



# MACRS

## CASES OF INTEREST



Kenneth J. Hill, Sr. Assoc. General Counsel | PERAC  
Patrick M. Charles, Assoc. General Counsel | PERAC  
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MACRS 2015 SPRING CONFERENCE

## Notable Recent Cases

### NOTABLE RECENT CASES

Martin

Laumann

Maslauskas

Ouellette

Buonomo

Howard

Connolly

Timmins

Cadigan

Randall

Fletcher, Thornton & Moscato

Fayne

Kelleher

Daley

Vernava

Madden



## ***Martin v. Concord Ret. Bd., and PERAC***

- Case No. CR-11-157 (DALA)
- Decision Date: April 17, 2015
- In a nutshell: DALA determined that dependent child allowances under § 7(2)(a)(iii) apply to children who are born and are in utero at the time of the member's retirement.



## ***Laumann v. Norfolk County Retirement System***

- Case No. CR-10-822 (DALA)
- Decision Date: June 20, 2014
- In a nutshell: The fact that a member was terminated from his position for “moral turpitude” has no impact on the member’s eligibility for ADR. Also, refusing to undergo back surgery does not constitute a “failure to follow through with reasonable medical treatment,” given its complexity and risk.



## ***Maslauskas v. State Retirement Bd.***

- 1951 - John and Claire Maslauskas get married
- 1974 - John became a member of State Retirement System
  - Nominated his wife Claire as beneficiary
- 1997 - Changed beneficiary to his godson
- 2002 - Retirement papers - indicated “single”
  - Chose to retire under Option A (no survivor benefits)
- 2010 - John died
  - Claire - still his wife - requested that the Board pay her John’s pension; argued that he mistakenly selected the wrong retirement option
  - Board denied request; cannot change his option selection after his retirement



## ***Maslauskas (Continued)***



- Claire appealed to DALA

- Argued that the Board did not require John to obtain a spousal acknowledgment or give her notice of the option selection under § 12(1)

- DALA determined:

- John certified in his retirement application under penalty of perjury that he was not married; nothing in Chapter 32 requires a Board to investigate his marital status beyond his sworn submission
- Because John failed to obtain the spousal acknowledgment, his option selection was invalid, and defaulted to Option B
- However, Claire was not John's Option B beneficiary; his godson was entitled to any funds remaining in his retirement account
- However, according to Board calculations, John was overpaid benefits under Option A in an amount greater than the amount remaining in John's retirement account...so no one gets anything



## ***Maslauskas (Continued)***

- Case No. CR-10-600 (DALA)
- Decision Date: May 8, 2015
- In a nutshell: Although a retirement option cannot be changed after a member retires, that option choice can be deemed invalid and therefore default to another option. A board is not required to obtain a spousal acknowledgment form when it has no knowledge that the member was married at the time of his retirement.



# *Ouellette v. Haverhill Retirement Board*

- 1981 - Member started as a police officer
- 12/31/03 - Filed for superannuation
- 8/14/05 - Applied for § 7 ADR related to incidents occurring in November 2003
  - ADR approved effective 2/14/05 (6 months prior to application date)
- Board imposed 75% cap on disability allowance
- Ouellette argued eligible for exception in § 7(2)(a)(ii), because she was **continually a member in service** since 1/1/88
- Board/PERAC disagreed: upon superannuation (12/31/03), she ceased to be a member in service
  - Upon the effective date of her disability allowance (2/14/05), she had not continuously been a member in service since 1/1/88
  - She argued that the date of incident should be used (November 2003)
- Appeals Ct.: statute ambiguous, but CRAB's interpretation reasonable





## ***Ouellette (Continued)***

- Case No. 13-P-291 (86 Mass.App.Ct. 396 (2014))
- Decision Date: September 30, 2014
- In a nutshell: A retired member who subsequently applies for accidental disability is not exempt from the 75% cap on her disability allowance, because her retirement meant that she had not continuously been a member in service since January 1, 1988.



## ***Retirement Board of Somerville v. Buonomo***

- Case No. SJC-111413 (467 Mass. 662 (2014))
- Decision Date: April 2, 2014
- In a nutshell: Mr. Buonomo was a Somerville retiree who became the elected register of probate for Middlesex County after his retirement. He was not a member of the Middlesex Retirement System. In 2009 he pled guilty to 34 charges stemming from the theft of monies from cash vending machines attached to photocopy machines in the Registry of Deeds office. SJC held that he violated the laws applicable to his office or position and that he forfeited his pension under c. 32, § 15(4).



# ***Howard v. Haverhill Retirement Board***



- 1967 - Officer Howard joined the Haverhill Police Dept.
- 1994 - Appointed prosecuting officer at local courthouse
- 2002 - New Chief of Police hired
- 2004 - Chief reassigned several police officers, including Officer Howard
  - Officer Howard was transferred to patrolman
  - He was 62-years old at the time
- Mr. Howard felt humiliated and believed the reassignment was punishment for his previously filing a grievance
- He developed depression and emotional issues and could not work
- 2005 - Filed for superannuation retirement
- 2006 - Filed application for ADR, for depression resulting from the transfer
  - Medical panel unanimously found him permanently incapable of performing his duties as a result of the transfer
- 2007 - HRB voted to grant him the benefits

## Howard (Continued)



- PERAC remanded back to the HRB
  - Howard argued: the transfer caused his depression
  - ADR statute should be read in harmony with worker's compensation statute: mental or emotional disabilities arising out of a *bona fide* (done in good faith) transfer are excluded from the definition of "personal injury"
- Howard appealed to DALA, then CRAB, then the Superior Court, who remanded it back to DALA
- Most recent DALA decision: The transfer was *bona fide*
  - Chief wanted a superior officer as court liaison
  - Chief has collectively bargained for right to transfer officers
  - Other officers were transferred at same time
  - Chief had greatest need for patrolmen

## **Howard** (Continued)

- Case No. CR-07-1052 (DALA)
- Decision Date: October 24, 2014
- In a nutshell: Police officer who developed mental/emotional issues following a transfer was not entitled to accidental disability benefits, because the issues arose out of a *bona fide* personnel action and, therefore, were exempt from the definition of “personal injury.” On appeal to CRAB.





## ***Connolly v. State Board of Retirement***

- Case No. CR-11-18 (CRAB)
- Decision Date: December 19, 2014
- In a nutshell: CRAB decision reversed a decision of DALA and found that member was not entitled to accidental disability for a claimed neck injury allegedly caused by the cradling of a telephone for the bulk of her workday, because using a telephone is “common and necessary to all or a great many occupations.”





## ***Timmins v. Somerville Retirement Board***

- Case No. CR-13-533 (CRAB)
- Decision Date: December 19, 2014
- In a nutshell: It was not improper for a DALA magistrate to permit additional testimony at a second DALA hearing, because the hearing should be held *de novo* (afresh). On appeal to the Superior Court.



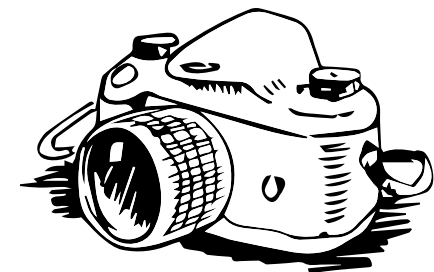
## *Cambridge Retirement Board v. Cadigan*

- 1981 - Joined Boston Retirement System
- 1996 - Left Boston Retirement System, and withdrew all of her deductions
- 2002 - MA Legislature passed Chapter 46 of the Acts of 2002
  - Complied with federal tax law: salary over a specific amount cannot be used in retirement calculation
  - Contained grandfather clause: not applicable to “members who were members in service on or before December 31, 1995”
- 2010 - Joined Cambridge Retirement System; re-deposited funds
- Highly compensated and tripped the federal compensation limit
- She argued that the grandfather clause applied; Board disagreed



## *Cadigan (Continued)*

- Three possible reasons she is subject to the IRS limit:
  - (1) Membership was discontinuous
    - Irrelevant: grandfather clause does not say that service must be “continuous”
    - Law only states that must be a member in service prior to 12/31/95; she was a member in service prior to that date
  - (2) Service was in multiple retirement systems
    - Although there were 105 separate retirement systems, they are all governed by Chapter 32 and benefits are calculated the same way
  - (3) Withdrawal and repayment of deductions
    - When she withdrew her deductions, she ceased to be a member
    - Irrelevant: grandfathered status remains because she was a member in service prior to 12/31/95
    - “Snapshot” approach



## ***Cadigan (Continued)***

- Case No. CR-12-574 (CRAB)
- Decision Date: Apr. 13, 2015
- In a nutshell: Member qualified for an exception to a federal tax limit because she was a member of a system prior to 1/1/96, even though she left that system, withdrew her money, and then re-deposited it in another system in 2010.



## ***Randall v. Haddad***

- Haddad was member of State Retirement System
- Also was director of charitable corporation
- Secretly sold church property (to her sister)
- Plaintiff diocese filed lawsuit
- Court ordered proceeds to be held in escrow
- Despite order, she later withdrew \$100,000 from the proceeds and cut a check for \$40,000 that she deposited into her State retirement account for the “buy back” of creditable years of service
- Plaintiffs sought an attachment



## *Randall (Continued)*

- Both State Board and A.G. moved to dismiss it
  - Argued that retirement accounts are exempt from attachment per M.G.L. c. 32, § 19
  - “The rights of a member to an annuity, pension or retirement allowance...shall not be attached or taken upon execution or other process.”
  - Superior Court and Appeals Court agreed
- SJC: Bar against attachment only applies to a member’s “rights” to the funds, and she had no “rights” to the \$40,000, so it could be attached
  - Emphasized the narrow scope of this holding and the indisputable facts concerning the theft





## ***Randall (Continued)***

- Case No. SJC-11402 (468 Mass. 347 (2014))
- Decision Date: June 12, 2014
- In a nutshell: M.G.L. c. 32, § 19 protects a member's rights to her retirement account from attachment but, when a member has no "right" to the money in that retirement account, attachment may be permitted.



## ***Fletcher, Thornton & Moscato v. PERAC***

- Case Nos. CR-11-118, 123, 153 (DALA)
- Decision Date: April 17, 2015
- In a nutshell: DALA held that a payment that is contingent upon retirement, no matter how it is described, is excluded from “regular compensation.”



## ***Barnstable Cty. Ret. Bd. v. PERAC ("Fayne")***

- Case No. CR-12-572 (DALA)
- Decision Date: March 31, 2015
- In a nutshell: DALA upheld PERAC's determination that the member was not entitled to a termination under § 10(2) because he was discharged for violating the laws applicable to his position. Member was also not entitled to a § 10(1) retirement benefit because his actions constituted moral turpitude.




## ***Kelleher v. Barnstable Cty., Ret. Bd. and PERAC***



- Robert Kelleher: member of Yarmouth FD for 32 years
- Throughout his career, member of HazMat Response Team
  - Voluntary position
  - Not part of his obligations as an employee of Yarmouth FD
  - To maintain certification, required to attend 80 hours of regularly scheduled training
  - Paid overtime (time and one-half) for attending the training
- Board determined that pay was not “regular compensation”

## ***Kelleher v. Barnstable Cty. Ret. Bd., and PERAC (Continued)***

<b>Board's Position</b>	<b>Kelleher's Position</b>
<ul style="list-style-type: none"><li>• 840 CMR 15.03(3)(f) specifically excludes overtime from the definition of "wages"</li></ul> 	<ul style="list-style-type: none"><li>• 840 CMR 15.03(3)(b) specifically includes payments for "holding the training, certification, licensing... for the performance of services related to the position the employee holds..."</li><li>• "Straight time" portion of pay constitutes "regular compensation"</li></ul>

## ***Kelleher v. Barnstable Cty. Ret. Bd., and PERAC***

- Case No. CR-10-794 (DALA)
- Decision Date: April 17, 2015
- In a nutshell: Even the “straight time” portion of the pay is overtime, because it is in addition to his regular hours for that pay cycle. Therefore, it is expressly excluded from the definition of “regular compensation.” Noted that his attendance was not required to remain a Yarmouth firefighter.





## ***Daley v. Plymouth Retirement Board***

- Finance Director for Plymouth
- 1994 - formed company that provided financial consulting services to various towns
- 1997 - left Finance Director job in Plymouth
- 2006 - retired from Plymouth, but continued consulting work while also collecting retirement
- G.L. c. 32, § 91 provides hour and earning limitations on retirees rendering services to a public entity
- PRB argued that Daley had excess earnings of more than \$350,000 for 2007 - 2010



## ***Daley (Continued)***



- Daley argued that the restriction did not apply to him as an independent contractor who had retired prior to passage of Chapter 21 of the Acts of 2009
  - Act amended § 91(b) to specifically include “independent contractors”
- Because § 91 did not include “independent contractors” prior to 2009, Daley argued that § 91’s limitations did not apply to him
- CRAB disagreed: longstanding history of applying to independent contractors
- PRB wanted Daley to pay it \$350,000 in excess earnings
- CRAB: PRB was only entitled to \$40,000 Daley received in retirement benefits for the disputed period

## ***Daley (Continued)***

- Case Nos. CR-11-441, CR-13-409 (CRAB)
- Decision Date: August 7, 2014
- In a nutshell: Retired member who worked as an independent contractor who frequently performed services for municipalities was subject to § 91's earnings limitation even though he retired prior to passage of Chapter 21 of the Acts of 2009. The penalty for the over-earnings was deemed to be the money he received in retirement benefits. Currently on appeal to Superior Court.



## ***Vernava v. Swampscott Retirement Board***

- Case No. CR-12-640 (CRAB)
- Decision Date: December 19, 2014
- In a nutshell: Sick and/or vacation pay used by a member each week to supplement his worker's compensation benefits (and maintain his health insurance) does not constitute "regular compensation."



## ***PERAC v. Madden***

- 1977 - Firefighter (Group 4)
- 1992 - Appointed Chief
- 2000 - Elected Mayor (Group 1)
  - Civil Service Law (M.G.L. c. 31, § 37): person in civil service position who is elected mayor may take leave of absence without pay for term
  - Person shall be reinstated at the end of term
- Incumbent Fire Chief agreed to a brief demotion to Deputy Chief starting 1/2/08
- Madden would return to Chief on 1/2/08 and take an immediate leave of absence then file for retirement



## ***Madden (Continued)***

- 1/4/08 - Applied for superannuation as Group 4
  - He performed no duties as Chief upon reinstatement
  - Board calculated retirement under Group 4
  - PERAC instructed Board to calculate under Group 1
- DALA: Group 1 proper, because he performed no duties as Fire Chief
- CRAB: Group 4 proper, because reinstatement sufficient; no service requirement
- Superior Court and Appeals Court: Group 1 proper, because c. 31, § 37 requires actual performance of duties upon reinstatement





## ***Madden (Continued)***



- Case No. 13-P-1587 (Appeals Court)
- Decision Date: August 7, 2014
- In a nutshell: A Group 4 member, who took a leave of absence pursuant to the Civil Service law (M.G.L. c. 31, § 37) to become mayor (a Group 1 position), must actually last perform the duties of a Group 4 member at the time of retirement in order to retire as a Group 4 member. Due to recent pension reform, this is no longer necessary as service in different groups is pro-rated.