

**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 Monday, April 6, 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; Phil Hanley; Rob Lubitz; Mark Smalley; Jason Hathcock

Also Present:

Annette Corallo, Board Secretary; Leticia Chavez, Recorder; Court Reporter, Ottmar and Associates; Hannah Auckland, Board Attorney; Ivy Voss, CORP Administrator's Assistant Attorney General; Dolora G. Gibson, Claimant; Michael J. Tucker, Attorney for Dolora G. Gibson (Claimant); James S. Barthel, Claimant (via conference call); David W. Barthel, Claimant (via conference call).

Call to Order:

Approval of the Minutes:

March 3, 2015, Public Meeting Minutes

MOTION: A motion to approve the March 3, 2015 Public Meeting Minutes was made by R. Lubitz. Motion was seconded and passed unanimously; minutes stand approved. **CORP 2015-18**

Rehearing: CORP Local Board for the Superior Court Case No. 3 CORP Administrator v. CORP Local Board for the Superior Court

This matter is a request for rehearing submitted by Jared Smout, Deputy Administrator for the Public Safety Personnel Retirement System, on the Board's decision at its meeting on October 7, 2014, to approve payment of a Death Benefit to Dolora G. Gibson, the named beneficiary of deceased CORP member Mark P. Barthel. Ms. Gibson is represented in this matter by her attorney, Michael J. Tucker.

The Board made its decision on the benefit award on October 7, 2014, under its authority pursuant to A.R.S. §38-904.A.:

38-904. Death benefits; amount

A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the board. If the designated person or persons do not survive the deceased member or if the designated

person does not claim the benefit, the payment is payable, at the election of the local board, to the designated person's nearest of kin as determined by the local board or to the estate of the deceased member. The beneficiary or person who is claiming to be the nearest of kin shall file a written application in order to receive the refund. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.

The CORP Administrator stated in the request for rehearing dated October 28, 2014, that "The Plan has reviewed the documentation and has concerns regarding this matter specifically because Ms. Gibson is Mr. Barthel's ex-spouse."

At its meeting on December 2, 2014, the Board voted to set a rehearing on this matter on January 6, 2015, with notice by certified mail to all parties. At the Board's meeting on January 6, 2015, the Board voted to table the rehearing so that the Board could contact the decedent's two brothers to make them aware of the proceedings, as they may have an interest in the funds. The decedent's brothers, David W. Barthel and James S. Barthel, were subsequently contacted by the Board Secretary and affirmed their interest in participating in these proceedings regarding the distribution of Mark P. Barthel's CORP death benefit.

The parties to this proceeding are:

This Board
The Fund Administrator
Dolora G. Gibson (the Claimant), represented by Michael J. Tucker, P.C.
David W. Barthel
James S. Barthel

There are no witnesses in this matter.

The Board was provided with the record in this matter pursuant to Section C.11, Record of Proceedings, of the Board's Rules of Procedure. The following records were provided:

1. Claims for Relief which includes:
 - a. Fund Administrator's Request for Rehearing dated October 28, 2014
 - b. Claimant's letter of Opposition to Request for Rehearing dated November 19, 2014
 - c. Statements of David W. Barthel and James S. Barthel submitted in response to the Board's request for statements dated February 12, 2015
2. Matters Officially Noticed by the Board, including Rulings of the Local Board:
 - a. CORP Membership and Beneficiary Designation forms of Mark P. Barthel dated May 30, 2007
 - b. Minutes of Board Meetings: July 8, 2014; October 7, 2014; December 2, 2014; January 6, 2015
3. Unprivileged Memoranda or Data: All communication among the parties since receipt of the Administrator's request for rehearing dated October 28, 2014

The record was numbered sequentially starting with the earliest documents received and ending with the most recent documents received.

Arizona Revised Statute referenced in request for rehearing:

§14-2804. Termination of marriage; effect; revocation of probate and nonprobate transfers; federal law; definitions

A. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between a divorced couple before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

1. Revokes any revocable:

(a) Disposition or appointment of property made by a divorced person to that person's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced person's former spouse.

All parties confirmed that they received copies of the documentation in this case. The Chair asked if any party had any additional factual evidence to provide to the Board. Ms. Voss, the CORP Administrator's Assistant Attorney General, advised that the Fund Administrator's concern is that the Local Board did not consider all the statutes that affect this matter, in particular A.R.S. §14-2804, which the Fund Administrator believes revokes Ms. Gibson's entitlement to the benefit. The Fund Administrator's position is that A.R.S §14-2804 revokes any beneficiary designation that is made pre-divorce. Ms. Voss also stated that the funds in question are not pension funds and are therefore not community property funds, and should not be disbursed based on a pre-divorce beneficiary form. She cited the *Lamparella v. Lamparella* case, found at 210 Ariz. 246 (App. 2005), as case law that provides guidance in this matter, in response to a question from the Board's Attorney.

Ms. Voss also stated that if a divorce occurs after a beneficiary form was submitted, a member has the right to submit a new beneficiary form and designate a new beneficiary. In a case where no post-divorce beneficiary form is completed, the Board by statute has the right and the mandate to designate who the beneficiary of benefits is or will be.

Mr. Tucker stated that the applicability of A.R.S. §14-2804 to revoke a beneficiary designation in favor of now ex-spouses is indisputable. However, Mr. Tucker added that a divorce decree and A.R.S. §14-2804 cannot revoke community property interest. The community property interest was already inherent in Mr. Barthel's participation in CORP and Ms. Gibson therefore seeks an award of the portion of the death benefit that would correspond to the years of the marriage.

Ms. Voss stated that a death benefit did not exist during the marriage of these parties, nor did it exist during employment. The death benefit was only generated upon the death of the member. Therefore, the Fund Administrator's position is that there is no community property interest in this death benefit.

Board Member Jason Hathcock asked Ms. Voss if the contributions made by the member to the plan during the marriage could be considered community property interest. Ms. Voss stated that, while contributions are made, these funds are not segregated but put into the retirement fund pool; it is only upon retirement or death that contributions are segregated or designated to that member

or the beneficiary. However, in a case where there is no designated beneficiary, the funds are then distributed to the member's estate or to the heirs of the estate. Therefore, the Fund Administrator's position is that these funds would not be considered community property interest. Ms. Voss also stated that the *Carpenter v. Carpenter* case the parties were asked to comment on pre-dated the enactment of A.R.S. §14-2804 by ten years. She believes that legislative intent in A.R.S. §14-2804 was clearly to address these situations where an ex-spouse is attempting to claim a revocable benefit.

In response to Ms. Voss' statements, Mr. Tucker stated that he disagreed that A.R.S. §14-2804 goes so far as to negate community property interests; at a minimum, such an interpretation would produce an unfair result due to the income impact on the ex-spouse, as the required contributions are deducted from a member's pay.

Board Member Phil Hanley asked Mr. Tucker: "If Ms. Gibson had a community property interest, why was that not addressed in the divorce decree?" Mr. Tucker stated that the parties were not represented by counsel during their divorce and further stated that, in his experience, state retirement plan benefits are often not addressed or even known as having to be treated differently than private employer retirement plans.

The Chair asked if either David W. Barthel or James S. Barthel would like to address the Board. David Barthel stated that the beneficiary designation form originally completed by Mark Barthel had his name and his brother James Barthel's name crossed out. He further stated that it has been his experience that if one wishes to change beneficiary information, a new form is completed. James Barthel's concern was directed at where this form came from or where the form was kept. The Board Secretary advised that the form in question was kept on file in its original format at the PSPRS office and a copy of the form was kept at the Local Board Office. The Board Secretary also added that she had contacted PSPRS upon Mr. Barthel's death to verify whether an updated beneficiary form had been completed; PSPRS confirmed that no updated form had ever been completed.

The Board had no further questions. To further discuss the Board's options, the Board agreed to enter Executive Session to receive legal advice.

MOTION: A motion to enter Executive Session to receive legal advice was made by J. Hathcock. Motion was seconded and passed unanimously. **CORP 2015-19**

MOTION: A motion to return to open session was made by J. Hathcock. Motion was seconded and passed unanimously. **CORP 2015-20**

Board Member Mark Smalley asked Ms. Gibson if she and Mr. Barthel were married at the time Mr. Barthel was making contributions to the ASRS. Board Member Phil Hanley clarified and asked Ms. Gibson if she knew who Mr. Barthel was working for at the time of their marriage. Ms. Gibson stated that they were married in 1999, and she believes that Mr. Barthel rolled over a 401K from his Texas employer to ASRS. The Chair asked the Board Secretary if the records reflected this rollover; the Board Secretary stated that the records did not indicate this but that all records of

services purchase or transfers are kept at ASRS or PSPRS, depending on the timing of the purchase.

Board Member Phil Hanley asked Ms. Gibson if she was employed during her marriage to Mr. Barthel from 1999 to 2010 and, if so, whether she accrued retirement benefits through her employer. Ms. Gibson stated that she did accrue retirement benefits. Mr. Hanley further asked: “When the decision to terminate the marriage was discussed, did she or Mr. Barthel consider whether or not there should have been a community property interest in her retirement benefit or vice versa?” Ms. Gibson stated that they did not decide or discuss this, they simply filed the divorce paperwork themselves the quickest way they could.

The Board Attorney asked Ms. Voss about the funds that Ms. Voss stated were not segregated prior to Mr. Barthel’s death. The Board Attorney verified that the contributions for each member are tracked. Ms. Voss stated that, while the funds are tracked, they are not segregated but kept in a pool fund until the funds are vested or, as in this case, a member has passed. Ms. Voss further stated that had a Domestic Relations Order (DRO) been in place, the Fund Administrator’s office would have tracked and held the funds separately, and distributed the funds accordingly. Ms. Voss strongly urged the Board to urge members to have a DRO on file if they divorce and to complete a new beneficiary designation, even if they intend for an ex-spouse to be the beneficiary.

The Board Attorney also asked Ms. Voss what authority she was relying on to say that A.R.S §14-2804 supersedes the Arizona Supreme Court ruling in *Carpenter v. Carpenter*, 150 Ariz. 62 (1986). Ms. Voss stated that it is the Fund Administrator’s understanding that the divorce decree did not establish community property interest as it did in the *Carpenter* case; further, that A.R.S §14-2804 states that it revokes any revocable benefit and that this particular benefit is, in fact, a revocable benefit. Mr. Barthel had the right to revoke his original beneficiary designation after the divorce. Ms. Voss also referenced a 2007 case from the Arizona Court of Appeals, *In re Estate of Rodriguez*, 215 Ariz. 358 (App. 2007), which states A.R.S. §14-2804 assumes that, after a divorce, neither spouse will want to leave any part of his or her estate to the other. Ms. Voss also added that the 2007 case states that if an ex-spouse wishes to re-designate the former spouse as the beneficiary of a revocable disposition of property, such re-disposition must be in writing and must comply with all other applicable requirements.

The Board Attorney also asked Ms. Voss if, up to the time of Mr. Barthel’s death, whether he and Ms. Gibson could have provided a DRO to the Fund Administrator. Ms. Voss stated they could have provided one. The Board Attorney further asked whether, even though the funds had not been segregated prior to Mr. Barthel’s death, if a DRO had been provided, could the funds have been calculated and determined up until the time of his death? Ms. Voss stated that if they had provided a DRO, the funds would have been segregated and held but that a DRO was not executed in this case. Ms. Voss also stated the Fund Administrator’s position that it would not be appropriate to pay community interest, if any, from the death benefit, because pursuant to A.R.S §14-2804, Ms. Gibson has no claim on a revocable benefit as an ex-spouse.

Mr. Tucker stated that their position is that the Fund Administrator continues to inappropriately conflate the notion of a community property interest that arises with the law on the effect of a divorce decree on a beneficiary designation. Mr. Tucker argued that the community property

interest would arise by virtue of the marriage and that to the extent the divorce decree didn't allocate the community property interest in one plan or another to one spouse or another, the community property interest remains intact.

Mr. Tucker also responded to Mr. Hanley's question to Ms. Gibson about the divorce decree and whether it made allocations of other retirement plan monies that were accumulated by Ms. Gibson and Mr. Barthel at the time of their marriage. Mr. Tucker stated that the divorce decree does have some language that allocates their IRA's, which are subject to a completely different set of rules among the spouses. Further, Mr. Tucker stated that the form of decree Mr. Barthel and Ms. Gibson used in order to create their own divorce decree didn't include language about state sponsored retirement plans because most individuals who use that particular form are privately employed and have private employer pensions.

The Board Attorney asked Mr. Tucker: "If there is a community property interest in the funds, has he or Ms. Gibson received any information as to the amount of employee contributions in the CORP account during the marriage or at the time of the dissolution?" Mr. Tucker stated that neither he nor Ms. Gibson are aware of the amount. For the record, the Board Attorney stated the amount: at the time Mr. Barthel transferred into the CORP on July 1, 2007, there was \$5,581.66 in contributions transferred to his CORP account. At the time of the divorce in 2010, the CORP accounting shows a total balance of \$17,249.26 in accumulated employee contributions. The Board Attorney asked if any of the parties wished to speak to those amounts.

Mr. Tucker stated that the amounts given speak directly to the issue that was being raised by the Board and its counsel about what these contributions represent. Mr. Tucker stated that if CORP participants were not part of a system that allocated part of their pay check to their CORP benefit as an employee contribution, those dollars would be part of their normal paychecks and not be disputed as being considered community property.

The Board had no further questions. To further discuss the Board's options, the Board agreed to enter Executive Session to receive legal advice.

MOTION: A motion to enter Executive Session to receive legal advice was made by P. Hanley. Motion was seconded and passed unanimously. **CORP 2015-21**

MOTION: A motion to return to open session was made by M. Smalley. Motion was seconded and passed unanimously. **CORP 2015-22**

The Chair stated that he believes the *Carpenter* case is on point and speaks to the issues in this case. He further stated that he believes Ms. Gibson would be entitled to half the amount of employee contributions made during the marriage and not to the death benefit itself. Board Member Phil Hanley agreed and said he believes Mr. Tucker made a very compelling point when he noted that the employee contributions during the time of marriage represent money that would have otherwise gone into the assets that make up the community property interest. He therefore believes Ms. Gibson would be entitled to half of the contributions made by Mr. Barthel during the time of their marriage.

Claimant David W. Barthel asked about the calculation Ms. Gibson may be entitled to based on the time Ms. Gibson and Mr. Barthel were married, and the contributions made during the marriage. The Chair confirmed that PSPRS would calculate the amount that was contributed during the time they were married and that a community property interest would be half that amount.

MOTION: A motion was made by P. Hanley, in consideration of A.R.S. §§ 38-904 and 14-2804, and community property laws including reasoning in *Carpenter v. Carpenter*, to award Ms. Gibson 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 consists 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. Motion was seconded and passed unanimously. CORP 2015-23

Return to Work Review: Danny E. McKeen

At its meeting on March 3, 2015, the Board approved a retirement application submitted by Danny E. McKeen based on a retirement date of January 19, 2015. Staff subsequently submitted his retirement application to the Fund Administrator for initiation of benefits. The Fund Administrator's office then contacted the Board Secretary to advise that CORP contributions were continuing on Mr. McKeen's behalf past his stated retirement date and asked the Board Secretary to research his status.

The Board Secretary learned that Mr. McKeen had been improperly transferred to a different position in Gila County, rather than being terminated from his CORP position before being hired for the other position. Compounding the transfer error, Gila County had continued Mr. McKeen's enrollment and contributions in CORP, rather than initiating ASRS membership effective on the date he assumed the position of CASA Coordinator for Gila County.

The Board Secretary notified Human Resources staff in Gila County that Mr. McKeen was required to terminate employment from his CORP position in order to effect a true separation from service and that his hiring for the CASA Coordinator position should be handled as a hiring, rather than a transfer. Gila County agreed to execute the termination and hiring as instructed.

The Fund Administrator's office asked that the Board review the new position to ensure that Mr. McKeen and Gila County are complying with the CORP return-to-work statutes (A.R.S. §§38-884.K. and 38-891.01). Mr. McKeen was advised that his CORP pension benefits will not begin until he is properly terminated from his former CORP position.

Gila County provided the position description for the CASA coordinator position that Mr. McKeen assumed after he left his CORP position. It appears the CASA Coordinator is not a CORP eligible position. Gila County indicates the five people who previously held this position contributed to ASRS and none of the other CASA Coordinator positions in Arizona are designated CORP positions. The position was previously based in probation but now reports to the Court Administrator.

After reviewing the Ending Payroll Verification Form that Gila County had submitted to the Local Board office before the Board approved his CORP retirement, the communications with the Fund Administrator and Gila County about Mr. McKeen's status, and the position description for the

CASA Coordinator in Gila County, the Board agreed that Mr. McKeen did not return to a CORP designated position.

MOTION: A motion that the Board reviewed the return to work status of Danny E. McKeen and finds that: (1) Mr. McKeen did not return to work in a CORP designated position in Gila County after his retirement from a CORP position. (2) Mr. McKeen's employer (Gila County) should proceed as quickly as possible to correct its error in continuing Mr. McKeen's CORP membership and contributions past his date of termination in his former CORP position, and ensure that he is enrolled in the proper state retirement plan in his current position as CASA Coordinator was made by R. Lubitz. Motion was seconded and passed unanimously. **CORP 2015-24**

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:

Juan D. Marquez, Jr.
Patricia M. McDonagh-Konecki
Abdullah Mulazim
Jon M. Thompson
Leticia Thrush

The Board Secretary advised that the effective CORP retirement dates for all applicants was April 1, 2015.

Board Member Jason Hathcock had a question regarding the calculation spreadsheet for members participating in the Reverse DROP retirement. He noted that the spreadsheet was calculating what appeared to be partial months, when members are participating in Reverse DROP for full months. The Chair requested that the Board Secretary follow up with PSPRS and update the Board at its May 5, 2015 meeting.

MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts and to note that the effective date for all applicants was April 1, 2015, was made by J. Hathcock. Motion was seconded and passed unanimously. **CORP 2015-25**

Juan D. Marquez, Jr.:	\$1,762.46	
Patricia M. McDonagh-Konecki:	\$3,270.24	(Reverse DROP Amount: \$168,131.62)
Abdullah Mulazim:	\$2,590.54	
Jon M. Thompson:	\$4,884.34	(Reverse DROP Amount: \$302,984.20)
Leticia Thrush:	\$2,614.92	

Status Update: 2015 CORP Election

Board member Jason Hathcock's term will expire on June 30, 2015. Pursuant to A.R.S. §38-893, the Board must conduct an election to fill that position on the Board effective July 1, 2015.

Pursuant to the Board-approved Action Plan, nomination ballots were mailed on February 20, 2015, to 2,421 active members under the Board’s jurisdiction. The deadline for submission of ballots was March 13, 2015. The Board office received 32 nomination ballots for a total of 12 individuals by the deadline. Two nominees are ineligible for placement on the ballot pursuant to A.R.S. §38-893(4), because the individuals are not active CORP members. Four nominees declined to have their names placed on the ballot. Six nominees will therefore appear on the election ballot. Ballots will be mailed by April 16, 2015.

Danna Quinn, Human Resources Director for the Maricopa County Judicial Branch, agreed to have her name submitted to Chief Justice Bales for appointment to the Human Resources Director position on the Board for a term beginning July 1, 2015.

The Board Secretary also advised that Board member Rob Lubitz’s term will expire on June 30, 2015, and he has agreed to have his name submitted to Chief Justice Bales for re-appointment for a term beginning July 1, 2015.

Status Update: Membership Audit

The Board Secretary advised that the 2014 annual audit the Board authorized at the September 9, 2014 meeting has been completed and of the 27 initial discrepancies only four remain. One discrepancy in Cochise County that involved a staff member incorrectly enrolled in CORP and one discrepancy in La Paz County, where the identified officer completed an exam and appears on the Board’s membership approval list, were resolved this month. Staff continues to work with the counties to obtain complete records for the members identified by the audit.

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:

Barker, Susan	Maricopa	3/2/2015
Barry, Steven	Yavapai	1/20/2015
Braley, Kristin	Pinal	3/2/2015
Carrillo, Christopher	Pinal	3/2/2015
Carter, Ronald	Pima	2/8/2015
Cruz, Angelica	Pima	12/1/2014
Diaz, Marcos	Gila	1/5/2015
Felix, Diego	Santa Cruz	2/2/2015
Fontenot III, Wilrey	Pima	1/11/2015
Greene, Gregory	La Paz	2/24/2014
Hancock, Paul	Apache	2/2/2015
Jagun, Oluwaseun	Maricopa	2/17/2015
Jaramillo, Sarah	Yuma	3/2/2015
Kane, Kacie	Graham	2/7/2015
Mahoney, Brian	Maricopa	1/5/2015
Marin, Rocio	Pima	2/8/2015
Mata, Lacey	Gila	1/19/2015
McCaskill, Whitney	Maricopa	2/2/2015
McGill, Brianna	Maricopa	2/17/2015
Morin, Gilbert	Yavapai	1/20/2015

Pena, Daniel	Yavapai	1/20/2015
Rainge, Sierra	Maricopa	12/1/2014
Sithole, Thandi	Pima	2/2/2015
Strabala, Cecilia	Maricopa	3/16/2015
Ukeagu, Ezenwa	Maricopa	2/17/2015
Ulmen, Philip	Cochise	1/12/2015

MOTION: A motion to approve the 26 applicants listed on the agenda for this meeting for membership in CORP pursuant to A.R.S. § 38-893.D. and to note for the record that the physical examinations for Kristin Braley, Gregory Greene, Paul Hancock, Kacie Kane, Brian Mahoney, Whitney McCaskill, Gilbert Morin and Sierra Rainge identified a physical or mental condition or injury that existed or occurred before the member's date of membership in the plan was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-26

Future Agenda Items:

The Board Secretary advised that the May 5, 2015 meeting agenda will include three disability cases that are set for annual review.

Call to the Public:

No members of the public addressed the Board.

The meeting was adjourned at 12:00 p.m.

Transcribed April 8, 2015