THE RESOURCE CENTERS, LLC
4360 Northlake Boulevard, Suite 206 ❖ Palm Beach Gardens, FL 33410
Phone (561) 624-3277 ❖ Fax (561) 624-3278 ❖ WWW.RESOURCECENTERS.COM

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND

Special Meeting of Tuesday, October 13, 2020

Location: **Electronic Meeting**
Meeting Contact: (800) 206-0116 (Plan Administrator)

Time: 1:00 P.M.

INSTRUCTIONS TO JOIN MEETING ELECTRONICALLY

Meeting ID: 148 380 1030

Resource Centers is inviting you to a scheduled RingCentral meeting:

For Video & Audio (Recommended):

If you are using a mobile device (Smart Phone or Tablet) use the "RingCentral" App.

Link to Join from Laptop, PC, Mac, Linux, iOS or Android: https://meetings.ringcentral.com/j/1483801030

For Voice Only:

US: 1(470)8692200: USE CODE 1483801030#

PLEASE NOTE:
Should any interested party seek to appeal any decision made by the Board with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose he may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation to participate in this meeting should contact The Resource Centers, LLC no later than four days prior to the meeting.

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND

Special Meeting of Tuesday, October 13, 2020

Location: **Electronic Meeting**
Meeting Contact: (800) 206-0116 (Plan Administrator)

Time: 1:00 P.M.

AGENDA

1. Call Meeting to Order
2. Roll Call
3. Minutes of Meeting Held August 4, 2020
4. Approval of the General Employees' Pension Fund Motions from August 4, 2020 Meeting
   a. Minutes of May 5, 2020 Meeting
   b. Discussion & Action of Benefit Forfeiture - William F. Davis, Jr.
      1. Motion to find Mr. Davis' Rights and Privileges to be Forfeited Under the Pension Plan
      2. Motion to have DOAH Handle the Hearing in this Matter
   c. Motion to raise $250,000 in Cash for the Payment of Fund Benefits and Expenses
   d. Amendment to the Ordinance Required by the SECURE Act. Motion to Send Ordinance to the Village.
   e. Motion to Pay All Disbursements
      1. Motion to Renew the Fiduciary Liability Insurance with the Cost not to Exceed $2,500
5. Attorney Report - Bonni Jensen
   a. Selection of Attorney for the General Employees' Pension Fund for the Matter Involving William F. Davis, Jr.
      1. Richelle Levy, Rice Pugatch Robinson Storfer & Cohen (1:15 P.M.)
      2. Gregg Rossman, Rossman Legal (1:50 P.M.)
      3. Jim Linn and Glenn Thomas, Lewis Longman Walker (2:25 P.M.)
      4. I. Jeffrey Pheterson, Ward Damon (3:00 P.M.)
6. Other Business
   a. Resignation of Mariana Ortega
   b. Status of Trustee Vacancies
   c. Election of Vice-Chairperson and Secretary.
7. Public Comments
   Email Public Comments During the Meeting to: palmspringsgeneral@resourcecenters.com
8. Schedule Next Meeting: Friday, November 13, 2020 at 2:00 P.M.
9. Adjournment

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND
MINUTES OF MEETING HELD
August 4, 2020

An electronic meeting was called to order at 2:01 P.M. Those persons present were:

TRUSTEES	**OTHERS**
Patti Waller	Bonni Jensen, Fund Counsel
Ed Horton	Margie Adcock, Administrator
Richard Reade	Jennifer Gainfort, Monitor
Mariana Ortega-Sánchez	Chad Little, Actuary
	Rebecca Morse, Finance Director
	William Davis, Participant
	Craig Boudreau, Attorney for William Davis
	David Miller, Village Attorney
	Ellie Neiberger, Deputy Village Attorney
	Jane Worth, Deputy Village Clerk

MINUTES

The Board reviewed the minutes of the meeting held May 5, 2020. A motion was made, seconded and carried 4-0 to approve the minutes of the meeting held May 5, 2020.

WELCOME NEW TRUSTEE RICHARD READE

It was noted that an Ordinance was recently passed that changed the Board composition. The Ordinance replaced the position previously held by the Finance Director with that of the Village Manager or his designee. The Board welcomed Richard Reade to the Board. The Board thanked Rebecca Morse for her many years of service to the Plan and the Participants. Ms. Jensen clarified that the position of the Village Manager or his designee on the Board is a singular position and either the Village Manager can sit on the Board as a Trustee, or a designee can sit on the Board as a Trustee but the position cannot be changed at random back and forth or to multiple people.

NEW BUSINESS

Discussion by Bonni Jensen Outlining the Duties of the Board

Ms. Jensen outlined the duties of the Board. She stated that the duties are very broad. She stated that the Trustees have a fiduciary duty to act in the best interests of the beneficiaries and participants of the Fund. She stated that the Board must elect a Chair and a Secretary. The Trustees have a duty of care, duty of loyalty, and a duty of good faith and fair dealing. The Board has the responsibility of providing an agenda, notice, meeting packets, minutes of meetings, an audit, valuation, holding quarterly meetings and approving benefits. The Board is responsible for making sure the Plan is being followed, that the rules are followed and decisions are documented appropriately. Ms. Jensen reviewed the Sunshine Law, voting requirements, and Public Records Law. She discussed the education requirements for the Trustees and the various educational opportunities available. She discussed the liabilities and penalties that could occur as well as the insurance that covers the Board for certain acts. Ms. Jensen discussed the Attorney's responsibilities to the Board. She stated that she prepares RFPs, letters to Participants, legal updates and Ordinances. The Administrator is responsible for drafting the minutes from meetings and for communication with the members and service providers as necessary.

There was discussion on the vacancy in the position of the 5th Trustee. Ms. Jensen stated that many times the position is posted by the clerk to get the word out. The Administrator is not usually charged with seeking applications for this position. Sometimes the other Trustees might know of a qualified candidate and bring it to the attention of the rest of the Board. She suggested that the Village could put a notice in with the Village water bill, put something in the Village Newsletter or post in Village Hall. Once a candidate is found, they would file a resume for the Board to consider and then appear at a Board meeting to discuss their qualifications. It was noted that the new Ordinance now requires Village Council's approval of the 5th Trustee.

Letter from the Village Attorney Dated July 22, 2020

The Board was provided with a letter from the Village Attorney dated July 22, 2020. The letter explains the new Ordinance amendment and the changes to the Board composition. It explains the requirement that the Chair must approve the Agenda and the meeting materials must be provided a week before a meeting.

Discussion and Action of Benefit Forfeiture – William F. Davis, Jr.

Ms. Jensen noted that William Davis and his attorney were present. She reviewed Section 112.3173, Florida Statutes. She stated that the Board needs to determine whether it has reason to believe that Mr. Davis' benefits are subject to forfeiture. She stated that the Board's decision today can result in a hearing to get evidence to make a determination of whether his benefits should be forfeited. She stated that if the Board determines that Mr. Davis' benefits are subject to forfeiture and a hearing should be held, the Board can hold the hearing itself or have DOAH hold the hearing. She stated that DOAH is a broad administrative hearing entity that makes recommendations to agencies. She stated that the Board is mandated to follow Section 120 but is not mandated to use DOAH. Ms. Jensen stated that the first thing the Board has to decide is whether there is reason to believe his benefits should be forfeited. She provided the Board with an updated memorandum to include the most recent information. She suggested that before making a decision the Board should hear from Mr. Davis' attorney. The Board should allow him to make a presentation and answer any questions.

Ms. Jensen stated that this matter first started in 2017 when her office was provided with a plea sheet that showed Mr. Davis pled guilty to two felonies. She stated that the Board held off on making a decision at that time because Mr. Davis maintained a post-conviction relief asking that his pleas be overturned. The Board held off action waiting for a final decision from the Court. His appeal was recently denied by the Court. Ms. Jensen reviewed her Memorandum dated July 24, 2020. She stated that the basis on which a benefit can be forfeited is a conviction of a "specified offense". The Board reviewed the Exhibits. The Exhibits show that Mr. Davis pled guilty to a felony under Section 838.016, which is a specified offense.

The Board gave Mr. Davis' attorney an opportunity to speak. Craig Boudreau appeared before the Board. He stated that he was not going to get into the underlying facts but did want to address a couple of issues. First was the issue of the inability of the Village to speed up the issuance of checks. Second, the Board was recently reconstituted by the passing of an Ordinance; however the Ordinance was not filed with the Clerk within four days of the hearing. As such, the Board as constituted today is not legal and not in compliance with the Code of Ordinances. He stated that it needed to be posted five business days before and that was not done. He suggested the Board consider delaying the matter, repassing the Ordinance correctly, and not taking any action today.

Dan Miller appeared before the Board. He stated that he was not a specialist in government law but the City Attorney opined that the Ordinance was validly passed at second reading and any issue, if one, did not affect the Ordinance. Mr. Miller stated that he was retained by the Village and the position of the Village is that this Board has reason to believe that the payments to Mr. Davis under the Plan are due to be forfeited. He stated that the decision today is to permit the question to go forward to an evidentiary hearing. The Village position is that there is clear reason to believe that forfeiture may be appropriate after an appropriate hearing is conducted because he pled guilty to a specified offense. The Village's position is that an evidentiary hearing should occur.

Ms. Jensen stated that she believes that the information before the Board shows that this should go to a hearing. There is reason to believe Mr. David pled guilty to a specified offense. If there are arguments against forfeiture those would be heard at the hearing. There was discussion on a hearing before the Board or before DOAH. Ms. Jensen stated that decision was up to the Board and the comfort level of the Board. She stated that either path the Board takes the Board would have to have an advocate. She stated that she cannot be both an Attorney for the Board and an advocate in the case. She recommended the Board hire an attorney to be the advocate in the case. Ms. Jensen reviewed the benefit forfeiture checklist with the Board. If the answer to both of the questions is yes, the matter should go to a hearing.

Ms. Ortega stated that she has been a Board Member for several years, has been in the Finance Department for 15 years and is proud to work for the Village. She stated that she was very offended by Mr. Boudreau's accusations involving the Finance Department. She stated that she did not think she could be impartial because it is linked to what she does every day. Ms. Jensen stated that the Board was not being asked to decide the truth of the case today, but rather is being asked if he pled guilty, was it a violation of Section 838, and did it happen before his retirement. She stated that the Board's concerns leads her to think the case should be decided by DOAH. There was a lengthy discussion.

Mr. Boudreau stated that Mr. Davis' original attorney did not advise him that he would lose his pension if he pled guilty. He entered into the pleas out of necessity and fear, not necessarily because he did something. Mr. Davis believed that when he entered the pleas he was keeping his pension

Ms. Jensen stated that she wanted to make it clear that Section 112.3173 provides that a person "shall" forfeit their benefit under certain reasons. There is no getting around that.

It is a mandate. There are no equitable reasons to be considered. The only decision today is to determine if Mr. Davis pled guilty and did that offense occur while he was employed. There was further discussion on the terms of adjudication versus conviction. Ms. Jensen stated that adjudication does not matter for purposes of this Statute.

A motion was made, seconded and carried 4-0 to find reason to believe Mr. Davis' rights and privileges are required to be forfeited under the Pension Plan. A motion was made, seconded and carried 4-0 to have DOAH handle the hearing in this matter. Ms. Jensen stated that she would set up the matter with DOAH. She stated that a contact will be entered between the Board and DOAH whereby a standard rate is set. She stated that the Board will need to hire an attorney advocate. She will provide a Notice of Hearing and Notice of Intention to Forfeit which will outline the process. Mr. Reade stated that he would like to move this along as quickly as possible and hold a special meeting prior to the November meeting. He would also like the Village Attorney to be notified of any hearing dates. There was discussion on the cost of the matter. Ms. Jensen stated that cost could be anywhere between $10,000 and $20,000.

ACTUARY REPORT

Chad Little appeared before the Board. He stated that FRS adopted new mortality tables so he will include those in the next Valuation. He stated that he used the new tables in one of his other plans and it caused their cost to go down.

Mr. Little stated that he was diagnosed with kidney cancer about a month ago. He stated there has been no delay workwise and he is recovering nicely.

Ms. Morse stated that she needed to have the Fund raise $250,000 for the payment of benefits and expenses. A motion was made, seconded and carried 4-0 to raise $250,000 in cash for the payment of Fund benefits and expenses

INVESTMENT MONITOR REPORT

Jennifer Gainfort appeared before the Board. Ms. Gainfort reviewed the market environment for the period ending June 30, 2020. She stated that it was a much better quarter than the prior one. There were strong gains across the global markets. A majority of the reversal came early in the quarter due to the economic stimulus. At the end of the quarter there was some optimism as there was a slow down with COVID cases and a resurgence of employment. She stated that it has been one of the most substantial recoveries the market has seen in history. The S&P 500 was up 20.5% which was the strongest return since 1998. Ms. Gainfort stated that growth outperformed value. There was an outperformance in technology where there was a lot of online shopping and Zoom meetings. International was strong but not as high as domestic. Interest rates stayed low and will stay low into 2021. Looking ahead it seems like a great recovery but it is too soon to tell for sure. COVID will continue to dominate headlines. What is needed is a reduction in the number of cases and a vaccine. There is definitely a lot of uncertainty involved. Another consideration is the level of support the government continues to provide. Finally, there is the election coming up in November. She stated that there are clear winners and losers along the way as the market continues to adapt to the new normal. The first quarter was rough but the recovery has been equally as strong in the second quarter.

Ms. Gainfort reported on the performance of the Fund for the quarter ending June 30, 020. The total market value of the Fund as of June 30, 2020 was $27,802,412. The asset allocation was 50.3% in domestic equities; 9.2% in international; 24.7% in domestic fixed income; 3.7% in global fixed income; 9.3% in real estate; and 2.8% in cash. Ms. Gainfort stated that there was no need to do any rebalancing.

The total portfolio was up 12.89% net of fees for the quarter ending June 30, 2020 while the benchmark was up 13.20%. The total equity portfolio was up 21.90% for the quarter while the benchmark was up 21.06%. The total domestic equity portfolio was up 21.76% for the quarter while the benchmark was up 22.03%. The total international portfolio was up 22.77% for the quarter while the benchmark was up 16.30%. The total fixed income portfolio was up 3.93% for the quarter while the benchmark was up 3.01%. The total domestic fixed income portfolio was up 4.46% for the quarter while the benchmark was up 2.13%. The total global fixed income portfolio was up .36% for the quarter while the benchmark was up 7.40%. The total real estate portfolio was down 1.51% while the benchmark was down 1.27%.

Ms. Gainfort reviewed the performance of the managers. The Anchor All Cap Value portfolio was up 15.54% for the quarter while the Russell 3000 Value was up 14.55%. MFS Growth Fund was up 24.68% and PRIMECAP Odyssey Growth Fund was up 23.61% while the Russell 1000 Growth was up 27.84%. The Vanguard Mid Cap portfolio was up 24.95% for the quarter while the Russell Mid Cap was up 24.61%. The Vanguard Total Stock portfolio was up 22.07% for the quarter while the Russell 3000 was up 22.03%. The Garcia Hamilton Fixed Income portfolio was up 4.46% for the quarter while the benchmark was up 2.13% The Templeton Global Fixed Income portfolio was up .36% for the quarter while the benchmark was up 7.40%. The Europacific Growth portfolio was up 22.77% for the quarter while the benchmark was up 16.30%. The Principal portfolio was down 1.51% for the quarter while the benchmark was down 1.27%.

Ms. Gainfort discussed Templeton. She stated that they have had a bit of a struggle. They do not manage very close to the Index but their ranking in the 100th percentile across the board is concerning. They still feel confident in the strategy over the long term but are looking at it on a client to client basis to see whether the client is comfortable with their volatility. She stated that the Fund has had this strategy since 2014. She recommended the Board take a look at other global fixed income options to see what else is out there. She stated that she would bring a manager comparison of Templeton with three other global fixed income managers to the next meeting so see if Templeton is still the best fit for the Fund.

CUSTODIAN REPORT

It was noted that Comerica advised that they were unable to attend the meeting today. They will be added to the November meeting.

ATTORNEY REPORT

Ms. Jensen provided a proposed Amendment to the Ordinance required by the SECURE Act. She stated that she added discretionary language that will allow the Fund to keep the Plan in compliance via Policy rather than having to keep amending the Ordinance. A motion was made, seconded and carried 4-0 to send the proposed Ordinance to the Village.

ADMINISTRATIVE REPORT

Ms. Adcock presented the disbursements. A motion was made, seconded and carried 4-0 to pay all listed disbursements.

Ms. Adcock advised that the Fiduciary Liability Insurance is due to expire on November 1, 2020. A motion was made, seconded and carried 4-0 to renew the Fiduciary Liability Insurance with the cost not to exceed $2,500.

PUBLIC COMMENTS

There were no public comments

OTHER BUSINESS

There was further discussion on the positon of the 5th Trustee. It was noted that perhaps the Clerk's office might be able to help if they receive any residents that have expressed an interest in serving on a board. There was discussion on whether the 5th could be a company that does business with the Village. Ms. Jensen stated that she would need to look into that further. It was noted that just because the Village has a relationship with a vendor does not mean that the Board would. It would need to be determined on a case by case basis.

Ms. Jensen stated that the Board will need a special meeting to select an attorney advocate regarding the Davis matter. She stated that she would provide information on the attorneys she would recommend. The Board stated that they would like to see at least 2-3 options.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Patti Waller, Chair

VILLAGE OF PALM SPRINGS
GENERAL EMPLOYEES' PENSION PLAN

In re:* *FORFEITURE OF RETIREMENT BENEFITS OF WILLIAM F. DAVIS

____/

NOTICE OF PROPOSED AGENCY ACTION

The Board of Trustees of the Village of Palm Springs General Employees' Pension Fund ("Fund") hereby gives notice to WILLIAM F. DAVIS ("Davis") that the Board has determined that there is reason to believe that the rights, privileges and benefits to which he is, or may be entitled to, or has previously received, from the Fund should be forfeited pursuant to Section 112.3173, Florida Statutes.

FACTS:

The basis of the proposed action is:

1. On November 30, 2017, Davis pled guilty to:

   a. Two felony counts of Unlawful Compensation for Official Behavior in violation of Florida Statutes 838.016; and
   b. A misdemeanor count of Petit Theft in violation of Florida Statutes §812.014.

   The Court adjudicated Davis on the one count of Petit Theft and withheld adjudication on the two felony counts for Unlawful Compensation. See attached Exhibit A.

2. These Counts were based on the facts as outlined in the Probable Cause Affidavit, which is attached as Exhibit C. In summary, the report provides:

   > As the Public Service Director, Mr. Davis directed and worked with contractors that were hired by the Village to perform services. One of the contractors was AKA Services, Inc. Mr. Davis worked with Carlo Aldo Basile ("Carlo") and Luigi Basile ("Luigi") at that company. The State Attorney's office concludes that Mr. Davis "received at least $19,500 from Carlo and Luigi Basile since 2010" to expedite the payment from the Village for the contracted services.

   For more details regarding the factual basis for the charges, review the Probable

Cause Affidavit, Exhibit C.

3. Davis's crimes constitute a "specified offense" pursuant to Florida Statutes Section 112.3173 (see attached Exhibit B for the full statute), specifically Section 112.3173(2)(e)4 and (2)(e)6.

Florida Statutes 112.3173(2)(e) defines "Specified Offense" as:

1. The committing, aiding, or abetting of an embezzlement of public funds.
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. **Any felony specified in chapter 838, except ss. 838.15 and 838.16**;
5. The committing of an impeachable offense;
6. **The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position**; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

Chapter 838 of the Florida Statutes is attached as Exhibit D.

4. Florida Statute 112.3173(2)(a), defines "Conviction" and "Convicted" as "an

adjudication of guilt by a court of competent jurisdiction; **a plea of guilty or of nolo contendere**; a jury verdict of guilty when adjudication of guilt is withheld and the accused is placed on probation; or a conviction by the Senate for an impeachable offense."

5. Mr. Davis was employed at the Village from September 6, 1989 to April 10, 2015. He began receiving his pension benefits effective June 1, 2015. Exhibit E. The probable cause affidavit which is the basis for the charges to which Davis pled guilty shows that there were 8 specific checks dated between July 6, 2010 and November 20, 2012. All of these dates were before Davis's retirement from the Village.

6. Having entered a plea of guilty to a specified offense within the meaning of Sections 112.3173(2)(a) and (e), Florida Statutes which was committed before his retirement, the Board has reason to believe that Davis's rights, privileges and benefits under the Fund must be forfeited pursuant to Florida Statutes Section 112.3173(3).

The Board has determined to hold a hearing under Chapter 120 of the Florida Statutes before a Division of Administrative Hearings (DOAH) Administrative Law Judge (ALJ) which will be scheduled with DOAH in accordance with the ALJ's schedule. The location will also be determined as set by DOAH. It can be anticipated that due to COVID-19 the hearing will be virtual via ZOOM or other electronic format.

If you wish to contest the proposed agency action you must file a petition requesting a hearing within 30 days by sending your petition to the Village of Palm Springs General Employees' Pension Plan, 4360 Northlake Boulevard, Suite 206, Palm Beach Gardens, Florida 33410, with an email copy to Pension Fund General Counsel, Bonni Spatara Jensen, Klausner, Kaufman, Jensen & Levinson, 7080 N.W. 4th Street, Plantation, Florida 33317 bonni@robertdklausner.com **and** bsjteam@robertdklausner.com**.**

Your petition must contain:

A. Your name, address, and telephone number and the name, address, and telephone number of your attorney, if any.

B. A statement of when and how you received this Notice.

C. A statement of all issues of disputed fact; that is which, if any, of the paragraphs 1-6 above, you dispute, if any. If there are no disputed facts, your petition must so indicate.

4. A concise statement of the ultimate facts that you allege, including the specific facts, that you contend warrant modification of the proposed forfeiture of your retirement benefits.

5. A statement of the specific statutes or rules that you contend require modification of the proposed forfeiture of your retirement benefits.

6. A statement of the relief which you seek, stating precisely the action you wish the Board of Trustees to take with respect to the proposed forfeiture of your pension benefits.

If you file a petition contesting the proposed action, the Board of Trustees will schedule a hearing on the proposed agency action and your petition disputing the proposed action.

IF YOU DO NOT FILE A PETITION CONTESTING THE PROPOSED FORFEITURE BY SEPTEMBER 14, 2020 (IF SENT BY 8/7) YOU WAIVE THE RIGHT TO REQUEST A HEARING ON THE FORFEITURE AND A FORFEITURE ORDER WILL BE ENTERED AT THE NOVEMBER 2020 PENSION BOARD MEETING.

If you do not wish to contest the proposed action, then you can either do nothing in response to this Notice or you can send a notice to the Village of Palm Springs General Employees' Pension Plan, 4360 Northlake Boulevard, Suite 206, Palm Beach Gardens, Florida 33410, with an email copy to Pension Fund General Counsel, Bonni Spatara Jensen, Klausner, Kaufman, Jensen & Levinson, 7080 N.W. 4th Street, Plantation, Florida 33317 bonni@robertdklausner.com and bsjteam@robertdklausner.com, signed and notarized, stating that you consent to or do not contest the forfeiture of your retirement benefits.

Mediation of this matter is not available.

Signed this 18 day of August, 2020, in Palm Springs, Palm Beach County, Florida.

Patti Waller
Patricia Waller, Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 19th day of August, 2020, to the below-name addressee, via email:

William F. Davis
c/o Craig Boudreau
2161 Palm Beach Lakes Boulevard
Suite 204
West Palm Beach, Florida 33409
email: mailbox@boudreaulaw.com

/s/ Bonni S. Jensen
Bonni S. Jensen

RECEIVED
SEP 17 2020
By

VILLAGE OF PALM SPRINGS
GENERAL EMPLOYEES' PENSION PLAN

In re: FORFEITURE OF RETIREMENT BENEFITS OF
WILLIAM F. DAVIS

PETITION FOR FORMAL ADMINISTRATIVE HEARING

COMES NOW the Petitioner, William F. Davis, Jr., who files this petition for formal administrative proceeding, and in furtherance thereof states:

1. Identifying information. The Petitioner's name, address, and telephone number is:

   William F. Davis, Jr.
   3570 Kendall Drive
   West Palm Beach, Florida 33406
   Tel. (561) 313-4480

2. Petitioner Davis is represented by the lawyer below:

   Craig A. Boudreau
   2161 Palm Beach Lakes Blvd.
   Suite 204
   West Palm Beach, Florida 33409
   Tel. (561) 641-5722
   Email: mailbox@boudreaulaw.com

3. On August 19, 2020 Petitioner's lawyer received the *Notice of Proposed Agency Action* by email.

4. Petitioner admits that he was employed at the Village from September 6,

1989 to April 10, 2015. Mr. Davis admits he began receiving his pension benefits effective June 1, 2015. Petitioner denies each and every other factual allegation contained in the *Notice of Proposed Agency Action* and demands strict proof thereof.

5. Petitioner asserts that *Notice of Proposed Agency Action* was not initiated by the duly elected Pension Board as members voting for the agency action were illegally placed on the Pension Board based upon a municipal ordinance which was passed by the Village Council in violation of its own municipal code which mandates that a proposed ordinance be filed with the Village Clerk "at least 32 business hours prior to ***each*** village council meeting." §2-52, Village of Palm Springs Code.

6. Petitioner is entitled to reversal of the proposed action as the action would violate his rights under Sections 2, 9, 10 and 23, Article 1 of the Constitution of the State of Florida, Article I, Section 10 of the Unites States Constitution, and Amendments, 4, 5, 6, and 14 of the United States Constitution.

7. Any plea entered into by Petitioner was involuntary as the result of misleading legal advice. Petitioner's lawyer Scott Skier specifically advised Petitioner that if he accepted the plea deal, he would get to keep his pension. "A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences'." *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (*quoting Brady v. United States*, 397 U.S. 742, 748 (1970)). Even where the plea colloquy

addresses certain consequences of a plea, a plea may still be involuntary. For example, even when the colloquy addresses the immigration consequences of a plea, it nevertheless will be held "involuntary based upon affirmative misadvice about deportation consequences." *Rila v. State*, 218 So. 3d 448, 449 (Fla. 4th DCA 2017) *citing Ghanavati v. State*, 820 So.2d 989, 991 (Fla. 4th DCA 2002).

8. Any taking of Petitioner's pension as result of an involuntary plea would violate his due process and property rights.

9. The Plan is a contract that predates Section 112.3173, Florida Statutes. As such, enforcement of Section 112.3173, Florida Statutes as it relates to this Plan would be an impairment of contract. The Plan was never amended to provide for forfeiture under the subsequently passed statute. Likewise, Section 112.048(3), Florida Statutes provides:

> Each city or town may by ordinance establish a contributory retirement system for those officials defined in subsection (2). The rules for participation, the amount of the official's contributions, and the method of appropriation and payment may be determined by ordinance of the city or town.

The Plan documents provide for vested rights upon retirement that are not subject to forfeiture under the terms of the Plan. The Plan does not contain a reserved power clause automatically adopting any changes by the legislature.

10. Petitioner requests that the action of the Board of Trustees of the Village of Palm Springs to forfeit the pension of Petitioner be denied, reversed, or otherwise

invalidated and that Petitioner retain his pension.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing petition was served on the persons or entities below by email or hand delivery this 17th day of September, 2020.

By Hand Delivery
Palm Springs General Employees' Pension Plan
4360 Northlake Boulevard, Suite 206
Palm Beach
Gardens, Florida 33410

By Email
Bonni Spatara Jensen
Klausner, Kaufman, Jensen & Levinson
7080 N.W. 4th Street,
Plantation , Florida 33317
bonni@robertdklausner.com
bsjteam@robertdklausner.com

Respectfully submitted,

/s/ Craig Boudreau

Craig A. Boudreau
Attorney for William F. Davis, Jr.
2161 Palm Beach Lakes Blvd
Suite 204,
West Palm Beach, Florida 33409
Fla. Bar No. 471437
mailbox@boudreaulaw.com

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

This CONTRACT is between the Village of Palm Springs General Employees' Pension Plan, 4360 Northlake Boulevard, Suite 206, Palm Beach Gardens, Florida 334120, and the State of Florida, Division of Administrative Hearings (DOAH).

WHEREAS, Section 120.65, Florida Statutes, authorizes DOAH to provide Administrative Law Judges (ALJs) on a contract basis to any governmental entity;

WHEREAS, the Village of Palm Springs General Employees' Pension Plan desires to use the services of DOAH's ALJs to conduct hearings involving the forfeiture of pension benefits; and

WHEREAS, Florida Statutes 112.3173 requires the Board to hold a hearing in accordance with chapter 120 of the Florida Statutes.

NOW, THEREFORE, the parties, for valuable consideration and the mutual promises between them, agree as follows:

1. Scope of Services. DOAH agrees to make ALJs available to the Village of Palm Springs General Employees' Pension Plan. The ALJs to be provided will be full-time judges employed by the State of Florida, Division of Administrative Hearings. The ALJs to be provided are

experts in the adjudication of administrative disputes and such ALJs shall, where possible, be persons familiar with cases involving the issues at hand.

2. Compensation. The fiscal year 2003-2004 General Appropriations Act, Chapter 2003-397, Laws of Florida, requires DOAH to renegotiate its contracts for ALJ services annually so that the hourly rate charged is based on a total-cost recovery methodology. The rate has been determined to be $153.00 per hour beginning October 1, 2019 through September 30, 2020 and $155.00 per hour beginning October 1, 2020. DOAH will notify the Village of Palm Springs General Employees' Pension Plan of the amended hourly rate on or about the first day of September of each year. That rate will become effective on the first day of October of that same year. The Village of Palm Springs General Employees' Pension Plan agrees to compensate DOAH for each hour actually worked, and subsequently, at the hourly rate determined in accordance with the Florida Legislature's directive. This rate will apply for ALJ services in preparing for hearings, traveling to hearings, conducting hearings, and preparing Recommended Orders.

3. Expenses. The Village of Palm Springs General Employees' Pension Plan agrees to pay the actual travel expenses of the assigned ALJ in the amount provided

pursuant to Chapter 112, Florida Statutes. DOAH agrees, whenever possible, to arrange the travel schedule of such ALJ so that the ALJ can accomplish other work during a trip, and, in such instances, travel expenses and hourly compensation will be prorated for services to the Village of Palm Springs General Employees' Pension Plan. In the event a hearing is being conducted by video teleconferencing, the Village of Palm Springs General Employees' Pension Plan will reimburse DOAH at the current DOAH video teleconferencing rate. DOAH will submit invoices monthly and the Village of Palm Springs General Employees' Pension Plan agrees to remit payment monthly in accordance with Chapter 218, Part VII, Florida Statutes. DOAH agrees to provide the Village of Palm Springs General Employees' Pension Plan an itemized statement of the charges and costs in the invoice.

4. Contract Management. Director of Administration, Lisa M. Mustain, shall provide contract management services under this Contract.

5. Term. This contract is for a term of one (1) year and will automatically renew for succeeding yearly periods one year from the date last signed. This Contract may be amended from time to time by mutual agreement of the parties, and may be terminated by either party for the

convenience of that party upon thirty (30) days' written notice.

6. Request for Services. The Village of Palm Springs General Employees' Pension Plan, in order to obtain the services for an ALJ, shall send a letter to the Chief Judge, Division of Administrative Hearings, requesting the services of an ALJ and shall include with such request a copy of any materials relevant to the request. DOAH shall provide an ALJ within thirty (30) days of is receipt of the letter.

7. Effective Date. This Contract will become effective on the date the last signature is made.

8. Notices. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

To: Village of Palm Springs General Employees' Pension Plan

Attn: Margie Adcock, Plan Administrator
Resource Centers, LLC
4360 Northlake Blvd., Suite 206
Palm Beach Gardens, FL 33410
Telephone: 561-624-3277
Email: margie@resourcecenters.com

With a copy to:
Bonni S. Jensen
Klausner, Kaufman, Jensen & Levinson

7080 NW 4^{th} Street
Plantation, Florida 33317
(954)916-1202

To DOAH:

State of Florida, Division of Administrative Hearings
Attn: Lisa M. Mustain, Director of Administration
1230 Apalachee Parkway
Tallahassee, Florida 32399

850-488-9675

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION PLAN

By: Patti Waller Date: 9/22/2020
Chair

By: ______________ Date: 9/23/20
Secretary

DIVISION OF ADMINSITRATIVE HEARINGS

By: Lisa M. Mustain Date: 9/23/2020
Lisa M. Mustain
Director of Administration

RPRSC

Rice Pugatch Robinson Storfer & Cohen
ATTORNEYS

ABOUT OUR FIRM

RPRSC maintains a single office located in Tower 101, 101 NE 3rd Avenue, Suite 1800, Fort Lauderdale, FL 33301. The firm is a Professional Limited Liability Company. Our phone number is (954) 462-8000. We are a local firm with a state-wide practice. RPRSC has existed for over 30 years, and is a well-known and highly respected Florida law firm. The firm is engaged exclusively in the practice of law and is comprised of 12 lawyers and 14 support personnel. While the firm has a diverse practice, the lawyers who make up the Pension Group at RPRSC are Ron, Ricki and Brent. We are all public pension lawyers and below is a summary demonstrating our expertise is the public pension legal arena.

Ronald J. Cohen. Ron is the leader of the firm's Pension Group and has been a Florida attorney since 1977. Ron has attained an AV rating in the Martindale-Hubbell Law Directory, signifying that he is considered by his peers to be preeminent in his field and of the highest ethical standards. He has been named one of South Florida's Top Rated Lawyers and has been certified by the Florida Bar Board of Legal Specialization and Education as a Specialist in Labor and Employment Law. In order to be certified, you must pass a rigorous review process, including a peer review by judges and lawyers. You are judged not only on your knowledge of the law, but on your competence, character, ethics and performance. A certified lawyer must have handled numerous contested matters as an advocate.

Ron received his Bachelor of Arts degree, *cum laude,* in 1973 from the University of Florida, and his Juris Doctor in 1976 from the University of Miami. He is admitted to the Florida Bar, the Montana Bar, and the Bars of the United States District Court for the Southern District of Florida, the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit. Ron is the long-time General Counsel to the Florida Public Pension Trustees Association ("FPPTA"), a not-for-profit association dedicated to the education of Florida public pension trustees. He believes that fiduciary education is essential in the public pension arena, and has freely given much of his time to educate Trustees. He is certified by the FPPTA as a Certified Public Pension Trustee. Ron is also a litigator and appellate attorney. He has successfully defended boards of trustees in numerous matters. He has handled hundreds of arbitrations and quasi-judicial hearings as well as having tried jury and non-jury cases. He not only handles relatively simple matters, but complex matters, including class actions involving millions of dollars in benefits. He prides himself on the vigorous representation of his clients while maintaining close watch on the substantial costs that are often associated with litigation. Ron has handled numerous appeals and writs of certiorari on matters such as disability appeals. He recently handled the financial urgency trial and appeal which resulted in a victory in the Florida Supreme Court for employees and for the preservation of retirement benefits.

Richelle B. Levy is a senior attorney with the firm and has been with Ron for over twelve years. Ricki graduated from the University Of Miami School Of Law, *cum laude* and has been an attorney for over twenty-three years. She worked in New York and New Orleans and has extensive experience in representing both private and governmental pension plans and employee benefit plans. Ricki worked for the City of New York as corporate counsel where she received extensive litigation training and continued in Florida on behalf of union Taft-Hartley plans, prior to turning her primary focus to the representation of governmental pension funds and public employee benefit plans. As general counsel for public funds, she has focused considerably on disability cases and tax issues affecting these plans, as well as educating trustees on their fiduciary duties. Ricki is a member of the Florida Bar, and is admitted to practice in the United States District Court for the Southern District of Florida and is an inactive member of the New York and Louisiana Bar. She is a member of the Florida Bar's Sections on Labor and Employment Law, Healthcare Law, and Local Government Law.

Ricki is a dedicated member of the Weston Community Emergency Response Team (CERT) and has been named Operations Manager for the City of Weston CERT. She regularly teaches training classes and conducts workshops in volunteer first aid and response for CERT. She has co-authored "Chapter Money in Florida: Everything that You Had Learned 'Appears to be Inaccurate,' and Probably Will Be Again" which appeared in the FPPTA publication *Retirement Security, A Good Investment* under <u>Florida's Legal & Legislative Issues</u>, Spring 2014. She is CPPT certified through the FPPTA and has spoken at the Trustee School, and is a member of the International Foundation of Employee Benefit Plans, the National Association of Public Pension Attorneys, and the American Association for Justice. Ricki is also an involved member in the Broward County Women's Lawyers Association and a member of the Florida Association of Women Lawyers. She is a regular panel member for Practice Law Institute's Women Leaders in Law.

Brent J. Chudachek is a senior associate with the firm and has been practicing with Ron since 2007, and his practice is focused primarily on representation of government pension funds. He has built quite a reputation in the Employee Benefits field and this has been indicated by his selection by Super Lawyers Magazine, as a *Florida Rising Star for 2012, 2013, 2014, 2015, 2016 and 2017 in the field of Employee Benefits Law*. He was also selected as a Top Up and Comer, by the South Florida Legal Guide, 2016 and 2017 Editions.

Brent graduated in 2002 with a B.A., in Economics from Hobart College. Brent received his J.D., *cum laude*, from St. Thomas University School of Law in 2006. During law school, Brent was a Merit Scholarship recipient and selected to the Peter T. Fay American Inn of Court. Brent also clerked for the Honorable Chief Judge David L. Levy (retired) at the Third District Court of Appeals while in law school. Brent is a member of the Florida Bar, and is admitted to practice in the United States District Court for the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit. Brent is certified by the FPPTA as a Certified Public Pension Trustee and regularly lectures at their Trustee Schools.

Richelle B. Levy

rlevy@rprslaw.com
(954) 701-8806

Employment:

Rice Pugatch Robinson Storfer & Cohen, PLLC- March 2014- Present
(via merger with Ronald J. Cohen, P.A.)
Senior Attorney, Public Pension and Employee Benefits Law Section

Ronald J. Cohen, P.A.- September 2008 – March 2014

Phillips, Levy & Rind, P.A. – February 1993 – May 1998
(formerly Kaplan and Bloom, P.A.),
Partner

Law Offices of Frank DeSalvo – 1992 (New Orleans, Louisiana)
Associate

New York City - January 1990 – January 1992
Staff Attorney, Corporate Counsel (New York, NY)

Bar Memberships:

Florida
United States District Court, Southern District of Florida

Professional Memberships:

Florida Bar Association
National Association of Public Pension Attorneys
International Foundation of Employee Benefits
American Association for Justice (formerly Amer. Trial Lawyers Assoc.)
Florida Association for Women Lawyers
Broward County Women Lawyers Association
Certified Public Pension Trustee, FPPTA

Community Memberships:

Community Emergency Response Team, 2014 - present
Weston, Florida
Program Manager, January 2017 – present

Education:

University of Miami School of Law, 1986, Coral Gables, Florida
Juris Doctor, cum laude
Honors: Winner, Moot Court Competition
Research Assistant; Professor Kathryn Sowle,
Semi-Finalist, 1988 Moot Court Competition
Advisor, 1989 Moot Court Competition
Vice-President, Forum for Women & Law
Deans List; Scholarship Recipient
University of Miami School of Law, 1989, Coral Gables, Florida
Bachelor of Arts, Sociology

AGREEMENT FOR LEGAL SERVICES FOR THE VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND

THIS AGREEMENT, made and entered into the ___ day of _________________, 2020, by and between the Village of Palm Springs General Employees' Pension Fund (hereinafter referred to as the "Plan"), and Rice Pugatch Robinson Storfer & Cohen PLLC, with its principal place of business at 101 NE 3rd Avenue, Suite 1800, Fort Lauderdale, Florida 33301, (hereinafter referred to as the "Firm").

WITNESSETH:

WHEREAS, the Plan has the need for legal services in connection with the Board representation of a forfeiture prosecution involving William F. Davis before the Department of Administrative Hearings; and,

WHEREAS, the Firm is desirous of entering into this contractual relationship as hereby set forth; and,

WHEREAS, it is the purpose of this Agreement to set forth clearly the understanding and agreement of the parties with respect to the above matter.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Plan and the Firm hereby agree as follows:

I. RECITALS

The above recitals are hereby incorporated into this Agreement.

II. SCOPE OF SERVICES

A. The Firm shall perform legal services as the Plan's Special Counsel, to:

i. review the records concerning the forfeiture of his benefits;

ii. advocate why the forfeiture should be upheld if appropriate after review;.

iii. provide reasonable availability for telephone consultation on matters relating to this case; and

iv. attend meetings of the Plan when requested.

B. The Firm shall promptly correct all work rejected by the Plan as failing to conform to this Agreement. The Firm shall bear all costs of correcting such rejected work.

C. The Plan, without invalidating this Agreement, may order changes in the work within the general scope of this Agreement consisting of additions, deletions, or other revisions, the Agreement price and time being adjusted accordingly. All such Plan changes in the work shall be authorized by written Addendum to this Agreement, and shall be executed under the applicable conditions of the Agreement.

III. EFFECTIVE DATE; TERM OF ENGAGEMENT

The effective date of the Firm's engagement is ___________________.

IV. COMPENSATION FOR SERVICES RENDERED

A. The Firm shall be compensated at $300.00 per hour for actual reasonable time spent by an attorney fully licensed by the State of Florida. The fee is to be computed on an hourly basis in 1/10th hour increments. Paralegal services are billed at the rate of $80.00 per hour.

B. The extent of legal services rendered shall be subject to the approval of the Plan. Approval of the Plan is required before incurring extraordinary expenses.

V. COST REIMBURSEMENT

The Firm does not charge for faxes, long distance telephone or regular postage. Copying charges are billed at the rate of $0.25 per page and overnight mail costs are billed as incurred.

VI. PAYMENT

A. All invoices received by the Plan are payable within thirty (30) days from receipt, provided they have first been approved by the Plan Administrator, and the Plan has accepted the work.

B. The Plan reserves the right, with justification, to partially pay any invoice submitted by the Firm when requested to do so by the Plan.

C. All invoices shall be directed to the attention of Margie Adcock, Pension Resource Center.

D. The Firm, upon final payment of the amount due under this Agreement, releases the Plan and its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

VII. TERMINATION

Service under this Agreement is at the pleasure of the Plan and may be terminated by the Plan at any time, with or without cause, upon written notice to the Firm. The Firm may terminate this Agreement, with cause, upon sixty (60) days' written notice to the Plan. If the Firm's services are terminated, the Firm will be paid for all services rendered and costs incurred to the date of notice of termination, unless the notice of termination specifies a later termination date or requires the completion of work in progress, in which case the Firm will be compensated and reimbursed for such services and costs incurred as are stated in such notice of termination.

VIII. REPRESENTATION AND WARRANTIES

The firm represents and warrants the following by execution of this Agreement:

A. Experience. The firm has substantial experience in providing legal services to public sector pension plans. It is understood that the execution of this Agreement by the Firm serves as stated commitment to fulfill all the conditions referred to in this Agreement and that the work provided shall conform to professional standards of care and practice in effect at the time the work is performed.

B. Identity of Key Personnel. The Firm agrees that Richelle Levy will be the key legal counsel for the services to be provided. All work by the Firm will be performed by her or under her direct supervision. Ms. Levy will attend meetings of the Board, and any hearing. If for some unforeseen reason a need does arise for a change in the primary legal counsel, the Firm will not make such a change without the prior written consent of the Plan.

C. Conflict of Interest. The Firm warrants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the faithful performance of services required under this Agreement. It is understood that the Firm shall not utilize its position with the Plan to obtain any advantage in securing information or assistance in matters in which it does not represent the Plan.

D. Firm's Authority. The Firm agrees not to bind, or to purport to bind, the Plan to any obligation not assumed herein by the Plan, unless the Firm has written authority to do so, and then only within the strict limits of that authority.

E. Insurance. That the firm carries professional liability insurance with a minimum policy limit of one million ($1,000,000.00) dollars per claim and such insurance will be maintained during the term of your engagement under this Agreement. The Firm shall provide proof of the Firm's coverage to the Plan's Administrator, if requested.

IX. OWNERSHIP OF RECORDS/PUBLIC RECORDS LAWS

A. All materials, information and data furnished to or developed for the Plan by the Firm or its employees, pursuant to this Agreement, shall be the sole property of the Plan and the

Plan therein reserves all rights. All such materials shall be delivered to the Plan upon request. Any information given to or developed by the Firm shall be made available by the Firm to any person if required by the provisions of the Florida Public Records Law, Chapter 119, Florida Statutes.

B. Public Records: Firm will comply with public records laws, specifically to:

1. Keep and maintain public records required by the Plan to perform the service.

2. Upon request from the Plan or its public records custodian, provide the Plan with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Firm does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to Plan all public records in possession of Firm or keep and maintain public records required by the Plan to perform the service. If Firm transfers all public records to Plan upon completion of the contract, Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Firm keeps and maintains public records upon completion of the contract, Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Plan, upon request from Plan or its public records custodian, in a format that is compatible with the information technology systems of Plan.

IF FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

Pension Resource Centers
Margie Adcock, Plan Administrator
4360 Northlake Blvd. Suite 206
Palm Beach Gardens, FL 33410
Phone: 561.624.3277
Fax: 561.624.3278

X. MISCELLANEOUS

A. Assignment. The services rendered under this Agreement are personal to the Firm and may not be assigned to any person who is outside the Firm.

B. Status of Plan Counsel. The Firm, its agents and employees are independent legal counsel performing professional services for the Plan and are not employees of the Plan.

C. Subcontracting. No portion of the services to be performed under this Agreement can be subcontracted without prior written approval of the Plan.

D. Amendments. This Agreement may be amended only by written instrument signed by both the Firm and the Plan.

E. Entire Agreement. This Agreement incorporates all the proposals, agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such proposals, agreements, covenants, and understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

F. Governing Law. This Agreement is deemed to be under, and shall be governed by and construed according to, the laws of the State of Florida. Any litigation arising out of this Agreement shall be had in the courts of Palm Beach County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

PENSION PLAN

Date: ______________ ____________________________________
Chair

Date: ______________	___________________________________ Secretary
Date:______________	RICE PUGATCH ROBINSON STORFER & COHEN PLLC ___________________________________ RICHELLE LEVY

ROSSMAN LEGAL

6840 Griffin Rd. • Davie, FL 33314 • Phone: 954.440.0908 • www.rossmanlegal.com

Bonni S. Jensen
Klausner, Kaufman, Jensen & Levinson
7080 N.W. 4th Street
Plantation, Florida 33317

13 August 2020

Re: Village of Palm Springs General Employees' Pension Fund - Forfeiture Hearing - W. Davis

Ms. Jensen:

I am attaching a copy of my resume along with this letter. Rossman Legal has three attorneys and practices in the following areas of law: Police Legal Advisor, Forfeiture, Civil Litigation, Estate Planning, Probate, Business Incorporation, Construction Law and HOA/Condominium Law. Most of my time is spent serving multiple local police departments as a legal advisor. I create and approve policy, conduct continuous training, participate in Command Staff meetings, guide homicide and other complicated investigations and act as a liaison to the State Attorney's Office. I have also handled critical events for several agencies including managing the agency response to the press.

As we discussed, I have also prosecuted several pension forfeiture cases on behalf of different pension funds. I would be happy to provide you with contact information for the Executive Directors and/or Board Members of those pension funds for reference. You can also contact Bob Sugarman of Sugarman Susskind for a reference as he was the pension fund attorney in those matters.

Please let me know if you require anything else.

Gregg Rossman

Gregg Rossman
Rossman Legal
6840 Griffin Rd
Davie, FL 33317
gregg@rossmanlegal.com

Day Phone: 954.440.0908
Cell Phone: 954.579.9249

10/14 – Present

Gregg Rossman, P.A. (d/b/a Rossman Legal)
6840 Griffin Road
Davie, FL 33314

Founder/Owner
Police Legal Advisor/Asset Forfeiture
Multiple Local Police Departments
Pension Forfeiture, Civil Litigation

10/14 – Present

Comprehensive Law Enforcement Analytics & Training (CLEAT) Founder/Partner
Prepare and present seminars on legal topics pertaining to law enforcement such as search and arrest warrants, Miranda Rights, witness testimony, homicide investigations, etc. Presented throughout the State of Florida.

09/97 – Present

Institute of Public Safety, Broward College
3501 Davie Road, Davie, FL 33314

Faculty/Adjunct Professor
Teach 40 hour Course titled "Case Preparation and Courtroom Presentation" several times a year. Also teach sections of Death Investigation and Criminal Laws. Previously taught legal sections of Police Academy classes, Public Service Aid Academy classes, Comparative Compliance classes, Crossover Academy classes and many topic specific seminar classes.

10/94 – 09/14*****

Office of the State Attorney, 17th Judicial Circuit
Assistant State Attorney
201 SE 6th Street, Room 670
Fort Lauderdale, FL 33301
*** Sworn as a "Special Assistant State Attorney" through 12/16 to handle two Death Penalty trials***

05/07 – 09/14 **Homicide Trial Unit**
Prosecuted 1st Degree Murder cases including guilt and penalty phase trials seeking imposition of the Death Penalty. Presented homicide cases to the Grand Jury, including police involved shootings. Advised law enforcement, approved applications for search and arrest warrants and other Court orders.

03/05 – 05/07 **Organized Crime Unit**
Prosecuted cases involving RICO including Murder, Racketeering, Bookmaking, Extortion and any Gang related crimes of violence.

08/00 – 03/05 **Career Criminal Unit**
Prosecuted defendants designated for assignment to Repeat Offender Court as Violent Career Criminals, Habitual Violent Felony Offenders, Habitual Offenders, Prison Releasee Reoffenders or 3 Strikes Offenders.

11/98 - 08/00 **Felony Trial Unit Supervisor**
Prosecuted DUI Manslaughter, Executive Assignments and high profile cases. Supervised five felony divisions.

01/97 – 11/98 **Felony Trial Unit Prosecutor**
Prosecuted all levels of felonies from third degree felonies up to and including 2nd Degree Murder.

10/94 -01/97 **County Court/Supervisor**
Prosecuted DUI, including recidivist offenders, Executive Assignments and high profile cases. Supervised three divisions.

Education

1994 **Nova Southeastern University**
Law Degree

1988 **Florida State University**
Major: Communications

Honors

2001 Distinguished Faculty – FPAA
2001 Prosecutor of the Year – MADD
1999 Prosecutor of the Year – SAO/Broward Crime Commission

Professional Biography

Gregg Rossman is an accomplished litigator with more than 26 years of trial experience. Gregg is an expert in criminal law and the application of the law in the service of law enforcement agencies. As an Assistant State Attorney, he tried some of the most complicated and high profile cases in Broward County. Many of those cases were featured in the national and local media. Gregg has been interviewed by ABC News on Good Morning America, Investigation Discovery Channel, CBS4 Miami, NBC6 Miami, WSVN7, WPLG10 Miami, and the Wall Street Journal, Sun-Sentinel and Miami Herald newspapers. Gregg has strong family ties and connections in the law enforcement community. He is a second generation Miamian.

Gregg has lectured extensively throughout the State of Florida on topics such as Ethics and Professionalism, Jury Selection, Direct/Cross Examination, Closing Argument, Collateral Crimes, Cross Examination of Experts, Enhanced Sentencing, Search and Seizure, Exigent Search Exceptions, Mobile Tracking and Cell Phone Signal Tracking. Gregg was quoted in a Wall Street Journal article about mobile tracking and cell site technology.

Since founding his own firm Gregg has contracted with multiple police agencies serving as their legal advisor. Gregg has also been hired as Special Counsel by Pension Plans to prosecute forfeiture actions on their behalf. He has conducted multiple Administrative Trials in this area. Gregg has also represented retired police officers whose pension benefits had been improperly limited and had those benefits restored.

Rossman Legal has three attorneys and the areas of practice beyond those stated above are Estate Planning, Probate, Business Incorporation, Construction Law and HOA/Condominium Law.

ROSSMAN LEGAL

6840 Griffin Rd. • Davie, FL 33314 • Phone: 954.440.0908 • www.rossmanlegal.com

AGREEMENT FOR RETAINER OF SERVICES

THIS AGREEMENT made and entered into this _________day of______________, 2020 by and between Rossman Legal and Village of Palm Springs General Employees' Pension Fund ("Client").

WHEREAS, Client wishes to retain Rossman Legal as its attorney in fact to represent it as an attorney in the following matters which shall hereinafter be referred to as "Services": Forfeiture Hearing - W. Davis

WHEREAS, Rossman Legal is willing to represent Client in the above enumerated "Service(s)" as its attorney under the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Client Agrees to deposit with Rossman Legal the sum of zero as a retainer against the fees to be incurred and "Service(s)" to be performed.

2. Client agrees to pay Rossman Legal as a fee for the performance of "Service(s)" the above referenced amount(s), as well as $300.00 an hour for all matters handled by an Attorney of the Firm. Client agrees to pay $95.00 an hour for all matters handled by a Paralegal of the Firm.

3. Client acknowledges that the basis of computing attorneys' compensation has been fully explained to Client, and that the compensation is based upon, among other factors, the time and labor involved, the novelty or difficulty of questions presented, the results obtained, time limitations imposed by this representation, and the reputation, experience and ability of the Attorney in performing this type of service.

4. If it is necessary for the Firm to file suit against the Client for the collection of any sums due under this Agreement, the Client shall pay the Firm a reasonable attorney's fee together with Court costs arising therefrom.

5. Interest at 1.5% per month will be added to all bills remaining past due after fifteen (15) days.

6. The Firm has made no representations, promises or guarantees to the Client

concerning the outcome of any legal action or litigation or concerning the total attorney's fees and court costs that will be incurred and due by the Client as a result. The Client acknowledges that he or she has not relied on any representations, promises or guarantees which are not contained in this agreement.

7. This Agreement contains the whole understanding between the Firm and the Client. It may only be modified in writing, signed by both parties.

8. The Client acknowledges that he or she has been advised that if any portion of this Agreement is not clearly understood, the Client should NOT sign it. The Client understands and acknowledges that he or she may seek independent legal counsel to review and explain this Agreement to the Client and the Client has had an ample opportunity to do so.

IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed and delivered on the day and year first above written.

____

By: Authorized Representative
(Sign Name)

____

Gregg Rossman, Esq.
For the Firm,
Rossman Legal

ATTACHMENT TO AGREEMENT FOR RETAINER OF SERVICES WITH ROSSMAN LEGAL

This is an Attachment to the agreement for Retainer of Services dated _____________ between Rossman Legal and Village of Palm Springs General Employees' Pension Fund (“Client”).

In consideration of the Agreement, Client and Rossman Legal agree to supplement Agreement for Retainer of Services as follows:

A. **Public Records:** Rossman Legal will comply with public records laws, specifically to:

1. Keep and maintain public records required by the Client to perform the service.

2. Upon request from the Client or its public records custodian, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Rossman Legal does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to Client all public records in possession of Rossman Legal or keep and maintain public records required by the Client to perform the service. If Rossman Legal transfer all public records to Client upon completion of the contract, Rossman Legal shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Rossman Legal keeps and maintains public records upon completion of the contract, Rossman Legal shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Client, upon request from Client or its public records custodian, in a format that is compatible with the information technology systems of Client.

IF ROSSMAN LEGAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY

TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

ADMINISTRATOR
PENSION RESOURCE CENTER
4360 NORTHLAKE BOULEVARD - SUITE 206
PALM BEACH GARDENS, FL 33410
TELEPHONE: (561) 624-3277
FACSIMILE: (561) 624-3278

IN WITNESS WHEREOF, the parties hereto have executed this Addendum by their respective authorized representatives on the dates indicated below.

ROSSMAN LEGAL

By:__________________________________
Gregg Rossman, Esq.
For the Firm

Date:_____________________________________

WITNESS: ________________________________
As to Rossman Legal

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND

By: _____________________________________
Chair

By: _____________________________________
Secretary

Date:_____________________________________

WITNESS:_________________________________
As to Client

REPLY TO: TALLAHASSEE

August 19, 2020

Bonni Jensen, Esq.
Legal Counsel to Village of Palm Springs Police Officers Pension Plan
Board of Trustees

Re: Legal Representation of Village of Palm Springs Police Officers Pension Plan Board of Trustees—Forfeiture Matter

Dear Bonni,

Thank you for the opportunity to be considered to serve as litigation counsel to the Palm Springs Police Officers Pension Plan Board of Trustees in a benefit forfeiture matter. As requested, information about my firm, our public pension practice, and a proposed engagement letter are enclosed.

Lewis, Longman & Walker is a statewide law firm with thirty-three lawyers and three paralegals located in four Florida offices: Jacksonville, St. Petersburg, Tallahassee, Tampa and West Palm Beach. Our lawyers have a strong statewide reputation in the areas of public pension law and governmental law, as well as environmental, water and land use law. The Firm provides pension-related legal services to pension boards and local governments throughout Florida.

Lewis, Longman & Walker currently represents a number of Florida pension plans and local governments in a broad range of retirement and employee benefits matters, including: advice on plan compliance with applicable federal and state laws; acting as general counsel to pension boards and attending pension board meetings; providing legal advice on all matters pertaining to the pension plan; providing counsel on fiduciary and state ethics, sunshine and public records law issues; preparing plan amendments; review of contracts, RFPs and plan documents for legal sufficiency; and representation in legal proceedings at the trial and appellate level. Shareholder

Glenn Thomas has handled a number of forfeiture matters at the trial and appellate level. Glenn and I have also represented numerous clients in formal administrative hearings before the Florida Division of Administrative Hearings. Based on our broad experience in public pension matters, Lewis, Longman & Walker has developed substantial proficiency in responding to the unique legal issues facing local government pension plans in a comprehensive and cost-effective manner. The Firm also monitors and regularly reports on proposed legislation, regulations and rulings that impact public employee retirement plans.

Please let me know if you have any questions, or if additional information is required.

Sincerely,

James W. Linn

Enclosures

Glenn E. Thomas
Shareholder

Email
gthomas@llw-law.com

Phone
850.222.5702

Office
315 South Calhoun Street
Suite 830
Tallahassee, FL 32301

Biography

Glenn Thomas represents public entity clients in pension and local government matters. His representation of pension boards includes advice and counsel on legal and fiduciary obligations, and guidance on quasi-judicial board functions such as disability and forfeiture proceedings. As pension board counsel, Glenn has handled numerous forfeiture and disability proceedings from initial hearing to appeal; including the successful defense of pension forfeiture at the District Court of Appeal level. He also advises pension board members on relevant local government issues such as Sunshine Law, ethics and public records. He is admitted to practice in the United States District Courts for the Southern, Middle and Northern Districts of Florida. Prior to becoming an attorney, Glenn was a deputy sheriff for more than ten years with the Broward County Sheriff's Office.

The following is a representative sample of the governmental pension board clients Mr. Thomas represents. His representation includes instructing boards on all legal and fiduciary obligations, drafting plan amendments and other documents, maintaining plan compliance with federal and state laws, and providing guidance on quasi-judicial board functions such as disability and forfeiture proceedings.

- **City of Apopka's Police Officers' Retirement Trust Fund, Firefighters' Retirement Trust Fund and General Employees' Trust Fund (**2009-present): Mr. Thomas serves as legal counsel for the Boards of Trustees of all three City of Apopka retirement plans. His representation has included hearings on disability, forfeiture and other benefit issues.

- **City of Fort Lauderdale General Employees Retirement System** (2017-present): Mr. Thomas serves as legal counsel to the Board of Trustees. His **representation** has included hearings on disability, forfeiture and other benefit issues.

- **City of Fort Walton Beach** (2004-2014): Mr. Thomas served as legal counsel for the Board of Trustees. Mr. Thomas successfully represented the City in a pension forfeiture case, and prevailed in an appeal of the pension board's action before the First District Court of Appeal.

- **City of Madison Police Officers and Firefighters' Retirement System** (2020): Mr. Thomas serves as legal counsel for the Boards of Trustees
- **City of Vero Beach Employee Retirement Plan** (2012-Present): Mr. Thomas serves as legal counsel to the City's General Employee **Retirement** System Retirement Committee.

Glenn is Board Certified in City, County and Local Government Law by the Florida Bar, and serves on the Executive Council of the City, County and Local Government Section of the Florida Bar. He is Chair of the Florida Bar's Annual Public Employment Labor Relations Forum. He is a frequent lecturer and has written numerous articles on pension matters. He earned his B.S. in Criminology from Florida State University in 1990 and his Juris Doctor, cum laude, from Nova Southeastern University in 2000.

Jim Linn

Shareholder

Biography

Mr. Linn advises public employers and pension boards on federal and state laws pertaining to governmental retirement plans. He works closely with local governments and pension actuaries in restructuring retirement benefit programs and preparing pension plan documents and amendments. He also represents public employers and pension boards in pension-related litigation and appeals. As a lobbyist and AV-rated attorney, Jim has represented statewide associations, corporations and public sector clients before the Florida legislature for more than two decades. He is a former Chairman of the Florida Bar Section on City, County and Local Government Law, and is a frequent lecturer on public pension and employment topics.

Jim holds a Bachelor's Degree from Florida State University and graduated with honors from the Florida State University College of Law. He has been included in The Best Lawyers in America since 2009 in the areas of labor and employment law and employee benefits (ERISA) law.

Email

jlinn@llw-law.com

Phone

850.222.5702

Office

315 South Calhoun Street
Suite 830
Tallahassee, FL 32301

REPLY TO: TALLAHASSEE

August 19, 2020

Village of Palm Springs Police Officers Pension Plan
Board of Trustees
c/o The Resource Centers
4360 Northlake Blvd., Suite 206
Palm Beach Gardens, FL 33410

Re: Legal Representation of Village of Palm Springs Police Officers Pension Plan Board of Trustees—Forfeiture Matter

Dear Board Members:

On behalf of the law firm of Lewis, Longman & Walker, P.A. ("LLW"), thank you for the opportunity to represent the Village of Palm Springs Police Officers Pension Plan Board of Trustees ("Board") in the above-referenced matter that is further defined in Section 2 of this Engagement Agreement ("Agreement"). The purpose of this Agreement is to document the terms of our professional relationship. A solid attorney-client relationship is built on a clear understanding of the terms of the relationship. Therefore, I ask that you review this letter with care and then either confirm your agreement to these terms or state any different or additional terms that the Board would like us to consider.

1. Client. Unless and until agreed by all parties in writing, LLW's only client in this matter is the Village of Palm Springs Police Officers Pension Plan Board of Trustees, whose primary address is c/o The Resource Centers, 4360 Northlake Blvd, Suite 206, Palm Beach Gardens, FL 33410.

2. Services. LLW will provide advice and representation to the Board on a forfeiture matter, as requested by the Board. Specifically, LLW will act as litigation counsel for the Board in a forfeiture matter brought pursuant to section 112.3173, Florida Statutes. Any additional matters that the Board may ask us to undertake must be covered by a separate Engagement Agreement and will require a separate conflict check.

3. Professional Fees. Glenn Thomas, a shareholder in our Tallahassee office who has extensive experience in forfeiture matters, will be primarily responsible for this matter and will act as lead trial counsel. Mr. Thomas' hourly rate is $300.00. Mr. Thomas and I will ensure that this matter is staffed

in a manner adequate and appropriate to the requirements of the representation. The rates for other LLW attorneys range from $225.00 to $335.00 per hour. The rates for paralegals/law clerks range from $175.00 to $195.00 per hour. These rates will be in effect through December 2020 and are subject to change in January of each subsequent year. If rates are changed the Board will be notified.

4. Communication and Cooperation. In order for us to serve as the Board's counsel, it is essential that we are able to contact the Board, and that the Board respond to our requests for information or documents as expeditiously and completely as possible. We may also require client personnel be made available to meet with us in relation to representing the Board in this matter.

It is my understanding that Bonni Jensen will be the Board's primary client contact for this matter. Mr. Thomas and I can be reached by telephone at 850.222.5702. Mr. Thomas' cell phone is 850.597.0744, and his email address is gthomas@llw-law.com. We endeavor to return all telephone calls or e-mails within 24 hours during the business week; however, if you are ever unable to reach us, please contact our assistant, Elizabeth, by telephone at 850-222-5702 or by e-mail at elizabeths@llw-law.com.

5. Costs. LLW will charge the Board for direct costs incurred on the Board's behalf for this representation.

6. Billing and Payment. We will bill the Board on a monthly basis for professional services rendered and expenses incurred in connection with this matter. Our services will be billed in tenth of an hour increments rounded up to the nearest increment, with a minimum entry for the task of one tenth of an hour. The Board agrees to pay the amount of each invoice in full in accordance with Florida's Prompt Payment Act (Section 218.70, etc., Fla. Stat.). Payments received will be applied to the outstanding invoices specified by the payment. If a specific invoice is not specified, the payment will be applied to the oldest outstanding invoice. If you have any questions about an invoice or if the Board disputes any items or any invoice, the Board agrees to notify us in writing within fifteen (15) days of the billing date of the question or concern. If no issues are raised within this time period, the firm will assume the Board does not have any dispute with the invoice.

7. Public Records LLW will keep and maintain public records required by the Board to perform the services requested. However, the parties agree that the nature of the retention contemplated herein does not render LLW a "public agency" within the meaning of the term in Chapter 119, Florida Statutes.

Upon request of the Board's custodian of public records, as identified in the next section, LLW will provide the Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

For public records requests that require significant administrative time or the use of technology to fulfill, LLW will prepare an estimate of the cost of fulfilling the public records request and provide same to the Board in writing. If the Board has a policy regarding the manner of calculating charges for significant administrative time or the use of technology, LLW will follow the policy in developing the cost estimate. The Board's policy will be attached hereto upon execution by the Board. If the Board does not have a specific policy for calculating charges for significant administrative time or the use of technology, LLW shall develop the estimate based on LLW's actual cost. Significant administrative time will be considered time in excess of 30 minutes. Labor costs shall be estimated based on 1.25 x the hourly rate of the lowest paid LLW member capable of performing the work. The cost of technology shall be estimated based on actual cost, with no mark-up.

LLW will ensure that public records maintained or created in connection with this representation that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of the representation if LLW does not transfer the records to the Board.

Upon completion of the representation, LLW shall transfer, at no cost to the Board, all public records in possession of LLW related to the representation, in the format in which those records were ordinarily kept, provided that all electronic records shall be produced to the Board in a format that is compatible with the Board's information technology systems. If the Board desires the records to be transferred in a format that is different than the above-referenced format, LLW shall prepare a cost estimate for the records conversion upon request, and provide the converted records to the Board upon approval of the cost estimate.

LLW shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. LLW may retain duplicate copies of non-exempt and non-confidential public records after the record copies are transferred to the Board.

If the Board receives a public records request for materials the record copies of which are maintained by LLW, the Board shall immediately notify LLW of the request in writing. LLW will provide the records to the Board, or allow the records to be inspected or copied within a reasonable time, as directed by the Board. If the Board desires for LLW to review the records for responsiveness and/or exemption/privilege, the Board shall advise LLW of its desire in writing and LLW shall provide the service at the rates provided herein. If the Board should direct LLW to "certify" a public record, the Board should provide LLW with direction on the desired format of such certification along with the records request.

8. **IF LLW HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LLW'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, LLW WILL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

(561) 624-3277
Telephone Number

RecordsRequest@resourcecenters.com
E-mail Address

4630 Northlake Blvd, Suite 206
Palm Beach Gardens, FL 33410
Mailing Address

We sincerely thank you for choosing LLW to assist in this matter. If the Board agrees with the foregoing terms and conditions, please sign in the space provided at the bottom of this Agreement, return a copy to me, and retain a copy for the Board's records. On behalf of LLW, we look forward to assisting the Board in this matter.

Sincerely,

James W. Linn

James W. Linn
Shareholder
Lewis, Longman & Walker, P.A.

ACCEPTED BY:

Village of Palm Springs Police Officers Pension Plan Board of Trustees

By: ______________________________

____
[PRINT NAME]

____
[TITLE]

____
[DATE]

____
[Email Address]

____
[Work Telephone Number]

____
[Cell Phone Number]

WARD
DAMON
ATTORNEYS AT LAW

4420 BEACON CIRCLE
WEST PALM BEACH, FL 33407
Telephone: (561) 842-3000
Direct: (561) 594-1443
Facsimile: (561) 842-3626
www.warddamon.com

I. Jeffrey Pheterson, Esquire
jpheterson@warddamon.com

August 12, 2020

BY EMAIL
(bonni@robertdklausner.com)

Bonni Spatara Jensen, Esquire
Klausner, Kaufman, Jensen & Levinson
7080 NW 4th St
Plantation, FL 33317-2201

Re: Village of Palm Springs General Employee Pension Plan/Pension Forfeiture Proceeding

Dear Ms. Jensen,

This correspondence is sent to you as a follow up to your inquiry about representation of the Village of Palm Springs General Employee Pension Plan (Plan) in a proceeding before the State of Florida, Division of Administrative Hearings (DOAH), and related matters. It is my understanding that the Plan requires legal representation regarding a former employee of the Village who pled guilty to violations of Section 112.3173, Florida Statutes, which addresses felonies involving breach of public trust and other specified offenses by public officers and employees, resulting in potential forfeiture of retirement benefits.

This firm, through the undersigned, would like to be considered for undertaking prosecution of this pension forfeiture case against that former employee. I believe that our experience in labor relations, and our prior work with this forfeiture statute in particular, make us well suited for this engagement.

Towards that end, and to permit this expression of interest to be taken in its appropriate context, I will outline below our prior experience in labor relations and with this subject matter area, public pension forfeitures. Also, attached are some materials which more generally describe the Ward Damon law firm and its labor and employment law practice. Finally attached is a draft engagement letter should this firm be chosen to undertake this responsibility. This draft may need to be edited for the precise name of the client, and as otherwise required.

I have undertaken two cases involving prior representation of clients on public pension forfeitures which are a matter of public record. These cases were complex and illustrate our competency in this area. Although these two cases involved representation of individuals seeking to avoid forfeiture, I am well equipped to represent the Plan in seeking forfeiture as well, based upon my management background.

The first case involved representing W. D. Childers, a former West Florida colorful politician who served 30 years in the State Senate, from 1970 to 2000, including a stint as Senate President from 1980 to 1982 and as dean from 1988 to 2000. He holds the title of Florida's longest-serving state legislator, which title, with term limits, will never pass to another.

Childers was represented by me at the administrative level and on appeal in the Florida Courts on the forfeiture of his retirement benefits upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior. He had accrued pension benefits in FRS in three positions, first as a public school teacher, then as a State Senator, and, then after implementation of term limits, as an Escambia County Commissioner. In this last position, the problems arose. That conviction resulted in forfeiture of all FRS benefits, irrespective of the underlying different periods of employment by different covered employers.

The final appellate case is reported at *W.D. Childers v. State of Florida, Department of Management Services, Division of Retirement*, 989 So.2d 716 (Fla. 4th DCA 2008). A copy of this case is attached. This case precedent established a number of points helpful to governmental entities seeking pension forfeitures.

The second significant representation involved former West Palm Beach City Commissioner Raymond Liberti. Mr. Liberti had been an employee of the State of Florida, in what then was the Florida Department of Health and Human Services, covered by FRS. He left that position, and subsequently became a West Palm Beach City Commissioner, which municipality had its own separate pension system. His crimes were related to that second municipal employer with its separate pension system. He was convicted as part of what was known as the “pay for play” culture of what was then becoming referred to as Corruption County. In 2006, Liberti was convicted and sentenced to 18 months in prison for accepting $66,000 plus a $2,000 watch from a businessman who wanted to use code enforcement to force a massage parlor operator to sell low.

Mr. Liberti's City pension was forfeited, while his state FRS pension, unaffected by any misconduct, was left intact, as required by law. This representation regarding the FRS decision was handled at the administrative level and no court appeals were necessary.

This firm also has engaged in various related representations through the years. We have represented the City of Boca Raton Police and Firefighters Pension Fund regarding a disputed application for service-connected disability benefits. Further, advice has been provided to a number of public employers, and former public employees and officials on public sector pension matters, including other forfeiture issues (which are not in the public record, and thus remain confidential).

I would note further that we have extensive experience in recent days with hearings involving Zoom and related technology. Handling this DOAH proceeding in that manner will be straightforward. Furthermore, the undersigned is trained in all Palm beach County OIG Ethics matters, and conversant in the Public Records Act and Government in the Sunshine Act.

Attached is a draft standard engagement letter for the firm. I have included an hourly rate of $300.00 per hour for me. This is discounted from my standard private sector rate of $500.00 per hour. This draft engagement letter may need to be edited to conform to the Village's standards for contracts.

Should any additional information, or a remote video conference interview be required or helpful, please contact me and we can take any necessary steps to provide all information requested.

We look forward to working through this process, and handling these matters expeditiously and in a cost-effective manner.

Sincerely,

/I. Jeffrey Pheterson/

I. Jeffrey Pheterson, Esquire

IJP/sj

Enclosures:

1. *Childers v. State of Florida, Department of Management Services, Division of Retirement*, 989 So.2d 716 (Fla. 4th DCA 2008),

2. Ward Damon Employment and Labor Law Section Brochure,
3. Ward Damon Firm Brochure,
4. Ward Damon Engagement Letter.

989 So.2d 716
District Court of Appeal of Florida,
Fourth District.

W.D. CHILDERS, Appellant,
v.
STATE of Florida, DEPARTMENT OF MANAGEMENT SERVICES, DIVISION OF RETIREMENT, Appellee.

No. 4D07–4230.
|
Aug. 27, 2008.

Synopsis
Background: Former state employee challenged order of the Department of Management Services, Division of Retirement, forfeiting his pension based upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior.

Holdings: The District Court of Appeal, May, J., held that:

[1] forfeiture of benefits was not a fine for purposes of Excessive Fines Clause;

[2] forfeiture was not a criminal penalty and did not violate Double Jeopardy Clause, and

[3] forfeiture did not violate constitution prohibition on ex post facto laws.

Affirmed.

West Headnotes (9)

[1] **Fines**—Excessive fines

Excessive Fines Clause limits only those fines directly imposed by, and payable to, the government. U.S.C.A. Const.Amend. 8.

1 Cases that cite this headnote

[2] **Fines**—Excessive fines
Public Employment—Revocation, Suspension, or Termination of Benefits
States—Right to benefits, and amount

Forfeiture of former state employee's retirement benefits upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior was not a fine for purposes of Excessive Fines Clause, because the employee had not been ordered to pay anything to the government; forfeiture merely relieved the State of its duty to pay retirement benefits. U.S.C.A. Const.Amend. 8; West's F.S.A. Const. Art. 2, § 8; West's F.S.A. § 112.3173(3).

1 Cases that cite this headnote

[3] **Double Jeopardy**—Fines, penalties, and forfeitures

Double Jeopardy Clause was not violated by the forfeiture of former state employee's retirement benefits upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior; forfeiture statute did not impose criminal punishment, but rather served to assure the people's right to secure and sustain the public trust of public office against abuse. U.S.C.A. Const.Amend. 5; West's F.S.A. Const. Art. 2, § 8; West's F.S.A. § 112.3173(3).

[4] **Double Jeopardy**—Double Jeopardy

The Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and the multiple punishments for the same offense. U.S.C.A. Const.Amend. 5.

[5] **Double Jeopardy**Prohibition of Multiple Proceedings or Punishments

Double Jeopardy Clause protects only against the imposition of multiple criminal punishments for the same offense. U.S.C.A. Const.Amend. 5.

[6] **Double Jeopardy**Civil or criminal nature

In determining whether a particular punishment is criminal or civil, for purposes of double jeopardy, a court must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. U.S.C.A. Const.Amend. 5.

[7] **Double Jeopardy**Civil or criminal nature

The following considerations are helpful in determining whether a particular punishment is criminal or civil, for purposes of double jeopardy: whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned. U.S.C.A. Const.Amend. 5.

[8] **Constitutional Law**Public employees and officials
Public Employment Revocation, Suspension, or Termination of Benefits
StatesRight to benefits, and amount

Forfeiture of former state employee's retirement benefits upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior did not violate constitutional prohibition on ex post facto laws, irrespective of the date employee entered into the pension system or the date his pension rights vested, where forfeiture statute was enacted before employee committed the crimes for which he was convicted. U.S.C.A. Const. Art. 1, § 10, cl. 1; West's F.S.A. § 112.3173(3).

1 Cases that cite this headnote

[9] **Constitutional Law**Punishment in general

An "ex post facto law" is one which reaches back in time to punish acts which occurred before enactment of the law. U.S.C.A. Const. Art. 1, § 10, cl. 1.

Attorneys and Law Firms

***717** H. Michael Muniz and I. Jeffrey Pheterson of Buckingham, Doolittle & Burroughs, LLP, Boca Raton, for appellant.

Geoffrey M. Christian, Assistant Attorney General, Tallahassee, for appellee.

Opinion

MAY, J.

The extent to which a state pension can be forfeited because of a criminal conviction is challenged in this appeal. A former state employee appeals a final agency order forfeiting his pension based upon his conviction for bribery and receipt of unlawful compensation or reward for official behavior. He challenges the forfeiture of the full amount of his pension. He argues that the statute is unconstitutional as applied to that part of the pension that accrued prior to his employment as a county commissioner, during which time he committed the forfeiting crimes. We affirm.

***718** The facts are not in dispute. While employed as a school teacher for two and a half years, the employee was a member of the Teacher Retirement System, which later became part of the Florida Retirement System (FRS). He became a member of the Florida Legislature in 1970, where he served for thirty years, accruing credited service under the FRS.

In November 2000 he became a member of the Escambia Board of County Commissioners, and he continued to accrue years of credited service. It was during his tenure as a county commissioner that he was charged with the crimes that ultimately led to the forfeiture of his pension benefits under the FRS. He was convicted of bribery and unlawful compensation or reward for official behavior. The parties stipulated that the crimes were not related to the employee's service as a teacher or legislator.

The Department of Management Services, Division of Retirement (DMS), notified the employee of agency action to forfeit his rights and benefits under the FRS, pursuant to section 112.3173, Florida Statutes (2003), based on the employee's convictions. The Administrative Law Judge (ALJ) prepared and submitted an order recommending that the DMS enter a final order forfeiting the employee's rights and benefits under the FRS, excepting the return of any accumulated contributions. The DMS adopted the findings of fact and conclusions of law set forth in the ALJ's order, and ordered the forfeiture of all of the employee's rights and benefits under the FRS, excepting the return of accumulated contributions.

On appeal, the employee argues that section 112.3173 of the Florida Statutes is unconstitutional because, as applied, it violates his constitutional protections against excessive fines, double jeopardy, and *ex-post facto* laws. The employee suggests that the forfeiture apply only to that part of the pension that accrued during his tenure as a county commissioner and not to the thirty-two and a half years he served as a teacher and legislator. We disagree with the arguments presented and align this court with the First District Court of Appeal, which addressed the same constitutional arguments in *Busbee v. State, Div. of Ret.,* 685 So.2d 914 (Fla. 1st DCA 1996).

Article II, section 8 of the Florida Constitution declares that a "public office is a public trust," and the "people shall have the right to secure and sustain that trust against abuse." Art. II, § 8, Fla. Const. "Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law." Art. II, § 8(d), Fla. Const.

To effectuate these constitutional provisions, the Florida Legislature enacted section 112.3173, which provides that "[a]ny public officer or employee who is convicted of a specified offense committed prior to retirement ... **shall forfeit all rights and benefits** under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination." § 112.3173(3), Fla. Stat. (2003) (emphasis added).

In *Busbee,* the First District Court of Appeal upheld section 112.3173 against similar constitutional challenges. Finding the statutory forfeiture provision to be a part of the pension contract between the State and the employee, and the issue to be one of contract law, the court affirmed the forfeiture of Busbee's pension based upon his guilty plea to a bribery charge. The First District then addressed the multiple constitutional issues raised: impairment ***719** of contracts, double jeopardy, excessive fines, due process, and equal protection.

[1] [2] The Excessive Fines Clause limits "only those fines directly imposed by, and payable to, the government." *Austin v. United States,* 509 U.S. 602, 607, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (quoting *Browning–Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,* 492 U.S. 257, 268, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989)). Forfeiture of the employee's retirement benefits is not a fine because the employee has not been ordered to pay anything to the government. Unlike a criminal forfeiture statute, section 112.3173(3) merely relieves the State of its duty to pay retirement benefits. *See also Wright v. Unifs. for Indus.,* 772 So.2d 560, 561 (Fla. 1st DCA 2000) (rejecting an excessive fines challenge to section 440.09, Florida Statutes, which denies workers' compensation benefits to employees that engage in a criminal act for the purpose of securing workers' compensation benefits.).

Here, the State entered into a contract with the employee, promising to pay him benefits upon his retirement. That contract included a condition precedent: the employee must refrain from committing specified offenses prior to retirement. The non-occurrence of that condition foreclosed the employee's right to performance. It is as direct and to the point as that. There simply is no violation of the Excessive Fines Clause. "This is not a prosecution under Florida criminal law for accepting a bribe, and it is not a punishment for accepting a bribe. This is an action to enforce the terms of the pension contract and nothing more." *Busbee,* 685 So.2d at 917.

[3] [4] We also hold that the Double Jeopardy Clause is not violated by the forfeiture of the employee's entire pension. "[T]he Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and the multiple punishments for the same offense." *United States v. Halper,* 490 U.S. 435, 440, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989) (overruled on other grounds). Here, there is neither a second prosecution for the same offense after acquittal nor a second prosecution after conviction. The question is whether the employee is receiving multiple punishments for the same offense. The answer is "no."

[5] [6] [7] "The Clause protects only against the imposition of multiple *criminal* punishments for the same offense." *Hudson v. United States,* 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) (emphasis in original); *see also Locklear v. Fla. Fish & Wildlife Conservation Comm'n,* 886 So.2d 326, 327–28 (Fla. 5th DCA 2004) (discussing Hudson). In determining whether a particular punishment is criminal or civil, a "court must first ask whether the legislature, 'in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.' " *Hudson,* 522 U.S. at 99, 118 S.Ct. 488 (quoting *United States v. Ward,* 448 U.S. 242, 248, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)). The following considerations are helpful in making this determination:

> (1) "[w]hether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of scienter"; (4) "whether its operation will promote the traditional aims of punishment—retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may ***720** rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the alternative purpose assigned."

Id. at 99–100, 118 S.Ct. 488 (quoting *Kennedy v. Mendoza–Martinez,* 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)).

The forfeiture statute does not impose an affirmative disability or restraint. While forfeiture, in general, has historically been understood as punishment, courts of this state have recognized that statutes providing for forfeiture of government benefits merely enforce the terms of a contract rather than impose punishment. *See Austin,* 509 U.S. at 618, 113 S.Ct. 2801; *Busbee,* 685 So.2d 914; *Wright,* 772 So.2d 560. This statute does not require a finding of scienter. *See* § 112.3173(1).

While the statute promotes deterrence against the commission of certain crimes, and while the outcome, particularly in this case, may appear harsh, it serves a unique alternative purpose—to assure the people's right to secure and sustain the public trust of public office against abuse. Art. II, § 8, Fla. Const. It is in the public's interest that the retirement system be prevented from inducing to public service those individuals inclined to breach the public trust. *Cf. Steigerwalt v. City of St. Petersburg,* 316 So.2d 554, 555–56 (Fla.1975) (recognizing that retirement benefits serve the public interest of insuring employees are "faithful and honest" in the "discharge of the duties" of public service). Weighing these factors, we find the forfeiture statute does not provide multiple criminal punishments and therefore no violation of the Double Jeopardy Clause.

[8] [9] We further hold that the application of the forfeiture statute to the employee's rights under the FRS does not violate the constitutional proscription against *ex post facto* laws. " 'An *ex post facto* law is one which reaches back in time to punish acts which occurred before enactment of the law.' " *Pilkay v. City of Tampa, Gen. Employee Pension Fund, Bd. of Trs.,* 505 So.2d 1100, 1101 (Fla. 2d DCA 1987) (quoting *Peeler v. Heckler,* 781 F.2d 649, 651 (8th Cir.1986)). Neither the date the employee entered into the pension system nor the date that his pension rights vested is relevant to an *ex post facto law* analysis. *See Busbee,* 685 So.2d at 916–17. It is the date of the crime which led to the conviction that determines the outcome. Because section 112.3173(3) was enacted before the employee committed the crimes for which he was convicted, section 112.3173 does not reach back in time and does not violate the proscription against *ex post facto* laws. *Pilkay,* 505 So.2d at 1101–1102.

Having found no violation of the Excessive Fines Clause, the Double Jeopardy Clause, or the proscription against *ex post facto* laws, we find the forfeiture statute can be constitutionally applied to the forfeiture of the employee's pension. One thing the legislature made perfectly clear is that an "employee who is convicted of a specified offense committed prior to retirement ... **shall forfeit all rights and benefits** under any public retirement system of which he or she is a member." § 112.3173(3) (emphasis added). We therefore affirm the forfeiture order.

Affirmed.

WARNER, J., and BIDWILL, MARTIN J., Associate Judge, concur.

All Citations

989 So.2d 716, 33 Fla. L. Weekly D2056

MAIN OFFICE
4420 Beacon Circle
West Palm Beach, FL 33407

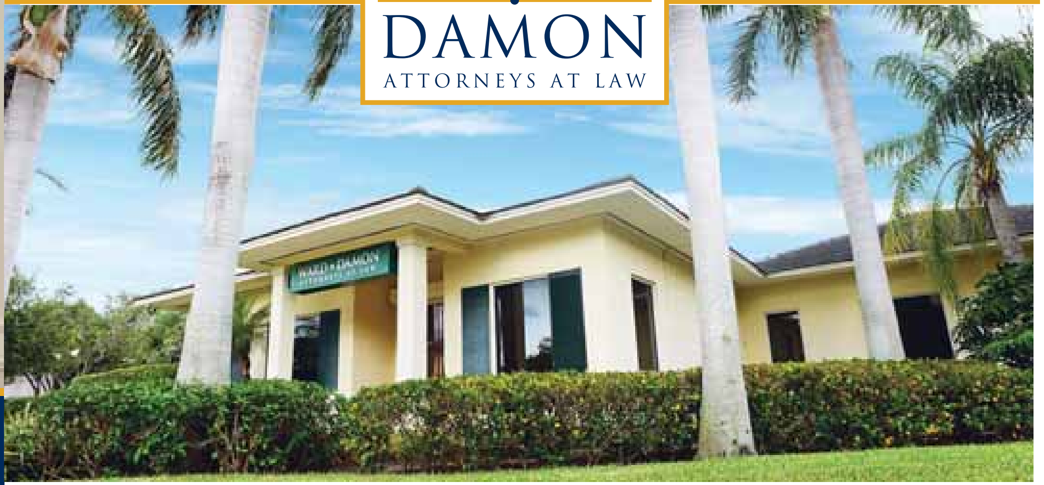
OTHER FLORIDA OFFICES
1200 N. Federal Highway, Ste. 200
Boca Raton, FL 33432

WARD DAMON
ATTORNEYS AT LAW

Telephone: 561.842.3000
Fax: 561.842.3626

Visit our website for more information about our firm, attorneys and practice areas:
warddamon.com

WARD DAMON
ATTORNEYS AT LAW



ABOUT THE FIRM

Ward Damon is a multi-disciplined law firm with attorneys who have been providing highly effective legal counsel to businesses and individuals in the South Florida community for over 30 years.

The firm was established on a simple premise: to provide high quality legal guidance with exceptional attention to client service and satisfaction, while always striving to exceed client expectations at reasonable, fair rates.

Our main office is located in West Palm Beach, and we have offices in Boca Raton and Jupiter/Juno. We serve clients throughout the State of Florida, and we have a strong and longstanding presence in the South Florida tri-county area.

WHY WARD DAMON?

- Attorneys at Ward Damon seek to understand each business and client they represent, so legal advice is provided with the clearest understanding of the impact on each client's business on a global scale.
- Our passion for legal excellence is best demonstrated through our long-standing relationships with clients, as well as others in the legal and business communities. For over 30 years, the attorneys at Ward Damon have earned their reputation by continuing to provide the sound legal counsel of major national law firms with the responsiveness, efficiency and cost-effectiveness of a mid-sized regional law firm.
- Ward Damon is recognized by The National Law Journal & Legal Times as one of the Top Law Firms in Florida. The firm includes Martindale-Hubbell AV Rated preeminent lawyers, Super Lawyers Magazine "Super Lawyer" and "Rising Star" recipients, and South Florida Legal Guide "Top Lawyers."

PRACTICE AREAS

Real Estate Law & Litigation	Banking & Finance	Insurance Defense
Business & Corporate	Government & Administrative	Probate Litigation
Commercial & Complex Litigation	Healthcare	Employment & Labor
Family & Marital	Intellectual Property	Title Closings & Escrow
Estate & Tax Planning	Construction	Will, Trusts, Estates, & Probate

EMPLOYMENT & LABOR LAW

Businesses involved in labor disputes are faced with increasingly complicated workplace regulations. Ward Damon provides practical and current advice based on decades of experience in the field while factoring in client concerns. We take a business-focused approach to labor and employment laws, and strive to help our clients make sound, tactical decisions to successfully move forward in this fast-paced climate.

Our attorneys serve our clients in their roles both as negotiators and as advocates using best practices internally within their business organizations, and in the courts and before governmental agencies. We work to understand the client's industry, how the issues fit into the larger picture, and give strategic, clear advice on what to do next. If litigation arises, our principal goal is cost-effective, expeditious resolution of disputes using customized strategies to meet each client's unique needs.

Our clients range from sole proprietors and multi-generation family-owned businesses to some of the largest employers in the State of Florida including manufacturing, service companies, construction, healthcare, communications, professional services, and transportation corporations.

OUR EXPERIENCE COVERS A WIDE RANGE OF EMPLOYMENT MATTERS, INCLUDING:

- Counseling employers on issues ranging from hiring, retention, discipline, leave issues, termination, Americans with Disabilities Act (ADA) compliance, Family and Medical Leave Act (FMLA) compliance, sexual harassment, and other employment law issues
- Internal audits of employment practices, including policies, exempt/non-exempt classifications, leave programs and work eligibility (I-9)issues
- Periodic review and revision of employee handbooks and manuals, substance abuse testing programs (including DOT), electronic communications issues, document retention, and other areas
- Drafting, reviewing and enforcing non-solicitation and non-compete agreements
- Drafting and reviewing employment and severance agreements
- Wage and hour issues, including compliance with the overtime and minimum wage requirements of the Fair Labor Standards Act (FLSA) and state wage laws
  - Claims arising under whistleblower and retaliation statutes
  - Litigating to protect trade secrets and to enforce non-solicitation and non-complete agreements

MEET OUR ATTORNEYS

I. JEFFREY PHETERSON

Managing partner at Ward Damon, Jeff's practice focuses on labor and employment law, business and corporate law, complex litigation, governmental representation, and probate litigation. A member of the Florida Bar since 1976, he advises clients on these matters and, when required, practices before federal and state courts throughout Florida.

He is recognized in The Best Lawyers in America®, Florida's Super Lawyers™ in Law & Politics, as voted by his peers, recognized as one of the Top Lawyers in South Florida™ in the South Florida Legal Guide, and has a Martindale-Hubbell Rating of AV Preeminent, which indicates the highest legal ability and ethical standards as established by confidential opinions from members of the Bar and Judiciary.

Jeff believes in having an ongoing dialogue with clients, gaining an in-depth understanding of their businesses, essential objectives or goals, and then, in consultation with the client, taking prompt action to accomplish those goals.

DENISE BLEAU

Denise, an equity partner, manages the firm's litigation department. She is devoted to ensuring each client of the firm receives the highest level of service through dedicated attorneys and staff working together to advocate for the firm's clients, skillfully and with integrity.

Denise's own practice focuses on complex and high-conflict litigation involving commercial, probate, employment, real estate, business and securities disputes. She has developed a reputation in the community as a formidable opponent in the courtroom and a tenacious advocate for her clients.

BARI L. GOLDSTEIN

Bari is a partner at Ward Damon and focuses her practice on preventative labor and employment defense work and represents and counsels private, not-for-profit and public sector employers on varied regulatory, administrative and litigation issues that affect all aspects of the employment relationship.

Her work includes: advising employers on personnel issues, wage and hour matters, and employee relations; conducting internal investigations; drafting handbooks, contracts, job descriptions, and employment forms; drafting responses and appearing at mediations, on-site audits and investigations by governmental agencies (e.g., OFCCP, DOL, OSHA, ICE and EEOC) involving complaints of discrimination, I-9 compliance, OSHA complaints, unemployment claims and wage and hour issues; representing federal contractors during OFCCP audits and counseling clients on issues stemming from AAP obligations and requirements.

SALLY STILL

Florida Bar Board Certified in Labor and Employment Law, Sally helps business owners and employers comply with the complicated web of employment and labor-related laws that govern their companies. She works proactively to ensure compliance and defends employers faced with regulatory actions brought by governmental agencies or lawsuits filed by employees. She represents employers in labor matters, such as collective bargaining negotiations and arbitrations.

Sally also works in the area of commercial litigation, representing businesses in commercial disputes in state and federal courts and those involving agency regulatory matters. She practices in federal and state appellate courts and has prepared briefs on issues ranging from federal trademark and patent infringement to trespass and injury to land.

KENNETH REHNS

Ken is a partner at Ward Damon where he primarily focuses on business and commercial law, labor and employment litigation as well as complex commercial litigation. He has built a career representing the interests of individual, corporate and institutional clients in a broad range of complex federal and state commercial litigation matters, including state and federal securities litigations, FINRA arbitrations, administrative and government proceedings, labor law matters, and contract and commercial disputes.

Ken spent nine years as a commercial litigator in New York City, regularly representing clients in high-profile matters around the country. He is a fierce advocate who is always ready to zealously represent clients' interests in a way that gets results.

WARD • DAMON

ATTORNEYS AT LAW

BANKING AND … PORATE LAW • COMMERCIAL A … CONSTRUCTION LAW • EMPLOYMENT AND LABOR LAW • ESTATE PLANNING • FAMILY AND MARITAL LAW • GOVERNMENTAL AND ADMINISTRATIVE LAW • HEALTHCARE • INTELLECTUAL PROPERTY • PROBATE LITIGATION • REAL ESTATE LAW AND LITIGATION • TITLES, CLOSINGS AND ESCROW • WILLS, TRUSTS, ESTATES, AND PROBATE • BANKING AND FINANCE • BUSINESS AND CORPORATE LAW • COMMERCIAL AND COMPLEX LITIGATION • CONSTRUCTION LAW • EMPLOYMENT AND LABOR LAW • ESTATE PLANNING • FAMILY AND MARITAL LAW • GOVERNMENTAL AND ADMINISTRATIVE LAW • HEALTHCARE • INTELLECTUAL PROPERTY • PROBATE LITIGATION • REAL ESTATE LAW AND LITIGATION • TITLES, CLOSINGS AND ESCROW • WILLS, TRUSTS, ESTATES, AND PROBATE • BANKING AND FINANCE • BUSINESS AND CORPORATE LAW • COMMERCIAL AND COMPLEX LITIGATION • CONSTRUCTION LAW • EMPLOYMENT AND LABOR LAW • ESTATE PLANNING • FAMILY AND MARITAL LAW • GOVERNMENTAL AND ADMINISTRATIVE

Experienced Law Firm. Effective Service.

Founded in 1987, Ward, Damon, Posner, Pheterson & Bleau, PL, is a multi-discipline business law firm dedicated to protecting the legal interests of our clients by providing conflict resolution and effective strategies to help our clients achieve their long-term objectives.

Ward•Damon attorneys provide guidance and legal counsel to assist our clients in navigating every stage of their legal matters — from mediation and arbitration, to litigation in federal and state courts.

For more than a quarter century, Ward•Damon has been built on service, integrity, solid judgment, and a team of attorneys with genuine dedication to clients' needs. Our legal staff focuses on offering customized attention: a reason clients continue to turn to Ward•Damon for legal counsel.

AREAS OF PRACTICE

Banking and Finance
Business and Corporate Law
Commercial and Complex Litigation
Construction Law
Employment and Labor Law
Estate Planning
Family and Marital Law
Governmental and Administrative Law
Healthcare
Intellectual Property
Probate Litigation
Real Estate Law and Litigation
Titles, Closings and Escrow
Wills, Trusts, Estates, and Probate

Sophisticated Solutions for Savvy Clients

Our clients are business owners, executives, entrepreneurs, and investors who require a specialized level of legal counsel tailored to assist their business, real estate, and family matters. At Ward•Damon, we can provide sophisticated counsel seamlessly across all practice areas to offer clients full-service legal representation.

Our clients value the fact that we care about their business and business practices. Our advice is practical and based upon decades of experience in the field. When disputes arise, cost-effective and expeditious resolution is always our principal goal.

INDUSTRIES REPRESENTED BY WARD • DAMON

- Regional and National Banks
- Financial Institutions
- Manufacturers
- Mortgage Servicers
- Healthcare
- Homeowners Associations
- Condo Associations
- Agribusiness
- Municipalities and Government Agencies
- Performing Arts
- Construction
- Insurance
- Hospitality

LIGHTHOUSE TITLE SERVICES, INC.

As part of our commitment to meet the needs of our clients, Ward•Damon provides title insurance and closing services through our in-house title company, Lighthouse Title Services. Whether you are a homeowner, realtor, investor, builder, or lender, Lighthouse Title Services offers quality, reasonably priced settlement services for Florida real estate transactions.

Our experienced team works to help you reduce costs on real estate transactions. Whether it is a traditional closing, short sale, a second mortgage, or an intricate commercial sale, we will strive to ensure your closing proceeds smoothly, while protecting you from unnecessary financial loss due to unknown judgments, liens, or other title defects.

Contact Lighthouse Title Services, Inc. at **561.882.9044**.

MAIN OFFICE

4420 Beacon Circle
West Palm Beach, FL 33407

BOCA RATON OFFICE

1200 N. Federal Highway
Boca Raton, FL 33432

JUNO BEACH OFFICE

14255 U.S. Highway 1
Juno Beach, FL 33408

WARD DAMON
ATTORNEYS AT LAW

warddamon.com
561.842.3000

Find Us on Facebook
Facebook.com/warddamon

Find Us on Linkedin
linkedin.com/company/warddamon

WARD
DAMON
ATTORNEYS AT LAW

4420 BEACON CIRCLE
WEST PALM BEACH, FL 33407
Telephone: (561) 842-3000
Facsimile: (561) 842-3626
www.warddamon.com

I. Jeffrey Pheterson, Esquire
jpheterson@warddamon.com

August 12, 2020

Village of Palm Springs General Employee Pension Plan
c/o Bonni Spatara Jensen, Esquire
Klausner, Kaufman, Jensen & Levinson
7080 NW 4th Street
Plantation, FL 33317-2201

RE: Village of Palm Springs General Employee Pension Plan/Pension Forfeiture Proceeding

To whom it may concern,

Thank you for retaining Ward, Damon, Posner, Pheterson & Bleau (the "Firm" or "Ward Damon") as your legal counsel regarding the above-referenced matter. This letter will confirm the terms of the Firm's representation. In addition, this letter will explain our fees and billing procedures, as well as what you, the Village of Palm Springs General Employee Pension Plan, (the "Client"), can expect from us and what we expect from the Client.

The Firm will represent the Client in this matter on an hourly rate basis. Any other matters that the Client wishes the Firm to handle will be the subject of a separate agreement. The Firm is not, for example, advising the Client under this agreement on the tax consequences of the real or potential outcome of any litigation, corporate tax issues, or regulatory and compliance issues.

Time spent by I. Jeffrey Pheterson and other partner level attorneys is currently charged at $300.00 per hour and time spent by associate attorneys is charged at $200.00 per hour. Time spent by any law clerk or para-professional is currently charged at $140.00 per hour. Our hourly rates are subject to change from time to time during our representation in this matter. The Client will be assessed a flat percentage charge of 6% of the fees you incur to cover administrative costs such as computerized database access and usage (e.g., Lexis and other databases), postage, photocopying, facsimile transmissions, long distance telephone service, etc. This charge does not include disbursements and other services, which include such things as filing fees, certified or registered mail, courier services, expedited mail delivery (e.g., FedEx), out-of-plan required Lexis research charges, deposition costs, travel costs, and the fees and expenses of investigators and experts, if needed. These disbursements are billed on an out-of-pocket basis and will be included on each invoice.

We bill fees and other services on a monthly basis and payment is due upon the Client’s receipt of the invoice.

REASONABLENESS OF FEE

If at any time you believe the Firm’s interim periodic hourly bills are not fair and reasonable, you agree that you will notify the Firm within thirty (30) days of the date of the questioned invoice, and together, you and the Firm will review the invoice. If no notice is received, it is understood that the invoice is accepted by you as correct and accurate, and as setting forth fair and reasonable charges for services rendered.

If at any time the Client wants to terminate our services, please notify the undersigned in writing. Likewise, if at any time we find that we are unable to continue representing the Client, we will notify you in writing. We reserve the right to terminate our representation if the Client fails to comply with the terms of this fee agreement, or as allowed by the terms of the Florida Rules of Professional Conduct, and the client agrees not to contest our withdrawal from any court or administrative proceeding in such event. As soon as possible after any such termination, a final statement will be prepared and sent to the Client. Should the Firm’s representation be terminated for any reason, the Client agrees to promptly pay, within the following thirty (30) days, for all attorneys’ fees and costs incurred through the date of such termination. In the event any action is brought to enforce this Agreement, such action shall be brought with venue for any related court cases being in Circuit Court in Palm Beach County, Florida. The prevailing party in any proceedings shall be entitled to recover its costs of enforcement including, without limitation, reasonable attorneys’ fees and court costs required to collect any balance due, or in court.

We will perform the legal services which we have agreed to undertake on the Client’s behalf in a professional manner and we will keep you informed of all material developments in a reasonable and timely manner. To enable us to do this, the Client agrees to disclose such facts as are requested and which are reasonably necessary for us to perform the services for which they have retained us. Although we may give the client our professional judgment regarding a matter, as to the likelihood of a favorable outcome on a particular case, the amount of a potential recovery, what a clause in a document says, or whether a particular contract or negotiation will result in the desired outcome, we are never able to guarantee any of these. We will, however, endeavor to give the Client our best judgment in light of the law and the particular facts made known to us.

After you have had the opportunity to review this proposed fee agreement, please feel free to call me with any comments or questions you may have. If the agreement meets with your approval, please sign where indicated below to evidence your agreement with the matters set forth herein and return same to me. A self-addressed envelope is enclosed for your convenience.

Finally, attached hereto is the Firm’s e-mail policy for your review. By signing this retainer agreement, you agree to the terms of Ward Damon's e-mail policy and procedures.

We look forward to working with you on this matter.

Very truly yours,

/s/ I. Jeffrey Pheterson

I. Jeffrey Pheterson, Esquire
For the Firm

I/We hereby accept the legal representation
by Ward Damon as described above.

Village of Palm Springs General Employee Pension Plan

By: ________________________ Date: __________________
Signature

____
Print name

WARD DAMON'S E-MAIL POLICY AND PROCEDURES

We regard e-mail as an important business tool and would like to make appropriate use of it in our dealings with our clients. However, clients will appreciate that there are certain risks associated with e-mail communications and, therefore, our use of it must be subject to certain guidelines and restrictions.

You may wish to send us a list of your home and office e-mail addresses so that these can be addressed to our outlook contacts file. We will use these addresses only as a means of sending individual messages on matters on which you have retained us. We will not, of course, make the addresses available to any outside organization without your prior agreement or as required by law.

We treat e-mails as having the same priority as items sent by regular U.S. Mail or by fax. However, please do not use e-mail as a means of sending communications with which you wish for us to deal as a matter of urgency. There may be delays from your e-mail server sending your e-mail or there may be an exceptionally high volume of incoming mail which our server is unable to deal with instantly, or e-mails can be lost or deleted before they reach our office or your e-mail may be blocked by spam software or considered to be junk mail due to factors beyond our control. Therefore, please do not assume that we have received your message until we have responded to it or specifically acknowledged it.

We may or may not place in our file a copy of any e-mail that you send to us. However, we strongly recommend that you also send us a separate hard copy by U.S. Mail wherever possible if the message is uniquely important. Please ensure that you do not send us your only copy of a document as it may not reach us safely.

Ordinary e-mail is not a very secure environment in which to send particularly sensitive messages. Internally, our staff members have been instructed to treat e-mails as confidential, just as they would any other communication from a client. We have no reason to believe that our system is not secure, and we have various security procedures to protect our system as far as possible. However, we recommend that you do not use e-mail as a means of sending us information of a highly confidential nature. You should also not send us information which could be construed as defamatory or obscene.

We have measures in place to protect our system against sending or receiving viruses but we cannot guarantee that these will be completely effective. Please ensure that you take appropriate measures to check against viruses in all communications to or from the firm.

Finally, please ensure that your messages are addressed correctly. You can send an e-mail at the following addresses:

I. Jeffrey Pheterson, Esquire	jpheterson@warddamon.com
Shimirra Jackson	sjackson@warddamon.com

WARD • DAMON

accepts
Visa, MasterCard and American Express
to simplify bill-paying

Please fill out this form and return to: Fax # (561) 842-3626

CREDIT CARD AUTHORIZATION FORM

Name: ______________________________

Address: ______________________________

____

Phone: ______________________________

Invoice #: ______________________________

Name as shown on card: ______________________________

Card Type (check one) _____ **MasterCard**

_____ **Visa**

_____ **American Express**

ACCT # _______-_________-_________-_________ **Exp** ___/___

SEC CODE ___________

Total Charge: $_________________

I hereby authorize Ward Damon to charge the above total and I agree to pay this amount according to card issuer agreement.

Authorized Signature: ____________________ **Date** __________

For internal use:

Matter number: ______________________________

Submitted to accounting by: ______________________________

ATTACHMENT TO AGREEMENT FOR RETAINER OF SERVICES WITH WARD, DAMON, POSNER, PHETERSON & BLEAU

This is an Attachment to the agreement for Retainer of Services dated _____________ between Ward, Damon, Posner, Pheterson & Bleau ("Ward Damon") and Village of Palm Springs General Employees' Pension Fund ("Client").

In consideration of the Agreement, Client and Ward Damon agree to supplement Agreement for Retainer of Services as follows:

A. **Public Records:** Ward Damon will comply with public records laws, specifically to:

1. Keep and maintain public records required by the Client to perform the service.

2. Upon request from the Client or its public records custodian, provide the Client with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Ward Damon does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to Client all public records in possession of Ward Damon or keep and maintain public records required by the Client to perform the service. If Ward Damon transfer all public records to Client upon completion of the contract, Ward Damon shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Ward Damon keeps and maintains public records upon completion of the contract, Ward Damon shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Client, upon request from Client or its public records custodian, in a format that is compatible with the information technology systems of Client.

IF WARD DAMON HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE

PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:

ADMINISTRATOR
PENSION RESOURCE CENTER
4360 NORTHLAKE BOULEVARD - SUITE 206
PALM BEACH GARDENS, FL 33410
TELEPHONE: (561) 624-3277
FACSIMILE: (561) 624-3278

IN WITNESS WHEREOF, the parties hereto have executed this Addendum by their respective authorized representatives on the dates indicated below.

WARD DAMON

By: ______________________________
I. Jeffrey Pheterson, Esq.
For the Firm

Date: ______________________________

WITNESS: ______________________________
As to Ward Damon

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND

By: ______________________________
Chair

By: ______________________________
Secretary

Date: ______________________________

WITNESS: ______________________________
As to Client

September 29, 2020

Village of Palm Springs General Employee's Pension Fund

Board of Trustees

4360 Northlake Boulevard, Suite 206

Palm Beach Gardens, Florida 334120

Please accept this letter as my formal resignation from the General Pension Board of the Village of Palm Springs, effective October 1, 2020

Personal commitments have become too great for me to be able to fulfill the requirement of my position of Secretary and I feel it is best for me to make room for someone with the energy to dedicate to this board.

I am grateful for the opportunity of serving as a member of the board for almost seven years and I wish the board the best in the future.

Best regards,

Mariana Ortega