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ALAN CRANSTON
CONTROLLER

Controller of the State of California

SACRAMENTO

January 6, 1964

Honorable Earl Ben Gilliam
Judge of the Municipal Court
San Diego Judicial District
Court House
San Diego, California

Dear Judge Gilliam:

May I add my congratulations to the many you are receiving upon your appointment to the Municipal Court.

I am enclosing information regarding the Judges' Retirement System, which is administered by this office. Your membership in the system will be automatic under the Law, by virtue of your judicial position.

Your attention is also invited to the time limitation upon making an election to come within the provisions of Article 5 (§§ 75090-2). Under the provisions of Article 5 a judge may elect to provide a monthly allowance to his surviving spouse in the event he should die before becoming eligible for retirement but after being credited with 10 or more years of service. In order to do so, however, a judge must so elect within 6 months after becoming a judge (i.e., of a Municipal or higher Court). A summary, "Benefits under Article 5," is included in the enclosures for your further information.

Should you have any question, please do not hesitate to call upon me.

Very sincerely,

Alan Cranston

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ALAN CRANSTON
STATE CONTROLLER

Credit for Prior Service
Judges' Retirement Law
(As amended 5/1/62)

(a) Prior Service as judge of an "excluded court"--Section 75029

Under Section 75029 a judge may claim credit for his prior service as judge of an "excluded court" by paying the required contributions into the Judges' Retirement Fund. There is no prescribed form; a letter accompanying the required contribution and stating the purpose, will suffice.

We would need to know whether the judge is credited with any of such prior service under any other retirement system, since the Attorney General has held that a person may not receive credit for the same service in two retirement systems supported wholly or in part by public funds (34 Ops. Cal. Atty. Gen. 138).

It might be helpful to know, however, that withdrawal of accumulated contributions from the other system (e.g., State Employees' Retirement System under Government Code Section 20393) may effectively relinquish credit for such service in that system, for purposes of Section 75029, providing it occurs prior to retirement under the other system and terminates all rights therein (34 Ops. Cal. Atty. Gen. 138).

The required contributions for a judge to claim credit for his prior service under Section 75029 is "a sum equal to the amount which would have been deducted" from his salary "had he been a judge during the time" he was a judge of an "excluded court", computed by applying to the rate of salary received by him during his first year on the court (i.e., on a Municipal or higher Court), the rate of deduction then applicable ($2\frac{1}{2}$% prior to May 1, 1962, and 4% thereafter). Section 75029 does not require interest.

Contributions are not required as to any period prior to the time that the Judges' Retirement Law has been in effect, which was August 1, 1937, in the case of a judge whose first service was on the Superior Court, or September 1, 1941, in the case of a judge whose first service was on the Municipal Court (Ltr. Op. Cal. Atty. Gen. to Controller, Dec. 3, 1957; 20 Ops. Cal. Atty. Gen. 114). In claiming credit for prior service under Section 75029, all service as judge of an "excluded court" must be included (Ltr. Op. Cal. Atty. Gen., May 23, 1958).

(b) Prior service as "public legal officer" or constitutional officer--Section 75030.5

Under Section 75030.5 a judge meeting the requirements may contribute and claim credit for all or any part of his prior service in the following capacities as defined in Section 75030.5:

(1) A judge who first became a judge of a Municipal or higher Court prior to May 1, 1962--prior service as a "public legal officer" or as a "constitutional officer".

(2) A judge who first became a judge of a Municipal or higher Court after May 1, 1962--prior service as an "elected state constitutional officer".

Section 75030.5 requires that he file a written election with this office and pay the required amount into the Judges' Retirement Fund. It also provides that he may not be credited for any period of time for which he is "receiving" or "entitled to receive" a retirement allowance from any other public retirement system. A statement to that effect should be included as a part of his written election filed with this office. There is no prescribed form; a letter accompanying the required contribution and stating the purpose will suffice.

It might be helpful to know, however, that withdrawal of accumulated contributions from the other system (e.g., State Employees' Retirement System under Government Code Section 20393) may effectively relinquish credit for such service in that system, for purposes of Section 75030.5, providing it occurs prior to retirement under the other system and terminates all rights therein (34 Ops. Cal. Atty. Gen. 138).

Section 75030.6 provides that a judge may not elect to receive credit for prior service under Section 75030.5 until he has served as a judge of a Municipal or higher Court for at least 6 years, or has been elected as such a judge. This restriction was effective October 1, 1961, and does not apply to any judge who was a member of the Judges' Retirement System on September 30, 1961.

The required contribution for a judge to claim credit for his prior service under Section 75030.5 is "a sum equal to the amount which would have been deducted" from his salary "had he been a judge during the time" for which he elects to receive credit for service as a public legal officer or constitutional officer, computed by applying to the rate of salary received by him during his first year on the court (i.e., on a Municipal or higher Court), the rate of deduction then applicable ($2\frac{1}{2}$% prior to May 1, 1962, and 4% thereafter), plus interest at 3% a year from the respective dates the retirement contributions would have been made to the date of payment.

Contributions are not required as to any period prior to the time that the Judges' Retirement Law has been in effect, which was August 1, 1937, in the case of a judge whose first service was on a Superior or higher Court, or September 1, 1941, in the case of a judge whose first service was on a Municipal Court (Ltr. Op. Cal. Atty. Gen. to Controller, Dec. 3, 1957; 20 Ops. Cal. Atty. Gen. 114). In selecting service for credit under Section 75030.5, a judge should specify particular service by dates; and where he has more prior service than he needs, he may select, insofar as is to his advantage, service prior to the date for which no contribution is required in his case (31 Ops. Cal. Atty. Gen. 204). Some limitation exists under Subdivisions (a) through (g) of Section 75025, which specify that the requisite number of years of service must have been within a certain number of years immediately preceding retirement. No such limitation exists in the case of the 20 years of service required at age 60 under Subdivision (h), however.

(c) General considerations--whether or when to claim prior service

Whether it is advantageous for a judge to contribute and claim credit for prior service, especially where it involves relinquishment of credit therefor under another retirement system, rests in the final analysis in the judgment of the particular individual. There is no time limit upon making the contribution and election under either Section 75029 or Section 75030.5 other than that it must be prior to retirement. Under Section 75030.5 interest accrues at 3%, but Section 75029 does not require interest.

Credit for additional service over and above that needed for retirement does not operate to increase the rate of the retirement allowance under Section 75032, but might increase the allowance under Article 3.6 (Sec. 75076).

Under Section 75025, eligibility to retire for age and service commences at age 60 with 20 years of service credited. The length of service required for retirement gradually decreases above the age of 65, as set forth in Section 75025, to age 70, at which time the requirement is 10 years of service. (Some limitation exists under Subdivisions (a) through (g) of Section 75025, which specify that the requisite number of years of service must have been within a certain number of years immediately preceding retirement--no such limitation exists in the case of the 20 years of service required at age 60 under Subdivision (h), however.)

Under Article 3.6 (Sections 75075-75079), a judge may elect to receive an increased allowance provided he meets the conditions therein (see "Benefits under Article 3.6", attached). If he has credit for 20 years of service for which he has contributed to the Judges' Retirement Fund, the allowance is 75%; otherwise the increased allowance is 65% (Sec. 75076).

The advisability of claiming credit for prior service should also be considered from other standpoints: (a) after a judge attains eligibility for retirement his surviving wife would be eligible for the retirement allowance specified in Section 75104.4, in the event of his death prior to retirement; (b) a judge electing under Article 5 (Secs. 75090-2) must have a minimum of 10 years of service credited for his surviving wife to be eligible for the allowance thereunder, in the event of his death prior to retirement; (c) length of service credited up to a maximum of 6 years would be a factor in computing the death benefit under Section 75104.5, in the event of death prior to retirement; or (d) length of service credited up to a maximum of 8 years, would be a factor in computing the retirement allowance under Section 75033. Length of service credited is no longer a factor in the event of disability retirement (Secs. 75060-75060.6), except as it might affect the amount of the allowance under Article 3.6.

Upon request, this office will compute the amount of contribution required. The request should specify the particular service by dates. The request should be accompanied by a certification as to the prior service from the county clerk or other appropriate official. In the case of service on the Municipal Court, a certification from the county clerk as to such service is also needed. Also, your birthdate would frequently be helpful in connection with your request.

(Rev. 5/62)

ALAN CRANSTON
STATE CONTROLLER

Benefits under Article 5 (Sections 75090-2)
Judges' Retirement Law

Under the provisions of Article 5--Sections 75090-2 (added by Chap. 2136, Stats. 1961) a judge may elect to provide a monthly allowance to his surviving spouse in the event he should die prior to becoming eligible for retirement, but after being credited with 10 or more years of service.

A judge may elect to come within the new Article 5 by filing a written notice thereof with the Secretary of State:

(a) On or before October 1, 1962, if he is a judge on September 15, 1961; or

(b) Within 6 months after becoming a judge, if he becomes a judge after September 15, 1961.

Any such election may thereafter be revoked by the judge and a reelection may be made at any time after such revocation. There is no prescribed form, but a suitable pattern for making the election is attached.

If a judge who so elects dies prior to retirement while serving as a judge, his surviving spouse shall receive a monthly allowance thereafter from the Judges' Retirement Fund until her death or remarriage:

(a) If the judge is credited with at least 10 but less than 20 years of service--1.625% of the salary of the judicial office, multiplied by the number of years of service credited; or

(b) If the judge is credited with 20 or more years of service and his surviving spouse is not eligible for an allowance under Section 75104.4--37½% of the salary of the judicial office.

The allowance is based upon the salary payable, at the time payment of the allowance falls due, to the judge holding the judicial office to which the deceased judge was last elected or appointed. For this purpose any fraction of a year equals one year. If this allowance is paid, no payment shall be made pursuant to Section 75104 or 75104.5.

The allowance is payable only if the judge is "credited" with at least 10 years of service (or 20 years in the case of the 37½% rate). While a judge may claim credit for his prior service as judge of an excluded court, or as public legal officer or constitutional officer, he is not "credited" with such service unless and until he claims credit and makes the necessary contributions, if any, for such service as provided in Sections 75029 and 75030.5. A summary, "Credit for Prior Service", outlining the requirements of Sections 75029 and 75030.5, is attached.

After a judge becomes eligible for retirement (for age and service), the monthly allowance to his surviving spouse would be payable under Section 75104.4 of another article and no allowance would be payable under this Article 5 (Sec. 75091).

Any judge so electing to come under the provisions of this Article 5 shall contribute $2 a month to the Judges' Retirement Fund, which shall be deducted from his monthly salary by the State Controller, or in the case of a municipal judge, by the county auditor. Unless a later date is specified in the notice of election, it is effective when filed with the Secretary of State, and the $2 contribution will be automatically deducted from the judge's salary commencing with the month in which the election is effective. Section 75092 further provides that the Legislature reserves the right to increase the rate of contribution in such amount as it may find appropriate.

(Note: There is another article having the same number [Article 5--Judges' Retirement Fund, Secs. 75100-97.)

ALAN CRANSTON
State Controller

4/23/63

JUDGES' RETIREMENT LAW
(Govt. Code §§ 75000-75109)

All judges of municipal and superior courts, district courts of appeal and the Supreme Court of this State are covered by the Judges' Retirement Law (judges of the superior and higher courts have been covered since the inception of the act in August 1937; judges of the municipal courts were included in September 1941). Coverage is effective upon becoming a judge, with contributions automatically deducted from his salary.

I. Service credited.

Judicial service. Basically, a judge is credited with the period of time that he has held office as a judge of any one or more of the covered courts (i.e., municipal or higher).

This includes service prior to the inclusion of the particular court in the system (August 1, 1937 in the case of a superior or higher court, or September 1, 1941 in the case of a municipal court), for which no contributions were required.

If a judge again becomes a judge after separating and withdrawing his contributions, he must return such contributions before regaining credit for such service.

Other prior service. A judge may claim credit for certain other prior service, provided he makes the required contribution, and is not credited with such service under any other retirement system (or withdraws and terminates all rights therein):

(1) For all of his service as judge of an "excluded court" under § 75029 (i.e., on a justice or police court).

(2) For all or any part of his service qualifying under § 75030.5, depending upon when he first became a judge of a municipal or higher court:

(a) As a "public legal officer" or a "constitutional officer" -- if he first became a judge prior to May 1, 1962.

(b) As an "elected state constitutional officer" (only) -- if he first became a judge on or after May 1, 1962.

Military service. Credit for time absent from his position as judge by reason of wartime service with the armed forces is authorized under certain conditions. Where he may claim credit for prior service under § 75029 or § 75030.5, this includes absence from a position covered thereby.

II. Contributions.

The basic contributions are a like percentage of the judge's salary, contributed by each the State and the judge (it was $2\frac{1}{2}$% from the inception in 1937, until increased to 4% effective May 1, 1962). Additional contributions from judges are specified in connection with elections available.

Judge's contributions. 4% of his State and/or county salary, by pay roll deduction.

Additional contributions required or permitted for prior service or other purposes:

(1) For credit for prior service as judge of an "excluded court" under § 75029, or as a constitutional or public legal officer under § 75030.5 [see detailed summary, "Credit for Prior Service"].

(2) For service for which contributions were not required, in order for it to count for purposes of the 75% rate of allowance under Article 3.6 [III, infra].

(3) For coverage under Article 5, to provide a widow's allowance in the event of death in office before attaining eligibility for retirement [V, infra].

(4) To make up the minimum 10 years' contributions required for retirement for age and service (§ 75026).

No contributions are required for judicial service prior to the inclusion of the court in the system, or for other prior service under § 75029 or § 75030.5 prior thereto (i.e., August 1, 1937 in the case of a judge whose first service was on a superior or higher court, or September 1, 1941 in the case of a judge whose first service was on a municipal court).

State's contributions. 4% of judicial salaries of all authorized positions, transferred monthly from the General Fund.

Section 75107 provides, however, that whenever it appears that the money in the Judges' Retirement Fund is likely to be insufficient to meet the obligations payable during the ensuing fiscal year, the State Controller shall report such condition of the fund to the Legislature at its next regular session, and "it shall be the duty and obligation" of the Legislature to appropriate such sums as may be necessary to meet the obligations payable during the ensuing fiscal year.

III. Retirement for age and service (§ 75025).

Eligibility to retire for age and service commences at age 60 with 20 years of service credited. The length of service required for retirement gradually decreases above age 65, to age 70 at which time the requirement is 10 years of service, but the lesser number of years of service required above age 65 must have been within a certain period immediately preceding retirement:

Age 70,	with	10	years	of	service	within	the	15	years	preceding retirement.
Age 69,	"	12	"	"	"	"	"	16	"	" "
Age 68,	"	14	"	"	"	"	"	18	"	" "
Age 67,	"	16	"	"	"	"	"	20	"	" "
Age 66,	"	18	"	"	"	"	"	22	"	" "
Age 60,	"	20	"	"	"	(without limitation as to time).				

Basic allowance (§ 75032). 50% of the salary, at the time payment of each allowance falls due, of the judicial office to which he was last elected, for the remainder of his life.

Under this allowance, no further amount is payable after his death unless, in lieu of the allowance for his life alone, at retirement the judge elects an actuarial equivalent under one of the optional settlements authorized (§§ 75070-2):

(1) A lesser allowance to judge for life, with guaranteed minimum of his accumulated contributions. If death intervenes, the balance to be paid to his surviving spouse or estate.

(2) A lesser allowance to judge for life, and thereafter the same amount to his surviving spouse for life.

(3) A lesser allowance to judge for life, and thereafter 50% thereof to his surviving spouse for life.

(4) Such other actuarial equivalent as he may select, subject to approval of the Controller.

The unmodified allowance being based on the salary of the judicial office from time to time, provision is made for adjustment of such optional allowances during their term to reflect any increase of the unmodified allowance due to change in salary.

Note: Better allowances are now available under Article 3.6, and no judge has retired at the basic allowance or elected an optional settlement in lieu thereof, since Article 3.6 became effective in 1959.

Article 3.6 allowances. A judge may elect to receive the better allowances accorded by Article 3.6:

(1) If he retires prior to attaining age 70, or

(2) Regardless of age if he was a judge on September 18, 1959, and

(a) retires within 5 years after September 18, 1959, or

(b) if not eligible to retire within the said 5-year period, he retires within 2 years after attaining eligibility.

The retirement allowance to a judge so qualifying under Article 3.6 is a percentage of the salary, at the time payment of each allowance falls due, of the judicial office to which he was last elected or appointed:

(1) If credited with 20 years or more of service for which he has contributed* -- 75%;

(2) Otherwise -- 65%.

This allowance is payable for the balance of the judge's life, with an allowance thereafter to his surviving spouse, if any, equal to one-half of his retirement allowance were he living, until her death or remarriage.

*Note: A judge is permitted to contribute for any credited service that did not require contributions, in order to qualify it for purposes of the higher rate of allowance.

Reduction of allowance. The retirement allowance of a judge retired for age and service shall be reduced:

By the amount of any compensation to which he becomes entitled as the incumbent of any public office.

By the amount of any compensation received by him while sitting on a court under assignment.

IV. Disability retirement.

A judge who is unable to discharge efficiently the duties of his office by reason of mental or physical disability of a permanent character may, with his consent, be retired for disability by approval of the Governor and the Chief Justice (§ 75060). Alternatively, he may be retired by the Supreme Court, after proceedings before the Commission on Judicial Qualifications, for disability of a permanent character seriously interfering with the performance of his duties (Const., Art. VI, § 10b).

The retirement allowances provided in the case of retirement for disability under § 75060 are the same as the allowances provided in the case of retirement for age and service, except as to possible reduction or termination of the allowance.

Reduction of allowance. The retirement allowance of a judge retired for disability is subject to termination:

While under age 65, if he is no longer so incapacitated (in the determination of the Commission on Judicial Qualifications) he is eligible for assignment to a court and his disability retirement allowance shall cease if he refuses assignment while he is not so incapacitated.

While under age 70, if he engages in the practice of law or other gainful occupation, his disability retirement allowance shall cease permanently (except as below).

or his retirement allowance shall be reduced:

By the amount of any compensation to which he becomes entitled as the incumbent of any public office.

By the amount of any compensation received by him while sitting on a court under assignment.

V. Death in office.

After eligible to retire (§ 75104.4). If a judge dies in office before retirement after becoming eligible for retirement for age and service, his surviving spouse shall receive an allowance equal to one-half of the retirement allowance payable to the judge were he living and retired, until her death or remarriage.

Before eligible to retire (Art. 5). Within 6 months after becoming a judge, a judge may elect coverage under Article 5 (requiring contribution of $2 per month by pay roll deduction) to provide a monthly allowance to his surviving spouse in the event he should die prior to becoming eligible for retirement but after being credited with 10 years or more of service. In such event the allowance to his surviving spouse is a percentage of the salary payable, at the time payment of each allowance falls due, of the judicial office to which the judge was last elected or appointed, until her death or remarriage:

(1) Credited with 10 to 20 years of service -- 1.625% for each year of service credited; or

(2) Credited with 20 or more years of service -- 37½%.

For purposes of Article 5 (only) a fraction of a year equals one year.

Otherwise. If a judge dies in office and no allowance is payable to his surviving spouse (under either of the above), the following are payable to his designated beneficiary or his estate:

(1) His accumulated contributions (§ 75104).

(2) A death benefit equal to one month's salary for each completed year of service, not to exceed one-half his annual salary (§ 75104.5).

VI. Separation.

Deferred retirement (§ 75033). If the service of a judge is discontinued other than by resignation, death, recall, impeachment or retirement, he may elect to leave his accumulated contributions in the fund, and upon attaining age 65, be retired, and receive a retirement allowance for the remainder of his life of 5% for each year of service credited, not to exceed 40%, of the salary at the time payment of each allowance falls due, of the judicial office last held by the judge. No further amount is payable after his death unless he elects an actuarial equivalent under one of the optional settlements [III, infra].

If a former judge who has left his accumulated contributions on deposit under § 75033 dies before retirement after becoming eligible for retirement under § 75033, his surviving spouse shall receive an allowance equal to one-half of the amount of the unmodified retirement allowance payable to the judge, were he living and retired, until her death or remarriage.

Otherwise (§ 75104). Where a judge resigns and is not qualified to, or does not elect to allow his contributions to remain on deposit, his accumulated contributions are refunded to him, and all rights in the system terminate.