

**MINUTES OF PUBLIC MEETING
FOR THE CORRECTIONS OFFICER RETIREMENT PLAN LOCAL BOARD
FOR THE SUPERIOR COURT**

A Public Meeting of the Corrections Officer Retirement Plan Local Board for the Superior Court was convened Tuesday, August 4, 2015, at 10:00 a.m., Conference Room 109, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

Board Members Present in Conference Room 109:

Kevin Kluge, Chair; Mark Smalley; Jason Hathcock

Board Members Present via Conference Call:

Danna Quinn

Board Members Absent:

Rob Lubitz

Also Present:

Annette Corallo, Board Secretary; Hannah Auckland, Board Attorney; Leticia Chavez, Recorder; Court Reporter, Ottmar & Associates; Sandra Mariani, Applicant #09-03; Cindy Winn; Sandee McClelland, President of smartworksplus; Nanci Williams, Polsinelli Law Firm, representing David and James Barthell

Call to Order:

Approval of the Minutes:

July 7, 2015, Public Meeting Minutes

MOTION: A motion to approve the July 7, 2015 Public Meeting Minutes was made by M. Smalley. Motion was seconded and passed unanimously, minutes stand approved. **CORP 2015-44**

Review of Notice of Retiree Return to Work:

Cindy Winn – Coconino County

The Board received a Notice of Retiree Return to Work from Coconino County for Cindy A. Winn. The form indicates that Ms. Winn retired from the Coconino County Superior Court under CORP effective May 1, 2015, and returned to work through contracted services for the Coconino County Superior Court on April 13, 2015, as a Chief Probation Officer.

The Board initially reviewed this notice at its meeting on July 7, 2015 meeting. At that meeting, the Board reviewed a letter dated February 3, 2012, from PSPRS Deputy Administrator Jared Smout. In that letter, Mr. Smout states that smartworksplus does not fall under the statutory definition of an “employer” pursuant to A.R.S. § 38-881(23). Some Board members questioned whether the situation in which this letter was applied is on point in Ms. Winn’s case. Specifically,

questions were raised about whether the guidance in that letter is applicable given that A.R.S. § 12-251(A) states that the presiding judge of the superior court in each county shall appoint a chief adult probation officer who shall serve at the pleasure of the presiding judge. The Chair asked the Board Secretary to seek advice from the Board Attorney in drafting a letter to the PSPRS Administrator, Jared Smout, to seek guidance specific to Ms. Winn's case. The Board further agreed to table this item until the Board can receive legal advice from the Board Attorney and until a response is received from PSPRS.

The Board was provided with the letter subsequently sent to Mr. Smout on July 9, 2015, and his response in a letter dated July 14, 2015. Mr. Smout stated that the Public Safety Personnel Retirement System has stopped any practice perceived as providing a preliminary written opinion or pre-approval of anticipated actions. He further stated that the definition of "employer" discussed in his February 3, 2012 letter in the McGinnis matter, still stands. Ms. Winn was advised that the Board will consider this matter and of her right to attend the meeting.

The Board was also provided with an email from Ms. Winn to the Board Chairman dated July 27, 2015, which incorporates an email to Ms. Winn from Sandee McClelland, President of smartworksplus.

The Chair noted, for the record, that Cindy Winn and Sandee McClelland, President of smartworksplus, are present at today's meeting.

Sandee McClelland addressed the Board and advised that it has been the practice of smartworksplus to not contract elected officials in any capacity and that Ms. Winn's current position is an appointed position. Further, Ms. Winn was contracted as Chief Probation Officer by the Presiding Judge, with the approval of Coconino County Human Resources and the County Manager.

The Board had no questions for Ms. Winn or Ms. McClelland. The Chair asked whether any Board members wished to enter Executive Session to receive legal advice.

MOTION: A motion to enter Executive Session to receive legal advice was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-45

MOTION: A motion to return to open session was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-46

Board Member Mark Smalley asked Ms. Winn if the county was already paying an alternate contribution rate (ACR) for her position. Ms. Winn confirmed that that county is paying the ACR.

The Board had no further questions for Ms. Winn or Ms. McClelland.

MOTION: A motion that Ms. Winn is eligible to continue to receive a CORP pension because her employer does not fall under the statutory definition of "employer" pursuant to A.R.S. § 38-881(23), based on the letter to the Board from Jared Smout, Deputy Administrator for PSPRS, dated February 3, 2012 and that Coconino County is responsible for paying the CORP alternate contribution rate for the position of Chief Probation Officer currently held by Ms. Winn in a contracted capacity was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-47

Consideration of Disability Application (Taken out of order)

The Board approved Application #09-03 for Accidental Disability benefits on February 24, 2011, after a re-hearing. This matter was brought to the Board for an annual review on May 5, 2015, and, at that meeting, the Board voted to refer Applicant #09-03, Sandra M. Mariani, for an Independent Medical Reevaluation. The applicant signed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. Ms. Mariani was advised via certified mail that the Board would hear the matter at this meeting and received a copy of the doctor's reevaluation report.

All medical records received by the Board since Ms. Mariani's last reevaluation on January 24, 2012 were provided to the doctor who conducted the current reevaluation on July 10, 2015.

Dr. Michael Steingart, a Board Certified Orthopedic Surgeon, performed an Independent Medical Examination (IME) of the applicant on July 10, 2015. A copy of the IME report was provided to the Board.

Dr. Steingart also completed the Accidental Disability Questionnaire (Form C5-LB-A) and answered the questions posed by the Board in the letter dated June 11, 2015, referring the applicant for the IME.

The Board Secretary advised that the applicant's earliest normal retirement date would have been March 29, 2018, when she would be 62 years of age and have attained at least 10 years of service.

After review of the most recent IME, the Board had no questions for Ms. Mariani.

MOTION: A motion to continue the Accidental Disability benefit for Applicant #09-03, Sandra M. Mariani, and suspend the requirement for an annual review based on the most recent IME the Board has received, in which the IME doctor stated that Ms. Mariani's condition was permanent and she should not return to work in her former position as a detention officer, was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2015-48

Review of Proposed Documentation for Death Benefit Payment:

At its meeting on April 6, 2015, the Board voted, in consideration of A.R.S. §§ 38-904 and 14-2804, and community property laws including reasoning in *Carpenter v. Carpenter*, to award Dolora Gibson (ex-spouse of Mark P. Barthel) the portion of Mr. Barthel's CORP contributions paid from the time of their marriage in 1999 until the service of the divorce decree on August 19, 2010, which consisted of half the value of the employee contributions in the account on August 19, 2010, with the remainder of the funds that make up Mr. Barthel's Death Benefit to be paid to the *estate* of the deceased member.

The Public Safety Personnel Retirement System (PSPRS) subsequently distributed the community property portion of the CORP Death Benefit for Mark P. Barthel to Dolora Gibson. In a letter dated May 29, 2015, Bonnie Brown with PSPRS asked the Board Secretary to "work with Mr.

Barthel's brothers, David and James, to obtain and provide to the CORP the necessary paperwork so that the remaining funds can be transferred to Mr. Barthel's estate."

With the assistance of the Board Attorney, the Board Secretary drafted a letter to PSPRS to ask for guidance on the "necessary paperwork" that the CORP will accept, in order to direct the Barthel brothers as to how to proceed. Bonnie Brown with PSPRS responded in a letter dated June 5, 2015, that one or both of the brothers would need to either obtain Letters of Personal Representative/Letters Testamentary if a will existed, or, if no will existed, one or both would need to petition the Probate Court for Letters of Administration.

On June 10, 2015, the Board Secretary sent certified letters to both brothers advising them of the direction contained in Ms. Brown's letter dated June 5, 2015, and advised them that they are entitled to enlist the services of an attorney to help them navigate the probate process. They were also given instructions and the initial form to complete to apply for the funds awarded to the estate by the Board.

The brothers then retained the services of Polsinelli Law Firm. A paralegal with that firm, Nanci Williams, contacted the Board Secretary to ask whether the Board would accept an Affidavit for Collection of Personal Property instead of the documents referenced in the letters to the brothers, as directed by the PSPRS. The Board Secretary suggested that Ms. Williams speak to the paralegal at PSPRS about her proposal. In a later call, Ms. Williams indicated she had spoken to the paralegal at PSPRS, Michelle Pechan, who told her it would be up to the Local Board to decide whether it would accept the Affidavit. With a letter dated July 7, 2015, Ms. Williams sent a draft Affidavit for the Board's review.

The Board Attorney reviewed the proposed Affidavit and suggested that the Board Secretary ask Ms. Williams to add an affirmative statement to the last paragraph of the draft to the effect that Mr. Barthel had no surviving spouse, parent or child, or any additional siblings. Ms. Williams verbally agreed to that change and sent a revised draft Affidavit on July 27, 2015. She was also asked to attend the Board's meeting on August 4, 2015, to answer any questions from the Board and she agreed to participate. Ms. Williams and both brothers received notice via certified mail that the Board will consider this matter at the August meeting.

Copies of all correspondence referenced were provided for the Board to review. The Board Attorney was also present to provide guidance to the Board.

The Chair noted, for the record, that Nanci Williams, representing the Barthel brothers, is present via conference call.

The Chair asked if Ms. Williams could affirm that PSPRS informed her that the Local Board could decide to accept the affidavit or not to accept it. Ms. Williams did affirm.

The Board Attorney asked if Ms. Williams could further describe the telephone conversation she had with the Administrator's office. Ms. Williams stated she explained the situation to Michelle Pechan and advised she believes that statute allows, in the case of an estate valued under \$75,000, the parties could receive personal property via personal affidavit method. Ms. Williams stated that Ms. Pechan informed her that the Local Board had the authority to decide if they would accept an affidavit.

The Chair asked the Board Attorney if personal affidavits are commonly used as opposed to probate. The Board Attorney stated that the small estate affidavit is commonly used in these types

of situations, where the deceased did not have large assets, where there are not a number of parties claiming to be beneficiaries, or in cases where there is no will in place.

The Chair asked the Board Attorney why PSPRS did not originally accept the affidavit but is now allowing the Board to accept it. The Board Attorney stated that through conversations the Board Secretary had with PSPRS, PSPRS was concerned there could be more property at stake than just the funds that were available through the CORP death benefit. So at the time, PSPRS was more comfortable having a more formal process. The Board Attorney further stated that in a case where the parties are attesting that they are the only beneficiaries and that the death benefit is the only money that is available, an affidavit would be acceptable.

Board Member Jason Hathcock asked Ms. Williams if she could confirm or verify that the total assets are less than \$75,000. Ms. Williams did confirm that the assets are less than \$75,000 and advised the Board that the affidavit, which the parties will sign under oath, states the assets do not exceed \$75,000 and that there are no other potential claimants in this case.

MOTION: A motion to accept the Affidavit for Collection of Personal Property in support of the applications from David W. Barthel and James S. Barthel for the remainder of the funds that make up Mr. Barthel's Death Benefit as awarded to the estate of Mark P. Barthel at the Board's meeting on April 6, 2015, was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2015-49

Approval of Normal Retirement Benefits:

The Local Board may consider and vote on the approval of Normal Retirement benefits for the following applications or defer decision to a later date:

Paul R. Anderson
Arliss E. Cook
Frank C. Delamater
Laura E. Galvan
Ingrid E. Lashley
Gary L. Maxwell
Deborah L. Morton-Estime
Carol T. Walton

The Board Secretary advised that the effective CORP retirement date for all applicants is August 1, 2015.

MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts, effective August 1, 2015, was made by D. Quinn. Motion was seconded and passed unanimously. CORP 2015-50

| | |
|---------------------|--|
| Paul R. Anderson: | \$2,721.93 |
| Arliss E. Cook: | \$2,293.56 |
| Frank C. Delamater: | \$3,151.60 |
| Laura E. Galvan: | \$1,804.63 |
| Ingrid E. Lashley: | \$2,968.23 |
| Gary L. Maxwell: | \$3,839.20 (Reverse DROP Estimate: \$161,424.24) |

Deborah L. Morton-Estime: \$2,849.26 (Reverse DROP Estimate: \$11,436.41)
Carol T. Walton: \$2,800.88

Status Update: Membership Audit

Staff has continued to follow up with the last pending officer on the Board’s request that she take another exam because of Concentra’s failure to provide a copy of her previous exam, by letter and email on June 25, 2015, and a telephone message at her home (the court could not provide a work phone) and a second email on July 23, 2015. Staff was able to speak with the officer and she confirmed she has received the paperwork to re-take the exam.

Acknowledgement of CORP Physical Pre-Existing Conditions

The Chair noted, for the record, that the physical examination report for member Matthew W. Wokas identified one or more pre-existing conditions.

The Board approved this officer for CORP membership at the July 7, 2015 meeting. His physical examination report was received after a 60-day notice was sent to him.

Acknowledgement of CORP Physical Exam Final Letters:

The Chair noted, for the record, that physical examination reports for Tarin S. Hawkins and Beth Lyles were not received within 60 days of receipt of their membership applications and that final letters requesting an examination were sent to these members via certified mail on July 20, 2015.

Approval of Membership:

The Local Board may consider and vote on the approval of the following requests for membership or defer decision to a later date:

| | | |
|-------------------|----------|-----------|
| Baumann, Casey | Maricopa | 7/20/2015 |
| Hawkins, Tarin | Cochise | 4/27/2015 |
| Lyles, Beth | Maricopa | 2/2/2015 |
| Porter, Elizabeth | Maricopa | 6/22/2015 |

MOTION: A Motion to approve the four applicants listed on the agenda for this meeting for membership in CORP pursuant to A.R.S. § 38-893.D, was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-51

Future Agenda Items:

The Board Secretary advised that the Board will hear a new disability application at its September 8, 2015 meeting.

The Local Board Office is still in the process of collecting medical records for disability applicant Ruth K. Marblestone. Previously the Board requested that Ms. Marblestone provide a list of doctors for her 2008 accident. That list was received in July and letters were then sent to the listed medical providers.

The Chair advised that he and the Board Secretary are on the agenda for the August 13, 2015 Probation Management meeting to discuss the possibility of presenting Reverse DROP information sessions and to raise awareness that the Reverse DROP option may expire next year. The Board Secretary advised that PSPRS has stated all payouts for the Reverse DROP must be made by June 30, 2016, so any employees who want to participate in the Reverse DROP will likely have to start the application process before anyone will know if the option will be extended. The Chair asked the Board Secretary verify with PSPRS that an applicant who terminates by May 31, 2016, can file a Reverse DROP application after June 1, 2016.

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 10:45 a.m.

Transcribed August 10, 2015