

**MINUTES OF THE LADY LAKE
SPECIAL POLICE PENSION BOARD MEETING
LADY LAKE, FLORIDA**

August 8, 2016

The Police Pension Board Meeting was held in the Town Hall Commission Chambers at 409 Fennell Blvd., Lady Lake, Florida.

MEMBERS PRESENT: Chairperson/Member Captain Jason Brough; Member Captain Robert Tempesta; Member John Schmied; Member Leonard Cieciek, and Member Pete Chiasson

TOWN STAFF PRESENT: Kris Kollgaard, Town Manager; Pam Winegardner, Finance Director; and Carol Osborne, Staff Assistant to Town Clerk

Others Present: Mayor Ruth Kussard and Kevin Stone of Stone & Gerken, P.A.

1. Roll Call: Chairperson/Member Captain Jason Brough called the meeting to order at 3:00 p.m. with all members present.

2. Public Comment: Chairperson/Member Captain Brough asked if anyone in the audience had any comments or questions.

Town Manager Kris Kollgaard gave a quick overview of how the meeting was scheduled to proceed. She stated the interview with Ms. Jensen will be done by telephone and Mr. Stone will be present for his interview. Ms. Kollgaard stated that if the members can discuss the results and come to a decision today, the Town Manager will work with the attorney on the formal contract and move forward with the disability hearing.

3. Interviews for Police Pension Board Legal Services - Bonni Jensen of Klausner, Kaufman, Jensen & Levinson and Kevin Stone of Stone & Gerken, P.A.

Chairperson/Member Captain Brough announced that Ms. Jensen will be interviewing by telephone rather than in-person as it is a long drive from the Plantation area. He asked if the members would like to comment on anything from her proposal prior to the telephone interview.

Member Chiasson asked about the travel charges.

Chairperson/Member Captain Brough stated he also had questions regarding travel expenses, and that they should ask Ms. Jensen about the fees during the interview.

Telephone Interview - Bonni Jensen of Klausner, Kaufman, Jensen & Levinson

Chairperson/Member Captain Brough and the Board members introduced themselves and stated they have her proposal and fee schedule before them. Captain Brough asked Ms. Jensen if she would like to give a presentation or answer questions.

Ms. Jensen stated that there are not a lot of attorneys in the state that practice pension law; approximately four firms that she is aware of at this time. She stated she has been with Klausner, Kaufman since 2011, and has been practicing in this field since she was a clerk. Ms. Jensen

stated her firm has been working with pension law since the 1970's and have participated in each of the changes to Florida Statutes 175 and 185. She stated her firm also networks with other funds across the country, which provides valuable resources if problems come up. She asked if there were any questions.

Member Chiasson stated he understands the Board attorney's role in helping the members interpret rules and regulations. He asked what Ms. Jensen would consider her role as counsel to the members in interpreting or understanding the evidence presented in a disability case.

Ms. Jensen replied that it is really a two-part hearing process with a disability claim. She stated the firm could assist in gathering the information for a disability claim. The second issue would be assisting in locating a doctor to complete an independent medical evaluation, as not all doctors are willing to do this. Ms. Jensen stated the firm would prepare the background information for the members so they could review the records in an informal process, and would assist the members to make a presentation about the disability claim. If the members denied a claim, the firm would assist the Board in drafting an order regarding the decision, establish an appeal hearing if requested, and represent the Board.

Member Chiasson asked what role counsel would play regarding the investment side of this board.

Ms. Jensen replied the firm would not give financial advice, but would assist with reviewing applications and drafting investment policy statements, although the consultants sometime assist with that. The firm would follow up to make sure that is happening in that case. Ms. Jensen stated their role is to make sure the board is in compliance with state statutes, not the financial part of it.

Member Cieciek clarified that the board would have to hire special counsel if it denied a disability claim.

Ms. Jensen explained that the Board attorney cannot advise and be an advocate as well, so in an appeals process, she could advise but not be an advocate during the hearing.

Member Schmied questioned Ms. Jensen's fee for travel, showing as \$1,500 for travel to and from quarterly meetings; acknowledging that Plantation is quite a distance.

Ms. Jensen confirmed this fee, stating it would take a little over six hours' drive round trip.

Chairperson/Member Captain Brough mentioned the possibility of telephone conferencing in place of travel as was done in Brooksville, and as is being done now.

Ms. Jensen confirmed that she could do this, or could use Skype or FaceTime also if this was set up and available at Lady Lake. She stated if that was the case, she would only charge for the meeting time.

Chairperson/Member Captain Brough asked if there were any further questions or comments by the members or Ms. Jensen.

Ms. Jensen stated she would love to work with the Board, and thanked them for the opportunity to interview. The telephone connection was then terminated.

Chairperson/Member Captain Brough stated that Brooksville was just setting up a Skype account to enable them to see the attorney during meetings before he left there.

Ms. Kollgaard asked if the members would like to discuss this applicant or wait until after the second interview to discuss both.

The members agreed they would like to go ahead and interview Mr. Stone and discuss both applicants afterwards.

Interview - Kevin Stone of Stone & Gerken, P.A.

Chairperson/Member Captain Brough asked Mr. Stone if he would like to give a presentation or answer questions. The Board members introduced themselves to Mr. Stone.

Mr. Stone stated he has been with Stone & Gerken for ten years and has spent the entire time representing local governments in various capacities. He stated several of them have public pension programs and some participate in FRS. Mr. Stone stated he is currently the city attorney for the City of Umatilla, and it has the same 185 plan as the Town of Lady Lake and their pension board employs this board's previous attorney.

Mr. Stone stated he is general counsel for the City of Eustis' police and firefighter's pension board, and has handled everything from disability claims to contract negotiations, as well as keeping up with legislative updates.

Member Cieciek asked Mr. Stone to expound on his representation of the board for disability claims.

Mr. Stone replied that he was brought in as special litigation counsel for the Eustis police and firefighters' pension separately (separate boards) to litigate disability claims that had not been handled as well as they could have and ended up with trips to the courthouse. He stated he cleaned up some of the disability procedural issues. Mr. Stone stated his role in disability claims is as follows: 1) an initial disability claim is made to the board, 2) the board designates someone to respond to the applicant and request information on their claim to include medical records authorizations, 3) contact the medical providers used by the applicant over the past years, and 4) obtain and sort the records and ready them for presentation in a quasi-judicial proceeding so the board can find facts and make decisions about the permanent and total disability. He stated every disability claim is unique and some more challenging than others.

Mr. Stone explained that some attorneys will rely on plan administrators to do records collection and put together the packets for the board members, while others such as he and Mr. Christiansen are more involved. He stated that the board should dictate who is doing what; but make sure the work is not being duplicated and is being done efficiently.

Member Chiasson asked Mr. Stone to explain his role as counsel to this board in regard to evidence in a disability case.

Mr. Stone stated that because of the institutional structure of the board, they are judge, jury and defender of the plan, but should remain a neutral decision-maker while protecting the assets of the fund. He stated that even though he would represent the board as a neutral decision-maker,

he would be involved in some degree in identifying evidentiary issues and places where there would need to be additional exploration. He stated the initial hearing only provides for a presentation by the claimant and an opportunity to ask questions of the claimant. Mr. Stone stated the board's safeguard is the independent medical examination (IME), which is a review of records provided by the claimant by an independent doctor. He stated he would normally send an interrogatory to the chief of police or his/her designee to see if there is anything that does not seem right with the claim. This sometimes gives the attorney enough information to ask the right questions. Mr. Stone stated he also would normally invite a representative of the city, such as someone from the Human Resource department to give the city a voice. If issues are raised by the chief of police or his designee, or a representative of the city, those issues would be included in the packet prior to the disability hearing to let the board members know what questions to ask. Mr. Stone stated the board also has the power to hire an investigator, to direct its counsel to investigate other records, take depositions and do discovery in a full-scale lawsuit, but this is not warranted in many disability claims and wastes fund money, and ultimately taxpayers money.

Member Captain Tempesta stated that the board was previously told that counsel would act as the board's advisor, but if the members denied a disability claim during the initial hearing, they would have to hire another attorney to cover an appeal as it would be a conflict.

Mr. Stone stated that he is not aware of any case law for local government pension, although there is case law on city quasi-judicial proceedings generally, where there may be due process problems if the city's attorney or the decision-maker's lawyer is also taking a position in the claim, or defending it. He stated his position is that this does not extend to fact-finding and assisting the board in asking the right questions in their quasi-judicial capacity.

Ms. Kollgaard stated she believed the previous attorney may have been referring to if the disability claim is denied at a full hearing and is then appealed by the claimant, as it may go to court.

Mr. Stone stated that it would depend on the nature of the denial; whether the denial is based on a legal standard such as whether the disability is permanent or total, or the veracity of the claim itself. He stated there are times when the board attorney may have to declare a conflict.

Member Chiasson asked Mr. Stone about his hourly fee schedule for quarterly board meetings, and how many hours he may charge for preparation, travel and attending the quarterly meeting.

Mr. Stone estimated that when things are running smoothly, with no new legislation, no disability hearings, no change of investment managers or plan administrators to mess things up, it will not take much more than three and a half hours for preparation, travel and attendance at the meeting as his firm is closer than some.

Member Cieciek asked what an enlightened clerk position entails (included in resume).

Mr. Stone replied that the clerk's position was enlightening as he worked for a judge who was disbarred for some of his antics in the courtroom during his clerkship.

With no further questions, the members thanked Mr. Stone for coming and Mr. Stone thanked the board members for their time.

Chairperson/Member Captain Brough opened discussion on the three attorneys who submitted proposals. In summary, he stated that the first attorney has no experience with pension plans; the second attorney has a lot of experience, but is much further away and more expensive; and the third attorney is experienced, local and much less expensive.

Member Chiasson commented that Mr. Stone appears knowledgeable, polite and has relevant expertise. He stated that it appears he has less paperwork experience than Ms. Jensen, but more than Mr. Carraway, and falls in the middle in the way of experience, with the least expensive fees of all three.

Member Cieciek agreed with Mr. Chiasson's comments. He stated that the firm of Klausner, Kaufman, Jensen & Levinson is very large and this plan would be a small frog in a big pond, but that Stone & Gerken is more of a local firm and may be more in tune with this plan's needs.

Member Schmied asked Ms. Kollgaard if the contract for the board attorney would be for a specific amount of time. He asked if the contract could be drawn up for a six-month probationary term.

Ms. Kollgaard stated the term would be left up to the board, but the contracts are normally drawn up for a one or two-year term, with automatic renewal as long as both parties agreed. She stated that the contract would contain a clause that would give the board the right to terminate the agreement without cause with a 30-day notice, and the attorney would have the same right.

Chairperson/Member Captain Brough noted that the firm of Klausner, Kaufman, Jensen & Levinson included a sample contract in their proposal which included that clause and also stated the terms of the agreement could be revisited after six months.

Member Chiasson stated that he feels that the firm of Klausner, Kaufman, Jensen & Levinson is too far away and too expensive.

Member Schmied agreed, stating the members have a fiduciary responsibility to the fund, although there is no doubt they have a tremendous amount of experience.

Upon a motion by Member Cieciek, and a second by Member Chiasson, the Board selected Kevin Stone of Stone & Gerken, P.A., as per their proposal, to provide legal services for the Town of Lady Lake Police Pension Board by a vote of 5-0.

Ms. Kollgaard stated that if the board approves, she will notify Mr. Stone of their decision and will draw up the contract, and will then distribute it to the board members for their review. She asked that the members respond only to her with any questions or feedback. Ms. Kollgaard stated that if it is not a conflict, she will ask the Town's attorney to review it as well. And with the board's permission, she will also supply Mr. Stone with the disability packet to review and notify the claimant's attorney once Mr. Stone accepts the position.

Chairperson/Member Captain Brough asked if she will also notify the other attorneys of the board's selection, and Ms. Kollgaard agreed that she would.

Chairperson/Member Captain Brough stated that per the Rules of Operation, the board members are required to have some type of annual training. He stated he received notice from the state that an annual conference is coming up in Orlando and is free training specifically for this type

of board. He stated he will forward this information to the Town Manager, who can then forward it to the members.

Ms. Kollgaard stated that members can be reimbursed for their mileage from the police pension fund since it is a requirement for this volunteer board.

4. Adjourn: *With no further business to discuss, the meeting was adjourned at 3:47 p.m.*

Kristen Kollgaard, Town Clerk

Chairperson/Captain Jason Brough

Transcribed by Nancy Slaton, Deputy Town Clerk