



# MACALONEY, SURVIVOR BENEFITS, CONFEDERATE WIDOWS AND OTHER CASES OF INTEREST



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March 26, 2014



# WHAT WE WILL COVER TODAY

- Confederate Widows or “How Long Can Pension Liability Last?”
- Cases of interest to the public pension community in Massachusetts, rendered July 1, 2013 and thereafter.
- 4 Myths — Busted



# UNBORN WIDOWS, A CENTENARIAN & A DISABLED CHILD FROM THE CIVIL WAR

- Gertrude Janeway
- Alberta Martin
- Maudie Hopkins
- Albert Woolson
- Irene Triplett



# THE JOHN JANEWAY ANALYSIS

- John Janeway, police officer in Quabbin, dob 1946, retires at age 49 in 1995, under the Heart Law, picking Option B. His wife, Miriam predeceases him, dying at age 70 in 2016.
- Gertrude Grubb is born in 2009.
- John Janeway marries Gertrude Grubb in 2027, when he is 81 and she is 18.
- They are married for 10 years before John Janeway dies in 2037. John Janeway dies of pneumonia.
- In 2037, the Quabbin Retirement Board votes to grant Gertrude Janeway a Section 101 benefit. By 2037, the Quabbin Retirement Board is paying \$12,000 a year for Section 101.
- Gertrude Janeway dies in January of 2103 at the age of 93. The benefit on account of John Janeway has spanned 3 centuries.
- If he had died of the cause for which he had retired, Gertrude would have been eligible for the Section 9 benefit for the same time period.



# THE TONY RANDALL ANALYSIS

- Tony Randall, born February 26, 1920.
- Married Heather Harlan, November 17, 1995, when he was 75 and she was 25.
- Heather Harlan born in 1970.
- Two children were born of the marriage:
  - Daughter Julia, born 1997
  - Son Jefferson, born 1998



# CASES OF NOTE SINCE JULY 1, 2013

*(in alphabetical order)*

- Bettencourt
- Carell
- “Conway” (*Medford Retirement Board v. PERAC*)
- DeFelice
- Gaffney
- Herrick
- MacAloney
- Tozza
- Wesolowski
- Zavaglia





# ZAVAGLIA v. GLOUCESTER RETIREMENT BOARD & SALEM RETIREMENT BOARD

- [Case No. CR-09-459](#)
- Decision Date: January 10, 2014
- In a nutshell: To purchase prior non-membership service or to transfer prior non-membership service from one contributory retirement system to another, the person who seeks to purchase such service must be a member in service, actively employed in a governmental unit.



# MEDFORD RETIREMENT BOARD v. PERAC

- [Case No. CR-11-161](#)
- Decision Date: September 27, 2013  
aka "Conway"
- **In a nutshell:** In regard to 91A determinations, PERAC is not required to file an appeal of the Board's decision, as its supervisory authority over boards is "comprehensive and persuasive."





# WESOLOWSKI v. HAMPDEN REGIONAL RETIREMENT BOARD & PERAC

- [Case No.: CR-11-66](#)
- Decision Date: January 10, 2014
- **In a nutshell:** Affirms PERAC's Chapter 21 of the Acts of 2009 guidance regarding the dual membership provision vesting requirements, the under \$5000 rule, and whether under \$5000 service can nevertheless trip the dual membership provisions of 5(2)(e) (It can.)



## G.L. c. 32, SECTION 5(2)(e)

- A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, **each system shall pay the superannuation retirement allowance attributable to membership in that system to the member;** and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.



# MACALONEY v. WORCESTER REGIONAL RETIREMENT SYSTEM & PERAC

- [Case No.: CR-11-19](#)
- Decision Date: June 21, 2013
- In a nutshell: Pursuant to the provisions of Section 4(2)(b), a permanent firefighter can purchase up to 5 years of creditable service for any time they served as a call firefighter or for the time her or she was on the respective lists and/or rosters making him or her eligible for such duty, *but they must pay for such service.*

- [See PERAC Memoranda 22/2013](#)

- [See PERAC Memoranda 33/2013](#)



# PERAC v. BETTENCOURT

- [Case No.: Suffolk Superior Ct., C.A. No. 12-4545](#)
- Amended Decision Date: February 6, 2014

➤ **In a nutshell:** A public pension forfeiture is not subject to 8<sup>th</sup> Amendment scrutiny, as in such circumstances there is no payment made to a sovereign and no extraction of anything from the Defendant.

**Take away:** You cannot cram a pension into a suitcase.



# THE 8<sup>TH</sup> AMENDMENT TO THE UNITED STATES CONSTITUTION

## Eighth Amendment



Excessive bail shall not be required,  
nor excessive fines imposed,  
nor cruel and unusual  
punishments inflicted.





## U.S. v. BAJAKAJIAN — 523 U.S. 321 (1998)

- SCOTUS holds for the first time that a *particular* forfeiture constituted an Excessive Fine within the meeting of the 8<sup>th</sup> Amendment.





## BAJAKAJIAN'S THREE-PRONGED TEST

1. Government must have extracted payments as a fine.
2. Such extraction or fine must be punitive.
3. Such punitive extraction or fine must be proven to be "grossly disproportional to the gravity of [the criminal] defendant's offense."



## BOSTON RETIREMENT BOARD v. CRAB & CARELL

- [Case No.: Suffolk Superior Ct., C.A. No. 13-2476](#)
- Date of Decision: February 7, 2014
- In a nutshell: CRAB is affirmed in permitting a remarried widow to collect death benefits even though she remarried prior to the repeal of the remarriage penalties which were excised from the law in 2000.



# HERRICK v. ESSEX REGIONAL RETIREMENT BOARD & CRAB

- [Case No.: 456 Mass. 801 \(2013\)](#)
- Amended Decision Date:  
September 20, 2013
- **In a nutshell:** Where a retirement board makes a legal error denying retirement benefits that is corrected by a court, interest must be paid.

[See: PERAC Memorandum #32/2013](#)



# TOZZA v. PERAC & CHELSEA RETIREMENT BOARD

- [Case No.: CR-09-94](#)
- Date of Decision: March 13, 2014
- **In a nutshell:** “The correct rate [of interest] to be applied is that determined by the Chelsea Retirement Board’s actuary. The Chelsea Retirement Board has elected not to retain its own actuary, but to rely on the Commonwealth’s actuary, PERAC.”



## TOZZA v. PERAC & CHELSEA RETIREMENT BOARD (Continued)

- First test of PERAC Memorandum #32/2013.
- Arises in context of a Board advocating PERAC should decide the interest rate, not individual Boards.
- Seems to suggest that PERAC is promoting the interest rate described in Section 22(6)(b), and there may not be an alternative interest rate.
- Objections must be filed by March 28, 2014.



# DEFELICE v. STONEHAM RETIREMENT BOARD

- [Case No. CR-10-656](#)
- Decision Date: January 16, 2014
- **In a nutshell:** Once a member, always a member. A retirement board cannot terminate a member's right to active membership where there has been no separation from service.





# GAFFNEY v. BRISTOL COUNTY RETIREMENT BOARD v. PERAC

- [Case No.: CR-12-505](#)
- Date of Decision: December 5, 2013
- **In a nutshell:** Because the Petitioner has forfeited his rights under Chapter 32 pursuant to s. 15(4), the Petitioner is not entitled to receive a retirement allowance from any Chapter 32 system based on subsequent employment and any annuity savings account deductions are required to be returned to him without interest.



# MYTH #1

- As an active member, I can name all three of my children, Mary, Will and Grace, as Option 12(2)(d) beneficiaries.
- When I retire, I can name the three of them as my Option C beneficiaries.

*(This is the same myth, despite the two bullet points.)*



## MYTH # 2

- I have minor children, but I am not allowed to name one of them as my Option 12(2)(d) beneficiary.



## MYTH # 2 — CAVEAT

- A minor child may be named as a member's Option 12(2)(d) beneficiary BUT
- **CAUTION:** Jack Sprat, who is divorced from Julie Sprat, has 4 minor children. He names one, Leonard, as his Option 12(2)(d) beneficiary. Leonard is 12 when Jack passes away, and lives to be 100.
- Until Leonard is 18, payment is made to his guardian, in this case his mother. From ages 18 to 100, the Board pays Leonard directly.



## MYTH # 3

- I have to actually serve as a call firefighter versus being on a reserve list to receive credit under Section 4(2)(b).



## MYTH #4

- PERAC determines a retiree has excess earnings pursuant to 91A.
- Subsequently, the retirement board at its hearing determines that PERAC was wrong and the retiree has no excess earnings.
- The retirement board sends PERAC a notice to appeal its determination.