
**JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES
MEETING AGENDA – SEPTEMBER 22, 2017 – 9:00AM
RICHARD “DICK” COHEE BOARD ROOM**

PRESENT

Lt. Richard Tuten III, Board Chair
Richard Patsy, Board Secretary
Lt. Chris Brown, Trustee
Willard Payne, Trustee
William Scheu, Trustee

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Joey Greive, Fund Treasurer
Lawsikia Hodges, Office of General Counsel
Dan Holmes, Summit Strategies – *via webex*
Pete Strong, Fund Actuary – *via webex*
Bob Sugarman, Pension Counsel – *via webex*
Cindy Danese, AAA Reporters

EXCUSED

CITY REPRESENTATIVES INVITED

Greg Anderson, City Council Liaison

GUESTS

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. **A MOMENT OF SILENCE WILL BE OBSERVED FOR THE FOLLOWING DECEASED MEMBERS:**

Thomas E. Broward, Retired Police Detective
Donald G. Butler, Retired Fire Lieutenant
Vernon H. Simms, Retired Fire Captain
Linda Treadwell, Retired Firefighter
Earl H. Williamson, Retired Police Sergeant

IV. **PUBLIC SPEAKING PERIOD**

V. **CONSENT AGENDA – ITEMS 2017-09-(01-11)CA**
Board action requested

2017-09-01CA

Meeting Summary and Final Transcript Approved

1. Final Transcript of the Board of Trustees Meeting held August 18, 2017. Copies held in the meeting files.
2. Meeting Summary of the Board of Trustees Meeting held August 18, 2017. Copies held in the meeting files.
3. Meeting Summary of the Board of Trustees Workshop held September 15, 2017. Copies held in the meeting files.

2017-09-02CA

Disbursements

Disbursements A

8-1-2017 thru 8-31-2017

1.	J. P. Morgan	\$	673,368.38
2.	Pinnacle Associates LTD	\$	147,262.00
3.	Commercia Bank	\$	140,671.62
4.	Baker-Gilmour Cardiovascular	\$	1,700.00
5.	Leadership Jacksonville	\$	100.00
6.	AAA Reporters	\$	721.35

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7.	Rotary Club of West Jacksonville	\$	265.00
8.	GRS	\$	9,442.00
9.	CDW Government	\$	2,116.00
10.	SHI	\$	624.84
11.	Tim Johnson	\$	42.77
TOTAL		\$	976,313.96

The listed expenditures in DISBURSEMENTS B have been reviewed and deemed payable. The Police and Fire Pension Fund Executive Director – Plan Administrator certifies that they are proper and in compliance with the appropriated budget.

Disbursements B

8-1-2017 thru 8-31-2017

1.	<u>Transaction list of Accounts Payable distributions</u>	\$	25,186.72
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2017-09-03CA

Pension Distributions

A. August 11, 2017

1.	Regular Gross	\$	5,404,937.51
2.	Regular Lumpsum	\$	0.00
3.	Regular Rollover	\$	0.00
4.	Regular DROP Gross	\$	1,116,607.03
5.	DROP Lumpsum	\$	0.00
6.	DROP Rollover	\$	0.00
TOTAL		\$	6,521,544.54

B. August 25, 2017

1.	Regular Gross	\$	5,403,153.14
2.	Regular Lumpsum	\$	47,614.40
3.	Regular Rollover	\$	31,162.49
4.	Regular DROP Gross	\$	1,115,659.59
5.	DROP Lumpsum	\$	175,546.59

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6.	DROP Rollover	\$	0.00
	TOTAL	\$	6,773,136.21

All calculation and dollar amounts have been reviewed and calculated in accordance with accepted procedures.

The following Consent Agenda items 2017-09-(04-07) were verified with supporting documentation and approved at the Advisory Committee meeting held on September 13, 2017. Vote was unanimous.

2017-09-04CA

Application for Membership

2017-09-05CA

Applications for Vested Retirement

2017-09-06CA

Applications for Time Service Connections

2017-09-07CA

Applications for DROP

The following Consent Agenda items 2017-09-(08-11) were verified with supporting documentation and received as information at the Advisory Committee meeting held on September 13, 2017.

2017-09-08CA

Refund of Pension Contributions

2017-09-09CA

Share Plan Distributions

2017-09-10CA

DROP Participant Termination of Employment

2017-09-11CA

DROP Distributions

VI. INVESTMENT CONSULTANT REPORTS

Dan Holmes

1. Expiration of Investment Advisory Agreements
Board action requested
2. Reimbursement of FY2017 Benefit Payments Advance from the City
Board action requested

VII. EXECUTIVE DIRECTOR'S REPORT

Timothy H. Johnson

1. Finance Manager
Board action requested
2. Interim Finance Manager Contract
Board action requested
3. Outstanding Legal Opinions
4. Ordinance 2017-647 Appointing Nawal B. McDaniel to the Jacksonville Police and Fire Pension Board of Trustees
5. Medical Director Contract

VIII. COUNSEL REPORTS

Lawsikia Hodges

1. Ordinance 2017-564 – Staggering Terms
2. Participation of DROP Members in the Share Plan
3. Internal Revenue Code Compliance of Share Distributions to DROP Members
4. Order Denying Motion to Disqualify
5. Effect of 2017 Pension Reform on 2015 Retirement Reform Agreement/Consent Judgment

IX. OLD BUSINESS

1. Bailiff Time Service Connections
2. PEW Analysis of New PFPF Contribution Policy

X. NEW BUSINESS

XI. NEXT MEETING

Friday, October 20th, 2017 at 9:00AM

XII. ADJOURNMENT

NOTES:

Any person requiring a special accommodation to participate in the meeting because of disability shall contact Steve Lundy, Assistant Plan Administrator at (904) 255-7373, at least five business days in advance of the meeting to make appropriate arrangements.

If any person decides to appeal any decision made with respect to any matter considered at this public meeting such person will need a record of proceedings, and for such purpose such person may need to ensure that a verbatim record of the proceedings is made at their own expense and that such record includes the testimony and evidence on which the appeal is based. The public meeting may be continued to a date, time, and place to be specified on the record at the meeting.

Additional items may be added / changed prior to meeting.

SL

**JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES
MEETING SUMMARY – AUGUST 18, 2017 – 9:00AM
RICHARD “DICK” COHEE BOARD ROOM**

PRESENT

Lt. Richard Tuten III, Board Chair
Lt. Chris Brown, Trustee
Willard Payne, Trustee

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Pedro Herrera, Sugarman & Susskind, Fund Counsel
Lawsikia Hodges, Office of General Counsel
Dan Holmes, Summit Strategies – via Webex
Denice Taylor, AAA Reporters

EXCUSED

Richard Patsy, Board Secretary
William Scheu, Trustee
Greg Anderson, City Council Liaison
Joey Greive, Fund Treasurer

GUESTS

Randy Wyse, President, Jacksonville Association of Fire Fighters
Steve Zona, President, Fraternal Order of Police
Mark Muchowicz, Jacksonville Sheriff's Office

I. CALL TO ORDER

Chairman Richard Tuten called the meeting to order at 9:00AM.

II. PLEDGE OF ALLEGIANCE

III. PUBLIC SPEAKING PERIOD

There were no requests for Public Speaking. Public Speaking Period closed.

IV. CONSENT AGENDA – ITEMS 2017-08-(01-13)CA

2017-08-01CA

Meeting Summary and Final Transcript Approved

1. Final Transcript of the Board of Trustees Meeting held July 21, 2017. Copies held in the meeting files.
2. Meeting Summary of the Board of Trustees Meeting held July 21, 2017. Copies held in the meeting files.

2017-08-02CA

Disbursements

Disbursements A

7-1-2017 thru 7-31-2017

1.	Baker Gilmour Cardiovascular	\$	4,000.00
2.	Nat'l Assoc. of Gov. Archives	\$	75.00
3.	All Purpose Printing	\$	3,739.95
4.	Drummond Press Inc.	\$	198.59
5.	Fed Ex	\$	199.83
6.	Cecil Powell & Co.	\$	11,151.65
7.	AAA Reporters	\$	428.40
8.	Bedell Firm	\$	4,700.91
9.	Timothy Johnson	\$	26.64
10.	Votenet Solutions	\$	3,130.00
11.	Pitney Bowes	\$	725.07
12.	GRS	\$	2,925.00
13.	The Northern Trust Company	\$	47,338.81
14.	Acadian Asset Management LLC	\$	286,929.00
15.	Office of General Counsel	\$	32,523.00

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16.	Thompson, Siegel & Walmsley LLC	\$	42,431.71
17.	Pinnacle Associates, LTD	\$	141,081.00
18.	Sawgrass Asset Management	\$	48,527.93
19.	Holmes Custom	\$	49.53
21.	Tortoise Capital Advisors	\$	96,336.00
TOTAL		\$	726,518.02

The listed expenditures in DISBURSEMENTS B have been reviewed and deemed payable. The Police and Fire Pension Fund Executive Director – Plan Administrator certifies that they are proper and in compliance with the appropriated budget.

Disbursements B

7-1-2017 thru 7-31-2017

1.	<u>Transaction list of Accounts Payable distributions</u>	\$	18,204.56
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2017-08-03CA

Pension Distributions

A. July 14, 2017

1.	Regular Gross	\$	5,400,964.77
2.	Regular Lumpsum	\$	3,390.88
3.	Regular Rollover	\$	0.00
4.	Regular DROP Gross	\$	1,114,054.78
5.	DROP Lumpsum	\$	110,712.56
6.	DROP Rollover	\$	0.00
TOTAL		\$	6,629,122.99

B. July 28, 2017

1.	Regular Gross	\$	5,403,520.73
2.	Regular Lumpsum	\$	46,428.15

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3.	Regular Rollover	\$	7,919.75
4.	Regular DROP Gross	\$	1,116,607.03
5.	DROP Lumpsum	\$	0.00
6.	DROP Rollover	\$	0.00
TOTAL		\$	6,574,475.66

All calculation and dollar amounts have been reviewed and calculated in accordance with accepted procedures.

The following Consent Agenda items 2017-08-(04-08) were verified with supporting documentation and approved at the Advisory Committee meeting held on August 9, 2017. Vote was unanimous.

2017-08-04CA

Application for Membership

2017-08-05CA

Applications for Survivor Benefits

2017-08-06CA

Applications for Vested Retirement

2017-08-07CA

Applications for Time Service Connections

2017-08-08CA

Rescission of DROP Participation

The following Consent Agenda items 2017-08-(09-13) were verified with supporting documentation and received as information at the Advisory Committee meeting held on August 9, 2017.

2017-08-09CA

Refund of Pension Contributions

2017-08-10CA

Share Plan Distributions

2017-08-11CA

DROP Participant Termination of Employment

2017-08-12CA

DROP Distributions

2017-08-13CA

DROP Distributions for Survivors

A motion was made by Chris Brown to approve the Consent Agenda items 2017-08-(01-13CA), seconded by Willard Payne. The vote was unanimous.

V. INVESTMENT CONSULTANT REPORTS

Dan Holmes

3. Investment Performance Review – *taken out of order*

Dan Holmes described the Fund's performance over the past quarter, noting that factors such as strong US economic growth, increased sales and earnings, low inflation, and increases in consumer and business spending have driven good Fund returns.

Dan Holmes discussed the asset allocation of the Fund relative to other public pension plans. He said that the Fund's median weight to US equities, overweight to international equities, lower fixed income exposure, and high relative allocation to real estate are all determinants of the Fund's good performance relative to the peer public pension plan universe.

Chris Brown asked why the Fund has taken a dip relative to other pension plans over the last 3 months.

Dan Holmes said it is partly due to the fact that the Fund has the biggest weighting in US equities, and during the quarter, US equities have been weaker than international equities. He said there was also a big difference in the performance of MLPs between the quarter, the trailing year and the year-to-date periods. He said that MLPs comprised the only class that was negative for the quarter.

Dan Holmes discussed the makeup and performance of the portfolio, starting with US and international equity. He noted that Eagle, Brown, and Pinnacle are making comebacks. He also said that international equities may be undervalued.

Chris Brown asked if the closing of the pension plan to new members would affect how the plan is bound by the statute relative to asset allocation.

Pedro Herrera said that the plan would still be bound to the statute. He asked if the plan would be bound by cost or market value.

Dan Holmes said he believes the plan would be bound by market value.

Dan Holmes continued his discussion of the makeup and performance of the portfolio, covering fixed income, real estate, and MLPs. He said that the real estate portfolio has been greatly additive to the plan since the real estate crisis.

1. Economic & Capital Market Update – July 31, 2017
2. Flash Report – July 31, 2017

Dan Holmes briefly discussed the Economic & Capital Market Update, and the Flash Report. He said that the bottom line was that July was another good month for equities and MLPs, and emerging markets were up six percent in the month alone.

Dan Holmes concluded his discussion noting that the Total Fund was up 2.1% in the month, and FYTD net of fees, the Fund was up 12.2%, which is about 1.9% above the policy index.

Chris Brown thanked Dan Holmes for his hard work.

Dan Holmes said to thank the markets as well, and wished everyone a good weekend.

VI. EXECUTIVE DIRECTOR'S REPORT
Timothy H. Johnson

Timothy Johnson said that Steve Lundy has taken over the creation of the Board Books, and that this month, Steve chose a new cover photo which shows the PFPF building as it was in the 1940s. He said it's fun to see the history of Jacksonville.

Timothy Johnson said that the PFPF staff continues to do a great job on the dashboard, noting that the staff has made over 1,000 transactions so far this year. He said that this number doesn't include phone calls or emails – it only shows transactions with paper records.

Chris Brown asked about the public records outstanding statistic.

Timothy Johnson said now that Jessica Fields is full-time, the public records turnover is about two weeks. He said that since these statistics are reported monthly, there are just a few public records outstanding from last month, if any.

Timothy Johnson discussed the records retention project, noting that over 53,000 documents have been scanned out of a total estimated 300,000.

Timothy Johnson said that he has not found a suitable Finance Manager, and will be launching an external search.

Timothy Johnson discussed the FIAC recommended term staggering chart and their work plan for the next Fiscal Year. He said that there was perfect attendance at the FIAC's August meeting.

Timothy Johnson briefly discussed the new bi-monthly newsletter, which will be made by Steve Lundy.

Chris Brown said that Steve Lundy's material presentation skill is 'right on the spot'. He said that he likes the font and the format of the newsletter.

Timothy Johnson briefly discussed the Trustee conference in Orlando from November 15-17th. He said that the 17th is the Board of Trustees Meeting, and that the Board is welcome to attend the conference on the 15th and 16th, and return to Jacksonville early for their regular meeting. He said he will extend the conference invitation to the other PFPF committees.

Chris Brown asked about the PFPF's new policy to stop sending Direct Deposit Statements to members by default, and asked if an online system is in the works.

Steve Lundy said that yes, Chuck Hayes is working with ITD to develop an online system that will follow the City's template.

Richard Tuten recessed the meeting for a 5-minute break at 10:04AM.

Richard Tuten reconvened the meeting at 10:09AM.

VII. COUNSEL REPORTS

*Pedro Herrera
Lawsikia Hodges*

1. John Keane v. Jacksonville Police and Fire Pension Fund Board of Trustees – Defendant's Response in Opposition to Plaintiff's Motion to Disqualify Counsel

Lawsikia Hodges said that she would like to discuss this matter with the Trustees in a one-on-one setting, for strategic reasons. She said that the Trustees should have received some correspondence from her office this week.

2. Ordinance to Stagger Terms

Lawsikia Hodges discussed the staggers, and the ordinance which was introduced to City Council. She said that the FIAC members have decided who will get which term length after the term stagger takes effect. She said that although the ordinance was already introduced, she can propose amendments to correct the changes as to who will get what term length.

Lawsikia Hodges asked for a motion to direct her to make corrective changes to the ordinance.

A motion was made by Chris Brown to direct Lawsikia Hodges to make corrective changes to the Ordinance to Stagger Terms, seconded by Willard Payne. The vote passed unanimously.

Lawsikia Hodges discussed the Advisory Committee election, and who would get what staggered terms. She said that the terms will be divvied up by the most populous vote. She said that she and Timothy Johnson will bring a recommendation to the Trustees in September regarding any election rule revisions that would be necessary.

Lawsikia Hodges and Chris Brown discussed a possible Board of Trustees term staggering. Lawsikia Hodges said that it would require a change to the charter, which is more complicated than an ordinance change.

Richard Tuten suggested that for Council appointed Trustees, it should be written into the law that the Council needs to consider any reappointments 6 months before the appointed Trustees' terms are scheduled to end, in order to avoid Trustees like Bill Scheu staying on the Board long after their term ends.

Lawsikia Hodges said that two opinions should be completed by OGC within the next couple of weeks; first, the opinion answering Richard Tuten's questions concerning the Consent Decree; and second, the opinion regarding Bailiff Time Service Connections.

Pedro Herrera said that the Securities Litigation Policy is being worked on, and that it looks straightforward. He asked if the PFPF has a designated public records officer as required by recent changes to Florida public records law.

Timothy Johnson said that Jessica Fields is the PFPF's designated public records officer, and that a notice is posted in the front office.

IX. NEW BUSINESS

Taken out of order

1. FORFEITURE OF PENSION

1. ROUNSVILLE, Michael S.

Timothy Johnson said that the Advisory Committee originally decided to delay their recommendation to the Board of Trustees until Mr. Rounsville finished his appeal. He said that now, the Advisory Committee has recommended that the Board deny Mr. Rounsville's vested retirement application.

A motion was made by Chris Brown to deny the vested retirement application of ROUNSVILLE, Michael S., seconded by Willard Payne. Discussion:

Chris Brown added that Mr. Rounsville did receive a felony conviction, and that he did use his public safety powers to commit a crime.

Pedro Herrera clarified that Mr. Rounsville is entitled to a refund of his pension contributions, without interest, and that the motion was to deny his application for vested retirement.

The vote passed unanimously.

Timothy Johnson said that the PFPF staff will notify Mr. Rounsville accordingly.

VIII. OLD BUSINESS

Taken out of order

1. 2017-07-04CA – APPLICATION FOR MEMBERSHIP

1. **GARDNER, Zachary K.**
Previously approved under Trustee Rule 13.3 – amended to cleared

A motion was made by Chris Brown to amend the Application for Membership of GARDNER, Zachary K. to cleared, seconded by Willard Payne. The vote passed unanimously.

X. NEXT MEETING

Friday, September 15, 2017 at 9:00AM

XI. ADJOURNMENT

Richard Tuten adjourned the meeting at 10:35AM.

NOTES:

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Any person requiring a special accommodation to participate in the meeting because of disability shall contact Steve Lundy, Assistant Plan Administrator at (904) 255-7373, at least five business days in advance of the meeting to make appropriate arrangements.

If any person decides to appeal any decision made with respect to any matter considered at this public meeting such person will need a record of proceedings, and for such purpose such person may need to ensure that a verbatim record of the proceedings is made at their own expense and that such record includes the testimony and evidence on which the appeal is based. The public meeting may be continued to a date, time, and place to be specified on the record at the meeting.

Additional items may be added / changed prior to meeting.

SL

Richard Patsy, Board Secretary

To be approved at the Board of Trustees Meeting on September 15, 2017

**JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES
WORKSHOP SUMMARY – SEPTEMBER 15, 2017 – 9:00AM
RICHARD “DICK” COHEE BOARD ROOM**

PRESENT

Lt. Richard Tuten III, Board Chair
Richard Patsy, Board Secretary
Lt. Chris Brown, Trustee – *via webex*
William Scheu, Trustee – *via webex*

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Joey Greive, Fund Treasurer
Lawsikia Hodges, Office of General Counsel
Dan Holmes, Summit Strategies
Pete Strong, Fund Actuary – *via webex*
Bob Sugarman, Pension Counsel – *via webex*
Denice Taylor, AAA Reporters

EXCUSED

Willard Payne, Trustee

GUESTS

Randy Wyse, President
Mike Lynch, JFRD
Paul Bennett, COJ

ASSISTANT PLAN ADMINISTRATOR’S NOTE:

*Although today’s meeting was noticed as the regularly scheduled September Board of Trustees Meeting, it has been changed to a ‘Workshop’ because of the lack of a physical quorum. This summary follows the discussion; no Board action was taken. The regular September Board of Trustees meeting has been rescheduled for September 22, 2017 at 9AM.
–SL*

I. CALL TO ORDER

Chairman Richard Tuten called the workshop to order at 9:15AM.

II. PUBLIC SPEAKING PERIOD

Randy Wyse said that he called the Florida Division of Retirement yesterday and learned that the PFPF has failed to complete the paperwork required to receive the state Chapter Funds. He said that he wants to know why this was not completed on time. He said that the report was due on March 1st. He said that if it is completed now, it would take three months to receive the money, and that the Holiday Bonus is paid from this money.

Timothy Johnson said that the PFPF is currently working on the report, and it should be ready by Friday the 22nd. He said that two reports were due in March, and that he was only aware of one. He said that he prepared the first report himself. He said that this matter coincided with the resignation of the PFPF controller. He said that the PFPF has hired an interim finance manager to prepare the report.

Bob Sugarman asked if the PFPF can ask the State to expedite the request for funds.

Timothy Johnson said that he can try, and that he will call the State personally.

Randy Wyse said that the Members should get the money, and that they do not currently have the money. He asked what's happening, and that over \$11 million is on the line. He said that he overheard Richard Tuten bragging about a 14% return on the Fund, which could have been earned on the \$11 million Chapter Funds, but was not, because the PFPF did not complete the report to the State.

Richard Tuten asked if it has been decided exactly where the Chapter Fund money goes.

Randy Wyse said that it is very clear in the collective bargaining.

There were no more requests for Public Speaking. Richard Tuten closed the Public Speaking Period.

Bob Sugarman said that the PFPF needs to pull out all the stops to get this administered.

Richard Tuten asked if there is anything hindering the PFPF from transferring funds to make an advance while waiting on the Chapter Funds from the State.

Lawsikia Hodges and Bob Sugarman said that they don't know for sure and would look into the matter.

III. COUNSEL REPORTS

Lawsikia Hodges

1. Bailiff Time Service Connections Opinion

Lawsikia Hodges handed out copies of the Bailiff Time Service Connections opinion from OGC. She said that the outcome is the same: regular full-time bailiffs may be entitled to connect their time. She said that the rule has always been that any prior time a Member has served with the City may be connected into the Plan. She said that the original intention was that bailiffs were to work part time, but over the years, many bailiffs ended up working full time hours. She said that a notification to Members needs to be sent so that they may begin submitting applications to connect time.

Richard Tuten asked if the Board needs to vote on this opinion.

Lawsikia Hodges said that it does not need to be voted on.

Timothy Johnson asked what the rate would be to connect time.

Lawsikia Hodges said that the law is very clear on the formula used, and that it is based on the date that the application is submitted to connect time.

Chris Brown said that the PFPF should get the applications in before the raises become effective on October 1st.

Timothy Johnson said that the PFPF will get the applications in before October.

2. Ordinance 2017-647 Appointing Nawal B. McDaniel to the Jacksonville Police and Fire Pension Board of Trustees

Bill Scheu said that he has to leave soon, but wanted to note Nawal's appointment to the Board by City Council, and that the legislation to appoint her is going through Council now. He said that she is outstanding and will be very helpful to the Fund.

3. Ordinance 2017-564 – Staggering Terms

Lawsikia Hodges said that the Term Staggering legislation is on the consent agenda for the City Council, and will be approved.

IV. INVESTMENT CONSULTANT REPORTS

Dan Holmes

Dan Holmes briefly discussed performance of the Fund for August. He said there were strong returns across the board. He said that all assets classes are performing above their benchmarks. He said that Brown was successfully terminated, and the funds have successfully transitioned. He said that the funds were transitioned for about \$20k less than estimated.

Dan Holmes discussed the performance of specific money managers, such as Wedge, Eagle, Baillie Gifford, Neuberger, and Loomis Sayles.

Dan Holmes discussed the performance of MLPs, noting that he still thinks they're cheap and remain attractive. He said that research shows that distribution growth should pick up in the next year, and double digit returns are expected in 2018 and 2019.

Timothy Johnson asked if it is too early to see the impact of the hurricanes on MLPs.

Dan said that it looks like it is too early, however Principal has reported no damage from either hurricane to their properties.

Richard Tuten wished Dan Holmes a Happy Birthday.

Dan Holmes gave his personal story of having survived kidney disease, and that he is very lucky to be celebrating his 56th Birthday today.

Timothy Johnson invited Dan Holmes and everyone at the table to share a Birthday cake following the workshop.

V. NEXT MEETING

Friday, September 22nd, 2017 at 9:00AM

VI. ADJOURNMENT

Richard Tuten adjourned the meeting at 9:54AM.

NOTES:

Any person requiring a special accommodation to participate in the meeting because of disability shall contact Steve Lundy, Assistant Plan Administrator at (904) 255-7373, at least five business days in advance of the meeting to make appropriate arrangements.

If any person decides to appeal any decision made with respect to any matter considered at this public meeting such person will need a record of proceedings, and for such purpose such person may need to ensure that a verbatim record of the proceedings is made at their own expense and that such record includes the testimony and evidence on which the appeal is based. The public meeting may be continued to a date, time, and place to be specified on the record at the meeting.

Additional items may be added / changed prior to meeting.

SL

Richard Patsy, Board Secretary

To be approved at the Board of Trustees Meeting on September 22, 2017



Date: September 15, 2017

To: City of Jacksonville Police & Fire Pension Fund – Board of Trustees

From: Dan Holmes

CC: Timothy Johnson
Stephen Lundy

Subject: Expiration of Investment Advisory Agreements

Please be advised that a significant number of Investment Advisory Agreements for investment managers employed by the Pension Fund are due to terminate on September 30, 2017. The managers to which this pertains are shown below:

- Northern Trust Aggregate Bond Index
- Northern Trust S&P Index
- Northern Trust EAFE Index
- Eagle Capital Management
- Sawgrass Asset Management`
- Pinnacle Associates Ltd.
- Thompson Siegel & Walmsley, Inc.
- Harvest Fund Advisors LLC
- Tortoise Capital Advisors

Summit recommends each Agreement be extended under the same terms and conditions as contained in the current Agreements for a period of one (1) year. During this extension period, Summit recommends each Agreement be updated by the Fund's legal counsel to reflect best practices which include:

- Conversion of the Agreements from a term period to an "evergreen" status whereby the manager Agreements will continue until terminated with a notice period;
- Accurate reflection of fee schedules which combine assets of the Fund with those of the City of Jacksonville Retirement System where managers are common to both;
- Insertion of MFN clauses where appropriate; and
- Any other Agreement updates deemed advisable by legal counsel.

Please note also the following:

- At this time, Summit does not recommend termination of any investment managers.
- As a result of pension reform, Summit is conducting an asset-liability study. The one year extension will not affect the ability to terminate any manager should the need arise pursuant to any new asset allocation or implementation Fund being adopted as a result of the asset-liability study.
- FIAC recommends adoption of the above.

Please contact Timothy Johnson if you have any questions or concerns.



Date: September 15, 2017
To: Board of Trustees for the City of Jacksonville PFPF
From: Daniel J. Holmes, Principal
Subject: Reimbursement of FY 2017 Benefit Payments Advance from the City

Below is a recommendation to raise the necessary liquidity of \$122 million to reimburse the City of Jacksonville for the advancement of benefit payments for FY 2017. The PFPF FIAC approved the recommendation below at their meeting on 9/14/17.

- \$122 million is needed by the end of September. The City wants the cash proceeds available by cash wire on 9/27.
- Historically, PFPF has used the index funds to raise the majority of the cash in order to minimize transactions costs.
- The City will “pay back” or advance the FY18 payments in early December, so Summit will then make reallocation recommendations to reinvest the cash back into the accounts and accomplish any necessary rebalancing then.
- My recommendations below also keeps overall asset allocation within permissible ranges around targets.
- Recommendation: Liquidate
 - \$62 million from the Northern S&P 500 index fund
 - \$18 million from the Northern EAFE index fund
 - \$26 million from the Northern Aggregate Bond Index fund
 - \$16 million from Thompson Siegel bond account (not enough in the bond index fund to cover all the non-equity allocation of the reimbursement)

Please let me know if you have any questions.



POLICE AND FIRE PENSION FUND
ONE WEST ADAMS STREET, SUITE 100
JACKSONVILLE, FLORIDA 32202-3616

"We Serve. . .and We Protect"

Phone: (904) 255-7373
Fax: (904) 353-8837

Date: September 15, 2017
To: PFPF Board of Trustees
From: Timothy H. Johnson, Executive Director
RE: Executive Director's Monthly Status Report

DASHBOARDS

Benefits	Prior Month	FYTD
Retiree Payroll (\$)	\$10,808,091	\$125,323,250
Refunds (\$)	\$201,762	\$2,859,511
Refunds (#)	13	268
New Members	0	303
New Medicals	73	399
Disability Applications	0	0
Disability Appeals	0	0
Deaths	1	45
Pension Estimates	6	374
Buyback Applications	6	74
Reclamations (\$)	\$0	\$569
Reclamations (#)	0	1
DROP Revocations	0	1

Retirements	Prior Month	FYTD
Total (Minus Enter DROP)	0	72
Full Retirement	0	7
Vested Retirement	2	13
Enter DROP	0	103
Exit DROP	1	110
Disability	0	0
Survivor	1	30
Children	0	8
Retirement Appointments	28	171
DROP Appointments	37	147

Public Records Requests	Prior Month	FYTD
Requests (#)	3	53
Completed (#)	4	58
Response Pages Produced (#)	39	3912

Records Retention	Prior Month	FYTD
Access Records Scanned (#)	49627	112850
In House Records Scanned (#)	847	6903

UPDATES

Finance Manager: Candidate identified. Recommendation to Personnel Committee to interview candidate and bring report to board in October.

Interim Finance Manager: Recommended by Kevin Stork, Mike Givens is a CPA and former COJ Treasurer who will complete necessary posing and close-out the financials for FYE 2017. Contract is attached. Recommend acceptance pending legal review.

Outstanding Legal Opinions: See attached chart.

Ordinance 2017-647: Appointing Nawal B. McDaniel to the JPPF Board. See attached resume.

Employee Conflict of Interest: More to come.

Property Performance Analysis: More to come.

FIAC Investment Policy Discussion: Bringing recommendation to the board in 2018 relative to portfolio changes following A/L Study, streamlining the document and policies to fill the private assets target.

KEVIN B. GRANT

kevingrant47@gmail.com ■ Jacksonville, Florida ■ (904) 477-7875 Cellular

PROFESSIONAL EXPERIENCE

Independent Consultant – Southeast Region (2016 – Present)

Provide services as a consultant for businesses and non-profits in the areas of financial structures, operational enhancements, programs and plans redevelopment and continuous follow-up support to achieve strategic goals. Additional roles include onsite management with a review presentation of operational management proposals for enhancements or restructure; grant review for submissions, grant performance analysis and evaluations; contract review and management; response for information and/or proposal review, writing and submissions.

Fresh Ministries, Inc. – Jacksonville, Florida (2015 – 2016)

Chief Financial Officer & Director of Beaver Street Enterprise Center

Chief Financial Officer – Financial: Served as senior-level leader that provided financial vision and leadership, strategic and tactical planning, development and coordination of all finances. Lead all financial operations, assesses organizational performance against both the annual budget and company's long term strategy, and ensures protection of the organization's assets and integrity of the financial information, and acts as an advisor to the Board of Directors. Oversaw all accounts, ledgers, ensuring compliance with appropriate Generally Accepted Accounting Principles (GAAP), internal control safeguards, regulatory requirements, and Office of Management and Budget (OMB) audit requirements for the annual A-133 audit. Managed cash flows, forecasting, performance and established policies and investment guidelines. Developed tools and review systems necessary to provide critical financial and operational information to senior leadership and made actionable recommendations on both strategy and operations. Engaged the board, executive and audit committees around financial issues, trends, and changes effecting the organization. Develop and utilize forward-looking, predictive models and activity-based financial analyses to provide insight into the organization's operations and business plans. Remained up to date on nonprofit audit best practices and state and federal law regarding nonprofit operations. **Leadership:** Developed a direct report financial team, managing work allocation, training, problem resolution, performance evaluation, and the building of an effective team dynamic. **Operational:** Ran the grants, contracts reviews, requests for proposals and budgets. Consulted as necessary with legal counsel and insurance providers to reduce the risk and liability of company. Engaged ongoing with insurance programs, including health, general liability, workers' compensation, property and automobile insurance. **Director of Beaver Street Enterprise Center (BSEC):** Led all functions of a two facilities business incubator. Sourced and recruited start-up companies with the potential to become successful at BSEC. Prepared, modified and executed the strategic plan of the incubator. Developed and implemented the annual operating plan of the incubator as approved by the board. Provided timely and informed communications to the board relative to the operation of the incubator. Supplied timely and clear services to the clients of the incubator to ensure the maximum chance of business success to client companies. Cultivated advisory teams and mentoring resources. Assisted tenants to develop mutually beneficial, synergistic relationships among themselves. Helped with proposals and with referrals to external and internal sources of necessary support services. Build BSEC's credibility through ongoing management-reporting and public relations activities and ensure sustainability and growth by seeking programmatic funding and other support. Supervise and manage BSEC's professional and clerical staff, including annual performance reviews.

City of Jacksonville – Jacksonville, Florida

Finance Manager (Operations Administrator)/Energy Grants Project Manager (2010 – 2015)

Served as financial and operational liaison to the Director of Neighborhoods Department in the day-to-day operations of the department with operational, financial and logistical support to the department which includes annual budget analysis and tracking, budget development, auditing, and in depth process analysis for seven (7) divisions and nine (9) activities. Responsible for managing the processing, reconciliation, and auditing of procurement and accounting functions and ensuring the accurate maintenance of accounts (index and sub-object), purchase orders, blanket order balances, grants, and trust funds, including federal and state funds. Perform general ledger accounting duties, account reconciliation, and funds transfers in accordance with departmental needs. Managed the budget process for the department, including monitoring to ensure goals and objectives are met. Represented the department at various meetings with regards to operational and administrative matters; review revenue reconciliation for the department; developed departmental policies regarding operational functions. Provided ad hoc reporting as necessary.

City of Jacksonville continued - *Energy Efficiency Grants Project Manager:* Monitored \$7.8m & \$1.2m Energy Efficiency and Conservation Block Grant operating budget and expenditure of funds, administers funds from various funding sources and initiates requests for adjustments and transfers.

Wells Fargo Bank, N.A. – Jacksonville, Florida (2006 – 2010)

Wachovia Bank, N.A. (Formerly First Union Bank) – Jacksonville, Florida (1998 – 2003)
Vice President/Relationship Manager/Team Leader

Administered a corporate trust book of issued bonds including corporate, municipal, industrial development; state assisted housing, variable rate issues, custody, and escrows, with a portfolio value of \$3 billion of managed assets. Maintained large revenue accounts while promoting good corporate/municipal client relationships with upper level executive and financial contacts. Oversaw all accounts, ledgers, ensuring compliance with appropriate Generally Accepted Accounting Principles (GAAP), perform general ledger accounting duties, account reconciliation, and funds transfers. Explored new business sales opportunities through interactions with clients, attorneys, financial advisors, brokers, and commercial bankers and promoted other products and services offered by the Bank. Managed invested funds within the trust and escrow accounts to ensure proper transfers, disbursements, and investments pursuant to document guidelines; forecasted cash flows relative to disbursement needs. Served as the Team Leader for up to 10 relationship managers and up to 15 trust associates for the southeast regional office. Responsibilities included recruiting, interviewing, hiring, training, and developing trust team members. Extensively reviewed and commented on legal documents associated with the issuance of new bonds, escrows, and custody accounts.

City of Jacksonville – Jacksonville, Florida
Senior Investment Analyst (Acting Treasurer from August 2005 to February 2006) (2003 – 2006)

Provided support in all areas of the treasury functions including management of City assets, investments and debt. Managed internal and risk controls for all Treasury activities. Provided debt & investment information for the annual financials and budgets, including standards for Generally Accepted Accounting Principles (GAAP) and Governmental Accounting Standards Board (GASB). Staffed personnel for programs created by the Treasury department. **Investments:** Monitored hedging program, Strategic Cash portfolio and fixed income money manager program; reviewed opportunities for new investment programs; reviewed and assisted in the revision of the Investment Policy; maintained the Investment & Borrowing Report for the Finance Committee. **Debt:** Reviewed financing options for the issuance of tax exempt debt; prepare RFP's for financial services, annual disclosure information, and rating agency presentation; review documents for new/outstanding bond issues & coordinate closings; develop and monitor debt schedules; initiate arbitrage calculations; transfer monthly debt service payments; review and key debt invoices. Participate in financing options and structures tax exempt credit markets; forecasted cash flows relative to disbursement needs. **Pension:** Participate in investment discussions with outside vendors; review portfolio and fund managers' performance.

The Bank of New York – Jacksonville, Florida (1996 – 1998)
Operations Administrator/Paying Agent

Managed a paying agent and invested funds portfolio and assisted Trust Officers with daily cash management and operational functions in the area of corporate trust (bond) related issues including trust indentures, client relations, and response to general correspondence.

PRIOR EXPERIENCES AND INTERSHIPS

American Sterling Corporation – Jacksonville, Florida - *Client Service Supervisor*
Corporate Software – Dallas, Texas - *Software Service Representative*
Florida Power Corporation – Ocala, Florida - *Energy Service Representative*
Barnett Bank – Ocala, Florida - *Loan Adjuster/HR Rep/Teller*

EDUCATION/CERTIFICATIONS

Bachelor of Science in Economics & Minor in Business Administration,
Florida State University – Tallahassee, Florida

Post Graduate Prerequisites, Samford University – Birmingham, Alabama

Certified Corporate Trust Specialist (CCTS) – Institute of Certified Bankers April of 2000

References available upon request

INDEPENDENT CONTRACTOR AGREEMENT

This is an Independent Contractor Agreement between the Jacksonville Police and Fire Pension Fund ("PFPF") and Michael R. Givens, C.P.A. PLLC ("Givens"). This agreement will become effective September 12, 2017, subject to ratification by the PFPF Board at its next regular meeting.

Recitals

PFPF is a single-employer contributing defined benefit pension plan covering all full time police officers and firefighters of the consolidated City of Jacksonville, Florida. PFPF is currently recruiting a senior level accounting administrator to fill a vacancy created by the departure of the PFPF employee providing accounting and financial reporting services. PFPF is in need of an experienced contractor to provide certain of the services expected from the accounting administrator for the period beginning with the start of the vacancy continuing through a successful hire. Time is of the essence as year-end approaches.

Givens has considerable experience and knowledge relative to the accounting and financial reporting services provided by the departed PFPF employee and is available to provide these services for the period of the vacancy in an interim consultant role. In this role, Givens will report to and take general direction from the PFPF Executive Director.

In consideration of the mutual promises set forth in this agreement, PFPF and Givens agree as follows:

Description of Work

Givens shall perform work as an independent contractor by providing the specified accounting and reporting services described below:

1. Organize, reconcile and schedule all transactions from the PFPF Center State Bank monthly activity statements and Northern Trust custodial statements in a manner that facilitates the computation and preparation of the accounting entries to record such activity.
2. Prepare and post the resulting journal entries to the accounting system of PFPF (FAMIS).
3. Design and generate a reporting tool for use in assembling interim financial reports desired by PFPF executives, including a budget to actual statement for the operating activities.
4. After all operating activities have been scheduled and posted to the general ledger, assist in identifying the source of any remaining available resources available for encumbrance for near term use.
5. Assist in training and transition of responsibilities to permanent finance manager hire.

Time Devoted to Work

In performing the services under this agreement, PFPF will rely on Givens to work the number of hours necessary to adequately perform the services described above and provide timely recording of the transactions and required reporting.

Payment of Fees

For the services described PFPF shall pay to Givens an hourly rate of \$125 for all hours worked. Givens shall submit an invoice for such fees and PFPF will pay each invoice within 10 business days after receipt. The current estimate of the time required to accomplish the agreed upon tasks 1-4 above for the period March 2017 through September 2017 is 168 hours. This estimate is based on an assumed availability and condition of the underlying records, as well as reasonable clerical and administrative assistance from PFPF staff. Additional work to extend or expand the scope of these agreed upon procedures and to train and transition to the permanent finance manager hire can be negotiated between the parties.

Relationship of the Parties

PFPF shall not withhold from Givens' fees any amount for federal income taxes, FICA, or any other legal deductions. Except where required by law, PFPF shall not make premium payments or contributions for any workers' compensation or unemployment compensation benefits for Givens. PFPF asserts it has relied upon Givens' experience, knowledge, and skill in selecting Givens to perform the services described in this agreement.

Givens shall have sole control of the manner and means of performing its services under this agreement, with PFPF only being interested in the delivery of the agreed upon services described in this agreement on a timely basis.

Savings Clause

If any provision of this agreement is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and shall be construed to effectuate the purpose and intent of this agreement.

Applicable Law

This agreement shall be governed by the laws of the State of Florida, and any action for breach of the terms of this agreement shall be commenced in a court of competent jurisdiction within Duval County, Florida where jurisdiction and venue shall lie.

Modification

This agreement may not be modified except by written agreement signed by both parties.

Incorporation

This agreement expressly supersedes all practices, understandings, and agreements, whether written or oral, not specifically set forth in the agreement. This agreement constitutes the entire agreement between PFPF and Givens, and there are no other agreements or understandings concerning this agreement which are not fully set forth in this agreement.

IN WITNESS WHEREOF, PFPF, by its authorized representative, and Givens, by its authorized representative, have executed this agreement, this _____ day of September, 2017.

Witness: Rebecca Gulest

Jacksonville Police & Fire Pension Fund
By: [Signature]

Witness: Stephen Long

Michael R Givens, C.P.A. PLLC
By: [Signature]

**Outstanding Opinions
Office of General Counsel**

<u>Opinion</u>	<u>Date of Request</u>	<u>Date Received (Expected)</u>
Securities Litigation Policy	January, 2017	(TBD)
Reemployment Affidavit	2/8/2017	(10/6/2017)
Benefit Correction / Appeal Policy	4/12/2017	(10/6/2017)
Bailiff Time Service Connections	4/21/2017	9/14/2017
Participation of DROP Members in the Share Plan	6/14/2017	9/1/2017
IRS Compliance of Share Distributions to DROP Members	6/14/2017	9/1/2017
Tuten's Request for Legal Opinions (Consent Decree)	6/16/2017	9/18/2017
Chapter Fund Questions	7/20/17	
Investment Consultant & Custodian Contract Extension	8/18/2017	(TBD)

1 Introduced by Council President Brosche:
2
3

4 **RESOLUTION 2017-647**

5 A RESOLUTION REGARDING THE JACKSONVILLE POLICE
6 AND FIRE PENSION BOARD OF TRUSTEES; APPOINTING
7 NAWAL B. MCDANIEL, A DUVAL COUNTY RESIDENT, TO
8 THE JACKSONVILLE POLICE AND FIRE PENSION BOARD OF
9 TRUSTEES, REPLACING WILLIAM B. SCHEU, PURSUANT TO
10 SECTION 22.02, JACKSONVILLE CHARTER, FOR A FIRST
11 FOUR-YEAR TERM TO EXPIRE ON JUNE 30, 2020;
12 PROVIDING AN EFFECTIVE DATE.
13

14 **BE IT RESOLVED** by the Council of the City of Jacksonville:

15 **Section 1. Appointment of Nawal B. McDaniel.** The Council
16 hereby confirms the appointment of Nawal B. McDaniel, a Duval County
17 resident, to the Jacksonville Police and Fire Pension Board of
18 Trustees, replacing William B. Scheu, pursuant to Section 22.02,
19 Jacksonville Charter, for a first four-year term to expire on June 30,
20 2020.

21 **Section 2. Effective Date.** This resolution shall become
22 effective upon signature by the Mayor or upon becoming effective
23 without the Mayor's signature.
24

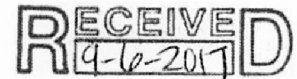
25 Form Approved:
26

27 /s/ *Margaret M. Sidman*

28 Office of General Counsel

29 Legislation Prepared By: Paula Shoup

17-647



NAWAL B. McDANIEL
1301 Riverplace Blvd., Suite 1500, Jacksonville, Florida 32207
Phone: (904) 346-5511, E-mail: nmcdaniel@rtlaw.com

EXPERIENCE

Rogers Towers, P.A., Jacksonville, Florida
Associate Attorney, July 2012 – December 2015
Shareholder, January 2016 – Present

Attorney practicing in the areas of Wills, Trusts and Estates and Probate, Trust and Guardianship administration. Experience includes meeting with clients to discuss estate planning needs, advising clients on various estate planning options, handling complex estates and trusts and federal estate, gift and generation-skipping transfer tax planning.

Fisher & Sauls, P.A., St. Petersburg, Florida
Associate Attorney, September 2007 – Present

Associate attorney practicing primarily in the areas of Wills, Trusts and Estates and Probate, Trust and Guardianship administration.

Gulfcoast Legal Services, Inc., St. Petersburg, Florida
Staff Attorney, September 2006 – August 2007

Representation of indigent clients in family law matters, including dissolution of marriage proceedings, paternity proceedings and domestic violence injunctions. Responsibilities included preparation of Complaints for Dissolution of Marriage, representation of clients at domestic violence injunction hearings, counseling and advising clients on matters involving child support, alimony and custody of minor children.

HONORS/ACTIVITIES

Gulfcoast Legal Services, Inc., Board of Directors, Vice President (2009 – 2010), President (2010 – Present); St. Petersburg Bar Association Probate & Guardianship Section, Chair (2009 – 2010); St. Petersburg Chamber of Commerce Young Professionals (2008 – 2012); Suncoast Hospice Foundation Council of Professional Partners (2008 – 2012); Suncoast Estate Planning Council (2008 – 2012); The Florida Bar Real Property Probate & Trust Law Section (2007 – Present); Executive Council Member, Leukemia and Lymphoma Society Light the Night Walk (2014); University of Florida Planned Giving Advisory Board (2016 – Present); Estate Planning Council of Northeast Florida (2012 – Present)

EDUCATION

Stetson University College of Law. Gulfport, FL. 2003 – 2006
Juris Doctor
University of the South. Sewanee, TN. 1999 – 2003
B.A. English Literature, Minor in Spanish
The Bolles School. Jacksonville, FL. 1995-1999
High School Diploma



POLICE AND FIRE PENSION FUND

ONE WEST ADAMS STREET, SUITE 100

JACKSONVILLE, FLORIDA 32202-3616

"We Serve . . . and We Protect"

Telephone: (904) 255-7373

Fax: (904) 353-8837

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE JACKSONVILLE
POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES AND
TREVOR O. GREENE, M.D., F.A.C.C., F.C.C.P., F.A.C.P.**

THIS AGREEMENT, made and entered into in duplicate the 1st day of July, 2016 by and between the **JACKSONVILLE POLICE AND FIRE PENSION FUND BOARD OF TRUSTEES**, a body politic and corporate, hereinafter referred to as the **"BOARD"** and/or the **"FUND"** and, **TREVOR O. GREENE, M.D., F.A.C.C., F.C.C.P., F.A.C.P.**, a licensed physician, with offices located at 3550 University Boulevard S., Suite 302, Jacksonville, Florida 32216, hereinafter referred to as **"TREVOR GREENE"**.

WITNESSETH:

WHEREAS, Chapters 112, 175 and 185 of the Florida Statutes and Article 22 of the City Charter vest the **BOARD** with full authority, power and responsibility to manage and administer the Police Officers and Firefighters Pension Fund, hereinafter referred to as the **FUND**; and

WHEREAS, the **JACKSONVILLE POLICE AND FIRE PENSION FUND** is in need of a Medical Services Consultant; and

WHEREAS, **TREVOR GREENE**, is desirous of providing these services to the **FUND**.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. The **FUND** hereby appoints **TREVOR GREENE** to provide services as Chairman of the Medical Services Committee. Those duties shall include, but shall not be limited to:

POLICE AND FIRE PENSION FUND

- (a) Coordinate, review, and recommend approval or denial of all candidates for entrance as members of the **FUND** in writing;
- (b) Review all applications for disability retirement and provide the **BOARD** with written opinions concerning the medical condition of any such applicant;
- (c) Attend meetings of the **BOARD** as may be required by the **FUND**;
- (d) Coordinate and direct the services of any other Medical Consultants whose opinions may be necessary concerning admission to the **FUND** or in the consideration of applications for disability retirement;
- (e) Make recommendations to the **FUND** concerning improved methods of gathering and maintaining medical information necessary to conduct the business of the **FUND**.
- (f) Such other duties as the **FUND**, through the **BOARD**, may assign.

Section 2. **TREVOR GREENE** represents and covenants that he is a duly licensed physician under the laws of the State of Florida and that he is now, and shall remain throughout the term of this Agreement, so licensed and in good standing with the Florida Medical Association.

TREVOR GREENE further represents that he has the necessary training and experience to perform the services required of him under this Agreement.

Section 3. The **FUND** shall provide **TREVOR GREENE** with all medical releases necessary for the performance of his duties and **TREVOR GREENE** shall be considered an Agent of the **FUND** for purposes of the Sovereign Immunity Law, Section 768.28, Florida Statutes.

Section 4. **NOTWITHSTANDING**, the provisions of Section 3, **TREVOR GREENE** shall, for the term of this Agreement, maintain in full force and effect a Medical Malpractice Insurance Policy.

POLICE AND FIRE PENSION FUND

Section 5. In consideration of the performance of these duties **TREVOR GREENE** shall be paid as follows:

- (a) For each review of an application for disability retirement, including any written opinion and appearance at a meeting of the **BOARD** as may be required by the **FUND**, a flat rate of \$200.00.
- (b) For each review of an employment entry medical file and written opinion, a flat rate of \$100.00.
- (c) All bills for second review of an employment entry medical file submitted by other Medical Consultants shall be approved as to reasonableness by **TREVOR GREENE** and a written opinion provided to the **FUND**, for payment of \$50.00 per chart.

Section 6. **TREVOR GREENE** acknowledges that for the purposes of all services performed under this Agreement that he occupies the status of Independent Contractor and accordingly is not an employee of the **FUND**.

Section 7. This Agreement shall be governed by the laws of the State of Florida.

Section 8. This Agreement shall commence on the 1st day of July, 2016 and shall remain in full force and effect through the 30th day of September, 2017; provided, however, that either party may terminate this Agreement with or without cause upon giving thirty (30) days prior written notice to the other party. The **BOARD** shall have the option of renewing this Agreement for additional periods based upon terms to be negotiated by the parties.

Section 9. This Agreement constitutes the entire understanding between **TREVOR GREENE** and the **FUND** with respect to all matters contained herein and may be amended only by written instrument executed by the parties.

POLICE AND FIRE PENSION FUND

Section 10. If any part of this Agreement shall be held void, voidable, or otherwise unenforceable by any court of law or equity, nothing contained in this Agreement shall limit the enforceability of any other part.

IN WITNESS WHEREOF the parties have duly executed this Agreement on the day and year above first written.

JACKSONVILLE POLICE AND FIRE PENSION FUND BOARD OF TRUSTEES

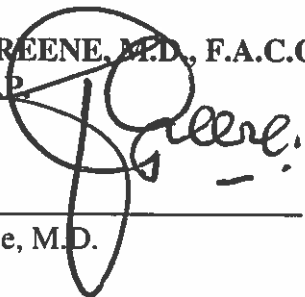


Chief Larry Schmitt, Chairman



Richard Tuten III, Board Secretary

TREVOR O. GREENE, M.D., F.A.C.C.,
F.C.C.P., F.A.C.P.



Trevor O. Greene, M.D.

ATTEST:



Devin Carter, Chief Financial Officer

**FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES AND TREVOR O. GREENE, M.D., F.A.C.C., F.C.C.P.,
F.A.C.P.**

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, is made and entered into this 1st day of October, 2017, by and between the **JACKSONVILLE POLICE AND FIRE PENSION FUND BOARD OF TRUSTEES**, a body politic and corporate, hereinafter referred to as the “**BOARD**” or the “**TRUSTEES**” and **TREVOR O. GREENE, M.D., F.A.C.C., F.C.C.P., F.A.C.P.**, a licensed physician, with offices located at 3550 University Boulevard S., Suite 302, Jacksonville, Florida 32216, hereinafter referred to as “**TREVOR GREENE**”.

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT, amends the **THE PROFESSIONAL SERVICES AGREEMENT** as follows:

“EXTENDS THE AGREEMENT UNTIL SEPTEMBER 30, 2018”.

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT shall commence on the day and year first above written and shall remain in full force and effect through the 30th day of September, 2018. All other terms and conditions of the Professional Services Agreement remain in full force and effect.

Signature element on the following page.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to the Professional Services Agreement as of the day and year first above written.

**JACKSONVILLE POLICE AND
FIRE PENSION FUND BOARD
OF TRUSTEES**

Lt. Richard Tuten III, Chair

Richard Patsy, Board Secretary

Robert Sugarman
Fund General Counsel

**TREVOR O. GREENE, M.D.,
F.A.C.C., F.C.C.P., F.A.C.P.**

Trevor O. Greene, M.D.

Attest to:

By: _____
Timothy H. Johnson
Executive Director – Plan Administrator

1 Introduced by the Council President at the request of the
2 Jacksonville Police and Fire Pension Board of Trustees:

3
4
5 **ORDINANCE 2017-564**

6 AN ORDINANCE AMENDING CHAPTER 121 (POLICE AND
7 FIREFIGHTERS PENSION PLAN), PART 1 (POLICE AND
8 FIRE PENSION FUND ADMINISTRATION), SECTION
9 121.103 (ADVISORY COMMITTEE), ORDINANCE CODE,
10 TO CREATE STAGGERED TERMS; AMENDING CHAPTER
11 121 (POLICE AND FIREFIGHTERS PENSION PLAN),
12 PART 5 (FINANCIAL INVESTMENT AND ADVISORY
13 COMMITTEE), SECTION 121.503 (FINANCIAL
14 INVESTMENT AND ADVISORY COMMITTEE; MEMBERSHIP,
15 APPOINTMENT AND TERMS), ORDINANCE CODE, TO
16 CREATE STAGGERED TERMS; PROVIDING AN EFFECTIVE
17 DATE.

18
19 **BE IT ORDAINED** by the Council of the City of Jacksonville:

20 **WHEREAS**, the Jacksonville Police and Fire Pension Board of
21 Trustees (the "Board") is an independent agency of the consolidated
22 City of Jacksonville, is governed by Chapter 121, *Ordinance Code*, and
23 is responsible for administering the Jacksonville Police and Fire
24 Pension Fund ("Pension Fund"); and

25 **WHEREAS**, the Advisory Committee created under Section 121.103,
26 *Ordinance Code*, and the Financial Investment and Advisory Committee
27 ("FIAC") created under Section 121.503, *Ordinance Code*, were
28 established to assist the Board with the administration of the Pension
29 Fund; and

30 **WHEREAS**, the Advisory Committee consists of seven members: three
31 police officers elected by police officers, three firefighters elected

1 by firefighters, and one retired member elected by the retired members
2 as a group, and the terms of all seven members are set to expire on
3 December 31, 2017; and

4 **WHEREAS**, the FIAC consists of five members and the terms of a
5 majority of the membership are set to expire on March 1, 2019; and

6 **WHEREAS**, the Board at its regular meeting on July 21, 2017,
7 recommended that the Advisory Committee and FIAC board members be
8 staggered in such a way as to create the least disruption in board
9 membership and provide better continuity in board membership as set
10 forth in the meeting minutes excerpt attached hereto as **Exhibit 1**; now
11 therefore

12 **Section 1. Chapter 121 (Police and Firefighters Pension**
13 **Plan), Part 1 (Police and Fire Pension Fund Administration),**
14 **Section 121.103 (Advisory Committee), Ordinance Code, amended.**

15 Chapter 121 (Police and Firefighters Pension Plan), Part 1 (Police
16 and Fire Pension Fund Administration), Section 121.103 (Advisory
17 Committee), *Ordinance Code*, is hereby amended to create staggered
18 member terms in the 2017 election, as illustrated on **Exhibit 2**
19 attached hereto, and as amended shall read as follows:

20 **Chapter 121. POLICE AND FIREFIGHTERS PENSION PLAN**

21 **PART 1. POLICE AND FIRE PENSION FUND ADMINISTRATION**

22 * * *

23 **Sec. 121.103. - Advisory Committee.**

24 There shall be an advisory committee composed of three police
25 officers and three firefighters who are Members or Qualified
26 Members of the fund and one person who has retired from the fund.
27 The Trustees shall establish the rules and regulations for the
28 election. Advisory Committee members shall be elected for a four-
29 year term, with the election in November of odd-numbered years,
30 with those elected to take office on the first Monday of the
31 following January. Of the seven persons elected to serve on the

1 committee in the November 2017 elections, one police member and one
2 firefighter member shall serve an initial term of two years, and
3 one police member and one firefighter member shall serve an initial
4 term of three years. All subsequent terms after the stagger is
5 established shall be for four year terms. The police officers shall
6 be elected by police officers, the firefighters shall be elected by
7 firefighters, who are Members or Qualified Members of the fund. The
8 retired member shall be elected by a vote of the retired members as
9 a group.

10 * * *

11 **Section 2. Chapter 121 (Police and Firefighters Pension**
12 **Plan), Part 5 (Financial Investment and Advisory Committee),**
13 **Section 121.503 (Financial Investment and Advisory Committee;**
14 **Membership, Appointment and Terms), Ordinance Code, amended.**
15 Chapter 121 (Police and Firefighters Pension Plan), Part 5
16 (Financial Investment and Advisory Committee), Section 121.503
17 (Financial Investment and Advisory Committee; Membership,
18 Appointment and Terms), *Ordinance Code*, is hereby amended to read
19 as follows:

20 **Chapter 121. POLICE AND FIREFIGHTERS PENSION PLAN**
21 **PART 5. FINANCIAL INVESTMENT AND ADVISORY COMMITTEE**

22 * * *

23 **Sec. 121.503. - Financial Investment and Advisory Committee;**
24 **Membership, Appointment and Terms.**

25 * * *

26 (c) The term of office shall be three years. No person shall
27 serve more than three consecutive terms. Of the five persons
28 selected to serve on the initial Committee two members shall serve
29 an initial term of one year and two members shall serve initial
30 terms of two years. All subsequent terms after the stagger is
31 established shall be for four year terms. In its confirmation of

1 the Committee Member nominee, the City Council shall designate
2 whether the initial term is for two or for three years.

3 * * *

4 **Section 3. Effective Date.** This ordinance shall become
5 effective upon signature by the Mayor or upon becoming effective
6 without the Mayor's signature.

7
8 Form Approved:

9
10 /s/ Lawsikia J. Hodges

11 Office of General Counsel

12 Legislation prepared by: Lawsikia J. Hodges

13 GC-#1145009-v3-PFPF_Advisory_and_FIAC_Legislation_-_Staggered_Terms.doc

**JACKSONVILLE POLICE AND FIRE PENSION FUND
BOARD OF TRUSTEES
MEETING SUMMARY – JULY 21, 2017 – 9:00AM
RICHARD “DICK” COHEE BOARD ROOM**

PRESENT

Lt. Richard Tuten III, Board Chair
Richard Patsy, Board Secretary
Lt. Chris Brown, Trustee
Willard Payne, Trustee – via webex
William Scheu, Trustee – via webex

STAFF

Timothy H. Johnson, Executive Director – Plan Administrator
Steve Lundy, Assistant Plan Administrator
Pedro Herrera, Sugarman & Susskind, Fund Counsel
Lawsikia Hodges, Office of General Counsel
Dan Holmes, Summit Strategies
Pete Strong, Fund Actuary
Denice Taylor, AAA Reporters

GUESTS

Greg Anderson, City Council Liaison
Anna Brosche, City Council President
K. Dobson, Jacksonville Association of Firefighters
Joey Greive, Fund Treasurer
Mark Muchowicz, JSO
Randy Wyse, President, Jacksonville Association of Firefighters

I. CALL TO ORDER

Chairman Richard Tuten called the meeting to order at 9:06AM.

II. PLEDGE OF ALLEGIANCE

III. A MOMENT OF SILENCE WAS OBSERVED FOR THE FOLLOWING DECEASED MEMBERS:

2. External Auditor's Engagement Letter (Carr, Riggs & Ingram)

Timothy Johnson said that the PFPF's external auditor, KBLD is retiring. He said he reached out to the City to find out about their external auditor. He said he was recommended to use the City's auditor, CRI. CRI would match KBLD's price. He said the timing is perfect, as the PFPF would be entering the contract with CRI at the same time as the City. He said the contract was for one year, and the price was \$30,000.

A motion was made by Chris Brown to enter into a contract with CRI, seconded by Rick Patsy. The vote passed unanimously.

3. 2017 Election Timeline Update

Timothy Johnson said that the Board of Trustees and the Advisory Committee have seats coming up for election. Two Trustee seats and all seven Advisory Committee seats expire on December 31st, and the election will be held in the Fall.

Richard Tuten said that he will not run for reelection, and that 14 years is long enough. He asked Timothy Johnson if he has received any indication from the Advisory Committee members on their intentions to run for reelection.

Timothy Johnson said that all seven members could run for reelection; however they could change their mind. He said that he has received no indication that any of the Advisory Committee members would not seek reelection.

Rick Patsy said that potentially, all of the Advisory Committee seats turning over at the same time is a bad thing.

Lawsikia Hodges said that the Board could recommend to the City Council changes to the ordinance to stagger the terms.

Greg Anderson recommended that the Board create a subcommittee to draft possible changes to the ordinance, and that he would not be in favor of an emergency Council vote on ordinance language change in order to change the ordinance before the election.

Chris Brown asked if the Board could direct OGC to draft new language for an ordinance change.

Lawsikia Hodges said she would come back to the August Board of Trustees' meeting with draft language prepared.

Chris Brown recommended that the Advisory Committee's seats be staggered in the following manner:

1. The three JFRD seats would have terms of 2, 3, and 4 years.
2. The three JSO seat would have terms of 2, 3, and 4 years.
3. The retired seat would have a term of 4 years.
4. All seats would have equal term lengths after.

A motion was made by Chris Brown to direct OGC to make a proposed ordinance change to stagger the seats of the Advisory Committee, seconded by Rick Patsy. Discussion:

Richard Tuten said that he would make an amendment to the motion for Timothy Johnson to work along with OGC to clear this up.

Lawsikia Hodges said that she can draft language to stagger the Board, FIAC, and Advisory Committee seats.

The vote passed unanimously.

Greg Anderson said that he recommends that he file the proposed language with the City Council, and the Board can make any amendments if they desire.

A motion was made by Bill Scheu to accept Greg Anderson's recommendation to file, seconded by Chris Brown. The vote passed unanimously.

4. FIAC Meeting Attendance Update

Timothy Johnson said that at the request of Richard Tuten, analysis was made of the meeting attendance of the FIAC. He said that he met with the FIAC

chair, and discussed attendance at the last FIAC meeting. He said that the FIAC committed to better attendance, and will inform the PFPF if they are unable to attend ahead of the meeting. He said a large factor affecting FIAC quorums was that the FIAC only had four members up until the last few months. He said that a new member orientation is also in the works.

Richard Tuten said that he wasn't sure if the FIAC members knew what they were getting themselves into, and if they were aware of the gravity of the commitment, and that there are millions of dollars on the line.

Timothy Johnson informed the Board of the working group that was held Thursday. He said a robust discussion was had concerning how to administer the recent pension reform. He said he will prepare notes to present to the Board in their August meeting.

Rick Patsy said that it was a good and constructive meeting.

A motion was made by Rick Patsy to direct Summit Strategies and GRS to start the asset-liabilities study, seconded by Chris Brown. Discussion:

Pete Strong said that he could have a draft ready by November, and a final version by mid-December or January.

The vote passed unanimously.

VIII. COUNSEL REPORTS

There were no new counsel reports.

IX. INVESTMENT CONSULTANT REPORTS

Dan Holmes

1. Economic & Capital Market Update – June 30, 2017

Dan Holmes said that continued economic growth has been driving strong returns. Job growth, wage growth, and GDP growth have been contributing factors to the recent great returns.

Exhibit 2

Board Member	Current Term End	Initial Term Length	Stagger Term End	Subsequent Term End
Active Police Officer	December 31, 2017	2 years	December 31, 2019	December 31, 2023
Active Firefighter	December 31, 2017	2 years	December 31, 2019	December 31, 2023
Active Police Officer	December 31, 2017	3 years	December 31, 2020	December 31, 2024
Active Firefighter	December 31, 2017	3 years	December 31, 2020	December 31, 2024
Active Police Officer	December 31, 2017	4 years	December 31, 2021	December 31, 2025
Active Firefighter	December 31, 2017	4 years	December 31, 2021	December 31, 2025
Retiree	December 31, 2017	4 years	December 31, 2021	December 31, 2025

PFPF Advisory Committee & FIAC Proposed Staggered Terms

FIAC	MEMBER	INITIAL TERM LENGTH	PERMANENT TERM LENGTH		Current Term Start	Current Term Ending	Proposed Term End	3/1/2017	3/1/2018	3/1/2019	3/1/2020	3/1/2021	3/1/2022	3/1/2023	3/1/2024	3/1/2025	3/1/2026	3/1/2027	3/1/2028	
			3/1/2018	3/1/2019																
	Van Pelt	1	3		3/1/2016	3/1/2019	3/1/2017				X									
	Kowkabany	2	3		3/1/2016	3/1/2018		X				X								
	Lewis	1	3		3/1/2016	3/1/2019	3/1/2017				X									
	Devine	2	3		3/1/2016	3/1/2018		X				X								
	Smith	3	3		3/1/2016	3/1/2019			X				X							

ADVISORY COMMITTEE	MEMBER	INITIAL TERM LENGTH	PERMANENT TERM LENGTH		Current Term Start	Current Term Ending	Proposed Term End	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	12/31/2024	12/31/2025	12/31/2026
			12/31/2020	12/31/2021											
	F1	2	4		1/1/2014	12/31/2017					X				
	F2	3	4		1/1/2014	12/31/2017		X				X			
	F3	4	4		1/1/2014	12/31/2017			X				X		
	P1	2	4		1/1/2014	12/31/2017				X					
	P2	3	4		1/1/2014	12/31/2017		X				X			
	P3	4	4		1/1/2014	12/31/2017				X			X		
	R	4	4		1/1/2014	12/31/2017			X					X	

SUGARMAN & SUSSKIND

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Facsimile (305) 447-8115

♦Board Certified Labor
& Employment Lawyer

September 1, 2017

Board of Trustees
City of Jacksonville Police & Fire Pension Fund Advisory Committee
c/o Tim Johnson, Executive Director
1 West Adams Street, Suite 100
Jacksonville, FL 32202

Re: Participation of DROP members in the Share Plan

Dear Trustees:

You have requested our opinion as to whether Chapters 175 and 185, Florida Statutes, require the City of Jacksonville Police and Fire Pension Plan to permit DROP members to participate in the Supplemental Share plan. For the reasons and based upon our understanding of the facts as set forth below, it is our opinion that the plan is not required to permit DROP members to participate in the Share.

Our opinion is based upon our understanding of the facts as follows. The City of Jacksonville Police and Fire Pension Plan was created by Chapter 18615, Special Acts of Florida, during the 1937 legislative session. The plan contains a DROP and a Supplemental Share plan, set forth respectively in Sections 121.209 and 121.115 of the City's Code of Ordinances.

With regard to the DROP, Section 121.209 of the Code of Ordinances provides, "[a]dditional service beyond the date of entry into the DROP shall no longer accrue any additional benefits under the Pension Fund."

Section 121.115(e) relating to the Supplemental Share plan states in relevant part:

Distribution of share accounts. A Participant with ten or more years of credited service with the City, upon termination of creditable service employment, shall be eligible to receive a distribution of 100 percent of the balance in his or her Share Account, together with all earnings and losses and interest credited to the Share Account through the date of termination of employment... (emphasis added)

Those sections exclude DROP members from continued participation in the Share. First, under Section 121.209 of the Code of Ordinances as cited above, no additional benefits accrue under the plan upon entry into the DROP. Share benefits cease thus to accrue upon entry into the DROP. Furthermore, since DROP members no longer accrue any additional benefits, their creditable service employment effectively ceases upon entry into the DROP. Under Section 121.115 of the Code of Ordinances, the termination of creditable service employment entitles DROP members to the distribution of their Share accounts, which is consistent with the cessation of the accrual of Share credits. Accordingly, it is our opinion that the plan does not permit DROP members to continue participation in the Share.

The exclusion of DROP members from the Share is permitted under Chapters 175 and 185, Florida Statutes. Since the City of Jacksonville Police and Fire Plan was created by special act prior to May 27, 1939, the Plan is effectively exempt from the provisions of Chapters 175 and 185 that would otherwise prohibit the exclusion of DROP members from continued participation in the Share.

Generally, local law plans are required to permit DROP members to continue to participate in a supplemental share plan. Sections 175.032(7) and 185.02(8), Florida Statutes, provide:

175.032...

(7) “Deferred Retirement Option Plan” or “DROP” means a local law plan retirement option in which a firefighter may elect to participate. A firefighter may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his or her employer. However, a firefighter who enters the DROP and who is otherwise eligible to participate may not be precluded from participation or continued participation in a supplemental plan in existence on, or created after, March 12, 1999. (emphasis added)

185.02...

(8) “Deferred Retirement Option Plan” or “DROP” means a local law plan retirement option in which a police officer may elect to participate. A police officer may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his or her employer. However, a police officer who enters the DROP and who is otherwise eligible to participate may not be precluded from participation or continued participation in a supplemental plan in existence on, or created after, March 12, 1999. (emphasis added)

Those Sections, however, do not apply to local law plans that were created by special act on or before May 27, 1939. Sections 175.351(2) and 185.35(2), Florida Statutes, provide:

175.351...

(2) The premium tax provided by this chapter must be used in its entirety to provide retirement benefits to firefighters, or to firefighters and police officers if both are included. Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter. (emphasis added)

185.35...

(2) The premium tax provided by this chapter must be used in its entirety to provide retirement benefits to police officers, or to police officers and firefighters if both are included. Local law plans created by special act before May 27, 1939, shall be deemed to comply with this chapter. (emphasis added)

“Deemed to comply” means that the plan is effectively exempt from actual compliance. By the use of the word “chapter,” the legislature gave broad effect to the exemption.

The broad exemption is confirmed by Sections 175.061(8)(b) and 185.05(8)(b), Florida Statutes, which specify certain provisions of Chapters 175 and 185 with which local law plans created by special act before May 27, 1939 are required to comply despite the exemption contained in Sections 175.351 and 185.31:

175.061(8) ...

(b) Notwithstanding s. 175.351(2) and (3), a local law plan created by special act before May 27, 1939, must comply with the provisions of this subsection.

185.05(8) ...

(b) Notwithstanding s. 185.35(2) and (3), a local law plan created by special act before May 27, 1939, must comply with the provisions of this subsection.

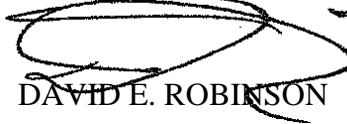
The legislature did not make similar exceptions for Subsections 175.032(7) and 185.02(8) (requiring local law plans to allow DROP members to participate in the DROP). Thus, by rule of interpretation, the legislature did not intend to require compliance with those Subsections. Accordingly, we conclude that Subsections 175.032(7) and 185.02(8) do not apply to this plan.

For the foregoing reasons, it is our opinion that Sections 175.351(2) and 185.35(2) exempt local law plans that were created by special act before May 27, 1939, such as City of Jacksonville Police and Fire Pension Plan, from compliance with Sections 175.032(7) and 185.02(8), Florida Statutes, which would otherwise prohibit the exclusion of DROP members from the Share. Therefore, the plan is not required to permit DROP members to participate in the Share.

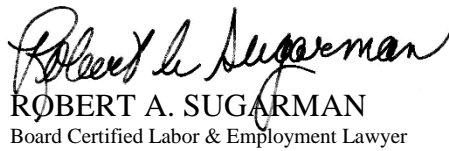
Board of Trustees
City of Jacksonville Police & Fire Pension Fund – Advisory Committee
September 1, 2017
Page | 4

We look forward to discussing this matter further with you.

Yours truly,



DAVID E. ROBINSON



ROBERT A. SUGARMAN
Board Certified Labor & Employment Lawyer

RAS/jd

cc: Lawsikia Hodges

SUGARMAN & SUSSKIND

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♦Board Certified Labor
& Employment Lawyer

September 1, 2017

Board of Trustees
City of Jacksonville Police & Fire Pension Fund
c/o Tim Johnson, Executive Director
1 West Adams Street, Suite 100
Jacksonville, FL 32202

Re: Internal Revenue Code Compliance of Share Distributions to DROP members.

Dear Trustees:

You have requested our opinion as to whether the distribution of a member's Share account to the member when he/she enters the DROP is a permitted in-service distribution under the Internal Revenue Code (hereinafter "the Code"). For the reasons and based upon our understanding of the facts as set forth below, it is our opinion that the distribution of a member's Share account to the member when he/she enters the DROP is a permitted in-service distribution under the Code.

Our opinion is based upon our understanding of the facts as follows. The City of Jacksonville Police and Fire Pension Plan contains a DROP and a Supplemental Share plan, set forth respectively in Sections 121.209 and 121.115 of the City's Code of Ordinances.

With regard to the DROP, Section 121.209 of the Code of Ordinances states, "Additional service beyond the date of entry into the DROP shall no longer accrue any additional benefits under the Pension Fund."

Section 121.115(e) relating to the Supplemental Share plan states in relevant part:

Distribution of share accounts. A Participant with ten or more years of credited service with the City, upon termination of creditable service employment, shall be eligible to receive a distribution of 100 percent of the balance in his or her Share

Account, together with all earnings and losses and interest credited to the Share Account through the date of termination of employment... (emphasis added)

Those sections mean that a member who enters the DROP is no longer engaged in creditable service employment and is therefore eligible to receive the distribution of 100% of his or her Share benefit. The distribution of Share benefits to a DROP member is thus permitted under the plan.

The distribution is also permitted under the Internal Revenue Code. Under Section 1.401(a)-(1)(b)(1) of the Department of Treasury regulations, a qualified plan generally may not permit the distribution of a participant's benefits under the plan to commence prior to the participant's retirement—which generally requires that the participant separate from service for the employer. There are exceptions to that rule. Under Section 401(a)(36) of the Code, a qualified plan may make distributions to a member who has not separated from service if the member has attained age 62. Furthermore, in recent proposed regulations promulgated on January 27, 2016 in Volume 81, No.17, Page 4599 of the Federal Register, the IRS permits governmental plans to make in-service distributions to members who have attained normal retirement age under the plan, if the plan's normal retirement age is not lower than the age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.¹ The proposed regulations set forth certain "safe harbor" normal retirement ages that are deemed not to be earlier than the typical retirement age for workers in governmental plans. As long as a plan's normal retirement age is not below the applicable safe harbor age, the plan may make in-service distributions to participants who have reached normal retirement age.

Since members of the DROP continue in the employment of the City during the DROP period, the distribution of Share benefits to DROP members is an in-service distribution. In order for the distribution to be permissible, therefore, it must occur upon or after the attainment of a normal retirement age that is consistent with the proposed regulations.

At Page 4600 the proposed regulations define normal retirement age as:

the lowest age specified in the plan at which the employee has the right to retire without the consent of the employer and receive retirement benefits based on the amount of the employee's service to the date of retirement at the full rate set forth in the plan (that is, without actuarial or similar reduction because of retirement before some later specified age). (emphasis added)

¹ Though the proposed regulations are not final, governmental plans are permitted to rely on the regulations as proposed. At page 4604, the IRS provides, "Governmental plan sponsors may rely on these proposed regulations for periods preceding the effective date, pending the issuance of final regulations. If and to the extent the final regulations are more restrictive than the rules in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect."

In other words, normal retirement age is generally that age at which one becomes entitled to unreduced retirement benefits under the plan.

Section 121.209(a)(1) of the Code of Ordinances provides:

(a) *Eligibility of Member to participate in the DROP. All Members who are eligible to, may elect participation in the DROP, provided Members comply administratively with the rules and regulations established by the board for the administration of the DROP.*

(1) *A Member who is eligible to receive normal retirement benefits under Section 121.201(a) may participate in the DROP providing the Member elects to participate within the time limits contained in Section 121.209(b)(1).* (emphasis added)

Section 121.209(a)(1) clearly conditions entry into the DROP upon the attainment of eligibility for normal retirement benefits (i.e. Normal Retirement Age as defined by the regulations). The distribution of Share benefits to a DROP member is therefore permissible, if the Plan's normal retirement age is consistent with the proposed regulations.

Section 121.201(a) of the plan provides that a Member may receive an unreduced normal retirement age upon completion of 20 years of credited service. Thus, the Plan's normal retirement age, as that term is defined in the proposed regulation, is 20 years of credited service.

That normal retirement age is consistent with the proposed regulations. With regard to "Qualified Public Safety Employees," Section 1.401(a)-1(b)(2)(v)(H) of the proposed regulations provides:

(H) *Service-based safe harbor for qualified public safety employees. A normal retirement age under a governmental plan that is the age at which the participant has been credited with at least 20 years of service under the plan is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed if the participants to which this normal retirement age applies are qualified public safety employees (within the meaning of section 72(t)).*

Section 72(t)(10)(B)(i) of the Code defines qualified public safety employee as:

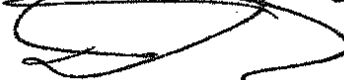
- (i) *any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision, ...*

Since the participants of the City of Jacksonville Police and Fire Pension Plan provide police and firefighting services within the meaning of Section 72(t)(10)(B)(i) of the Code, the plan's normal retirement age of 20 years of service is consistent with the safe harbor provided under Section 1.401(a)-1(b)(2)(v)(H) of the proposed regulations.

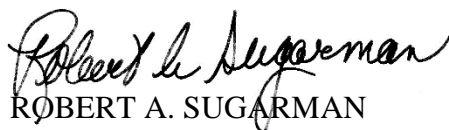
Since a member must reach normal retirement age under the plan in order to enter the DROP, and since the plan's normal retirement age is consistent with the proposed regulations of the department of treasury, it is our opinion that the distribution of a member's Share account to the member upon his/her entry into the DROP is permitted under the Internal Revenue Code.

We look forward to discussing this matter further with you.

Yours truly,



DAVID E. ROBINSON



ROBERT A. SUGARMAN

Board Certified Labor & Employment Lawyer

RAS/jd

cc: Lawsikia Hodges

United States District Court
Middle District of Florida
Jacksonville Division

JOHN KEANE,

Plaintiff,

v.

No. 3:16-cv-1595-J-20PDB

**JACKSONVILLE POLICE FIRE AND
PENSION FUND BOARD OF TRUSTEES,**

Defendant.

Order

Before the Court are John Keane's opposed motion to disqualify the Office of General Counsel of the City of Jacksonville from further representing the Jacksonville Police and Fire Pension Fund Board of Trustees in this action, Doc. 17, the Board's response, Doc. 20, Keane's reply, Doc. 23, and the Board's opposed motion for leave to file a surreply, Doc. 24.

Background

On December 29, 2016, Keane filed an amended complaint against the Board. Doc. 4. He alleges the following facts.

The Marvin B. Clayton Firefighter Pension Trust Fund Act, codified at chapter 175 of the Florida Statutes, calls for the creation of pension funds for firefighters throughout Florida, sets standards for firefighter pensions in municipalities throughout Florida, establishes a "Firefighter's Pension Trust Fund" in each municipality in Florida, and provides for the creation of independent boards of trustees to administer pension funds. Doc. 4 ¶¶ 7, 8; see Fla. Stat. § 175.021 (legislative declaration concerning the Act). The Act contains provisions on the

boards' powers, responsibilities, and independence from municipalities in which they operate. Doc. 4 ¶¶ 9–12. The Marvin B. Clayton Police Officers Pension Trust Fund Act, codified at chapter 185 of the Florida Statutes, contains similar provisions for pension funds for police officers. Doc. 4 ¶¶ 13–15.

To implement those laws, the Florida legislature established by special act the Jacksonville Police and Fire Pension Board of Trustees as an independent agency and empowered it to enter into contracts, leases, or other transactions; employ and fix the compensation of an administrator and any consultants; and have all other powers it reasonably determines necessary or appropriate to the performance of its duties in administering pensions for employees of the Jacksonville Sheriff's Office and Jacksonville Fire and Rescue Department. Doc. 4 ¶¶ 6, 16–17; *see* Laws of Fla., ch. 90-443, § 2; Laws of Fla., ch. 92-341, § 1; Charter of the City of Jacksonville, Article 22, § 22.04. The special act distinguishes Board employees from city employees and repeals any inconsistent provisions in the city's charter. Doc. 4 ¶¶ 18–19.

In the past, the Office of General Counsel has claimed it cannot represent the Board because chapters 175 and 185 “create a present or potential conflict of interest” and the Board is not the city but an independent agency. Doc. 4 ¶ 21. The Board is “an independent agency from the City [of Jacksonville], created wholly by state law, that acts as the sole judge of the terms and administration of the Fund, subject only to judicial review.” Doc. 4 ¶ 22.

Keane is the Board's former executive director and administrator. Doc. 4 ¶ 4. His initial employment contract with the Board was effective August 1, 1990. Doc. 4 ¶ 23.

On September 1, 1991, the Board entered into a financial services contract with the city for the city to provide administrative services for the Board, including distributing pension payments as determined by the Board. Doc. 4 ¶ 24; Doc. 4 at 22–26.

On September 20, 2000, the Board adopted a Senior Staff Voluntary Retirement Plan (“SSVRP”) to compensate its “senior staff members,” some of whom were ineligible to participate in a pension plan for city employees. Doc. 4 ¶ 25; Doc. 4 at 38–56. The Board made itself the SSVRP’s exclusive administrator. Doc. 4 ¶ 27.

Under the SSVRP, a member with five years of Board service who contributes seven percent of his or her compensation may receive retirement benefits upon turning 65 in the form of biweekly payments of three percent of the average final compensation for each year of credited service. Doc. 4 ¶¶ 28, 29. The Board has an employer identification number with the Internal Revenue Service for SSVRP members and contributes to social security for SSVRP members, while the city makes no such contributions for city employees. Doc. 4 ¶ 20.

On June 20, 2003, the Board’s financial services contract with the city was restated and continued to obligate the city to distribute pension payments as determined by the Board. Doc. 4 ¶ 32. Since the SSVRP’s inception, the Board has reported the SSVRP’s existence and cost in annual budget submissions to the city and recorded contributions in its own database. Doc. 4 ¶ 33.

On February 12, 2004, Keane’s employment contract with the Board was restated. Doc. 4 ¶ 30; Doc. 4 at 28–56. (The restated contract has been amended five times. Doc. 4 ¶ 30.) The restated contract incorporates the SSVRP and attaches it as an exhibit. Doc. 4 ¶ 31; Doc. 4 at 28–56. Since Keane began participating in the SSVRP, he has complied with all SSVRP requirements, including making all required contributions. Doc. 4 ¶¶ 34, 37.

On September 25, 2015, the Board approved Keane’s application for retirement, and effective October 1, 2015, he began receiving benefits under the SSVRP. Doc. 4 ¶¶ 36, 37. He continued to receive benefits after a cost-of-living adjustment on January 1, 2016. Doc. 4 ¶ 38. Two others also receive benefits under the SSVRP. Doc. 4 ¶ 35.

The city now contests the legitimacy of the SSVRP. Doc. 4 ¶ 39.

On August 9, 2012, John Crescimbeni (a city councilman) asked Cindy Laquidara (the city's then-General Counsel) to provide an opinion on the Board's authority to establish the SSVRP. Doc. 4 ¶ 40. Laquidara issued a memorandum suggesting the Board lacked authority to establish the SSVRP based on a reading of Article 16 of the city's charter providing only the City Council may amend the pension system for city employees. Doc. 4 ¶¶ 41, 42. In response, the Board sought an opinion from Robert Klaussner (the Board's then-counsel). Doc. 4 ¶ 44. He issued an opinion stating the Board was not subject to Article 16 and possessed authority to establish the SSVRP. Doc. 4 ¶ 44.

Klaussner's opinion went "largely unchallenged" for three years, during which Keane retired and received benefits under the SSVRP. Doc. 4 ¶ 45.

On November 20, 2015, the city sued Keane, the Board, and the two others receiving benefits under the SSVRP. Doc. 4 ¶ 46; *see City of Jacksonville v. Jacksonville Police Fire Pension Board of Trustees etc.*, No. 16-2015-CA-007380 (Fla. 4th Cir. Ct.). The city sought a declaration the Board lacked authority to establish the SSVRP. Doc. 4 ¶ 46.

On February 9, 2016, citing Laquidara's memorandum, the city amended its charter to expressly prohibit the Board from establishing or administering any retirement plan other than the Jacksonville Police and Fire Pension Fund. Doc. 4 ¶ 47. Two months later, on April 20, 2016, Jason Gabriel (the city's General Counsel) issued an advisory opinion to Lenny Curry (the city's Mayor) "echoing" Laquidara's memorandum and relying on section 7.02 of the city's charter. Doc. 4 ¶¶ 48, 49. (Section 7.02 provides, "The head of the office of general counsel shall be the general counsel who shall be the chief legal officer for the entire consolidated government, including its independent agencies. ... Any legal opinion rendered by the general counsel shall constitute the final authority for the resolution or interpretation of any

legal issue relative to the entire consolidated government and shall be considered valid and binding in its application unless and until it is overruled or modified by a court of competent jurisdiction or an opinion of the Attorney General of the State of Florida dealing with a matter of solely state law.”)

On April 21, 2016—the day after Gabriel issued the advisory opinion—the city voluntarily dismissed the state-court action against Keane, the Board, and the other SSVRP benefit recipients. Doc. 4 ¶ 51.

A few weeks later, on May 9, 2016, Michael Weinstein (the city’s Director of Finance and Administration) sent Keane a letter informing him his benefits under the SSVRP would be terminated and he instead would receive the lesser payments to which he would have been entitled if eligible to participate in the city’s pension plan. Doc. 4 ¶¶ 52, 53; Doc. 4 at 80. Weinstein cited Gabriel’s advisory opinion. Doc. 4 ¶ 52; Doc. 4 at 80.

Keane demanded the Board provide benefits under the SSVRP, but the Board refused and has not tried to enforce the financial services contract with the city that requires the city to pay amounts determined by the Board. Doc. 4 ¶¶ 54, 55. Since May 9, 2016, the Board has issued Keane only the lesser payments calculated by Weinstein. Doc. 4 ¶ 56.

Based on those alleged facts, Keane brings a claim under 42 U.S.C. § 1983, contending the Board violated the Fourteenth Amendment’s procedural due process clause by reducing his benefits without notice or an opportunity to be heard (count I), a claim under § 1983, contending the Board violated the Fifth Amendment’s takings clause by reducing his benefits without just compensation (count II), a claim for breach of contract, contending the Board breached the restated contract with him by failing to pay him benefits under the SSVRP (count III), and a claim for promissory estoppel, claiming the Board is estopped from failing to pay him benefits under the SSVRP (count IV). Doc. 4 ¶¶ 57–79. He requests actual and compensatory damages,

a declaration that the Board had authority to establish the SSVRP and must pay him the amount due under the SSVRP, injunctive relief restoring his benefits under the SSVRP and the restated contract, reasonable costs and attorney's fees, and any other just and proper relief. Doc. 4 ¶¶ 61, 69, 73, 79.

On January 24, 2017, the Office of General Counsel appeared on behalf of the Board to request an extension of time to respond to the amended complaint. Doc. 7. The Court granted the motion, Doc. 8, and on February 6, 2017, the Board filed a motion to dismiss, Doc. 9. The Board argues Keane fails to state a claim for a violation of a constitutional right and the Court should decline to exercise jurisdiction over the state-law claims. Doc. 9. On March 2, 2017, Keane filed a response in opposition. Doc. 12. The motion is pending.

On March 16, 2017, the parties' attorneys filed a case management report. Doc. 13. They did not request a preliminary pretrial conference to address any unresolved issue or present any matter for the Court's preliminary consideration. *See generally* Doc. 13. Based on the dates requested by the parties, the Court entered a case management and scheduling order setting a December 15, 2017, deadline for completing discovery, a February 9, 2018, deadline for filing any dispositive motion, and a trial during the term beginning August 6, 2018. Doc. 14.

Motion to Disqualify Counsel

On June 30, 2017, Keane filed the motion to disqualify the Office of General Counsel from further representing the Board in this action. Doc. 17.

Citing Rule 4-1.7 of the Rules Regulating The Florida Bar ("Conflict of Interest; Current Clients"), Keane contends the Board is "an entity distinct from the City, created by state law," and the Board and city often have conflicting interests. Doc. 17 at 1–2. He points to a 1987 letter from James Harrison (the city's then-General Counsel) stating the Office of General Counsel could no longer represent the Board because chapters 175 and 185 "create relationships, which despite all good intentions,

place our attorneys in either a present or potential conflict of interest,” and, “I will not quote the rules regulating the Florida Bar. Suffice it to say, professional ethics require me to make this decision as being in the best interest of your Board and the City at this time.” Doc. 17 at 2; Doc. 17-1. Keane points to the fact that the same attorneys representing the Board in this action represented the city against the Board in the state-court action. Doc. 17 at 3; Doc. 17-2. Keane points to Gabriel’s advisory opinion, including a portion in which Gabriel chastises the Board for “obstinacy” regarding establishment of the SSVRP and the Board’s “insistence that it has complete authority over its administrative expenses.” Doc. 17 at 3–4; Doc. 17-3. And Keane points to the Board’s initial disclosures in this action that include letters, memoranda, and opinions by current and former members of the Office of General Counsel regarding the Board’s lack of authority to establish the SSVRP. Doc. 17 at 4; Doc. 17-4.

Keane argues Gabriel’s advisory opinion conflicts with the Board’s prior position it has authority over its financial decisions and administrative expenses and “the Board’s ... institutional interest in maintaining its autonomy from the City,” and expresses concern the General Counsel will rely on the same legal argument it used in state-court action: “that the Board does not have autonomy over its own financial decisions, and is beholden to the legal determinations of the City’s General Counsel.” Doc. 17 at 4–5. He contends the General Counsel’s “strong incentive to make an argument that will enhance the City’s (and its own office’s) control over the Board ... creates an irreconcilable conflict of interest between ... the City and the Board,” the conflict is imputed to all attorneys in the Office of General Counsel, and representation of the Board creates both apparent and actual impropriety. Doc. 17 at 5, 7. He compares the General Counsel’s representation of the Board to the “fox being left to guard the henhouse” and contends the city is “puppeteering the Board to achieve the same remedy that it previously sought in its lawsuit against the Board.” Doc. 17 at 7–8.

The Board responds Keane has no standing to seek disqualification of the Office of General Counsel because he has no attorney-client privilege to assert, and disqualification is unwarranted. *Doc. 20*. Its arguments focus on the relationship and balance of power between the consolidated government, the Board, and the Office of General Counsel. *See generally Doc. 20*. It contends the Office of General Counsel's attorneys differ from private attorneys because the Florida Legislature mandates the former's representation of multiple units of the government, compares the Office of General Counsel to state attorneys general, cites legal provisions it contends show the Board is part of the consolidated government the Office of General Counsel represents, cites cases to show state courts have repeatedly recognized its role in representing the consolidated government, and asserts it represents the interests of the entire consolidated government instead of any particular unit. *Doc. 20 at 2–4, 6, 7–11, 12–16; Docs. 20-1, 20-2, 20-3, 20-5, 20-7, 20-8*. It observes the Office of General Counsel has not changed positions on the legality of the SSVRP and the 1987 letter stating there is a conflict of interest between the Board and the Office of General Counsel is no longer valid, and contends disqualifying the Office of General Counsel would harm the Board because it has the most institutional knowledge about the Board. *Doc. 20 at 3, 5, 15; Doc. 20-6*.

Keane replies the Office of General Counsel has no authority to control the Board, the City is “inconsistent in the degree of authority or responsibility it claims to have over its agencies and independent agencies,” the relationship between the Office of General Counsel and the Board is not analogous to the relationship between an attorney general and a state agency, he has standing because the conflict of interest is severe enough to call into question the fair and efficient administration of justice and standing rules are relaxed for conflicts involving counsel for a public entity, and the Office of General Counsel omits any indication the Board “has waived th[e] conflict of interest or even acquiesced to the General Counsel's representation in the first place.” *Doc. 23*. He points to laws cited in the amended complaint, *Docs. 23-1, 23-2*; a declaration by him concerning Harrison's letter, the Board's practice of

hiring independent legal counsel for its legal needs, the Board's vote to approve his pension benefits, and the absence of any Board vote to revoke his pension benefits, Doc. 23-3; docket sheets and filings from the state-court action and other actions, Doc. 23-4; an article on City Council's refusal to hold a public workshop on a dredging proposal because an independent authority voted for the project, Doc. 23-5; and a filing from another case in which the city argues a spoliation motion for loss of a document by the Jacksonville Human Rights Commission should be analyzed as a third-party spoliation claim, Doc. 23-6.

Law

"[L]awyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (internal quotation marks omitted). A court thus has the "power and responsibility to regulate the conduct of attorneys who practice before it." *United States v. Kitchin*, 592 F.2d 900, 903 (5th Cir. 1979); *see also United States v. Ross*, 33 F.3d 1507, 1523 (11th Cir. 1994) (a court "must protect its independent interest in ensuring that the integrity of the judicial system is preserved").

"A motion to disqualify counsel is the proper method for a party-litigant to bring the issues of conflict of interest or breach of ethical duties to the attention of the court." *Musicus v. Westinghouse Elec. Corp.*, 621 F.2d 742, 744 (5th Cir. 1980). A party may also or instead pursue bar disciplinary proceedings. *Prudential Ins. Co. of Am. v. Anodyne, Inc.*, 365 F. Supp. 2d 1232, 1237 (S.D. Fla. 2005).

A disqualification motion is governed by local rules and federal common law. *Herrmann v. GutterGuard, Inc.*, 199 F. App'x 745, 752 (11th Cir. 2006). The movant must prove the grounds for disqualification. *In re BellSouth Corp.*, 334 F.3d 941, 961 (11th Cir. 2003). If a court bases disqualification on an ethical violation, "the court may not simply rely on a general inherent power to admit and suspend attorneys,

without any limit on such power.” *Schlumberger Techs., Inc. v. Wiley*, 113 F.3d 1553, 1561 (11th Cir. 1997). Instead, the court must identify a rule and find the lawyer violated it. *Id.*

Disqualification is a “blunt device.” *Prudential*, 365 F. Supp. 2d at 1237 (quoted authority omitted). Among other costs resulting from disqualification, “it may be difficult for a replacement attorney to fully master factual and legal nuances in a complex case, ... impairing the adversarial process.” *Id.*

Because a litigant is presumptively entitled to counsel of its choosing, only a compelling reason will justify disqualification. *BellSouth*, 334 F.3d at 961. Because disqualification is a “harsh sanction,” it “should be resorted to sparingly.” *Norton v. Tallahassee Mem’l Hosp.*, 689 F.2d 938, 941 n.4 (11th Cir. 1982). And because a disqualification motion may be used to harass or for tactical advantage, it should be viewed with caution. *Herrmann*, 199 F. App’x at 752.

Disqualification is not mandatory, even if a court finds a lawyer is violating a conflict-of-interest rule. *Prudential*, 365 F. Supp. 2d at 1236. Instead, a “court should be conscious of its responsibility to preserve a reasonable balance between the need to ensure ethical conduct on the part of lawyers appearing before it and other social interests.” *Woods v. Covington Cty. Bank*, 537 F.2d 804, 810 (5th Cir. 1976).

In undertaking the balancing, pertinent factors may include the nature of the ethical violation, the age of the action, the prejudice to the parties, the effectiveness of counsel in light of the violation, the public’s perception of the profession, and whether the attempt to disqualify is a tactical device or a means of harassment. *See Cox v. Am. Cast Iron Pipe Co.*, 847 F.2d 725, 731–32 (11th Cir. 1988) (considering some of those factors); *Arrowpac Inc. v. Sea Star Line, LLC*, No. 3:12-CV-1180-J-32JBT, 2013 WL 5460027, at *12 (M.D. Fla. Apr. 30, 2013) (unpublished) (same); *Prudential*, 365 F. Supp. 2d at 1237 (same).

The Local Rules provide that the Rules Regulating The Florida Bar govern members of the Court and attorneys specially admitted to appear before the Court. Local Rule 2.04(d).

Rule 4-1.7 of the Rules Regulating The Florida Bar “concerns conflicts of interests with current clients.” *Young v. Achenbauch*, 136 So. 3d 575, 581 (Fla. 2014). It prohibits a lawyer from representing a client if the representation of one client will be directly adverse to another client or if there is a substantial risk the representation of a client will be materially limited by the lawyer’s responsibilities to another client unless the lawyer obtains informed consent. Rule 4-1.7. “Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated.” Rule 4-1.7, Comment (“Loyalty to a client”).

Rule 4-1.7 is based on two principles. *Hilton v. Barnett Banks, Inc.*, No. 94-1036-CIV-T24(A), 1994 WL 776971, at *3 (M.D. Fla. Dec. 30, 1994) (unpublished). “First, a client is entitled to his lawyer’s undivided loyalty as his advocate and champion.” *Id.* (internal quotation marks omitted); accord Rule 4-1.7, Comment (“Loyalty to a client”) (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”); *Chapman v. Klemick*, 3 F.3d 1508, 1512 (11th Cir. 1993) (a lawyer’s duty of loyalty to his client is “very nearly sacred”); *Gerlach v. Donnelly*, 98 So. 2d 493, 498 (Fla. 1957) (a lawyer must represent a client and handle the client’s affairs with the “utmost degree of honesty, forthrightness, loyalty and fidelity”). “Second, a lawyer should never place himself in a position where a conflicting interest may, even inadvertently, affect the obligations of an ongoing professional relationship.” *Hilton*, 1994 WL 776971, at *3.

Commentary to other rules clarify the rules do not define conflicts of interest in the government context. See Rule 4-1.11, Comment (“The question of whether [two] government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these rules.”); Rule 4-1.13, Comment (“Government agency”) (“[D]uties of lawyers employed by the government ... may be

defined by statutes and regulation. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these rules.”).

Commentary to Rule 4-1.7 provides the lawyer undertaking representation bears the primary responsibility for resolving questions of conflicts of interest, but opposing counsel may raise the question if the conflict “clearly call[s] in question the fair or efficient administration of justice.” Rule 4-1.7, Comment (“Conflict charged by an opposing party”); accord *McGriff v. Christie*, 477 F. App’x 673, 676–77 (11th Cir. 2012) (applying Georgia law interpreting an identical comment to the Georgia Rules of Professional Conduct; “A party who is not a former client of opposing counsel nevertheless has standing to raise the issue of opposing counsel’s conflict of interest if there is ‘a violation of the rules which is sufficiently severe to call in question the fair and efficient administration of justice’”); see also *In re Gopman*, 531 F.2d 262, 265 (5th Cir. 1976) (holding opposing counsel has standing to bring an ethical violation to a court’s attention if applicable ethical rules require counsel to do so); *Brown & Williamson Tobacco Corp. v. Daniel Int’l Corp.*, 563 F.2d 671, 673 (5th Cir. 1977) (holding a party has standing to seek disqualification of opposing counsel even if the party is not the aggrieved client if the party’s attorneys are “authorized” to report the ethical violation).

The commentary further provides an objection by opposing counsel should be viewed with caution because it could be a means of harassment. Rule 4-1.7, Comment (“Conflict charged by an opposing party”). Indeed, “[a]s a general rule, courts do not disqualify an attorney on the grounds of conflict of interest unless the former client moves for disqualification.” *In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83, 88 (5th Cir. 1976). “The relationship between an attorney and his client is personal.” *Id.* at 90. “The prohibition applied to attorneys against representation of conflicting interests rests on the duties of an attorney arising from the attorney-client relationship. In the absence of this relationship, the duties of loyalty and

confidentiality do not arise” and standing is absent. *Id.* (internal citation omitted). “To allow an unauthorized surrogate to champion the rights of the former [or current] client would allow that surrogate to use the conflict rules for his own purposes where a genuine conflict might not really exist.” *Id.* A “narrow exception[] to this general rule” is when the conflict of interest is “manifest and glaring,” thereby confronting a court with “a plain duty to act.” *Id.* at 89.

Analysis

Evident from the parties’ extensive briefing and the commentary to the Rules Regulating The Florida Bar concerning government lawyers, the asserted conflict of interest is not “manifest and glaring” so as to confront the Court with a “plain duty” to disqualify the Office of General Counsel from further representing the Board in this action at the request of someone who is not an aggrieved current or former client and who has a strategic interest in disqualification. *See Yarn*, 530 F.2d at 89. And to the extent there is a conflict of interest, it is insufficiently severe to call in question the fair and efficient administration of justice (whereas disqualification could for reasons that follow). *See McGriff*, 477 F. App’x at 676–77. Denying the motion to disqualify based on the absence of standing is warranted.

Balancing the interests compels the same decision. The nature of the asserted conflict of interest is unique and involves complicated issues concerning governmental relationships and historical practices best left resolved if at all not in deciding whether opposing counsel should be disqualified but in deciding the merits of the claims. Tellingly, Keane cites some of the same authority in his motion to support disqualification as he does in his amended complaint to support the claims. *Compare* Doc. 4 ¶¶ 7, 10, 13, 16, 17, 19, 21, *with* Doc. 17 at 1–4 *and* Doc. 23 at 2–4 (citing chapters 175 and 185 of the Florida Statutes, the city’s charter, and the General Counsel’s previous position stated in Harrison’s 1987 letter). Overlap of matters concerning disqualification and substantive merit causes pause.

The Office of General Counsel's representation of the Board here but against the Board in the state-court action is unlikely to damage the public's perception of the profession. The Office of General Counsel has maintained the same position in both actions, the city voluntarily dismissed the state-court action, and the distinction between the city and the Board is not widely known or understood. Even the highly experienced attorneys on both sides disagree on whether the Office of General Counsel's representation of the Board is proper, and they present at least colorable arguments to support their respective positions.

This action has been pending since last year, Keane raised no conflict of interest as a matter warranting preliminary consideration in the case management report, he waited more than five months from the Office of General Counsel's first appearance to file the motion to disqualify, the discovery deadline is only three months away, and disqualifying the Office of General Counsel and allowing new counsel time to get up to speed will interfere with case management.

Permitting the Office of General Counsel to continue representing the Board will not prejudice Keane beyond maintenance of Board positions adversarial to his positions, while disqualifying the Office of General Counsel would prejudice the Board financially (it would have to pay new counsel to start anew and do some of the same work the Office of General Counsel has already done) and strategically (the Office of General Counsel has expertise on the pertinent law and the most institutional knowledge about the Board besides perhaps Keane himself from his years as its executive director and administrator). Related to the latter point, because it would be difficult to find a replacement to "fully master factual and legal nuances" in this complex action, disqualifying the Office of General Counsel could impair the adversarial process. *See Prudential*, 365 F. Supp. 2d at 1237 (quoted).

Keane has presented no good reason to think the asserted conflict of interest will compromise the effectiveness of the Office of General Counsel in defending the Board against the claims made against it in this action. If the Board decides the

effectiveness of the Office of General Counsel is compromised, less than robust, or contrary to the Board's interests, the law that Keane himself cites makes clear the Board can hire new counsel. *See Fla. Stat. §§ 175.061(4), 185.05(4)* (giving pension boards the power and responsibility to "defend lawsuits of every kind, nature, and description"); *Fla. Stat. §§ 175.071(7), 185.06(6)* (allowing pension boards to hire independent counsel or use a municipality's counsel under terms found acceptable to help meet responsibilities).

Every motion to disqualify requires consideration of unique circumstances, and the current motion is no exception. For that reason, the cases on which Keane relies do not persuade the Court disqualification is warranted. *See Doc. 17 at 7–8; Doc. 23 at 6* (relying on *McGriff*, 477 F. App'x at 677 and *Kenn Air Corp. v. Gainesville-Alachua Cty. Reg'l Airport Auth.*, 593 So. 2d 1219 (Fla. 1st DCA 1992)).

The Court **denies** the motion to disqualify the Office of General Counsel from further representation of the Board, *Doc. 17*. Finding a surreply unnecessary, the Court **denies** the Board's motion for leave to file one, *Doc. 24*.

Ordered in Jacksonville, Florida, on September 15, 2017.



PATRICIA D. BARKSDALE
United States Magistrate Judge

c: Counsel of Record



**OFFICE OF GENERAL COUNSEL
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202**

**TO: Richard Tuten, Chairman
Jacksonville Police and Fire Pension Fund Board of Trustees**

CC: Tim Johnson, Administrator/Executive Director, JPPFF

**FROM: Jason R. Gabriel, General Counsel
through Stephen M. Durden, Chief Assistant General Counsel**

DATE: September 18, 2017

**RE: Effect of 2017 Pension Reform on 2015 Retirement Reform
Agreement/Consent Judgment**

I. Introduction.

The City and the Police and Fire Pension Board of Trustees (“Board”) entered into the 2015 Retirement Reform Agreement (“2015 Agreement”). The United States District Court incorporated that 2015 Agreement into what is commonly referred to as the *Wyse* Consent Judgment (“Judgment”). The 2015 Agreement concerned: (1) future benefits for members, from pension benefits to a new Share Plan, (2) provisions tying future use of the Unfunded Actuarial Liability Payment Account to whether or not the City makes a specified unfunded liability overpayment to the Board in any particular year, and (3) provisions related to Board governance. The Chair of the Board has asked for an opinion on a variety of questions concerning the relationship between the 2017 Retirement Reform (that occurred as a result of the 2016-2017

collective bargaining process) and the 2015 Agreement and Judgment, and the effect of same on the Board's rights, duties, and responsibilities as a signatory to the 2015 Agreement and Judgment.

II. Questions Asked.

1. Please advise whether the City payments referenced in the 2015 Agreement and Judgment are voluntary or compulsory.

2. Please advise what, if any, effect the 2017 Retirement Reform has on the 2015 Agreement and Judgment.

3. In accordance with the 2015 Agreement and Judgment, please advise what, if any, actions the Board must take in response to the 2017 Retirement Reform.

4. Please advise whether the City has the authority to set the surtax growth rate that is the basis for the Board's valuation of that asset.

III. Short Answers.

1. Because Florida law prohibits the City Council from contracting away the budget powers of a future council, the 2015 Agreement does not "compel" the City to make payments in excess of the statutorily required amount. Even if the 2015 Agreement *could* "compel" extra payments, it does not purport to do so. Instead, the 2015 Agreement only contemplates such payments being made by the City if the funds are available. Consequently, this memorandum focuses on the provisions as expressly set forth in the 2015 Agreement rather than on what label to apply to these provisions.

2. The provisions in the 2015 Agreement and Judgment affected by the 2017 Retirement Reform contain subjects of collective bargaining. Therefore, while the 2017 Retirement Reform changed certain terms of the 2015 Agreement and Judgment, the Florida

Constitution and Statutes, providing for collective bargaining, protect the right of the unions to negotiate the 2017 changes. As such, the parties and the Court expressly stated that, “Nothing in the 2015 Agreement shall be construed to impair the rights provided under Article 1, Section 6 of the Florida Constitution or Chapter 447, Florida Statutes.” Therefore, the changes to the terms of the 2015 Agreement and Judgment resulting from the collective bargaining process, i.e., 2017 Retirement Reform, comply with the 2015 Agreement and Judgment.

3. The Board should join the City and the Union in filing a Joint Annual Status Report that: (1) notes the implementation of the 2017 Retirement Reform and its compliance with Florida Law and the Judgment, and (2) requests that the Court amend the Judgment to no longer require the parties to file annual joint status reports considering the Court only required an annual report on the portion of the Judgment addressing the terms that have been renegotiated during the 2017 Retirement Reform collective bargaining process.

The Parties could further consider in the future whether to terminate the 2015 Agreement and move to dissolve the Judgment. The portions of the 2015 Agreement related to governance and not the subject of collective bargaining have been codified in the ordinance code and, therefore, lawfully exist separate and apart from the 2015 Agreement, calling into question the continued necessity of the 2015 Agreement and Judgment.

4. The Office of General Counsel issued an opinion regarding the City’s authority to set the surtax growth rate in a memorandum dated April 8, 2017. It is attached for reference.

IV. Discussion.

The first inquiry to be addressed is whether the City payments referenced in the 2015 Agreement and Judgment are voluntary or compulsory. The 2015 Agreement was drafted to provide for creation of, and specific uses for, an Unfunded Actuarial Liability Payment Account

("UALPA"). [Doc. 119-1, pp. 31-34]¹ However, prior to the parties entering into the 2015 Agreement, the Office of General Counsel made it clear to the City Council and the Board that the 2015 Agreement could not bind future City Councils to make extra payments to pay down the unfunded liability. In accordance with Florida Law, the 2015 Agreement provides that if the City makes specified additional payments into the Pension Fund in future years – payments in addition to the annual contributions required by law – the Board will use a specified amount in the UALPA to match the City’s payment to reduce the unfunded actuarial accrued liability. *Id.* If the City does not make the entire specified additional payment in any year, the 2015 Agreement provides that a pro-rata amount shall be transferred from the UALPA to the Enhanced Benefits Account, and the transferred amount may be used by the Board in its discretion to fund a share plan, to pay holiday bonus to retirees, or to pay down the unfunded liability. *Id.*

As explained by the Attorney General in 1989, “A municipality may enter into a contract which requires payments from non-ad valorem taxation sources beyond the end of the fiscal year” provided that the contract is, each year “subject to the appropriation of funds, . . .” 1989 Fla. Op. Att’y Gen. 157 (1989). In 2004, the Attorney General added Section 166.241(2), Florida Statutes, to support that earlier conclusion. Fla. Att’y Gen. Op. 2004-61 (2004). Section 166.241, according to the Attorney General, “prohibits a municipal officer from contracting during the course of the fiscal year for expenditures that have not been the subject of an appropriation for that year.” *Id.* The Attorney General concluded that while Section 116.241 does not prevent a city from entering into a multi-year contract, “a municipality would not be bound by the provisions of the statute,” i.e., the requirement for annual appropriation, “without

¹ Doc. 119 and 119-1 are references to the *Wyse* Consent Judgment and the 2015 Retirement Reform Agreement, respectively, as these are the numbers assigned to these documents by the Middle District Clerk of the Court.

regard to whether the municipality chooses to include a non-appropriation or fiscal non-funding clause in any contract to which it is a party.” *Id.* In other words, Section 166.241 implicitly adds to every multi-year contract a provision that in each year the contract is subject to appropriation in that year. See also, Op. Att’y Gen. Fla. 74-285 (1974) (The plain meaning of Section 166.241 is that before a municipal officer can make an expenditure of municipal funds, an appropriation must have been made therefore).²

This law of annual appropriation applies to contracts with labor unions. “[L]abor agreements are not exempt from the operation of the law of contracts.” 512 C.J.S. Labor Relations ss. 217, 239. Moreover, the power of a public board or agency to contract with a labor organization must be considered in light of statutory law and administrative regulation. 51 C.J.S. Labor Relations s. 218, p. 1031; *Lockport Area Special Educ. Coop. v. Lockport Areas Special Educ. Coop. Ass’n*, 338 N. E. 2d 463 (3 DCA Ill., 1975). The Attorney General and the courts have recognized that the law of contracts, including the requirement for annual appropriation, applies to collective bargaining agreements. The Florida Supreme Court in *State v. Florida Benevolent Association, Inc.*, 613 So. 2d 415, 418 (Fla. 1992) explained by quoting the District Court in *Pinellas County Police Benevolent Association v. Hillsborough County Aviation Authority*, 347 So. 2d 801, 803 (Fla. 2d DCA 1977), as follows:

A public employee’s constitutional right to bargain collectively is not and cannot be coextensive with an employee’s right to so bargain in the private sector. Certain limitations on the former’s right are necessarily involved. For instance, a wage agreement with a public employer is obviously subject to the necessary public funding which, in turn, necessarily involves the powers, duties and

² This law of annual appropriation is likewise required by the Florida Constitution. See *Florida Dept. of Health & Rehabilitative Servs. v. Southern Energy, Ltd.*, 493 So. 2d 1082, 1084 (Fla. 1st DCA 1986) (“Article VII, sec. 1(c) Florida Constitution provides that no money shall be drawn from the state treasury except pursuant to appropriations made by law. As a corollary to that provision, section 216.311, Florida Statutes, provides that no agency may contract in excess of funds appropriated to it.”).

discretion vested in those public officials responsible for the budgetary and fiscal processes inherent in government.

(Footnote omitted.) *See also United Faculty of Florida v. Board of Regents*, 365 So. 2d 1073 (Fla. 1st DCA 1979) (legislature not required to fund public employees' collective bargaining agreements). *State v. Florida Benev.* 613 So. 2d at 418. The Supreme Court explained the separation of power principle behind the law, adding:

Any other rule would permit the executive branch of government, by entering into collective bargaining agreements calling for additional appropriations, to invade the legislative branch's exclusive right to appropriate funds. Indeed, to accept such a rule would require this Court to abrogate years of strict adherence to the separation of powers doctrine. *See generally Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260 (Fla 1991) (neither power to appropriate nor power to reduce appropriations can be delegated to executive); *State ex rel. Kurz v. Lee*, 121 Fla. 360, 384, 163 So. 859, 868 (1935) (requiring legislative appropriation prevents expenditure of public money "without the consent of the public given by their representatives in formal legislative Acts. . . [and secures to the legislature] the exclusive power of deciding how, when and for what purpose the public funds shall be applied in carrying on the government").

Id. at 418-19. *See also State Dep't of Mgmt. Servs. v City of Delray Beach*, 40 So. 3d 835, 841 (Fla. 1st DCA 2010) ("Clearly the parties knew when the agreement was negotiated and executed that the law could change, and that continued availability of premium tax revenue is 'a matter of legislative grace that could be withdrawn by subsequent legislative action' Because the right to receive the additional annual benefit increase is dependent on continued legislative appropriations and the Plan's compliance with current law, it can fairly be characterized as either an expectant right or a contingent right. If the contingencies materialize, the right becomes vested.").

The 2015 Agreement accounts for Florida law prohibiting the City Council from contracting away the budget powers of a future council. Therefore, the City's obligation to make payments in excess of the statutorily required amount cannot, legally speaking, be "compulsory."

Focusing, however, on whether the City's obligation in the 2015 Agreement and Judgment is "voluntary" or falls under the label of some other adjective, obfuscates the actual terms of the Agreement and Judgment set forth above. The terms of the 2015 Agreement do not contain a liquidated damages clause or provide for breach of contract should the City fail to pay. Nor do the terms grant the Board any other rights in any year the City does not make an additional payment. Having said that, the 2015 Agreement contemplates such payments being made by the City, if the funds are available. In summary, the focus should be on the provisions as expressly set forth in the 2015 Agreement rather than on what label to apply to these provisions. But to answer the Chair's question in one sentence, the extra payments in the 2015 Agreement are not compulsory.

The second inquiry to be addressed is what, if any, effect the 2017 Retirement Reform has on the 2015 Agreement and Judgment. The 2015 Agreement and Judgment provide for continued collective bargaining, and the provisions in the 2015 Agreement and Judgment affected by the 2017 Retirement Reform are provisions containing subjects of collective bargaining. Therefore, while the 2017 Retirement Reform changed certain terms of the 2015 Agreement and Judgment, such changes were contemplated by law, the parties and the Court, and therefore, are in compliance with the 2015 Agreement and Judgment.

Prior to the 2015 Agreement, the Board created (1) the Enhanced Benefits Account ("EBA") to account for premium tax revenues received pursuant to Chapters 175 and 185, Florida Statutes, for the purpose of providing pension benefit enhancements, and (2) the City Budget Stabilization Account ("CBSA") to account for City pension contributions in excess of annual funding requirements. The 2015 Agreement mandated the transfer of the entire balances in the EBA and CBSA, less \$5 million from the CBSA, into the Unfunded Actuarial Liability

Payment Account to be used pursuant to the contingencies and terms of that Agreement. In particular, the 2015 Agreement provides for specified additional payments to be made by the City in future years – payments in addition to the annual contributions required by law – and creates contingent benefits for the Members if the City does not make those payments.

The 2016-2017 collective bargaining process led to the elimination of contingent – and creation of new – benefits in the 2017 Retirement Reform. Pursuant to this 2015 Agreement, the Board and the City agreed that “[f]rom and after the effective date, the PFPF shall not engage in the determination of pension benefits and shall leave the negotiation and future modification of pension benefits to elected City officials and certified bargaining agents [i.e., police and firefighter unions].” [Doc. 119-1, p. 21, ¶ III (B)] The parties also agreed that the 2015 Agreement would not be construed or interpreted to interfere with any collective bargaining rights. The 2015 Agreement, in pertinent part, states:

Nothing in the 2015 Agreement shall be construed to impair the rights provided under Article 1, Section 6 of the Florida Constitution or Chapter 447, Florida Statutes. All subjects of collective bargaining, including but not limited to pension or retirement benefits, shall be subject to the requirements of Chapter 447, Florida Statutes. The City and any authorized certified bargaining agent shall have the rights under and be subject to, the provisions of Chapter 447, Florida Statutes, including, but not limited to, the requirement for negotiations, the term limitation set forth in Section 447.309(5), Florida Statutes, and the impasse process.

[Doc. 119-1, pp. 21-22. ¶ III (B)]

Under the 2015 Agreement, each year that the City does not make extra unfunded liability payments, the Board may use Chapter 175 and 185 funds, or premium tax revenues, (as well as other monies) in the EBA to fund, in that year, the Share Plan. Sections 175.351 and 185.35, Florida Statutes, now provide that “the use of premium tax revenues, including any accumulations of additional premium tax revenues which have not been allocated to fund

benefits in excess of the minimum benefits, may deviate from the provisions of this subsection by mutual consent of the members' collective bargaining representative.” Sections 175.351 and 185.35 recognize the power of the unions and the City (but not the Board), to rearrange that use of Chapter 175 and 185 funds, both accumulated and future. Similarly, the unions have the power, to the exclusion of the Board, to negotiate use of the unspent CBSA monies. In the 2015 Agreement, the Board ³ agreed to use the CBSA monies to create a contingent benefit for all active police officers and fire fighters, e.g., extra Share Plan funding, if the City did not make the annual extra unfunded liability payments. [Doc. 119-1, p.33-34,¶ 4] Consequently, the 2015 Agreement combined the CBSA monies with the EBA monies to create the UALPA and tied that combined fund to a benefit, albeit a contingent benefit, that is subject to collective bargaining. As such, the negotiated changes in the use of the above noted accounts are part of the changes

³ The Board negotiated the 2015 Agreement on behalf of, and as an agent for, Jacksonville’s police and fire unions. Consequently, the principals, i.e., the unions, may modify any form negotiated on their behalf by the Board in the 2015 Agreement. Given that the Board negotiated the use of the UALPA for contingent benefits, the unions can negotiate a different use of the UALPA, without Board review, oversight, or vote. *See Lee v. City of Jacksonville*, 2015 WL 1387940 (Fla.Cir.Ct., March 25, 2015) *affirmed, sub.nom., Bd. of Trustees of Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 760 (Fla. 1st DCA 2016) (per curiam) (“Viewing the record in the light most favorable to [the Pension Fund], it is apparent then that the Pension Fund representatives negotiated such changes to the employee pensions on behalf of the employee unions. Accordingly, the Pension Fund necessarily acted as the employees’ representative.”). In other words, by the time the Board agreed to the 2015 Agreement, the Board knew that the Florida courts would conclude that, at least as to retirement benefits, the Board acted as agent and representative of the unions when it negotiated the 2015 Agreement.

The year following the 2015 Agreement, the voters approved the pension surtax as authorized in Florida Statutes containing the following provision, which served to further clarify the Board’s role or lack thereof in collective bargaining: “The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.” Fla. Stat. § 212.055(9)(a)(3).

intricately connected to retirement benefits that the 2015 Agreement expressly authorized in accordance with Florida Law.

The third unaddressed inquiry is what, if any, actions the Board should take in response to the 2017 Retirement Reform. But for the Court's requirement in the Judgment that an annual joint status report be filed confirming the Parties compliance with the obligation to make the unfunded liability payments set forth in Paragraph III (D) on pages 31-34 of the 2015 Agreement [Doc. 119, ¶ 2 (C)], there would be no need for the Board to take any action in response to the 2017 Retirement Reform. For purposes of complying with Paragraph 2 (C) of the Judgment, however, the Board should join the City and the Union in filing a joint status report no later than October 15, 2017, that (1) notes the implementation of the 2017 Retirement Reform in compliance with Florida Law and the Judgment, and (2) requests that the Court amend the Judgment to no longer require the parties to file annual joint status reports to take into account that the Court only required an annual report as to the portion of the Judgment addressing the terms renegotiated during the 2017 Retirement Reform collective bargaining process. The Parties could further consider in the future whether to terminate the 2015 Agreement and move to dissolve the Judgment. The portions of the 2015 Agreement related to governance and not the subject of collective bargaining have been codified in the ordinance code and, therefore, lawfully exist separate and apart from the 2015 Agreement, calling into question the continued necessity of the 2015 Agreement and Judgment.

In sum, the 2015 Agreement protects collective bargaining and the 2017 Retirement Reform implements that protected collective bargaining. The only way that the 2017 Retirement Reform could be considered inconsistent with the 2015 Agreement would be to conclude that the Unions did not have the right to bargain the agreements included in the 2017 Retirement Reform.

I trust this memorandum has addressed your questions. The General Counsel has had the pleasure of meeting individually with Board Members Scheu, Brown, Payne, and Patsy regarding this opinion as well as other pertinent legal matters, and looks forward to meeting with you at your upcoming scheduled meeting. Please do not hesitate to call me with any further questions.

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MEMORANDUM

TO: JFPF Board of Trustees, Tim Johnson, Administrator/Executive Director

CC: Jason Gabriel, Robert Sugarman

FROM: Stephen M. Durden, Chief Assistant

RE: JFPF Board Review of Proposed Legislation

DATE: April 8, 2017

I. INTRODUCTION

In Section 212.055(9), Florida Statutes, the Florida Legislature has authorized counties which meet various standards and requirements to impose a Pension Liability Surtax. The Legislature also adopted a new Subsection 112.64(6) to set out the methodology required to be used in accounting for the valuation of the Pension Liability Surtax if a county chooses to amortize the unfunded liability of an eligible defined benefit plan, i.e., pension plan. A question has arisen as to the entity responsible for determining the present value of the Pension Liability Surtax and the impact the answer to this question has on the Jacksonville Police and Fire Pension Board of Trustees review of proposed legislation.

II. QUESTIONS PRESENTED

A. Whether the City has the duty and authority to value the Pension Liability Surtax, including the duty and authority to make the assumptions that provide the foundation of that value.

B. 1. Whether the JFPF Board has the duty or authority to approve an actuarial impact statement which disregards the City's Pension Liability Surtax assumptions.

2. Whether the JFPF Board may comment on the proposed ordinances.

III. ANSWERS

A. Yes. The City has the duty and authority to value the Pension Liability Surtax, including the duty and authority to make the assumptions that provide the foundation of that value. Conversely, the JFPF Board has no authority or duty to value the Pension Liability Surtax.

The Legislature adopted Part VII, Chapter 112, Florida Statutes, in order to “implement[] the provisions of s. 14, Art. X of the State Constitution.” Section 112.61, Florida Statutes. This Part VII supersedes any and all “laws and ordinances relating to [] retirement systems or plans.” Section 112.62, Florida Statutes. Part VII has very direct language as to the responsibility for valuing the Pension Liability Surtax stating, “[T]he county[, i.e., the City] shall apply the present value of the total projected proceeds of the surtax to reduce the unfunded liability . . . beginning with the fiscal year immediately following approval of the pension liability surtax.” Section 112.64, Florida Statutes. Part VII includes requirements and duties for the plan administrator, e.g., Sections 112.63, 112.656, and 112.66, Florida Statutes, the plan actuary, e.g., Section 112.63, Florida Statutes, plan sponsor, e.g., Section 112.66, Florida Statutes, and the board of trustees, e.g., Sections, 112.625, 112.656, and 112.66, Florida Statutes. Rather than use the term administrator, actuary, sponsor, or trustee, the Legislature chose the term “county” to identify the party with the *responsibility* and *duty* to “apply the present value” of the Pension Liability Surtax. This duty carries with it the implied power to determine the present value. *See*, 1982 Fla. Op. Att’y Gen. 137.

On a similar note, Section 212.055(9) permits the City, not the JFPF Board or the three City pension boards in concert, to impose the Pension Liability Surtax. This statute gives the responsibility of the distribution of the Surtax to the City, not the JFPF Board. The City, not the JFPF Board, decides which eligible pension plans will benefit from the proceeds. The City, not the JFPF Board, decides which eligible plans shall benefit from the present value of the Surtax. The City owes a responsibility and duty to the citizens and taxpayers of Jacksonville make those determinations and to make the fundamental determination as to the present value of the tax. In the end, the City is accountable to all the taxpayers and citizens (1) for its determinations on the present value and (2) for budget decisions premised on those determinations. And, the City always remains responsible for funding its pension plans, as required by Florida Statutes and the Florida Constitution.

If the Board were to be given the authority to determine the present value of the tax, i.e., if the Board’s determination bound the City, then either (1) the Board would be making the same determination for the other two pension plans of the City or (2) the City would likewise be bound by valuation determinations made by the other two pension plans creating a situation where the statute demands the use of three different valuations. Nothing in the statutes related to the Pension Liability Surtax suggests that different valuations should be used, nor do these statutes suggest that any entity other than the City should make that determination. Instead, the Legislature quite clearly both recognized the possibility of multiple pension plans being benefited by the Pension Liability Surtax, and at the same time, providing for one entity to create one valuation.

B. 1. No, the JPPF Board does not have the duty or authority to approve an actuarial impact statement which disregards the City's Pension Liability Surtax assumptions.

Section 112.63(3), Florida Statutes, provides, in pertinent part, “No unit of local government shall agree to a *proposed change in retirement benefits* unless the administrator of the system, . . . has issued *a statement of the actuarial impact of the proposed change* upon the local retirement system, . . .” (Emphasis added). Nothing in this statute suggests that the Board is to provide an actuarial impact statement on any matter beyond retirement benefits, and the statute leaves no doubt that required actuarial impact statements are limited to “*proposed change[s]* in retirement benefits.” The proposed Pension Liability Surtax cannot be considered a “retirement benefit.”

Given the current status of proceedings, however, it seems likely that the Board will receive an actuarial statement from its actuary encompassing discussion of the Pension Liability Surtax. The Board should review that in light of the commands of the statute. Section 112.63(3) demands an actuarial impact statement of the *proposed change*. In this case the City has proposed a sales surtax with a growth rate of 4.25 percent. The statute, if it even permits review of the Surtax, asks for an actuarial impact statement as to the *proposal* before the Council, not a different proposal. Additionally, given the conclusion in Part A, i.e., that the City determines the value of the tax, if the JPPF Board decides to submit an actuarial report regarding the Surtax, the Board has the duty to provide an actuarial statement based on the tax as it would be valued by the City.

2. Section 22.07, Charter, provides, “No legislation shall be adopted by the Jacksonville City Council altering the terms of the pension fund without said legislation having first been referred to the board for its consideration and comment.” Various proposed ordinances have been submitted to the Board. The Board has the authority to comment on them. For example, each year, prior to October 31, the City may revisit the assumed growth rate (and the consequent present value), and each time the City considers such a change, the Board will have the opportunity to comment.

Indeed, the Board may comment on any ordinance before the Council and suggest modifications. This authority to comment does not, however, include ignoring its statutory duty to provide an actuarial impact statement regarding the proposal as submitted to the Council for its review, nor does the Board's authority to comment include ignoring the City's statutory authority and duty to determine the present value of the Pension Liability Surtax.

III. CONCLUSION

I am available to discuss this with you at your convenience.

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LEGAL MEMORANDUM

To: Tim Johnson, Executive Director, Police and Fire Pension Board of Trustees

CC: Jason Gabriel, Lawsikia Hodges, Bob Sugarman

From: Stephen Durden, Chief Assistant

Re: Bailiff Time Buy Back

Date: September 14, 2017

I. Background.

Pursuant to Chapter 67-1320, *Laws of Florida*, the Florida Legislature adopted (and approved by local referendum) the Consolidated Jacksonville Charter (Jacksonville Charter) which provides for the existence of an unclassified employment category of employees who are designed to conduct inquiries, surveys and special services while being exempt from the civil service system. See Section 17.06(e), *Jacksonville Charter*. For a number of years the Ordinance Code has provided that retired members of the Police Fire Pension Fund and the Correctional Officers Retirement Fund could work as Bailiffs while simultaneously collecting their retirement pay. Sections 120.309 and 121.105, *Ordinance Code*. Additionally, Section 121.107, *Ordinance Code*, on its face, prohibits “Bailiffs” from connecting their time if they later join the PFPF. Neither the General Employees Pension Plan nor the Correctional officers Plan has such a prohibition.

Section 16.04, *Jacksonville Charter* provides, in pertinent part, “any noncivil service employee... may elect to become a member of the retirement and pension system of the City of Jacksonville...” Section 16.04(a), *Jacksonville Charter*. The Jacksonville City Council has adopted legislation to define membership eligibility for the General Employees Pension Plan (“GEPP”) to include “[a]ppointed and elected officials and permanent employees not in the civil service system [who] opt to become members of the [GEPP] Plan, consistent with Section 16.04 of the City Charter”. Section 120.202(b), *Ordinance Code*.

The following question has been raised and is address below:

II. Question.

Whether a Bailiff can ever be eligible for buying time for service as a Bailiff.

III. Answer.

Yes, if, but only if, a particular Bailiff actually worked in a manner consistent with being a regular, full-time employee may that particular Bailiff be eligible for buying time for service as a Bailiff.

IV. Discussion.

This analysis begins with the *Jacksonville Charter*, Section 16.04(a), which reads, in pertinent part, as follows: “[A]ny noncivil service employee . . . may elect to become a member of the retirement and pension system of the City of Jacksonville. . . .” *The Charter*, then, grants to noncivil service employees the right to join the City’s retirement and pension system. In implementing Section 16.04, the City Council clarified membership eligibility of the GEPP within Section 120.202(b) which provides: “Appointed and elected officials and permanent employees not in the civil service system may opt to become members of the Plan, consistent with Section 16.04 of the City Charter. . . .” Section 120.202(b), *Ordinance Code*.

While the Ordinance Code does not define “permanent”, the term permanent under conventional labor law connotes *regular* employment on a long term and continuous basis. Black’s Law Dictionary states that “permanent employment” is “employment done on a *regular*, continuous basis, rather than hiring on a contractual basis.” *The Law Dictionary.org*. The Law Dictionary, 2015. Web. 29 July 2015. Although utilizing “Regular Full-time” in 2005, City Council similarly established the expression to mean “a budget allocated position requiring 40 hour of work per week on a *regular and recurring basis*”. See Sec. 116.1501(a), *Ordinance Code*. [emphasis added]

On the other hand, Section 116.1501, *Ordinance Code*, defines “temporary” and “part-time” employment as employment with limited or abbreviated durations. “Temporary” employment is initially limited to six months. See Section 116.1501(b), *Ordinance Code*. “Part-time” employment also limits employment within the City to be merely hourly-based. See Section 116.1501(c), *Ordinance Code*. The Florida Public Employees Relations Commission (PERC) similarly recognized “temporary” employees to “have no reasonable expectation of continued employment and who usually receive no benefits other than an hourly wage.” See *In Re Petition of Palm Beach County*, 19 FPER ¶ 24507 (1993). The Commission further distinguished “temporary” employees as limited in employment duration to a particular project or limited funding for mere weeks inhibit the employment from having a reasonable expectation of continuance. See *Id*.

In 1987, the Commission specifically considered the employment status of Jacksonville’s Special Purpose Employees (“SPE”) in *Florida Public Employees Council 79, AFSCME v. City of Jacksonville*, 13 FPER ¶ 18273 (1987). The Commission ordered that the SPEs be admitted in the AFSCME bargaining unit despite the fact they were referenced as “temporary” employees. The Commission found that due to their employment status existing for a “long-term uninterrupted” duration, the SPEs were not “temporary employees” as recognized by labor law, despite the arguments made by the City. *Id*.

PERC has relied on this opinion on multiple occasions to explain the term regular employment or to distinguish between regular and temporary employment. “For example, the Commission has determined that a ‘temporary’ employee who: (1) had been employed full-time for at least eleven months; (2) received the same hourly wage; (3) performed work similar to that

performed by regular employees under the same supervision; and (4) who could expect to remain employed as long as his performance was satisfactory, shared a community of interest with regular employees, and thus was not a temporary employee.” *In re Petition of Palm Beach County*, 19 FPER ¶ 24507. PERC may use other factors to distinguish whether an employ is in “regular” or “temporary” employment. PERC has defined as “regular” those employees “who have worked 40 or more hours on average per two week pay period for . . . 26 weeks.” *City of Miami (Department of Off Street Parking)*, 23 FPER ¶ 28288. *See, also, Metropolitan Dade County Public Health Trust*, 23 FPER ¶ 28101 (“ ‘regular full-time’ physicians . . . include all physicians regularly working forty or more hours per week pursuant to pre-arranged schedules” and “ ‘regular part-time’ physicians . . . include all physicians regularly working an average of at least forty hours per pay period (two weeks) for at least six consecutive months”). Whether full-time or part-time, these “physicians [had] an expectation of regular continued employment.” *Id.* So the term “regular” has no special meaning, other than as applied to a weekly or bi-weekly pay period.

An earlier memorandum from this office, applying PERC decisions and Section 120.202(b), *Ordinance Code*, concluded that because Community Service Officers were anticipated to remain regular, full-time employees for the Sheriff’s Office for up to five years, CSOs should be afforded benefits of retirement provided for any regular, full-time employees.

Applying this conclusion to the Bailiffs, however, is not as simple as exchanging the word “Bailiff” with the words “Community Service Officers.” The City Council has, in Section 121.107(d), identified Bailiff, as being in the class of temporary, part-time or seasonal employees. Additionally, Section 116.1502, seems to create a special employment status for Bailiffs. Bailiffs appear to be exempted from being designated as Temporary Full-time or Regular Part-time employees. Clearly, the Council sees the position Bailiff as being outside easy classification. Section 116.1501, *Ordinance Code*, defines Regular Full-time employment status as “a budget-allocated position requiring 40 hours of work per week on a regular and recurring basis.” Finally, the handbook for Bailiffs indicates that Bailiffs shall expect no more than 30 hours per week. Finally, they are not offered vacation or sick leave. They only work when called and when they choose to work.

Each and all of these factors distinguish Bailiffs from Community Service Officers. Neither the *Ordinance Code* nor the Sheriff’s manual suggests that Bailiffs have the status of “regular, full-time employment.” This does not mean that an individual Bailiff would never be categorized as a regular, full-time employee. Such a Bailiff, in order to demonstrate such status, would need to demonstrate that the Sheriff treated such Bailiff as a regular, full-time employee. Indications of that could be that such Bailiff worked at least 40 hours per week, week in and week out, for a period of time to exceed six months, or 80 hours per two-week period for a period of time to exceed six months.

On the other hand, even 40 hours per week for more than six months alone does not make the employee a regular, full-time employee. For example, if an employee worked six months at 40 hours per week then worked six months at 20 hours per week and then worked 40 hours per week for six months, it could not be concluded that the employee had a reasonable expectation of “regularly” working 40 hours per week. At the same time, using other factors used by PERC, it could not be reasonably be concluded that the 40-20-40 employee had a community of interest with the full-time, regular employees who never get to work only 20 hours per week for six months.

The Ordinance Code unquestionably declares that employees who work less than six months are temporary as opposed to “regular” employees. PERC opinions agree. Full-time requires 40 hours per week (or 80 hours per two week period). In order for a Bailiff to prove that he or she was entitled to connect time, i.e., was previously a permanent (regular), full-time employee, the Bailiff would need to show, at a bare minimum, more than six consecutive months of working not less than 40 hours per week (or not less than 80 hours per two-week pay period). Should that Bailiff’s employment record indicate periods of part-time work (less than 40 hours per week), then the Bailiff may not be able to demonstrate a reasonable expectation of working as a full-time, regular employee.

As noted, the position of Bailiff, then, is far more factually complex than that of the CSOs, because, undeniably, many Bailiffs do not work 40 hours per week and certainly do not do so on a regularly occurring basis for more than six consecutive months.

V. Conclusion.

I trust that this answers the question asked. Please do not hesitate to contact me with further questions.



POLICE AND FIRE PENSION FUND

ONE WEST ADAMS STREET, SUITE 100
JACKSONVILLE, FLORIDA 32202-3616

"We Serve...and We Protect"

Telephone (904) 255-7373
Fax (904)-353-8837

APPLICATION FOR PURCHASE OF PRIOR CITY OF JACKSONVILLE BAILIFF TIME SERVICE FOR PENSION PURPOSES

To be completed by active Jacksonville Police and Fire Pension Fund Member who served as a full time Bailiff for the City of Jacksonville.

Member Name (Print): _____

Maiden/Other Name Previously Used: _____

ID#: _____ DOB: _____ Phone: _____

Period of Service: At least six consecutive months of working not less than 40 hours per week (or not less than 80 hours per two-week pay-period).

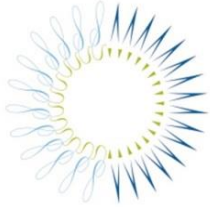
From (Date): _____ To (Date): _____

I hereby certify that I served as a full time bailiff during the period(s) of time listed above. I request investigation of the above referenced time for the purpose of connection.

Signature of Member

Date

***PLEASE RETURN COMPLETED FORM TO
JACKSONVILLE POLICE AND FIRE PENSION FUND***



Analysis of New Contribution Policy for Jacksonville's Police and Fire Pension Fund

The City of Jacksonville recently changed a number of the provisions for the public employee pension funds operated by the City. Key changes include closing the plans for new hires, introducing a defined contribution plan design for future employees, adding a sales tax for paying pension costs starting in 2031, increasing salary and improving benefits for some current employees, and altering the applicable contribution policies for both plans. This analysis focuses on the contribution policy changes, looking specifically at the Jacksonville Police and Fire Pension Fund (PFPF).

Core sources of data were actuarial analyses of the plan changes produced by the plan actuary for the PFPF. When possible we used the same assumptions. The core questions we looked to answer were as follows:

- 1) Will the new contribution policy be expected to make progress on paying down pension debt and strengthening the balance sheet for the PFPF if actual experience matches plan assumptions?
- 2) If returns fall short, will the new contribution policy be adequate to fund the Police and Fire Pension Fund?
- 3) What additional contributions would make up for any shortfalls from the current contribution policy?

Based on our analysis, we found that the new contribution will allow pension debt to grow over the next decade and puts the PFPF at risk of falling below minimum asset levels identified by the city. Additional annual payments of \$30 to \$35 million would be sufficient to keep asset levels above minimum thresholds until the sales tax is directed towards pensions in 2031.

The core changes to contribution policy are as follows:

- The present value of the pension sales tax is to be included as an asset for the purpose of calculating the amortization payments required under the contribution policy.
- The amortization period is to be reset to a 30-year closed amortization period.
- Amortization payments will be calculated on a level-percent-of-pay basis, using a 1.25% growth rate. Sales tax growth is assumed to be 4.25%.

Note that the first two changes are required by the state law authorizing Jacksonville to utilize a sales tax to fund pension liabilities.

Table 1 below shows key funding information and fiscal metrics based on the new contribution policy, assuming the plan hits its target rate of return. The data shows that through 2035, the plan's already substantial unfunded liability would have grown by nearly \$1 billion before progress is expected to be made on closing the funding gap. Negative operating cash flow will be expected to be nearly 9% by 2032—meaning that the plan would need to earn 9% in investments to avoid ending the year with less in the bank than the year before. The liquidity ratio, a measure of how many years of benefit payments the plan has on hand that was identified by Jacksonville as a key metric of fiscal health, would

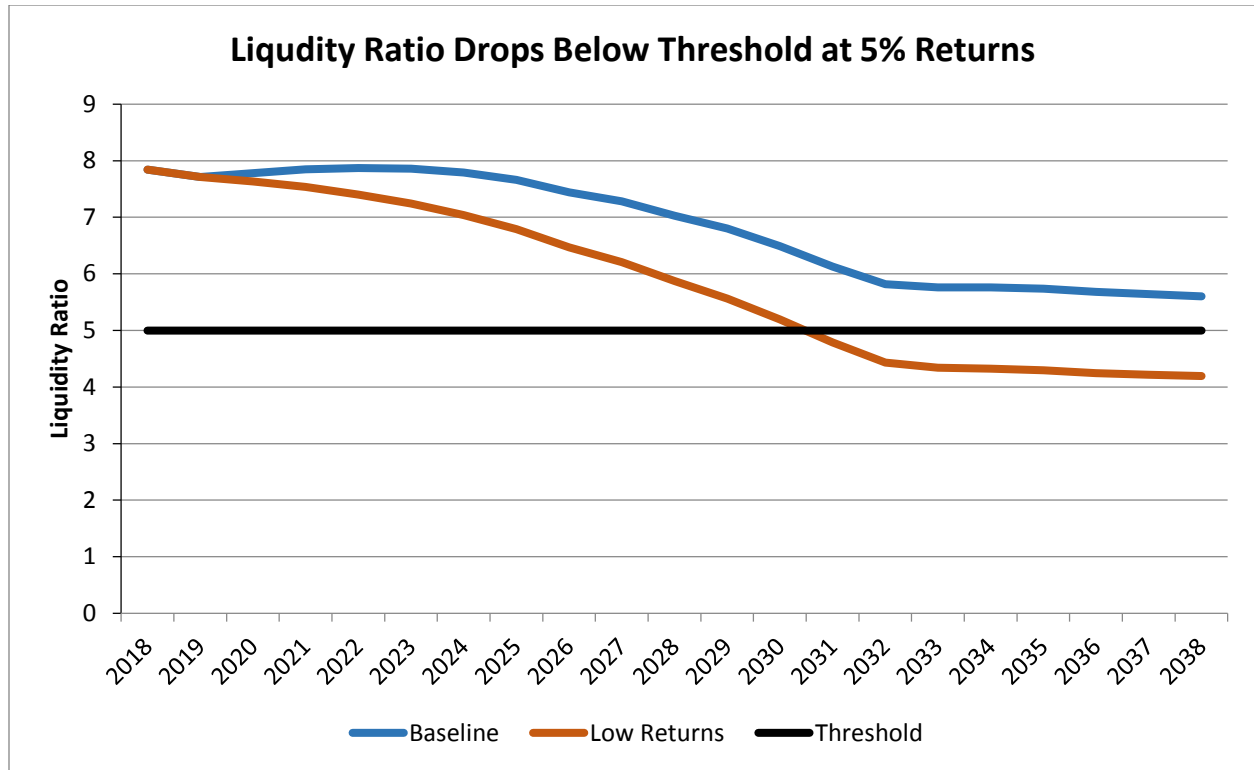
drop from 7.84 to 5.6—the city and the plan have identified a ratio of 5 as a threshold for needing accelerated payments.

Fiscal Year	Assets	Liabilities	UAAL	% Funded	ERC	Net Amort	Operating Cash Flow	Liquidity Ratio
2018	\$1,664	\$3,738	\$2,074	45%	\$136	-\$47	-2.6%	7.84
2019	\$1,723	\$3,854	\$2,131	45%	\$137	-\$49	-3.3%	7.71
2020	\$1,783	\$3,974	\$2,191	45%	\$140	-\$56	-3.5%	7.78
2021	\$1,842	\$4,094	\$2,251	45%	\$143	-\$61	-3.6%	7.85
2022	\$1,897	\$4,211	\$2,314	45%	\$144	-\$65	-3.9%	7.87
2023	\$1,945	\$4,326	\$2,380	45%	\$144	-\$70	-4.3%	7.86
2024	\$1,985	\$4,434	\$2,449	45%	\$143	-\$75	-4.8%	7.79
2025	\$2,012	\$4,533	\$2,522	44%	\$142	-\$80	-5.4%	7.66
2026	\$2,027	\$4,625	\$2,598	44%	\$140	-\$84	-6.1%	7.44
2027	\$2,029	\$4,709	\$2,680	43%	\$137	-\$89	-6.8%	7.28
2028	\$2,018	\$4,785	\$2,767	42%	\$135	-\$94	-7.5%	7.03
2029	\$1,991	\$4,850	\$2,860	41%	\$133	-\$100	-8.2%	6.8
2030	\$1,947	\$4,904	\$2,957	40%	\$132	-\$107	-9.2%	6.49
2031	\$1,962	\$4,948	\$2,986	40%	\$130	-\$33	-6.3%	6.13
2032	\$1,998	\$4,986	\$2,988	40%	\$127	-\$3	-5.4%	5.82
2033	\$2,032	\$5,018	\$2,986	40%	\$126	\$2	-5.5%	5.76
2034	\$2,064	\$5,042	\$2,979	41%	\$126	\$7	-5.6%	5.76
2035	\$2,092	\$5,056	\$2,964	41%	\$126	\$12	-5.7%	5.74
2036	\$2,117	\$5,060	\$2,943	42%	\$125	\$19	-5.9%	5.68
2037	\$2,139	\$5,052	\$2,913	42%	\$124	\$27	-6.1%	5.64
2038	\$2,157	\$5,034	\$2,876	43%	\$123	\$35	-6.3%	5.6

Note: All dollars in millions. UAAL is the unfunded liability or the gap between what the plan should have on hand and the plan’s assets. ERC is the employer contribution scheduled to be made by Jacksonville. Net amortization is the change in unfunded liabilities based on employer contributions, assuming the plan meets its investment target. Operating cash flow is the total cash inflows or outflows as a percentage of plan assets, before taking into account investment returns. Liquidity ratio is the plans’ assets in a given year divided by plan assets that year. Based on Pew analysis of projections by the plan actuary.

These results are driven by three factors, all of which are mandated by the state law that allowed Jacksonville to use sales taxes to help pay for pensions. The bill required that Jacksonville count the future sales taxes as plan assets in calculating pension contributions, extended the payment period for funding the pension debt to 30 years, and closed the plan, which reduces cash inflows. The total set of changes did result in a new plan design going forward that will have more stable and predictable costs and a dedicated revenue stream starting in 2031 as well as retaining some of the governance changes put in place in Jacksonville’s 2014 reforms.

The above analysis shows what would happen if the plan met it’s assumed of return. But if returns were just 5%, instead of the assumed 7%, the cash flow situation would be even more challenging. Under a 5% return scenario, we project that the liquidity ratio would drop below the city and plan’s threshold of 5, triggering sudden contribution spikes under the new policy.



Note: Based on Pew analysis of projections by the plan actuary.

At a minimum, increasing employer contributions into the plan would be needed to create enough of a cushion to keep the liquidity ratio above the minimum. Without this change, Jacksonville would either need to make substantial catch-up payments, as required by the new contribution policy, or let asset levels drop below what the city has identified as adequate. The former would make Jacksonville’s pension contributions volatile while the latter would add to the risk of a financial downturn causing funding levels to drop dangerously low. We estimate that contributing an additional \$30 to \$35 million in contributions annually above the actuarially determined employer contribution (ADEC) would avoid crossing the liquidity threshold.

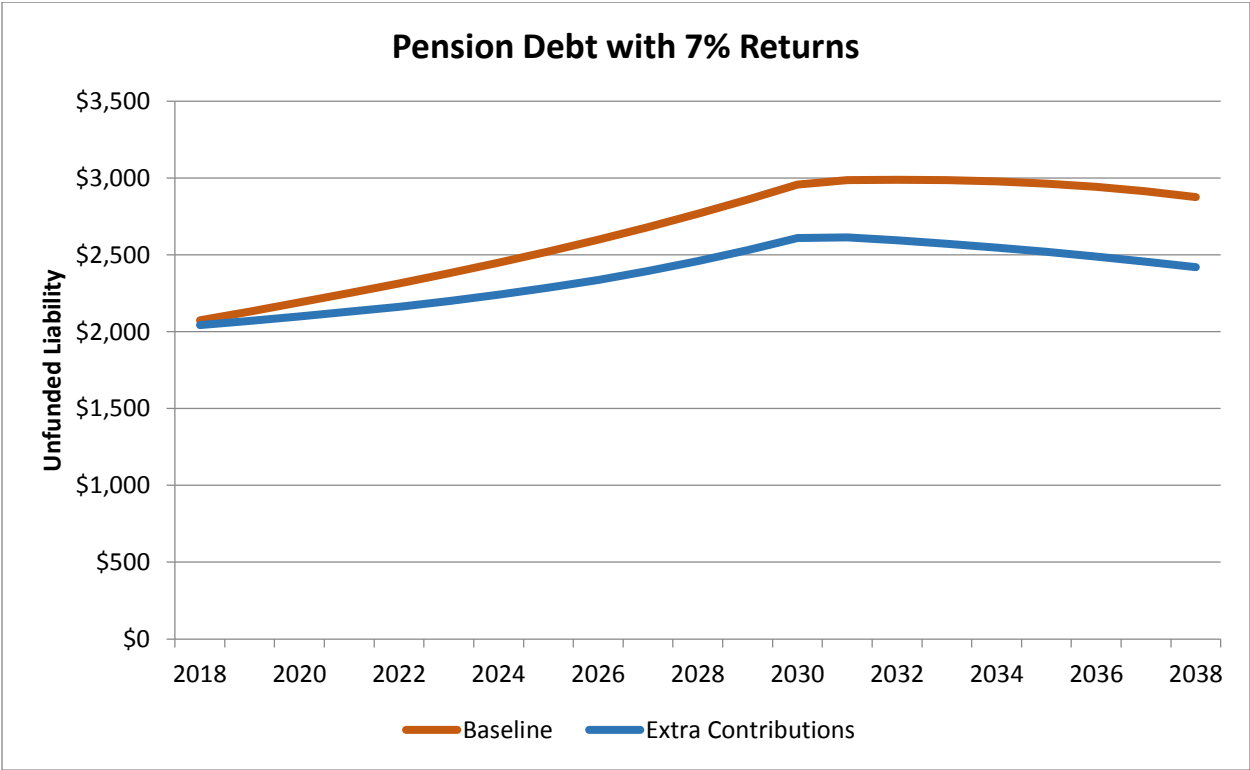
Table 2: Low Returns, \$30M Extra Contributions

Fiscal Year	Assets	Liabilities	UAAL	% Funded	ERC	Net Amort	Operating Cash Flow	Liquidity Ratio
2018	\$1,663	\$3,738	\$2,075	44%	\$166	-\$16	-0.7%	7.84
2019	\$1,717	\$3,854	\$2,136	45%	\$165	-\$21	-1.6%	7.71
2020	\$1,771	\$3,974	\$2,203	45%	\$167	-\$28	-1.9%	7.78
2021	\$1,823	\$4,094	\$2,270	45%	\$171	-\$33	-2.1%	7.82
2022	\$1,870	\$4,211	\$2,342	44%	\$172	-\$37	-2.4%	7.82
2023	\$1,908	\$4,326	\$2,417	44%	\$172	-\$42	-2.9%	7.78
2024	\$1,937	\$4,434	\$2,497	44%	\$172	-\$48	-3.4%	7.68
2025	\$1,953	\$4,533	\$2,580	43%	\$171	-\$53	-4.0%	7.51
2026	\$1,957	\$4,625	\$2,668	42%	\$169	-\$57	-4.8%	7.26
2027	\$1,946	\$4,709	\$2,762	41%	\$167	-\$63	-5.5%	7.07

2028	\$1,923	\$4,785	\$2,861	40%	\$166	-\$68	-6.2%	6.79
2029	\$1,885	\$4,850	\$2,965	39%	\$165	-\$74	-7.0%	6.52
2030	\$1,830	\$4,904	\$3,074	37%	\$164	-\$81	-8.0%	6.19
2031	\$1,845	\$4,948	\$3,103	37%	\$162	\$1	-4.5%	5.80
2032	\$1,880	\$4,986	\$3,106	38%	\$161	\$32	-3.5%	5.47
2033	\$1,913	\$5,018	\$3,105	38%	\$160	\$38	-3.6%	5.41
2034	\$1,943	\$5,042	\$3,099	39%	\$160	\$43	-3.7%	5.42
2035	\$1,970	\$5,056	\$3,086	39%	\$160	\$48	-3.9%	5.40
2036	\$1,995	\$5,060	\$3,065	39%	\$160	\$56	-4.1%	5.35
2037	\$2,016	\$5,052	\$3,036	40%	\$159	\$65	-4.2%	5.31
2038	\$2,035	\$5,034	\$2,999	40%	\$158	\$74	-4.4%	5.28

Note: All dollars in millions. Based on Pew’s analysis of projections by the plan actuary.

Table 2 shows that \$30 million in extra annual employer contributions would still result in negative amortization until the sales taxes kick in, negative cash flow, and a reduced liquidity ratio. The changes in contribution policy allowed Jacksonville to cut over \$70 million from the city’s employer contribution— anything that doesn’t put an equivalent amount back would allow substantial increases in pension debt. The justification is the sales tax revenue that will kick in in 2031 and is projected to allow for positive amortization. Adding \$30 to \$35 million in additional annual contributions would protect the fund against going below the liquidity threshold, reduce the run-up in unfunded liabilities, and improve the cash flow situation while keeping the overall contribution policy in place.



Please feel free to reach out if you have questions or comments about the information above. We are also available discuss our research or provide more detailed information any time.