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TO: Theodore Lipscomb, Sr., Chairman,  
Milwaukee County Board of Supervisors

FROM: Margaret Daun, Corporation Counsel  
Anne Berleman Kearney, Deputy Corporation Counsel *ABK*

DATED: August 16, 2019

RE: *Jennifer L. Aleman v. Employees' Retirement System of the County of Milwaukee*  
Case No. 18-CV-6291; *Jennifer L. Aleman v. Pension Board of the Employees'*  
*Retirement System of the County of Milwaukee and Milwaukee County*  
Case No. 18-CV-9215

We request that this matter be referred to the Committee on Judiciary, Safety, and General Services, and the Committee on Finance for approval of a settlement related to two lawsuits brought by Jennifer L. Aleman for survivorship pension benefits that she received because of the death of her husband, Sergio Aleman, who was an employee of Milwaukee County (the "County") and died in 2012 while on-duty as a deputy sheriff.

After the death of her husband, Ms. Aleman was paid workers' compensation benefits by the County under Wis. Stat. § 102.46 (death benefit) from August 2012 to January 2018; workers' compensation benefits by the State of Wisconsin under Wis. Stat. § 102.475 (death benefit); and expenses by the County under Wis. Stat. § 102.50 (burial expenses) in a lump sum in 2012. Additionally, in August 2012, Ms. Aleman began receiving pension payments under Milwaukee County General Ordinance § 201.24(6.1) (accidental death benefit for deputy sheriffs) from the Employees' Retirement System ("ERS"). For some time, Ms. Aleman received both streams of benefits; namely, at the time that Ms. Aleman received the workers' compensation payments, she also received pension benefits.

However, it could be argued and eventually was argued by the County that the workers' compensation paid to Ms. Aleman by the County was subject to offset by the pension benefit amount paid. MCGO § 201.24(11.9) provides, in relevant part, that:

Any amounts which may be paid or payable under the provisions of any state workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against and payable in

lieu of any benefits payable out of the funds provided by the county under the provisions of this ordinance on account of the same disability or death.

Similarly, ERS Rule 1018 states, in relevant part, that:

The [Pension] board shall offset a member's disability pension by any amounts that accrue to the member on or after the effective date of the pension under the provisions of any state workers' compensation or similar law on account of the same disability, regardless of when such amounts are actually paid.

Retirement Plan Services ("RPS"), which runs the day-to-day operations of ERS informed Ms. Aleman of the County's offset position in 2017; and, 5 years after the benefits started, instituted an offset. At first, that offset amounted to the entire pension benefit amount. Since February 2018, Ms. Aleman has received a reduced pension benefit amount from the County.

Ms. Aleman challenged the offset to her survivorship pension benefit amount. In 2018, Ms. Aleman filed a writ of mandamus suit against ERS, arguing that she relied on the larger pension benefit amount that was mistakenly explained by County employees in 2012. She alleged breach of fiduciary duty, namely, that ERS and the County are obligated to follow through on the statements made by RPS and thus continue paying both workers' compensation benefits and pension benefits to her. In addition to the benefits, Ms. Aleman sought compensation, reasonable attorneys' fees, and punitive damages.

Meanwhile, in 2018, Ms. Aleman also appealed to the Milwaukee County Pension Board of the Employees' Retirement System of the County of Milwaukee (the "Pension Board") the RPS decision that an offset was required. Ms. Aleman and her attorney presented argument before the Pension Board. The Pension Board denied Ms. Aleman's request to exempt her from an offset.

Ms. Aleman then filed an additional suit in circuit court in the fall of 2018 against the Pension Board and Milwaukee County seeking review by *certiorari* of the Pension Board's finding.

In these suits, there is a legal dispute over the definition of the survivorship pension benefit paid to Ms. Aleman. Ms. Aleman has made a good faith reasonable argument based on her interpretation of Milwaukee County ordinances, Pension Board rules, and her reading of Wisconsin law. Milwaukee County has denied Ms. Aleman's claims and allegations in both suits. However, it is not disputed that there were mistakes in the pension benefit information provided to Ms. Aleman in 2012, and that under the circumstance she can argue reliance. Therefore, the parties participated in mediation with former Judge Richard Sankovitz. As part of the mediated settlement, the parties have reached a reasonable agreement as to the correct survivorship benefit amount and thus resolution to both suits.

The terms of the settlement are as follows. Milwaukee County will pay Ms. Aleman \$41,000.00 from the Litigation Fund. This is a negotiated amount that represents a significant compromise related to reliance damages, which she initially claimed to be in excess of \$250,000.00.

ERS will retain the repayments already made by Ms. Aleman, totaling \$16,832.00.

ERS will offset Ms. Aleman's pension payments going forward to account for the remaining workers' compensation benefits paid to her by the County, totaling \$94,755.75.

In addition, there is \$157,643.30 paid to Ms. Aleman in benefits through January 2017 from the pension trust. That is because this payment is being considered part of a correct survivorship pension amount for Ms. Aleman and, therefore, not repaid by Ms. Aleman.

ERS, through Pension Board action, will determine if it agrees with the recommendation that this sum is a correct survivorship pension amount. Should the Pension Board reject this recommendation, an alternative resolution of this matter may still be possible. In all, the resolution of this situation will be reviewed by the Internal Revenue Service ("IRS") as part of the Voluntary Correction Program ("VCP"). Should the IRS not accept that the proposed correction, which includes payment from the pension trust, Milwaukee County eventually may be required to repay \$157,643.31 to ERS. Any request of funds from the County under the VCP for the settlement of this issue or any other issue associated with the VCP will be made as a separate resolution to the County Board with a separate fiscal note and request for funding.

Last, Ms. Aleman will dismiss with prejudice both of her lawsuits.

The Office of Corporation Counsel and all other interested parties recommend approval of this settlement.

cc: Kelly Bablitch  
Raisa Koltun  
Janelle Jensen  
Allyson Smith  
Timothy Coyne