

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT**

# FAX COVER SHEET

TO	Board Services Unit Coordinator
COMPANY	CalPERS
FAX NUMBER	19167953972
FROM	Rylaarsdam, Dan
DATE	2022-10-27 18:08:47 GMT
RE	Rylaarsdam Family Trust - Written Argument In Support of Oct. 6, 2022 Proposed Decision re OAH No. 2022020329/Agency Case No. 2021-0474 - In the Matter of the Appeal of Lifetime Monthly Benefit Payable Upon the Death of William F. Rylaarsdam

## COVER MESSAGE

Board Services Unit Coordinator,

Attached is Respondent Rylaarsdam Family Trust’s Written Argument In Support Of The October 6, 2022 Proposed Decision in the above-referenced matter.

This matter is set to be heard at the November 16, 2022, regular meeting of the Board of Administration of the California Public Employees’ Retirement System.

Please provide us with the Board’s agenda for the November 16, 2022 hearing when it is available and other written arguments submitted in this matter.

Please let me know if you need any further information.

Thank you.

**Daniel H. Rylaarsdam** | BLANKROME  
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October 27, 2022

Board Services Unit Coordinator  
California Public Employees' Retirement System  
Post Office Box 942701  
Sacramento, CA 94229-2701  
Email: [Board@CalPERS.ca.gov](mailto:Board@CalPERS.ca.gov)  
Facsimile: 916-795-3972

Re: In the Matter of the Appeal of Lifetime Monthly Benefit Payable Upon the Death of William F. Rylaarsdam by Barbara Foster, Respondent, and Rylaarsdam Family Trust, Respondent.  
Hearing Dates: June 27, 2022, June 28, 2022, and July 1, 2022.

OAH No. 2022020329

CalPERS Case No. 2021-0474

Dear Board Services Unit Coordinator:

Enclosed is Respondent The Rylaarsdam Family Trust's Written Argument In Favor Of The October 6, 2022, Proposed Decision of the Administrative Law Judge in connection with the above-entitled matter and the November 16, 2022, regular meeting of the Board of Administration of the California Public Employees' Retirement System (the "Board"). For the reasons set forth in its Written Argument, Respondent Rylaarsdam Family Trust respectfully requests that the Board adopt the October 6, 2022, Proposed Decision of the Administrative Law Judge.

Thank you. If you need any further information, please let me know.

Sincerely,



Mary Jane Rylaarsdam

Enclosure

cc: Jennifer Vischer  
Dan Rylaarsdam

1 Mary Jane Rylaarsdam  
 2 33542 Astoria  
 3 Dana Point, CA 92629  
 4 Tel.: 949-322-8277  
 5 Email: mrylaarsdam@cox.net

6 Trustee of Respondent January 5, 2018  
 7 Amendment and Restatement of the  
 8 Rylaarsdam Family Trust Dated July 19, 2007

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

11  
 12 In the Matter of the Statement of Issues  
 13 Re: The Appeal of Lifetime Monthly  
 14 Benefits Payable Upon the Death of  
 15 William F. Rylaarsdam by

COAH Case No. 2022020329  
 CalPERS Case No. 2021-0474

16 **BARBARA FOSTER,**

Respondent

17 and

18 **RYLAARSDAM FAMILY TRUST,**

Respondent

19  
 20 **BOARD OF ADMINISTRATION OF**  
 21 **THE CALIFORNIA PUBLIC**  
 22 **EMPLOYEES' RETIREMENT**  
 23 **SYSTEM,**

Initiating Party

**RESPONDENT JANUARY 5, 2018**  
**AMENDMENT AND**  
**RESTATEMENT OF THE**  
**RYLAARSDAM FAMILY TRUST**  
**DATED JULY 19, 2007'S WRITTEN**  
**ARGUMENT IN FAVOR OF THE**  
**OCTOBER 6, 2022, PROPOSED**  
**DECISION OF THE**  
**ADMINISTRATIVE LAW JUDGE**

Proposed Decision Issued: October 6,  
 2022

Written Argument Due Date: October  
 27, 2022

CalPERS Board Of Administration  
 Meeting: November 16, 2022

1 Respondent January 5, 2018 Amendment and Restatement of The Rylaarsdam  
2 Family Trust Dated July 19, 2007 (the “RFT”) submits the following written  
3 argument in favor of the October 6, 2022 Proposed Decision of the Administrative  
4 Law Judge in the above-referenced matter. The appeal of Respondent Barbara Foster  
5 was correctly denied by the Administrative Law Judge with respect to the Judges  
6 Retirement System (“JRS”) determination that Barbara Foster is (1) not entitled to  
7 Surviving Spouse monthly benefits after the death of Justice William F. Rylaarsdam  
8 (Ret.); (2) not entitled to any lifetime monthly benefits after the death of Justice  
9 Rylaarsdam; and (3) not a valid beneficiary for Justice Rylaarsdam’s lump sum death  
10 benefits.

11 **I. INTRODUCTION.**

12 After three days of testimony, submission of evidence and documents, and  
13 written closing statements by the parties, the Honorable Eric Sawyer, Administrative  
14 Law Judge (“Judge Sawyer”), issued his October 6, 2022, Proposed Decision denying  
15 Ms. Foster’s appeal in all respects. Based on the facts and the law, this is the correct  
16 result. The RFT agrees with the Proposed Decision and respectfully requests that the  
17 Board of Administration of the California Public Employees’ Retirement System (the  
18 “Board”) adopt it in full.

19 The Proposed Decision correctly lays out the facts, evidence, and testimony,  
20 and the law and makes clear that Ms. Foster’s attempt to claim benefits from Justice  
21 Rylaarsdam’s JRS pension is wholly without merit. Ms. Foster’s claims are based on  
22 concocted evidence, twisted facts and a revisionist history of her and Justice  
23 Rylaarsdam’s brief relationship. Contrary to her testimony and the feigned and  
24 calculated persona she presented at the hearing, Justice Rylaarsdam’s surviving  
25 children, Mary Jane Rylaarsdam, Jennifer Vischer, and Dan Rylaarsdam (the  
26 “Rylaarsdam Children”), know Ms. Foster to be a savvy, intelligent business owner  
27 who can understand business and legal documents. She is not a victim here and she  
28

1 is not entitled to any part of Justice Rylaarsdam’s pension. For the reasons below, we  
2 request that the Board adopt the October 6, 2022, Proposed Decision in full.

## 3 **II. ARGUMENT.**

### 4 **A. Judge Sawyer Correctly Determined That Ms. Foster’s Claims and** 5 **Testimony Lacked Credibility.**

6 Pertinent to Judge Sawyer’s denial of Ms. Foster’s appeal is his finding that  
7 Ms. Foster lacked credibility and gave inconsistent and vague testimony. Key to his  
8 decision is the rapidly declining health of Justice William F. Rylaarsdam in the weeks  
9 and days before his death and his absolute incapacity on the day of his death (August  
10 3, 2020). Proposed Decision paras. 40-48, 54. On August 3, 2020, Justice  
11 Rylaarsdam’s “death rattle”<sup>1</sup> was telling. The end was very near for him when the  
12 Rylaarsdam Children left his home, and he passed just a few hours later. During his  
13 last hours, Ms. Foster was away from the house running errands including securing a  
14 copy of her marriage certificate and mailing the August 3, 2020, letter to  
15 JRS/CalPERS (the “August 3, 2020, Letter”).<sup>2</sup> When the Rylaarsdam Children left  
16 him that day he was – as he had been the entire time that day – incapacitated and  
17 unresponsive. On the day of his death, Justice Rylaarsdam lacked any mental or  
18 physical capacity to sign the August 3, 2020, Letter or know or understand its  
19 meaning. There simply was no credible evidence to suggest that Justice Rylaarsdam  
20 signed the August 3, 2020, Letter or that he could have understood its contents or  
21 purpose.

### 22 **B. On August 3, 2020, Justice Rylaarsdam Was Unresponsive and** 23 **Incapacitated And Could Not Have Signed The August 3, 2020, Letter** 24 **Or Understand Its Contents Or Meaning.**

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26 <sup>1</sup> The “death rattle” is when “[t]he breathing patterns [of a person approaching death] change and can create a rattling  
27 sound. This sound is known as the death rattle, and it is a part of the dying process. . . . The death rattle signals that  
28 death is very near.” <https://www.medicalnewstoday.com/articles/321487>.

<sup>2</sup> It is worth noting that Ms. Foster never claimed or testified that the August 3, 2020, Letter was executed or  
submitted to JRS/CalPERS in any way under her Power of Attorney, which JRS/CalPERS had not yet approved by  
August 3, 2020.

1 While Judge Sawyer found Ms. Foster’s version of the facts to be inconsistent  
2 and not credible, the testimony of Justice Rylaarsdam’s three surviving children,  
3 Mary Jane Rylaarsdam, Jennifer Vischer, and Dan Rylaarsdam (the “Rylaarsdam  
4 Children”), was clear and unwavering. The Rylaarsdam Children visited him on  
5 August 3, 2020 and left him just a few hours before he passed. They testified that on  
6 August 3, 2020, Justice Rylaarsdam was incapacitated, unresponsive, and unable to  
7 read, write or sign anything, communicate, recognize people, or understand what was  
8 being said to him. Proposed Decision, para. 54. Based on the Rylaarsdam Children’s  
9 visit with Justice Rylaarsdam just an hour or so before Ms. Foster said he signed the  
10 August 3, 2020, Letter, it would have been an impossible feat and there is no way that  
11 he could have read or understood what he was allegedly signing. Judge Sawyer  
12 correctly found as not credible Ms. Foster’s testimony that she had “intimate  
13 conversations” with Justice Rylaarsdam at some point that day and that he was able  
14 to sign the August 3, 2020, Letter. Proposed Decision, paras. 70-73.

15 Moreover, it is significant that during the three-day hearing, Ms. Foster offered  
16 absolutely no evidence to suggest that Justice Rylaarsdam intended to make her a  
17 beneficiary of his CalPERS pension or that he understood the contents or purpose of  
18 the August 3, 2020, Letter that she admitted drafting. She did not testify that she  
19 explained to Justice Rylaarsdam what the letter said or its purpose. Indeed, she  
20 provided no information about what she allegedly told Justice Rylaarsdam about the  
21 conversation she had with CalPERS earlier that day; she did not claim that she read  
22 to him the contents of the August 3, 2020, Letter or explained its contents, its meaning  
23 or purpose to him. Knowing that Justice Rylaarsdam could not read anything because  
24 of his recent cataract surgeries (an undisputed fact), she only testified that she asked  
25 him “Would you mind signing this?” (meaning the August 3, 2020, Letter that she  
26 had just drafted). Transcript of June 28, 2022, Proceedings, p. 43, lines 3-6.

27 Judge Sawyer correctly held that “Respondent Foster failed to meet her burden  
28 of establishing the signature on [the August 3, 2020, Letter] was Justice



1 Rylaarsdam's, or it evidenced his decision to make her a beneficiary on his account."<sup>3</sup>

2 Proposed Decisions, p. 4.

3 **C. Justice Sawyer Correctly Determined That The August 3, 2020, Letter**  
4 **Was Invalid.**

5 The documents support Judge Sawyer's correct determination that the August  
6 3, 2020, Letter is invalid as well. The documents show that Justice Rylaarsdam  
7 intentionally disinherited Ms. Foster from his will (Proposed Decision, para. 37), that  
8 the Foster-Rylaarsdam Family Trust only concerned the Trabuco Canyon house  
9 Justice Rylaarsdam and Ms. Foster had moved into the year before (*see* Proposed  
10 Decision, paras. 35-36), and that Justice Rylaarsdam's intention with respect to his  
11 separate property (which includes his CalPERS pension) passed to his three surviving  
12 children through the RFT (Proposed Decision, para. 37).

13 Further, the Rylaarsdam Children testified, and submitted sworn declarations  
14 stating, that the signature on the August 3, 2020, Letter is not Justice Rylaarsdam's  
15 signature and compared the signature on the August 3, 2020, Letter to Justice  
16 Rylaarsdam's signatures on documents submitted in this matter by JRS/CalPERS and  
17 Ms. Foster (even documents signed as recently as July 24, 2020). The alleged August  
18 3, 2020, signature does not come close to matching or showing sufficient similarity  
19 to his known real signature. Judge Sawyer was correct in holding that Ms. Foster *did*  
20 *not* meet her burden to show that JRS was wrong in its determination that the August  
21 3, 2020, Letter is *not* the signature of Justice Rylaarsdam and is *not* a valid request to  
22 (1) have his monthly pension recalculated to give Ms. Foster lifetime monthly benefits  
23 after his passing; or (2) add Ms. Foster as a beneficiary.

24 **D. Justice Rylaarsdam's CalPERS/JRS Pension Is His Separate Property**  
25 **That Was Funded Exclusively During His Marriage To His First Wife**  
26 **of 59 Years.**

27 <sup>3</sup> Judge Sawyer also found it revealing that Ms. Foster did not make any attempt to offer any corroborating evidence  
28 regarding Justice Rylaarsdam's physical and mental state on August 3, 2020, such as the hospice nurse or caretaker  
who were there that day, or Justice Rylaarsdam's treating physician. *See* Proposed Decision, para. 70.

1 Ms. Foster's goal here is to obtain a lifetime monthly pension from  
2 JRS/CalPERS based on her marriage to Justice Rylaarsdam of only eighteen (18)  
3 days. She seeks to gain a windfall based on funds that Justice Rylaarsdam contributed  
4 to JRS/CalPERS and benefits he earned as a Judge and then Justice during his fifty-  
5 nine (59) year marriage to Janice E. Rylaarsdam, his first wife (and the mother of the  
6 Rylaarsdam Children) who died on June 5, 2017. Proposed Decision, para. 20  
7 ("Justice Rylaarsdam's pension benefit was not the kind of asset respondent Foster  
8 could have claimed as community property . . . because the asset preexisted whatever  
9 relationship she had with Justice Rylaarsdam."). None of the funds Justice  
10 Rylaarsdam contributed to JRS/CalPERS was earned or contributed during the time  
11 that Justice Rylaarsdam knew Ms. Foster. The potential monthly benefits for Ms.  
12 Foster, an option for which Justice Rylaarsdam *never* indicated to CalPERS that he  
13 wanted to make and never made, could be in the millions of dollars over Ms. Foster's  
14 lifetime. Judge Sawyer correctly determined that Ms. Foster is not entitled to a  
15 monthly optional allowance from Justice Rylaarsdam's pensions and is not entitled to  
16 the pro-rata benefit or the unused contributions. Proposed Decision, paras. 39-50.

17 **E. Ms. Foster Was Not Justice Rylaarsdam's Domestic Partner or Putative**  
18 **Domestic Partner.**

19 No one disputes that Ms. Foster married Justice Rylaarsdam on July 16, 2020  
20 – a mere eighteen (18) days before he died. But Ms. Foster makes the incredible  
21 claim that she was somehow Justice Rylaarsdam's "domestic partner" such that she  
22 had a legal right to Justice Rylaarsdam's pension. No evidence was presented by Ms.  
23 Foster that Justice Rylaarsdam and she ever registered as domestic partners under  
24 California Family Code section 297. Proposed Decision, para. 15 ("[Ms. Foster]  
25 concedes she was not in a registered domestic partnership with Justice  
26 Rylaarsdam[.]"). However, Ms. Foster claims that she was Justice Rylaarsdam's  
27 putative domestic partner. But interestingly, Ms. Foster never actually testified that  
28 she believed she was Justice Rylaarsdam's domestic partner (i.e., a relationship

1 equivalent to a spousal relationship). There simply is no evidence, credible or  
2 otherwise, to support Ms. Foster's claim.

3 The Rylaarsdam Children stated in their sworn declarations that Ms. Foster and  
4 their father were not in a domestic partnership. And, once again, the documents belie  
5 Ms. Foster's concocted claims. Just six (6) months before Ms. Foster and Justice  
6 Rylaarsdam were engaged, Justice Rylaarsdam completed and signed the JRS form  
7 called a "*Mallano* application," which was received by CalPERS/JRS on November  
8 5, 2019. On that *Mallano* application, Justice Rylaarsdam expressly indicated that he  
9 was not legally married and was not in a domestic partnership. Proposed Decision,  
10 para. 32. Thus, there is no credible evidence that Ms. Foster believed she was in a  
11 putative domestic partnership. Rather the documentary evidence – signed by Justice  
12 Rylaarsdam – demonstrates the contrary.

13 In any event, the case law cited in Judge Sawyer's Proposed Order fully  
14 supports the determination that Ms. Foster is not entitled to any benefits based on an  
15 equitable putative domestic partner doctrine.

### 16 **III. CONCLUSION.**

17 Judge Sawyer considered the evidence and the credibility of the witnesses, Ms.  
18 Foster, and the Rylaarsdam Children. The facts and law are against Ms. Foster and  
19 support fully Judge Sawyer's Proposed Decision, and he rightfully determined that  
20 the "August 3, 2020 letter is invalid." Proposed Decision, p. 4, para. 48. The Board  
21 should see Ms. Foster's claim for what it is – a desperate attempt to gain a financial  
22 windfall to which she is not entitled. The pro-rata benefit and the unused  
23 contributions should be paid directly to the RFT pursuant to Justice Rylaarsdam's  
24 wishes as expressed in his will and the RFT. Proposed Decision, paras. 49, 50. The  
25 RFT respectfully request that the Board adopt Judge Sawyer's October 6, 2022,  
26 Proposed Decision as its final decision on this matter.

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DATED: October 27, 2022

By: 

Mary Jane Rylaarsdam  
Trustee of the Respondent January 5, 2018  
Amendment and Restatement of the  
Rylaarsdam Family Trust Dated July 19, 2007