

**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, January 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; Rob Lubitz; Mark Smalley; Jason Hathcock

**Board Members Attending via Conference Call:**

Phil Hanley

**Also Present:**

Annette Corallo, Board Secretary; Leticia Chavez, Recorder; Hannah Auckland, Board Attorney; Ottmar & Associates, Court Reporter; Dolora G. Gibson, Claimant; Michael Tucker, Attorney for Dolora G. Gibson (Claimant)

**Call to Order:**

**Approval of the Minutes:**

December 2, 2014, Public Meeting Minutes

**MOTION: A motion to approve the December 2, 2014 Public Meeting Minutes was made by R. Lubitz.** Motion was seconded and passed unanimously; minutes stand approved. **CORP 2015-01**

**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.

At its meeting on December 2, 2014, the Board voted to set a rehearing in this matter on January 6, 2015, with notice by certified mail to all parties at least 15 days in advance of the rehearing date. Ms. Gibson is represented in this matter by her attorney, Michael J. Tucker.

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."

The parties to this proceeding are:

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

There are no witnesses in this matter.

In a letter dated November 19, 2014, the Claimant's attorney, Michael J. Tucker, notified the Local Board that his client opposed the Fund Administrator's request for a rehearing.

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: Request for Rehearing dated October 28, 2014, and Letter of Opposition to Request for Rehearing dated November 19, 2014
2. Matters Officially Noticed by the Board, including Rulings of the Local Board:
  - Minutes of Board Meetings: October 7, 2014 and December 2, 2014
3. Unprivileged Memoranda or Data: All communication among the parties since receipt of the Fund Manager's request for rehearing.

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.

Mr. Tucker stated that he and Ms. Gibson received copies of all the records relevant to this case. Mr. Tucker also stated that neither he nor Ms. Gibson had any additional factual evidence to provide to the Board but referred the Board to the Divorce Decree. Mr. Tucker stated that during their divorce Ms. Gibson and Mr. Barthel were not represented by legal counsel but the divorce decree has language that specifically addresses retirement plan accounts. This language was handwritten in by the Judge at the bottom of the first page of the decree.

The Board Attorney asked Mr. Tucker and Ms. Gibson some questions on behalf of the Board, including what retirement plans were being contemplated at the time of the divorce, when Mr. Barthel became a probation officer, and what bearing community property law has on the CORP pension plan, the death benefit, and the Board's decision today.

In response to a question from the Board Attorney, Mr. Tucker stated that the plans contemplated at the time of the divorce were plans from previous employers. Ms. Gibson had an IRA and it is not known what plan Mr. Barthel had at the time.

As for community property, Mr. Tucker stated that, unlike the federal pension plan, for which a Qualified Domestic Relations Order (QDRO) is the only recognized method to address distribution of plan benefits, CORP is governed by state statute and there is nothing in the CORP statute that obviates community property law being applied to plan benefits. The Board Attorney then asked if Ms. Gibson's interest in the community property ended at the date of service of the default dissolution and if there is some amount of the benefit that could possibly be awarded to a different beneficiary. Mr. Tucker stated that community property would apply from the date of marriage and cease to accrue as of the date the divorce decree was entered. Mr. Tucker asked the Board to take into consideration that neither party was represented by counsel in the divorce proceedings, and it is apparent that neither the parties nor the Judge recognized that CORP benefits should have been addressed in the divorce decree.

In response to questions from the Board Attorney, Ms. Gibson stated that she believed Mr. Barthel became a probation officer in 2003 and further stated that they were married on July 10, 1999, and the divorce petition was served on August 19, 2010.

The Board Attorney asked Ms. Gibson whether she is aware of Mr. Barthel having any new living spouse, children, parents or siblings other than the two known brothers who advised the Board of Mr. Barthel's death. Ms. Gibson indicated that Mr. Barthel has no living spouse, children, parents or siblings other than two brothers.

Board member Jason Hathcock asked Mr. Tucker if Ms. Gibson could still obtain a Qualified Domestic Relations Order, even though Mr. Barthel has passed. Mr. Tucker stated that he is not aware of any law that would not allow Ms. Gibson to obtain one.

Board member Rob Lubitz asked Mr. Tucker whether a Qualified Domestic Relations Order would overrule A.R.S §14-2804 as it pertains to this benefit. Mr. Tucker stated he believes that if a court enters an order, it must be upheld by the Plan.

The Board had no further questions for Mr. Tucker or Ms. Gibson. 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 M. Smalley.** Motion was seconded and passed unanimously. **CORP 2015-02**

**MOTION: A motion to return to open session was made by M. Smalley.** Motion was seconded and passed unanimously. **CORP 2015-03**

The Board Attorney informed Mr. Tucker and Ms. Gibson that the Executive Session discussion concerned the Board's obligation to notify other interested parties of the current proceedings regarding the award of the death benefit, instead of waiting until a determination is made. The Board's concern is that while community property interest may apply to the assets in this case,

there may be other parties who have an interest in the benefit. She also advised that the Board feels they must take the time to notify those parties (Mr. Barthel's brothers) before the Board makes any determination.

Board member Jason Hathcock and the Board Attorney asked Ms. Gibson if there was a will in place at the time of death or at any time during the marriage. Ms. Gibson stated that no will existed at the time of death or during the marriage to her knowledge.

**MOTION: A motion to table this agenda item so that the Board can contact the two brothers of the deceased to make them aware of the proceedings, as they may have an interest in the funds, was made by J. Hathcock. Motion was seconded and passed unanimously. The Board further noted that a date certain for the next Board consideration cannot be set at this time because the time needed to locate and contact the brothers is unknown. CORP 2015-04**

#### **Consideration of Disability Application:**

The Board received Application #14-02 for Ordinary Disability Retirement on December 12, 2014. The applicant is a Juvenile Detention Officer in Yuma County, currently on medical leave but not yet terminated. The applicant was not injured in the course of physical contact or confrontation with a probationer or detainee. The applicant provided medical reports of findings and treatment. The applicant initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting. The applicant was notified via certified letter that the Board would consider the application at this meeting and of her right to attend.

The Board Secretary advised the Board that the applicant's physical exam dated May 14, 2007, identified rheumatoid arthritis as a pre-existing condition. The Board Secretary also advised that no medical records were provided from one of the medical providers listed in the application, Arthritis Center of Yuma.

**MOTION: A motion to enter Executive Session to receive legal advice was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2015-05**

**MOTION: A motion to return to open session was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2015-06**

Board member Phil Hanley left the meeting at 11:00 a.m.

After reviewing the medical documentation provided by the applicant and the applicant's physical exam, the Board felt that the disabling condition was pre-existing and therefore does not meet the criteria for Ordinary Disability retirement pursuant to A.R.S. §38-886.01.

**MOTION: Motion that the Board finds the applicant does not meet the criteria for Ordinary Disability retirement pursuant to A.R.S. §38-886.01 because the condition was pre-existing at the time of the applicant's CORP membership and predates the effective CORP Ordinary Disability date of September 26, 2008, was made by R. Lubitz. Motion was seconded and passed unanimously. CORP 2015-07**

## Review of Notice of Retiree Return to Work

The Board received a Notice of Retiree Return to Work from Pima County for Joseph C. Stemple. The form indicates that Mr. Stemple retired from the Arizona Department of Corrections under CORP effective January 1, 2011, and returned to work for the Pima County Superior Court on November 17, 2014, as a Probation Officer in a CORP designated position. Since Mr. Stemple retired under the Arizona Department of Corrections, this Board is unable to make a determination on his pension. However, this Board does find that Mr. Stemple holds a CORP designated position so his employer is responsible for paying the CORP alternate contribution rate on his behalf.

The Chair directed the Board Secretary to forward the Notice of Retiree Return to Work form to the CORP Local Board for the Arizona Department of Corrections for determination of his eligibility to continue to receive a CORP pension.

**MOTION: A motion that the Board received a Notice of Return to Work for Joseph C. Stemple and finds that (1) the Board Secretary is directed to forward the Notice of Retiree Return to Work form to the CORP Local Board for the Arizona Department of Corrections for determination of his eligibility to continue to receive a CORP pension and (2) Mr. Stemple's employer (Pima County) is responsible for paying the CORP alternate contribution rate on his behalf was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2015-08**

## Revision of 2015 Meeting Date:

Meeting dates for 2015 were approved at the Board meeting on December 2, 2014. After that meeting, staff realized that the date approved for December 2015 (2<sup>nd</sup>) was a Wednesday, rather than a Tuesday. Since a Wednesday meeting creates a conflict for the Board Attorney, staff proposes that the December 2015 meeting be held on Monday, December 7. While most meetings are scheduled on Tuesday, the meeting room isn't available on a Tuesday in early December. All meetings are scheduled to begin at 10:00 a.m.

January 6 <sup>th</sup>	Tuesday
February 3 <sup>rd</sup>	Tuesday
March 3 <sup>rd</sup>	Tuesday
April 6 <sup>th</sup>	Monday
May 5 <sup>th</sup>	Tuesday
June 2 <sup>nd</sup>	Tuesday
July 7 <sup>th</sup>	Tuesday
August 4 <sup>th</sup>	Tuesday
September 8 <sup>th</sup>	Tuesday
October 6 <sup>th</sup>	Tuesday
November 3 <sup>rd</sup>	Tuesday
December 7 <sup>th</sup>	Monday

**MOTION: A motion to approve the revised Board meeting date for December 2015 was made by R. Lubitz.** Motion was seconded and passed unanimously. **CORP 2015-09**

**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:

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

Michael B. Bushey  
Beverly J. Geske  
Cynthia L. Gordon  
Paula J. Martinez  
Penny S. Morrison  
Charles B. Moter  
Rebecca C. Shackelton  
Angenette C. Viall

**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 January 1, 2015, was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2015-10**

Michael B. Bushey:	\$2,720.66
Beverly J. Geske:	\$3,157.69 (Reverse DROP Amount: \$77,013.80)
Cynthia L. Gordon:	\$2,740.40 (Reverse DROP Amount: \$38,759.49)
Paula J. Martinez:	\$3,620.14 (Reverse DROP Amount: \$43,830.26)
Penny S. Morrison:	\$5,160.26 (Reverse DROP Amount: \$254,314.90)
Charles B. Moter:	\$3,890.41
Rebecca C. Shackelton:	\$3,407.63 (Reverse DROP Amount: \$62,126.70)
Angenette C. Viall:	\$2,601.49

**Status Update: Membership Audit**

At the Board's December 2, 2014 meeting, the Board directed the Board Secretary to inform Pinal County management that the Board had been unable to obtain copies of missing exams for 15 officers and ask that their department pay for another exam, to be followed up with certified letters to the affected officers explaining the need to take another exam.

Pursuant to the Board's direction at the December 2, 2014 meeting, the Board Secretary sent an email to Todd Zweig, Chief Adult Probation and Interim Juvenile Court Director, to notify him that 15 Pinal County members are asked to repeat their physical exam due to the Board's inability to retrieve their original exams from Concentra. Mr. Zweig agreed to have the 15 officers retake the physical examination.

Also at the December 2, 2014 meeting, the Board Secretary sought further direction from the Board as to whether it considered sufficient notice to have been given to the members from Coconino (Philip A. Rehm) and Maricopa (Alisa M. Bryant) who had not completed another exam. In both cases with respect to the certified mail, the USPS did not indicate the letters were undeliverable but they did not obtain a delivery signature (for Mr. Rehm the USPS indicated a delivery date). In both cases with respect to the email notification, the recipient's system confirmed delivery of the email but the recipients did not respond to the 'read receipt' request attached to the email.

The Board directed the Board Secretary to try to obtain a home address from Mr. Rehm's employer and attempt to send another certified letter. As for Ms. Bryant, the Board felt that the certified letter sent to her home address and email sent to her work email is sufficient notice. However, the Board also requested that the Board Secretary try to make verbal contact with Ms. Bryant and possibly send a follow-up email to the phone call.

The Board Secretary advised that Mr. Rehm has since terminated employment. As for Ms. Bryant, another certified letter was sent to her home address and this time the letter was returned as undeliverable. An email was sent to her work email address provided by the county and the recipient's system confirmed delivery of the email, but Ms. Bryant did not respond to the 'read receipt' request attached to the email. No verbal contact has been made yet.

Regarding the annual audit the Board authorized at the September 9, 2014 meeting, staff continues the process of auditing the list of officers subject to this Board's jurisdiction provided by PSPRS on October 23, 2014, against Board records.

#### **Acknowledgment of CORP Physical Pre-Existing Conditions:**

The Chair noted, for the record, that the physical examination report for member Tracy Wensel identified one or more pre-existing conditions. The Board approved Ms. Wensel for membership at the December 2, 2014 meeting. A physical examination report was received after a 60-day notice was sent to her.

#### **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:

Alcantara, Guadalupe	Pima	12/1/2014
Amos, Ethan	Coconino	9/22/2014
Castillo, Octavio	Gila	10/6/2014
Emerson, Jantzen	Maricopa	11/17/2014
Esparza Jr., Ruben	Yuma	11/24/2014
Ewald, Julie	Yuma	11/10/2014
Garcia, Jesus	Yuma	11/24/2014
Gilreath, Karen	Maricopa	12/8/2014
Glass Jr., Ricky	Maricopa	12/1/2014
Glazer, Lauren	Maricopa	12/8/2014
Lopez, Brenda	Yuma	10/20/2014

Lynn, Anna	Pima	10/20/2014
MacLean, Shannon	Pima	11/3/2014
Marroquin, Adrian	Mohave	11/17/2014
Morris, Allen	Yavapai	11/24/2014
Nez, Stephanie	Coconino	11/10/2014
Puls, Patrick	Pima	12/8/2014
Rosencrans, LeAnn	Maricopa	11/10/2014
Welch, Vienna	Yavapai	6/9/2014
Wittig, Bethany	Maricopa	12/8/2014
Zazuetta, Crystal	Mohave	10/20/2014

**MOTION: A motion to approve the 21 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 Guadalupe Alcantara, Ethan Amos, Octavio Castillo, Ruben Esparza Jr., Jesus Garcia, Karen Gilreath, Ricky Glass Jr., Anna Lynn, Shannon MacLean, Allen Morris, LeAnn Rosencrans, Bethany Wittig, and Crystal Zazuetta 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 R. Lubitz. Motion was seconded and passed unanimously. CORP 2015-11**

**Call to the Public:**

No members of the public addressed the Board.

The meeting was adjourned at 11:10 a.m.

Transcribed January 12, 2015