

ATTACHMENT A

THE PROPOSED DECISION

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

**In the Matter of the Appeal of Lifetime Monthly Benefit
Payable Upon the Death of William F. Rylaarsdam by:**

BARBARA FOSTER,

Respondent,

and

RYLAARSDAM FAMILY TRUST,

Respondent.

Agency Case No. 2021-0474

OAH No. 2022020329

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on June 27, June 28, and July 1, 2022, by videoconference.

Preet Kaur, Senior Attorney, represented Judges' Retirement System (or JRS).

Roland G. Simpson, Attorney, represented respondent Barbara Foster (respondent Foster).

Mary Jane Rylaarsdam, Trustee, represented respondent Rylaarsdam Family Trust (or respondent RFT).

The record was held open after the conclusion of the hearing for respondent Foster's counsel to lodge, for an in camera review, a copy of respondent Foster's personal journal described in her testimony during the hearing, and for closing briefs. The documents lodged in response are identified in the ALJ's orders marked for identification as Exhibits OAH 1 through OAH 4A.

The record closed and the matter was submitted for decision on September 9, 2022.

SUMMARY

Respondent Foster appeals JRS' determinations she is not entitled to any death benefits from the retirement account of her husband, retired appellate justice William F. Rylaarsdam (Justice Rylaarsdam), who passed away less than one month after the two were married. At the time of his death, Justice Rylaarsdam was receiving an unmodified monthly pension allowance, the highest amount available, due to an election he made when he retired a few years earlier while married to his first wife, Janice Rylaarsdam. After his first wife passed away, Justice Rylaarsdam never replaced her as a beneficiary to his retirement account or modified his optional retirement allowance.

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Shortly after Justice Rylaarsdam's death on August 3, 2020, JRS received a letter purportedly signed by him on the day of his death, whereby he designated respondent Foster to receive retirement benefits on his account. Respondent Foster argues her status as Justice Rylaarsdam's wife at the time of his death, and domestic partner for years prior, qualifies her to receive surviving spouse benefits (half of Justice Rylaarsdam's monthly pension payment). She also argues the letter in question properly designated her as a beneficiary, entitling her to receive optional benefits (a reduced amount of Justice Rylaarsdam's monthly pension payment) or, if not, at least lump sum death benefits available (unprocessed payments to Justice Rylaarsdam and unused contributions remaining in his account).

Respondent RFT opposes respondent Foster receiving a monthly allowance, disputes the authenticity of the August 3, 2020 letter, and argues it is the rightful recipient of Justice Rylaarsdam's lump sum death benefits, not respondent Foster.

Respondent Foster failed to meet her burden of proving by a preponderance of the evidence that JRS' determinations were in error. For example, respondent Foster is not an eligible surviving spouse under Government Code sections 75077 and 75077.5 because she was not married to Justice Rylaarsdam, or in a registered domestic partnership, at least one year before he retired.

Moreover, there is no optional death benefit available under Government Code sections 75070 and 75071. Justice Rylaarsdam was receiving the unmodified monthly payment after his only designated beneficiary, Janice Rylaarsdam, predeceased him. Justice Rylaarsdam did not modify his optional death benefit election under Government Code section 21462. Even if he had done so after marrying respondent Foster, such a modification would not have been effective until one year later, which would have been well after his death and therefore ineffective.

Finally, the August 3, 2020 letter is invalid. Respondent Foster failed to meet her burden of establishing the signature on it was Justice Rylaarsdam's, or it evidenced his decision to make her a beneficiary of his account. Therefore, Justice Rylaarsdam did not have a valid beneficiary designation on file in his retirement account, which meant lump sum death benefits are payable, by default, to his estate pursuant to Government Code sections 75006 and 75071, which in this case is respondent RFT.

Therefore, respondent Foster's appeal is denied.

FACTUAL FINDINGS

Parties and Jurisdiction

1. JRS is a defined benefit retirement plan for qualified judges of the state of California. (Testimony [Test.] of Teri Martinez; Ex. 1.)

2. The Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) administers the JRS in accordance with the Judges' Retirement Law. (Ex. 1; Gov. Code, § 75005.)

3. On September 26, 1985, Justice Rylaarsdam was appointed to the position of Superior Court Judge for the Superior Court of California, County of Los Angeles, and therefore became a member of JRS. (Exs. 26, 27.) He was subsequently elevated to the Fourth District Court of Appeal of the State of California. (*Ibid.*)

4. On July 19, 2007, Justice Rylaarsdam and his first wife Janice Rylaarsdam executed the Rylaarsdam Family Trust (hereinafter respondent RFT). (Ex. 13, p. A42.) Justice Rylaarsdam was the primary Trustee of respondent RFT. (*Ibid.*)

5. In June 2016, Justice Rylaarsdam retired.
6. In June 2017, Janice Rylaarsdam passed away. (Exs. 30, 31.)
7. Respondent RFT was amended on January 5, 2018. Justice Rylaarsdam's oldest child, Mary Jane Rylaarsdam (Ms. Rylaarsdam), was designated to be the primary Trustee of respondent RFT after the death of Justice Rylaarsdam. (Ex. 13.)
8. Justice Rylaarsdam and respondent Foster were married on July 16, 2020. (Test. of Foster; Ex. 37, p. A117.)
9. On August 3, 2020, Justice Rylaarsdam passed away. (Exs. 7, 11.)
10. As discussed in more detail below, JRS received a letter in the mail after Justice Rylaarsdam's death, on Justice Rylaarsdam's stationary, and bearing a signature attributed to him. The letter advised JRS of his marriage to respondent Foster and requested that respondent Foster be added to his retirement account "to receive all benefits then and upon my passing." (Ex. 37, p. A116.)
11. Respondent RFT disputed the authenticity of the letter from Justice Rylaarsdam, and argued respondent Foster was not properly designated as a beneficiary to Justice Rylaarsdam's retirement benefits. (Exs. 5, 10, 38; Test. of Ms. Rylaarsdam.)
12. As discussed in more detail below, JRS determined Justice Rylaarsdam's retirement account had no surviving spouse or optional death benefits available. JRS determined only lump sum death benefits were available because Justice Rylaarsdam did not have a valid beneficiary designation on file at the time of his death. JRS determined the signature attributed to Justice Rylaarsdam on the August 3, 2020 letter was not valid and therefore the letter was not a proper beneficiary designation. JRS

also determined respondent RFT, the primary beneficiary of Justice Rylaarsdam's estate, was the proper recipient of the lump sum death benefits, not respondent Foster. (Ex. 21; Test. of Martinez.)

13. On April 21, 2021, JRS sent letters to respondents RFT and Foster advising them of JRS' determinations and explaining their appeal rights. (Exs. 3, 4.)

14. On May 5, 2021, JRS received a letter dated April 28, 2021 from respondent RFT agreeing with JRS' determinations. (Ex. 5.)

15. By letter dated May 19, 2021, respondent Foster's counsel appealed JRS' determinations. (Ex. 6.)

16. A Statement of Issues was filed on behalf of JRS by CalPERS, seeking to affirm JRS' determinations. (Ex. 1.)

Establishment of Justice Rylaarsdam's Pension Benefits

17. Justice Rylaarsdam served as a Judge of the Los Angeles County Superior Court from September 1985 until June 1986. He then served as a Judge of the Orange County Superior Court from June 1986 until April 1995. He was elevated and served as an Associate Justice of the California Court of Appeal (District 4, Division 3) in April 1995. (Ex. 27.)

18. On a date not established in 2002, Justice Rylaarsdam requested JRS for a service retirement estimate, with an estimated retirement date of September 26, 2005. (Ex. 22, p. A82.)

19. By letter dated December 27, 2002, JRS informed Justice Rylaarsdam of his eligibility to retire in September 2003 and the benefits available to his surviving

spouse. JRS noted "[j]udges, who became a member of the JRS on or after January 1, 1980, must be married to their current spouse at least one year prior to their retirement date in order to provide a continuing benefit to a surviving spouse." (Ex. 22, p. A83.)

20. In JRS' December 27, 2002 letter, Justice Rylaarsdam was advised of the retirement options available to him. (Ex. 22.)

One option described was option 2, under which the member would receive a "reduced allowance" for his or her life after retirement. Upon the member's death after retirement, the member's spouse or designated beneficiary, for his or her lifetime, would receive a further reduced allowance amount. If the member's spouse predeceased the member, the member's pension would increase to an unmodified allowance, the highest amount available, for the member's lifetime, which was described as a "pop-up" provision. (Ex. 22, p. A83.)

Option 2 Waive (or 2W) was described as relinquishing the pop-up provision for option 2 and providing to the member's spouse or beneficiary, for his or her lifetime, upon the member's death after retirement, the same reduced allowance the member received. If the member's spouse predeceased the member, the same reduced allowance would be paid to the member for his or her lifetime. Choosing option 2W irrevocably waived the pop-up to the higher unmodified allowance. (*Ibid.*)

Justice Rylaarsdam was advised if he did not elect a retirement option, he would be paid the unmodified allowance. (Ex. 22, p. A85.)

21. By letter dated February 11, 2003, Justice Rylaarsdam informed JRS he planned to exercise option 2W. (Ex. 23.)

22. On September 8, 2004, Justice Rylaarsdam filed with JRS a signed Special Beneficiary Designation form, designating his wife Janice Rylaarsdam as the option 2W beneficiary. (Ex. 25.)

Justice Rylaarsdam's Retirement

23. On May 10, 2016, JRS received a Judges' Retirement Application from Justice Rylaarsdam, signed on May 2, 2016, with a retirement date of June 30, 2016. Justice Rylaarsdam elected Janice Rylaarsdam to receive the option 2 benefit after his death (not the option 2W he had previously requested), which provided him with the pop-up option in the event she predeceased him. (Ex. 28.)

24. By letter dated July 7, 2016, JRS confirmed Justice Rylaarsdam's retirement date and his option 2 election. Justice Rylaarsdam's first retirement payment was issued on July 31, 2016. (Ex. 29.)

Janice Rylaarsdam Passes Away

25. On June 5, 2017, Janice Rylaarsdam passed away. (Ex. 30.)

26. On June 23, 2017, Justice Rylaarsdam notified JRS of his wife's passing. (Ex. 30; Ex. 38, p. A121.)

27. By letter dated June 29, 2017, JRS notified Justice Rylaarsdam that, effective July 1, 2017, his reduced monthly allowance would increase to the unmodified allowance, due to the pop-up provision, from \$12,370.35 to \$13,704.50, an increase of \$1,334.15 per month. (Exs. 33, 31.)

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28. Justice Rylaarsdam continued to receive the unmodified allowance until his death; he never contacted JRS to modify his retirement option. (Ex. 38; Test. of Martinez.)

29. The Rylaarsdam Family Trust was amended and updated on January 5, 2018, in part, to reflect the death of Janice Rylaarsdam. (Ex. 13.) All of Justice Rylaarsdam's real and personal property were listed as assets of the trust. (Ex. 13, schedule A, p. A52.) At the time of the amendment, Justice Rylaarsdam had four adult children from his marriage to Janice Rylaarsdam, i.e., Ms. Rylaarsdam, Daniel H. Rylaarsdam (Mr. Rylaarsdam), Alice Rylaarsdam, and Jennifer Vischer (Ms. Vischer). Alice Rylaarsdam passed away in 2020.

Justice Rylaarsdam's Relationship with Respondent Foster

30. The record does not establish when Justice Rylaarsdam met respondent Foster or when their relationship began. However, by December 2018, the two jointly purchased a house in Trabuco Canyon (Trabuco house), and moved in together there in January 2019. (Test. of respondent Foster; explained and supplemented by Ex. L.)

31. On a date in 2019 not established, JRS requested members to complete and return a form indicating how they would like to receive an Extended Service Incentive Program (ESIP) payment as a result of the class action litigation in the Superior Court of the State of California, County of Los Angeles, entitled *Mallano v. Chiang*. JRS referred to the form as a "*Mallano* application." (Ex. 34; Test. of Martinez.)

32. On November 5, 2019, JRS received Justice Rylaarsdam's signed and notarized *Mallano* application indicating how he would like to receive his ESIP payment. In that document, Justice Rylaarsdam indicated he was not legally married and did not have a registered domestic partner. (Ex. 34; Test. of Martinez.)

33. On May 12, 2020, Justice Rylaarsdam and respondent Foster became engaged to be married. (Test. of respondent Foster.)

34. On July 16, 2020, Justice Rylaarsdam and respondent Foster were married in Big Sur, California. The couple returned home from Big Sur on July 20, 2020. (Ex. 37; Test. of respondent Foster.)

35. On July 21, 2020, Justice Rylaarsdam asked respondent Foster to sign a document establishing the Foster-Rylaarsdam Family Trust. The trust document had been prepared by attorney Alice B. Marshall, who respondent Foster believed was representing only Justice Rylaarsdam in the transaction. Justice Rylaarsdam and respondent Foster were designated as the primary trustees. The only asset placed in this trust was the Trabuco house. (Test. of respondent Foster; Ex. 14, Schedule A.)

36. Respondent Foster testified she was told the purpose of the Foster-Rylaarsdam Family Trust was to protect the Trabuco house, which testimony is consistent with the contents of the trust document. However, respondent Foster also testified she thought the trust was "for more than the house," though she was vague as to this, and professed she did not have a good understanding of the trust. Respondent Foster signed the trust document without studying it or asking to have her own attorney review it. Under the circumstances, respondent Foster's testimony did not establish she was told the trust was for anything other than what was specified within the trust document. (Test. of respondent Foster; Ex. 14.)

37. On July 21, 2020, Justice Rylaarsdam also signed his Last Will and Testament (Will), which he did in respondent Foster's presence. The Will bequeathed all of Justice Rylaarsdam's separate property, other than his interest in the Trabuco house, to the Trustee or successor Trustee of respondent RFT. (Ex. 12.) The Will

specifically disinherited respondent Foster from receiving any of Justice Rylaarsdam's separate property. (*Ibid.*)

38. On July 28, 2020, JRS received a Special Power of Attorney form designating respondent Foster as attorney in fact for Justice Rylaarsdam, effective immediately. The form was signed by Justice Rylaarsdam and respondent Foster. Justice Rylaarsdam specifically granted respondent Foster the ability to change his retirement option and to designate or change the beneficiary of his account and benefits. (Ex. 35.) By letter dated August 3, 2020, JRS confirmed the Special Power of Attorney had been processed. (Ex. 36.) Respondent Foster never used the Special Power of Attorney to effectuate any change in Justice Rylaarsdam's retirement account.

39. No evidence indicates either Justice Rylaarsdam or respondent Foster filed, or attempted to file, a Declaration of Domestic Partnership with the California Secretary of State.

The Deterioration of Justice Rylaarsdam's Health

40. Justice Rylaarsdam was 83 years old in early 2020. (Test. of respondent Foster.)

41. As a smoker for over 40 years, Justice Rylaarsdam developed Chronic Obstructive Pulmonary Disease, and by early 2020 he needed to use an oxygen machine to help him breathe. (Test. of respondent Foster; Ex. 11.)

42. By all accounts, Justice Rylaarsdam's overall health began to fail after the passing of his daughter Alice Rylaarsdam on April 8, 2020. For example, Justice Rylaarsdam began having multiple stays in the hospital, and was becoming physically

and mentally weaker. After two cataract surgeries shortly before he was married to respondent Foster, his eyesight was so bad that he professed to his family he could no longer read. Justice Rylaarsdam also was having trouble with his hearing. He increasingly deferred to others in conversation for help remembering a word or completing a thought. (Test. of Ms. Vischer; Ex. AA.)

43. On July 26, 2020, Justice Rylaarsdam became so confused he called 911 to report a caretaker was trying to kill him. No action was taken by law enforcement officers who responded to the call and interviewed Justice Rylaarsdam. (Test. of Ms. Vischer, Mr. Rylaarsdam.)

44. By late July 2020, Justice Rylaarsdam was prone to falling down and he found it hard to walk. His physician recommended hospice care at home. (Test. of respondent Foster.)

45. On and after July 28, 2020, Justice Rylaarsdam was provided hospice care at his home. A hospice nurse and a caretaker visited the home on weekdays to care for Justice Rylaarsdam. Due to his lack of mobility, a hospital bed for Justice Rylaarsdam was put in the downstairs guest bedroom, where he slept and spent most of the day. Respondent Foster continued to sleep in the master bedroom upstairs. (Test. of respondent Foster.)

46. By the end of July 2020, Justice Rylaarsdam's conversations became more scattered and confused. (Test. of Ms. Vischer.)

47. At the beginning of August 2020, Justice Rylaarsdam's health demise accelerated. For example, respondent Foster testified that on August 1, 2020, Justice Rylaarsdam had gotten out of bed but had an undescribed incident; on August 2,

2020, Justice Rylaarsdam “had a bad day.” Ms. Vischer testified Justice Rylaarsdam’s health deteriorated even more dramatically at the beginning of August 2020.

Justice Rylaarsdam Passes Away

48. Justice Rylaarsdam passed away the afternoon of August 3, 2020. His death certificate states the time of death was 4:40 p.m. (Ex. 11.)

EVENTS OF THE MORNING

49. Respondent Foster visited Justice Rylaarsdam in the downstairs guest bedroom at about 6:00 a.m. (Test. of respondent Foster.) That day was a weekday, so the hospice nurse arrived at 7:00 a.m., and the caretaker arrived at 8:00 a.m. (*Ibid.*) By all accounts, Justice Rylaarsdam’s three adult children had arrived around 9:00 a.m. (Test. of respondent Foster, Ms. Rylaarsdam, Ms. Vischer, Mr. Rylaarsdam.)

50. Justice Rylaarsdam never got himself out of bed that day. (Test. of respondent Foster, Ms. Rylaarsdam, Ms. Vischer, Mr. Rylaarsdam.)

51. Justice Rylaarsdam’s children left the house no later than 11:30 a.m., at the recommendation of the hospice nurse, who told them Justice Rylaarsdam was about to pass and they should not be there. (Test. of respondent Foster, Ms. Rylaarsdam, Ms. Vischer, Mr. Rylaarsdam.)

JUSTICE RYLAARSDAM’S CONDITION

52. There is a dispute concerning Justice Rylaarsdam’s mental and physical condition that day.

53. Respondent Foster testified her husband was able to have an intimate, personal talk with her early that morning; he later discussed with her his desire to have

her receive his pension benefits; and he was physically able to sign a letter discussing his pension benefits with some assistance from her.

54. On the other hand, Justice Rylaarsdam's three adult children uniformly testified Justice Rylaarsdam that morning did not have any understanding of what was happening; he was completely incapacitated and unresponsive to people; and he was not capable of physically signing a letter or understanding the contents of a writing. (See also Ex. AA.)

THE CONVERSATION WITH JRS' ERINN CONLEY

55. That day respondent Foster had a telephone conversation with Erinn Conley, formerly known as Erinn Gonzales, a JRS employee to whom Justice Rylaarsdam's account had been assigned for years. (Test. of respondent Foster, Ms. Conley.)

56. Respondent Foster gave conflicting testimony whether the conversation was in the morning or early afternoon; however, Ms. Conley was more definitive the conversation happened sometime in the morning.

57. It was not established whether the conversation happened while Justice Rylaarsdam's children were still in the house. But it is clear the conversation happened outside of their presence, and they did not know about it until Ms. Conley testified at hearing. (Test. of respondent Foster, Ms. Vischer, Ms. Rylaarsdam, Mr. Rylaarsdam.)

58. In their testimony, respondent Foster and Ms. Conley gave materially different versions of the conversation. There is no corroborating evidence concerning the discussion, and each witness was equally credible concerning the contents of their discussion. It is clear the two discussed some aspect of benefits available to

respondent Foster under Justice Rylaarsdam's account, such as health benefits, post-death pension benefits, or respondent Foster being designated a beneficiary. But the exact topic discussed was not established by a preponderance of the evidence.

THE AUGUST 3, 2020 LETTER

59. It was established by a preponderance of the evidence that, as a result of her discussion with Ms. Conley, respondent Foster drafted a letter dated August 3, 2020, on Justice Rylaarsdam's letterhead, addressed to "Erinn," stating Justice Rylaarsdam had married respondent Foster on July 16, 2020, and requesting respondent Foster be added "to my retirement account to receive all benefits now and at my passing." (Ex. 37.) Respondent Foster's date of birth and social security number also were provided. (*Ibid.*) The signature line had "W F Rylaarsdam" printed, and the signature above that clearly spelled out his first name in cursive but only his middle initial. (Ex. 37.)

60. Respondent Foster testified she told Justice Rylaarsdam about her conversation with Ms. Conley, and he agreed to sign a letter that would help her be designated a beneficiary to his pension. Respondent Foster also testified Justice Rylaarsdam signed the letter himself, though she had to put a pen in his hand and provide some physical assistance to help him prop up his arm.

61. Respondent Foster left the house in the early afternoon to do chores, including mailing the August 3, 2020 letter to JRS. Respondent Foster was notified of her husband's passing by a phone call as she was driving home. (Test. of respondent Foster.)

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THE SIGNATURE ON THE AUGUST 3, 2020 LETTER

62. Pursuant to Evidence Code section 1416, subdivisions (a) and (d), a witness other than a handwriting expert may offer an opinion whether a writing is in the handwriting of the purported writer if that witness has personal knowledge of the handwriting of the writer, either by having seen the writer write or by other means.

63. Justice Rylaarsdam's three adult children were qualified to offer an opinion concerning the signature on the August 3, 2020 letter, pursuant to Evidence Code section 1416, subdivisions (a) and (d). All three children are familiar with their father's signature, having seen it on various business and personal documents. (Ex. AA; Test. of Ms. Vischer, Ms. Rylaarsdam, Mr. Rylaarsdam.) They explained the distinctive way their father would sign a letter or less formal document, particularly using only his first and middle name initials instead of spelling out his first name. (*Ibid.*)

64. Justice Rylaarsdam's three adult children testified the signature on the August 3, 2020 letter was not consistent with their father's distinctive signature style. All three children have reviewed copies of various signatures in Justice Rylaarsdam's JRS account, including the Power of Attorney document sent in late July 2020. They also reviewed Justice Rylaarsdam's signature on his Will and the Foster-Rylaarsdam Family Trust document, both executed less than one month before his death. All three of Justice Rylaarsdam's children opined the signature on the August 3, 2020 letter was not made by their father. (Test. of Ms. Vischer, Ms. Rylaarsdam, Mr. Rylaarsdam.)

65. Pursuant to Evidence Code section 1416, subdivisions (b) and (c), a witness other than a handwriting expert may offer an opinion whether a writing is in the handwriting of a writer if the witness has seen a writing(s) purporting to be in the handwriting of the writer and upon which the writer has acted or been charged, or has

received letters in the due course of mail purporting to be from the writer in response to letters duly addressed and mailed by the witness to the writer.

66. JRS Staff Services Manager II Teri Martinez testified about the many documents signed by Justice Rylaarsdam on file in his JRS account, many of which were in response to written requests of JRS. Ms. Martinez also explained her experience from years of service at JRS reviewing and comparing judges' signatures on documents on file. Pursuant to Evidence Code section 1416, subdivisions (b), (c), and (d), Ms. Martinez was qualified to opine on the signature on the August 3, 2020 letter. Ms. Martinez opined the signature attributed to Justice Rylaarsdam on the August 3, 2020 letter did not match any of the signatures on file with JRS for Justice Rylaarsdam and therefore "was not valid," meaning it was not Justice Rylaarsdam's signature.

67. Pursuant to Evidence Code section 1413, a writing may be authenticated by anyone who saw the writing made or executed.

68. Although respondent Foster did not specifically testify as to Justice Rylaarsdam's signature style, her status as his wife and having lived with him for a few years supports the reasonable inference she was familiar with his signature, although not to the same extent as were Justice Rylaarsdam's adult children. In any event, according to respondent Foster's testimony, she witnessed Justice Rylaarsdam sign the August 3, 2020 letter. Pursuant to Evidence Code sections 1413, and 1416, subdivisions (a) and (d), respondent Foster was qualified to offer an opinion on the signature on the August 3, 2020 letter.

69. Based on the circumstances discussed above, respondent Foster failed to meet her burden of establishing by a preponderance of the evidence her assertion that the signature on the August 3, 2020 letter was Justice Rylaarsdam's. Her testimony was

vague as to Justice Rylaarsdam's signature style, as compared to the more detailed testimony of Justice Rylaarsdam's three adult children. Moreover, her testimony concerning the letter in question was not more persuasive than the comparison testimony offered by JRS' Ms. Martinez. Respondent Foster provided no explanation why the signature on the August 3, 2020 letter was so different than Justice Rylaarsdam's signatures on other documents on file with JRS. Thus, it cannot be found respondent Foster's evidence was more persuasive than the opposing evidence concerning the authenticity of the signature on the August 3, 2020 letter.

THE CIRCUMSTANCES UNDERLYING THE AUGUST 3, 2020 LETTER

70. Respondent Foster vaguely testified about Justice Rylaarsdam's ability to understand and sign the letter in question. She presented no corroborating evidence concerning Justice Rylaarsdam's ability to understand or sign the letter, such as the hospice nurse who was there the day Justice Rylaarsdam died or his treating physician who recommended the hospice care. In contrast, the testimony of Justice Rylaarsdam's three adult children that their father could not understand or sign such a letter is more consistent with Justice Rylaarsdam's rapidly deteriorating health and the fact he was in the process of dying at the relevant time.

71. Respondent Foster's version of events also is inconsistent with the intentions expressed by Justice Rylaarsdam as recently as July 2020, when he had estate planning documents prepared which almost completely disinherited respondent Foster, other than his interest in the Trabuco house.

72. Respondent Foster's inconsistent version of events that day further diminishes her credibility. In correspondence she sent JRS when this dispute arose, respondent Foster wrote Justice Rylaarsdam signed the August 3, 2020 letter at 6:30

a.m., which she thereafter faxed and mailed to JRS. (Ex. 18, p. A73.) However, respondent Foster testified the letter was signed after she spoke to Ms. Conley, which could not have happened at or before 6:30 a.m. Respondent Foster also was confused as to when she spoke with Ms. Conley, at first testifying the conversation was at approximately 9:00 a.m., and later testifying it could have been later in the day. Moreover, the record does not substantiate respondent Foster's claim she faxed the letter to JRS before mailing it; she admitted on cross-examination she may not have. Finally, respondent Foster conceded in her testimony that the day of her husband's death was "just a fog."

73. Based on the circumstances discussed above, respondent Foster failed to meet her burden of establishing by a preponderance of the evidence her assertions that Justice Rylaarsdam understood the contents of the August 3, 2020 letter, or he was physically able to sign it even if he did.

74. In her closing brief, respondent Foster argues the testimony of Justice Rylaarsdam's children should be discounted. She argues the Rylaarsdam children have a financial incentive to dispute the authenticity of the August 3, 2020 letter, in that if she is not deemed a beneficiary of Justice Rylaarsdam's retirement account, the children will inherit the lump sum death benefits through respondent RFT. Respondent Foster's argument is not persuasive, as the same can be argued about her. She has a financial incentive for the August 3, 2020 letter to be deemed valid, in that such a finding would support her argument she should receive a monthly optional settlement allowance and/or the lump sum death benefits.

75. Respondent Foster also argues in her closing brief that Ms. Martinez's testimony should be discounted. She argues JRS staff made a mistake in determining the August 3, 2020 letter is invalid, and therefore at hearing Ms. Martinez had an

incentive to not embarrass JRS by admitting the letter is valid. This argument is similarly unpersuasive. Again, respondent Foster is subject to the same type of argument. Having previously told JRS staff Justice Rylaarsdam signed the letter, it would be hard for respondent Foster to admit now he did not. Moreover, the record does not support her argument. JRS staff have consistently believed and maintained the signature attributed to Justice Rylaarsdam on the letter is questionable.

76. Finally, in her closing brief respondent Foster argues her testimony is more credible than the other witnesses' concerning the events of August 3, 2020 because the personal journal she kept during the last months of Justice Rylaarsdam's life corroborates her testimony. This argument is not persuasive. First, the journal was not offered or admitted into evidence; it was not even marked as one of respondent Foster's exhibits before the hearing. Second, even if admitted, the journal entry concerning the August 3, 2020 events is vague and was written days after-the-fact; the entry does not ameliorate the inconsistencies with respondent Foster's version of events described above.

Events After Justice Rylaarsdam's Death

77. On August 7, 2020, JRS received in the mail the August 3, 2020 letter. (Test. of Martinez; Ex. 37.)

78. At the time of Justice Rylaarsdam's death, the following lump sum benefits were available: \$11,548.25 from the July 31, 2020 warrant returned by the bank; \$1,485.35, which is Justice Rylaarsdam's prorated pension payment for August 2020; and \$180,790.00, which is the remaining unused contributions in Justice Rylaarsdam's retirement account. (Test. of Martinez; Ex. 4.)

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79. On August 10, 2020, JRS sent a condolence letter and package to respondent Foster. (Ex. 7.)

80. On August 19, 2020, Ms. Rylaarsdam contacted JRS to inquire about death benefits available under Justice Rylaarsdam's retirement account. (Ex. 10.)

81. On August 19, 2020, respondent Foster submitted a completed Claimant Statement and Survivor Information form to JRS. (Ex. 8.) In August 2020, respondent Foster furnished other information to JRS via email communication, namely Justice Rylaarsdam's Will and a copy of the Foster-Rylaarsdam Family Trust. (Ex. 9.)

82. On August 31, 2020, JRS received a letter from Ms. Rylaarsdam, who identified herself as the Trustee of respondent RFT, inquiring about Justice Rylaarsdam's pension and death benefits. Ms. Rylaarsdam later provided JRS a copy of the January 5, 2018 Amendment and Restatement to the Rylaarsdam Family Trust. (Exs. 10, 15.)

JRS' Determinations

83. In the months following Justice Rylaarsdam's death, respondent Foster and JRS staff communicated frequently by e-mail. In the course of those communications, respondent Foster shared her belief she was entitled to Justice Rylaarsdam's pension benefits because she was his surviving spouse. (Ex. 9.) She advised JRS she understood a registered domestic partner is considered to be a spouse under the law and that law applied to her because, as she stated, "Bill and I became domestic partners in July of 2018 and purchased our home together in December of 2018." (Ex. 16, p. A65.) Respondent Foster also advised JRS she believed the August 3, 2020 letter designated her as Justice Rylaarsdam's account beneficiary. (Ex. 18, p. A73.) She maintained the August 3, 2020 letter constitutes Justice

Rylaarsdam's request for a recalculation and change of his retirement settlement option after they married, which in turn activated a monthly optional allowance payable to her as his beneficiary. (*Ibid.*)

84. In the same few months after Justice Rylaarsdam's death, Ms. Rylaarsdam, acting as respondent RFT's trustee, also was in contact with JRS. Ms. Rylaarsdam argued respondent Foster was not a beneficiary of Justice Rylaarsdam's retirement account, and all lump sum death benefits should be paid to respondent RFT, as the sole beneficiary designated in Justice Rylaarsdam's estate plan documents. (Exs. 5, 10.)

85. JRS determined surviving spouse benefits are not payable under Government Code section 75077.5 because respondent Foster had not been married to, nor a registered domestic partner of, Justice Rylaarsdam for at least one year before his retirement, as required by Government Code section 75077. (Exs. 3, 4; Test. of Martinez.)

86. JRS determined there was no lifetime optional monthly allowance payable under Government Code sections 75077 and 21462 because Justice Rylaarsdam's only designated beneficiary (Janice Rylaarsdam) had predeceased him, and he did not thereafter request a change to his optional settlement allowance. (Exs. 3, 4; Test. of Martinez.)

87. JRS determined only lump sum death benefits are payable, i.e., the pro-rata benefit under Government Code section 75006 and the return of contributions under Government Code section 75071, subdivision (e). (Ex. 3; Test. of Martinez.) JRS concluded Justice Rylaarsdam did not have a valid beneficiary designation on file at the time of his death, and therefore, under Justice Rylaarsdam's estate plan,

respondent RFT was the proper recipient of the lump sum death benefits. (Exs. 3, 4; Test. of Martinez.)

88. In prior correspondence, JRS advised respondent Foster it had determined Justice Rylaarsdam's purported signature on the August 3, 2020 letter did not match the many other signatures JRS had on file for him, from documents unquestionably signed by him, and therefore the August 3, 2020 letter did not constitute a valid beneficiary designation. JRS also advised respondent Foster that, even if the August 3, 2020 letter was valid, it said nothing concerning a request for recalculation or modification of Justice Rylaarsdam's optional settlement allowance, and therefore was legally insufficient to revive a post-death optional allowance benefit. (Exs. 17, 18; Test. of Martinez.)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (Evid. Code, § 500.) Thus, the party asserting a claim or proposing to make changes generally has the burden of proof in administrative proceedings. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.) Put another way, there is a built-in bias in favor of the status quo; the party seeking to change the status quo usually has the burden of proving it. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388.) Thus, in this matter, respondent Foster is seeking to overturn JRS' determinations denying her any of Justice Rylaarsdam's death

benefits, which would change the status quo between the parties in this case. Respondent Foster therefore bears the burden of proof.

2. In *McCoy v. Board of Retirement, supra*, 183 Cal.App.3d at page 1051, and footnote 5, the court found “the party asserting the affirmative at an administrative hearing has the burden of proof, including . . . the burden of persuasion by a preponderance of the evidence.” Thus, the standard of proof in this matter is the preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Judges’ Retirement Law Generally

3. There are two retirement systems for judges in this state, the JRS and the Judges’ Retirement System II (JRS II). JRS is the original retirement system for all judges in California. Pursuant to Government Code section 75502, JRS was closed in 1994 upon the establishment of JRS II. (Subsequent undesignated statutory references are to the Government Code.) Each system has its own set of statutes. Justice Rylaarsdam was a member of JRS. The statutes discussed below apply to the JRS and Justice Rylaarsdam.

4. The Judges’ Retirement Law governs JRS. (§ 75000 et seq.)

5. The Judges’ Retirement Law provides a basic pension plan for judges of courts of record in this state who qualify on the basis of attaining a specified age in combination with a specified number of years of service as a judge. (*Rosenthal v. Cory* (1977) 69 Cal.App.3d 950, 952.)

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6. Section 75005 requires the Judges' Retirement Law to be "administered and governed by the Board of Administration of the Public Employees' Retirement System in accordance with the Public Employees' Retirement Law [PERL] to the same extent and with the same effect as if those provisions are contained in the Judges' Retirement Law, except for those provisions which provide for the payment of an allowance or other benefit and except for those provisions which conflict with any provision of the Judges' Retirement Law."

Surviving Spouse Death Benefit

APPLICABLE LAW

7. Section 75077 provides when a spouse survives the death of a judge who dies during retirement, the surviving spouse shall receive until death a monthly payment of one-half of the monthly allowance the retired judge received.

8. However, pursuant to section 75077.5, a surviving spouse may receive the surviving spouse death benefit "only if the spouse was married to the judge as of January 1, 1980, or continuously for a period beginning one year prior to the date of retirement and ending with the judge's death."

9. Section 75004.5 defines a "spouse" or "surviving spouse" to include "a domestic partner or domestic partnership, as defined in Section 297 of the Family Code, and all rights and responsibilities granted to a spouse or surviving spouse shall be granted equally to a domestic partner to the extent provided by Section 297.5 of the Family Code."

10. Family Code section 297 defines domestic partners as follows:

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(a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California *when both persons file a Declaration of Domestic Partnership with the Secretary of State* pursuant to this division, and, at the time of filing, all of the following requirements are met: (Emphasis added.)

(1) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(2) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(3) Both persons are at least 18 years of age, except as provided in Section 297.1.

(4) Both persons are capable of consenting to the domestic partnership.

11. Family Code section 297.5 specifies the rights, protections, benefits, responsibilities, obligations, and duties under law of domestic partners. Importantly, all references to domestic partners in the statute are to "registered domestic partners," signaling that to be considered a domestic partner for purposes of Family Code

section 297 and, by extension, Government Code section 75004.5, the judge and other person in question must be registered domestic partners, including both of them filing with the California Secretary of State a Declaration of Domestic Partnership.

ANALYSIS

12. In this case, Justice Rylaarsdam's first wife, Janice Rylaarsdam, was the only person eligible to receive the surviving spouse death benefit, had she survived Justice Rylaarsdam. That is because she had been married to Justice Rylaarsdam one year before he retired, and Justice Rylaarsdam listed her as the recipient of the "survivor allowance" when he filed his retirement application. The survivor allowance was no longer payable upon Janice Rylaarsdam's death, as she predeceased Justice Rylaarsdam.

13. The surviving spouse death benefit is not available to respondent Foster. She was not married to, and was not in a registered domestic partnership with, Justice Rylaarsdam one year prior to his retirement. Nor could she have been, as Janice Rylaarsdam was married to Justice Rylaarsdam during that time.

14. Based on the above, JRS correctly determined the surviving spouse benefit is not payable to anyone, including respondent Foster. (Factual Findings 1-49, 84-86; Legal Conclusions 1-13.)

RESPONDENT FOSTER'S ARGUMENTS

15. Respondent Foster argues in her closing brief she qualifies as a surviving spouse because she and Justice Rylaarsdam cohabitated in 2018 and purchased the Trabuco house together. She also argues Justice Rylaarsdam told her she would receive surviving spouse benefits, especially after they married, and that she relied on

his representation. While she concedes she was not in a registered domestic partnership with Justice Rylaarsdam, she argues the equitable putative domestic partner doctrine applies to her, which would put her in the same legal standing as a registered domestic partner under Family Code section 297.

16. In support of her argument, respondent Foster cites *In re Domestic Partnership of Ellis & Arriaga* (2008) 162 Cal.App.4th 1000, 1008, in which it was held that a person with a reasonable, good faith belief in the validity of his or her registered domestic partnership is similarly entitled to protection as a putative registered domestic partner, even if the domestic partnership was not properly registered. That holding was later disapproved by the California Supreme Court in *Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1126, where the Court concluded that doctrine should be based on a subjective good faith belief, rather than an objective one. It is important to note that in *Ellis & Arriaga*, the couple had signed and notarized registered domestic partner declarations but failed to file them with the Secretary of State, though one of them pled facts indicating he had a good faith belief the domestic partnership met legal requirements for a registered domestic partnership.

17. The equitable putative domestic partner doctrine does not apply in this case. Neither Justice Rylaarsdam nor respondent Foster attempted to become registered domestic partners, nor is there any evidence indicating respondent Foster ever believed herself to be a registered domestic partner. Purchasing a home together and cohabitating is not the same as actually being a registered domestic partner or attempting to become one.

18. Respondent Foster also cites the case of *Burnham v. Public Employees' Retirement System* (2012) 208 Cal.App.4th 1576, 1587 (*Burnham*), in which the court held the putative domestic partner doctrine did not apply to a pension death benefit

dispute sharing some similarities with the instant case. Respondent Foster argues *Burnham* refused to apply the doctrine to that dispute only because there was no evidence the parties accumulated assets during a domestic partnership. She suggests because she and Justice Rylaarsdam bought the Trabuco house together, *Burnham* supports her position.

19. However, the *Burnham* court noted "courts applied the putative spouse doctrine to protect the innocent parties of invalid marriages from losing rights to what would have been community property acquired during the unions as the result of their joint efforts." (*Burnham, supra*, 208 Cal.App.4th at p. 1587.) Earlier in the decision, the court focused on the significance of parties to a marriage first obtaining a marriage license, and parties to a domestic partnership first filing the requisite declaration with the Secretary of State. (*Id.*, at p. 1585.) It is clear the *Burnham* court applied the doctrine only to couples who had attempted to become either married or registered domestic partners, but did not have a valid marriage or registered domestic partnership due to error or legal technicality.

20. *Burnham* demonstrates why the putative domestic partner doctrine does not apply in this case. Respondent Foster never filed or attempted to file a registered domestic partner declaration. Moreover, the only known asset acquired by the couple is the Trabuco house. None of Justice Rylaarsdam's pension rights vested or accrued on or after 2018 when the two began cohabitating; by then, Justice Rylaarsdam had already retired and been receiving his benefits. Justice Rylaarsdam's pension benefit was not the kind of asset respondent Foster could have claimed as community property, either as a spouse or putative domestic partner, because that asset preexisted whatever relationship she had with Justice Rylaarsdam. It is the assets a couple gathers together during a putative marriage or domestic relationship that the

Burnham court sought to protect, not separate property obtained by one prior to the marriage or domestic partnership.

21. Whether or not respondent Foster was a putative domestic partner in and after 2018 makes no difference. Section 75077.5 clearly mandates a surviving spouse must have been married or a registered domestic partner one year before the judge retired. Justice Rylaarsdam had retired well before he and respondent Foster began to cohabit. She has cited no legal authority indicating the statute can be ignored.

22. Finally, respondent Foster failed to establish by a preponderance of the evidence that Justice Rylaarsdam made any representations to her about achieving surviving spouse status after his death. Even if he had done so, respondent Foster's dispute would be between her and Justice Rylaarsdam's estate. JRS has no responsibility for whatever Justice Rylaarsdam told respondent Foster, and is not bound by any such representations.

23. The Board and JRS unquestionably have a fiduciary duty to their members. Respondent Foster next argues in her closing brief the lack of evidence in the record showing Ms. Martinez or anyone else at JRS had sought legal counsel on the applicability of the putative domestic partner doctrine is inconsistent with that fiduciary duty. In support of her argument, respondent Foster cites *City of Oakland v. Public Employees' Retirement System, supra*, 95 Cal.App.4th at page 40, in which it was held "PERS has a fiduciary duty to provide timely and accurate information to its members." The narrow holding concerning PERS' fiduciary duty in the *City of Oakland* case does not support the broader proposition for which it was cited by respondent Foster. It is not even clear if the fiduciary duty discussed in that case applies to a member's family or putative beneficiaries.

24. In any event, there is nothing in the record showing Justice Rylaarsdam or respondent Foster contacted JRS about domestic partnerships or were provided with inaccurate information about them. While respondent Foster argued to JRS shortly after Justice Rylaarsdam's death she should be deemed a surviving spouse because she had cohabitated with Justice Rylaarsdam beginning in 2018, JRS correctly responded she was required to be a registered domestic partner to qualify and, even if she had been, the timing of her cohabitation conflicted with section 75077.5. Thus, it cannot be concluded JRS breached its fiduciary duty in this case.

25. Finally, respondent Foster argues in her closing brief JRS' determination that no lifetime surviving benefits are available was profoundly conflicted by an incentive to deny claims for benefits that would reduce the amount of funding JRS would need from the Legislature to keep the fund solvent. Theoretically that argument can be made in every pension benefit dispute. Regardless, the fiduciary duty JRS owes all of its members requires fairly enforcing the Judges' Retirement Law and giving it a consistent interpretation. Accepting respondent Foster's invitation to disregard the one-year requirement established in section 75077.5, and extend the putative domestic partner doctrine where it does not apply, would cause JRS to violate the fiduciary duty respondent Foster argues should be directing its decisions in this case.

Optional Death Benefits

ELECTION AT TIME OF RETIREMENT

Applicable Law

26. In addition to the surviving spouse death benefit discussed above, a retiring judge can elect a settlement option paying a surviving beneficiary a monthly allowance, depending on the election made. (§§ 75071.5, 75071.) No such beneficiary

designation can be made in derogation of the community property share of any nonmember spouse or former spouse. (§ 75074, subd. (c).) Moreover, the combined optional allowance payable to a designated beneficiary and the judge's surviving spouse allowance shall not exceed the amount of the judge's monthly retirement allowance. (§ 75071.)

27. A retiring judge who does not elect an optional settlement for a designated beneficiary receives an unmodified allowance for his or her lifetime. (§ 75070.) The unmodified allowance provides the judge with the highest monthly retirement pension amount. (*Ibid.*)

28. A judge retiring on or before January 1, 2018, may elect to have an actuarial equivalent of his or her retirement allowance, as of the date of retirement, applied to a retirement allowance, in accordance with one of the optional settlements specified in section 75071. (§ 75070.) By electing an optional settlement under section 75071, the judge reduces his or her lifetime monthly retirement allowance to provide a continuing benefit to a beneficiary after his or her death. (*Ibid.*)

29. Pursuant to section 75074.5, subdivision (a), between January 1, 2003, through January 1, 2007, a judge was allowed to designate a beneficiary to receive an optional benefit while still in office.

30. The optional settlements specified in section 75071 vary by how much of a reduction a judge would like to take and how much of an allowance they would like to leave their beneficiary upon their passing. The calculation of the benefits and how much a reduction the judge actually has to take is based upon the judge's age, the beneficiary's age at the time of retirement, and other factors. (§ 75071.)

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31. Pursuant to section 75071, the judge has the option of electing options 1, 2, 3, or 4. The option 2 benefit reduces the retirement allowance of the judge but provides the same reduced allowance to the beneficiary for his or her lifetime. (§ 75071, subd. (b)(1).) In the event the beneficiary predeceases the judge, the allowance is increased, or will "pop-up," to the full unmodified amount for the judge's lifetime. (*Id.*, subd. (b)(2).)

32. A judge who elects options 2 or 3 under section 75071 may "irrevocably elect to waive the provisions for an increase to his or her allowance," i.e., the pop-up provision. (§ 75073.) JRS refers to the option to waive the pop-up for option 2 as option 2w; the same as to option 3 is referred to as option 3w.

Analysis

33. In this case, on December 27, 2002, Justice Rylaarsdam was provided a retirement estimate explaining the types of optional settlements he could elect. Pursuant to section 75074.5, at that time Justice Rylaarsdam was permitted to elect his optional settlement prior to his retirement. In 2004, Justice Rylaarsdam elected option 2w, and named Janice Rylaarsdam as the option beneficiary. Such an election would have waived the pop-up provision in the event Janice Rylaarsdam predeceased Judge Rylaarsdam.

34. When Justice Rylaarsdam actually retired in 2016, section 75071 applied to him. Justice Rylaarsdam elected the option 2 benefit with the pop-up provision. He again named Janice Rylaarsdam as his beneficiary. Justice Rylaarsdam began receiving his monthly allowance based on the option 2 settlement, at an amount reduced from the unmodified allowance. Upon notifying JRS of the death of his beneficiary, Janice Rylaarsdam, JRS applied the pop-up provision and adjusted Justice Rylaarsdam's

retirement benefit to the unmodified allowance. This increased Justice Rylaarsdam's monthly retirement allowance by well over one thousand dollars per month, which he continued to receive until his death.

35. Pursuant to section 75071, there is no optional death benefit available after the judge's death if the only designated beneficiary predeceases the retired judge. In this case, Janice Rylaarsdam was the only designated beneficiary at Justice Rylaarsdam's retirement. (Factual Findings 1-48, 84, 86; Legal Conclusions 1-6, 26-34.)

ELECTION MODIFICATION POST-RETIREMENT

Applicable Law

36. Pursuant to section 75070, a judge has only 30 calendar days from receipt of the first retirement benefit payment to change or modify an option settlement election.

37. However, section 21462 provides the following exception to the 30-day deadline:

(a)(1) Notwithstanding any other provision of this part, a member who elected to receive optional settlement 2, 3, or 4, involving a life contingency of the beneficiary, may, if the beneficiary predeceases the member . . . elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's

remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.

[¶] . . . [¶]

(b) The election provided by this section is irrevocable and shall be made within 12 months following the death of the beneficiary who predeceased the member, . . . or within 12 months following marriage if the spouse is named as beneficiary. The election shall become effective on the date specified on the election, provided that this date is not earlier than the day following receipt of the election in this system pursuant to this section.

(c) A member . . . who has a qualifying event on or after January 1, 1988, and who fails to elect within 12 months, shall retain the right to make an election under this section. However, this election shall become effective no earlier than 12 months after the date it is filed with the board, provided that neither the member nor the designated beneficiary die prior to the effective date of the election.

(d) This section shall not be construed to mean that designation of a new beneficiary causes the selection of an optional settlement. An optional settlement shall be selected by a member in a writing filed by the member with the board. This section shall apply to any member who retires on or before December 31, 2017.

Analysis

38. The death of Justice Rylaarsdam's first wife, and designated beneficiary at retirement, Janice Rylaarsdam, was a qualifying life-event specified in section 21462, subdivision (b), allowing Justice Rylaarsdam to modify his optional settlement within 12 months. Justice Rylaarsdam did not modify his optional settlement within that period, and his optional settlement reverted to the higher, unmodified allowance.

39. Justice Rylaarsdam's marriage to respondent Foster in July 2020 qualified as another life-event allowing him to change his optional settlement. Justice Rylaarsdam never advised JRS he wanted to modify his retirement allowance to revert back to option two.

40. Even if the August 3, 2020 letter is valid and constitutes a proper designation of respondent Foster as the beneficiary of Justice Rylaarsdam's retirement benefits, the letter does not meet the requirements of section 21462 for purposes of modifying an optional settlement. First, the August 3, 2020 letter only attempts to designate a new beneficiary, but it says nothing about changing Justice Rylaarsdam's optional settlement election or specifying an optional settlement. The designation of a new beneficiary is not sufficient to change an optional settlement. (§ 21462, subd. (d).) The member must select an optional settlement, in writing, and file it with the Board. (*Ibid.*) Moreover, the August 3, 2020 letter would not have been effective until 12 months from the date of its submission, and Justice Rylaarsdam had to be alive on its effective date. (§ 21462, subd. (c).) Justice Rylaarsdam passed away the same day he purportedly signed the August 3, 2020 letter. (Factual Findings 1-76, 83, 86-88; Legal Conclusions 1-6, 36-39.)

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Respondent Foster's Argument

41. In her closing brief, respondent Foster simply argues JRS' determination was wrong because it did not apply the putative domestic partner doctrine. As concluded above, that doctrine does not apply to this case. Even if so, respondent Foster fails to explain or provide legal support showing how her status as a putative domestic partner would excuse compliance with the clear statutory mandate that an optional settlement modification must have been made in writing, as well as the very precise timing requirements of such a modification under section 21462.

Lump Sum Death Benefits

APPLICABLE LAW

42. A lump sum death benefit is a one-time payment dispersed to a designated beneficiary after a judge's death. (§ 75006.)

43. One lump sum death benefit is what is known as the pro-rata benefit. Section 75006, subdivision (a), defines pro-rata benefits as any accrued and outstanding retirement allowance of a deceased judge, or any unclaimed warrant issued prior to the judge's death. The pro-rata benefits must be paid in the following order: to the surviving spouse entitled to the allowance; the designated beneficiary; or the estate of the deceased. (*Ibid.*)

44. Another lump sum death benefit is the return of contributions, which is the balance of the judge's "unused member contributions that remain as a result of the termination of ongoing lifetime benefit payments following his death." (§ 75071, subd. (e).) This benefit is available to a judge who elected either option 2 or 3 after January 1, 2003. (*Ibid.*) If there is no qualified surviving spouse, and no designated

beneficiary receiving optional death benefits, any unused contributions remaining in the judge's retirement account at the judge's death must be paid to the designated beneficiary, or the judge's estate if a beneficiary has not been designated. (*Ibid.*)

45. To designate a beneficiary or change a beneficiary designation for lump sum death benefits, section 75074, subdivision (a), provides "a judge 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 under this article, by a writing filed with the [B]oard." Thus, unlike the modification of an optional settlement, which is dependent on the judge taking a reduction to his own retirement benefit, modification of a lump sum death benefit may be modified at any time and merely by a writing filed with the JRS.

ANALYSIS

Pro-Rata Benefit

46. In this case, pro-rata benefits were payable for the month of Justice Rylaarsdam's death, as well as the returned warrant issued for July 2020, in the total amount of \$13,033.60.

47. Using the hierarchy established by section 75006, respondent Foster does not qualify as a surviving spouse under sections 75077 and 75077.5, as concluded above.

48. The next step of the analysis is whether Justice Rylaarsdam had a surviving beneficiary. JRS correctly determined respondent Foster was not a properly designated beneficiary of Justice Rylaarsdam's account. The only evidence of an attempt to make respondent Foster a beneficiary of the account is the August 3, 2020

letter. However, respondent Foster failed to meet her burden of establishing by a preponderance of the evidence that the letter was valid. (Factual Findings 1-88; Legal Conclusions 1-6, 42-47.)

49. Finally, JRS correctly determined the pro-rata benefit was payable to Justice Rylaarsdam's estate pursuant to section 75006, in this case respondent RFT. In reviewing Justice Rylaarsdam's estate documents, it is clear his entire estate, other than his interest in the Trabuco house, was to go to respondent RFT. (Factual Findings 1-88; Legal Conclusions 1-6, 42-48.)

Unused Contributions

50. Here, the unused contributions amounted to \$180,790.00. JRS correctly determined the unused contributions also were payable to the estate, or respondent RFT, pursuant to section 75071, subdivision (e), because respondent Foster was not a qualified surviving spouse, and Justice Rylaarsdam had not designated a beneficiary. (Factual Findings 1-88; Legal Conclusions 1-6, 42-49.)

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ORDER

The appeal of respondent Barbara Foster is denied.

JRS' determinations concerning the available post-death benefits of Justice Rylaarsdam's retirement account, and the recipient of them, are affirmed.

DATE: 10/06/2022


Eric C. Sawyer (Oct 6, 2022 14:29 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings