to prove Ms. Ciano's priority of beneficiaries for the distribution of her community property share of David Ciano's CalPERS retirement allowance. Respondent Stadler based this argument

substantially upon a Decision issued by OAH and adopted by the CalPERS Board of Administration, *In the Matter of the Application for Death Benefits Payable on Account of C.A.*,<sup>3</sup> Case No. 2013-0458. The CalPERS Board adopted the Decision on August 20, 2014, but has not designated it as precedential. The Decision therefore carries no precedential weight, though the reasoning may be considered in subsequent matters such as this. The persuasive weight of the case *In the Matter of C.A.* is analyzed in the *Discussion* in Factual Findings 23 and 24, below.

16. Respondent Stadler also argued based on three letters from Ms. Ciano's cousin and two friends that Ms. Ciano wanted her community property share of David Ciano's CalPERS retirement allowance to go to the Ciano Trust, and nowhere else. The persuasive weight of these letters is evaluated in the *Discussion* in Factual Finding 25, below.

17. CalPERS argued that respondent Ciano is properly designated as the primary beneficiary pursuant to Government Code section 21493, for reasons including: (1) Ms. Ciano did not submit a beneficiary designation; (2) neither the Ciano Will nor the Ciano Trust designated a beneficiary of her community property share of David Ciano's CalPERS retirement allowance; (3) Ms. Ciano did not in any document disinherit her son, respondent Ciano; (4) Mr. Helbert sent his November 1, 2011 letter to Mr. McCauslan, not CalPERS, and the letter does not explicitly prioritize the beneficiaries; and (5) there is no document on file with CalPERS granting Mr. Helbert power of attorney to designate beneficiaries on behalf of Ms. Ciano. It is not necessary to address each of these arguments to reach a decision in this matter.

18. Respondent Ciano did not submit any documents at hearing. He testified that his mother, Ms. Ciano, told him and David Ciano that she wanted her community property share of David Ciano's CalPERS retirement allowance to go to respondent Ciano.<sup>4</sup> Respondent Ciano did not say when Ms. Ciano made this statement to him, or provide any other context for the conversation.

### *Discussion*

19. Substantial uncertainty remains about to whom Ms. Ciano wanted to leave her share of David Ciano's CalPERS retirement allowance. For reasons discussed below, the documents and testimony submitted by respondent Stadler do not resolve the uncertainty.

20. The most obvious reason for uncertainty is the fact that neither Ms. Ciano nor anyone acting on her behalf submitted to CalPERS a designation of beneficiaries following Mr. Helbert's submission of the Stipulated Order to CalPERS on July 12, 2012. Mr. Helbert

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<sup>3</sup> Party names are abbreviated from the original Decision to protect their privacy.

<sup>4</sup> Hearsay in the form of "declarations of a decedent may be admissible under certain circumstances to prove a state of mind at a given time although uttered before or after that time . . . ." (*Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675, 679.)

testified that the parties normally submit a designation of beneficiaries following submission of the Stipulated Order. This was never done.

21. Another reason for uncertainty regarding Ms. Ciano's wishes is that neither the Ciano Will executed on February 20, 2014, nor the Ciano Trust executed on August 23, 2011, and amended on February 20, 2014, directly address Ms. Ciano's share of David Ciano's CalPERS retirement allowance. There is no evidence why neither the Ciano Will nor the Ciano Trust address the CalPERS retirement allowance.

22. Respondent Stadler argued that Ms. Ciano's failure to file a beneficiary designation with CalPERS can be explained by her unfamiliarity with the process. This argument is unpersuasive, given that Ms. Ciano had legal representation. Ms. Ciano's attorney filed the Stipulated Order with CalPERS. She told him in her letter of October 19, 2011, that she wanted to conclude the issue of how her share of David Ciano's CalPERS retirement allowance would be distributed in the event she predeceased him. Given Ms. Ciano's correspondence with her attorney, her familiarity or unfamiliarity with the beneficiary designation process does not necessarily explain why no designation was filed with CalPERS. It could just as easily be argued that Ms. Ciano was satisfied with the status quo, and did not wish to file a beneficiary designation. There is simply not enough evidence to conclude whether either scenario is correct.

23. Respondent Stadler argued that that the Decision *In the Matter of C.A.* supports his argument that Mr. Helbert's letter to Mr. McCauslan is sufficient to prove Ms. Ciano's intent. The issue *In the Matter of C.A.* was whether, in the absence of a beneficiary designation on file with CalPERS, the lump sum death benefit of C.A., a CalPERS member, should be paid to the member's children pursuant to the statutory order of payment set forth in Government Code section 21493, or to her sister C.M. pursuant to a hand written holographic will dated November 7, 2011, signed by C.A., and found by the coroner in C.A.'s nightstand on the morning after she passed away. CalPERS initially determined that the lump sum death benefits should be paid to C.A.'s children. After C.M. sent C.A.'s will to CalPERS, CalPERS revised its determination and concluded that the lump sum death benefit would be paid to C.M. in substantial part because C.A.'s will unambiguously manifested her intent to designate C.M. as the beneficiary.

24. The instant case is distinguishable from the Decision *In the Matter of C.A.* in that Ms. Ciano did not execute Mr. Helbert's letter to Mr. McCauslan, which respondent Stadler argues should be used to designate Ms. Ciano's beneficiaries. The absence of a document executed by Ms. Ciano by which she prioritizes beneficiaries is an important distinction, given that the primary cases supporting the Decision *In the Matter of C.A.* involve documents executed by the members making the beneficiary designations.<sup>5</sup>

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<sup>5</sup> *Watenpaugh v. State Teachers' Retirement System* (1959) 51 Cal.2d 675, 681 [giving effect to a change of beneficiary form executed by the member and filed after his death]; *Lyles v. Teachers Retirement Board* (1963) 219 Cal.App.2d 523, 528 [giving effect to

25. Respondent Stadler submitted three letters from Ms. Ciano's cousin and two friends, which were accepted as administrative hearsay.<sup>6</sup> These letters have little persuasive effect or evidentiary value. First, the letters contain conclusory statements which do not corroborate other direct evidence, and which standing alone as administrative hearsay cannot support a finding. Second, the letters contain statements about what Ms. Ciano said. The authors of the letters did not testify at hearing, thus any statements in the letters about what Ms. Ciano said is inadmissible double hearsay.

26. In the end analysis, substantial factual uncertainty remains regarding Ms. Ciano's wishes. Under these circumstances, and in the absence of a valid designation of beneficiaries, it is impossible to know whether and how Ms. Ciano intended to prioritize potential beneficiaries. The designation of beneficiaries must therefore be determined by Government Code section 21493.

## LEGAL CONCLUSIONS

### *Applicable Statutes and Regulations*

1. Government Code section 21490, subdivision (a), provides:

Except as provided in subdivision (b), a member may at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.

2. Government Code section 21493, subdivision (a), provides, in relevant part, that if a person had no beneficiary designation in effect on the date of death, any benefit payable shall be paid to the survivors of the person in the following order:

- (1) The decedent's spouse.
- (2) The decedent's natural or adopted children.
- (3) The decedent's parents.
- (4) The decedent's brothers and sisters.

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a holographic will executed by the member and filed after her death, by which she changed her designation of beneficiaries].

<sup>6</sup> Pursuant to Government Code section 11513, subdivision (d), hearsay evidence may be used to supplement or explain other evidence, but is not sufficient in itself to support a factual finding unless it would be admissible over objection in a civil action.

3. California Code of Regulations, title 2, section 582 states, in relevant part:

A member may designate as beneficiary to receive any benefit payable to a member's designated beneficiary upon death before or after retirement, any person or persons . . . . The designation must be in writing, except as otherwise provided in this section, must give the name of the person and his address, and must be filed in the office of the board in Sacramento, California.

*Legal Conclusions*

4. Based on the Factual Findings and Legal Conclusions as a whole, respondent Stadler did not establish that Ms. Ciano intended to designate the Larrie K. Ciano Family Trust as the primary beneficiary of her community property share of David Ciano's CalPERS retirement allowance.

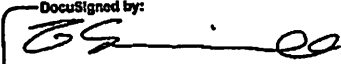
5. CalPERS correctly determined that payment should be issued to the statutory beneficiary in accordance with Government Code section 21493.

**ORDER**

1. CalPERS' determination to issue payment to the statutory beneficiary in accordance with Government Code section 21493 is **AFFIRMED**.

2. The appeal of Timothy C. Stadler is **DENIED**.

**DATED: December 10, 2015**

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**TIMOTHY J. ASPINWALL**  
Administrative Law Judge  
Office of Administrative Hearings