

***Mark A. Porter, & Associates, PLLC***

Attorneys and Counselors at Law  
1457 East 12-Mile Road  
P. O. Box 71527  
Madison Heights, Michigan 48071-0527  
Office: (248) 547 - 1 - 911  
Fax: (248) 547 - 1917  
[www.map-law.com](http://www.map-law.com)

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**Allen Park Retirees Association – Updates At Courts – 2nd Lawsuit Filed**

**[1] Court Activity Since November 01, 2017**

When we last met, the City and former Emergency Manager's attorneys had filed motions to dismiss the rest of this case [called "*summary disposition*"]. The hearing was held on **November 28, 2017**, in front of Judge Hubbard. The Attorney General's office again claimed that all decisions in favor of the State and the State Treasurer also applied to the former Emergency Manager. The City of Allen Park, which has been sitting quietly and silently in this lawsuit since **October, 2013**, claimed that it held no liability for the changes in the retiree health insurance.

Both the AG's office and the City also claimed that none of the labor contracts and ordinances under which APRA members retired are enforceable. They claimed that "*lifetime*" benefits actually expire every 2-3 years, when the rest of the contracts expire for **active employees**.

Our counter-argument was that the State's release of the City on **January 27, 2017**, changed everything. Out of the 30 [+] pages of the Emergency Manager Act, the word "*temporary*" is only found once. Modifications and terminations of collective bargaining agreements are to be **temporary**. Nowhere does the EM Act state what happens to retirement benefits **after** the State leaves. We argued that – like a rubber band – the contracts and retirements "snap-back" into place.

To no surprise, however, on November 28th, Judge Hubbard granted the motions to dismiss by the State and the City. The Judge never got to the issues cited above – she simply ruled that the original Court of Claims decision in **September, 22, 2015**, applied to everyone – and forever.

**[2] The Court of Appeals and Wayne County Frustrations**

Our appeal of Judge Hubbard's decision was timely made to the Michigan Court of Appeals on **December 18, 2017**. The timely filed claim is actually just a few forms with the case name and Court case number – as well as proof that the Court Reporters have been notified to prepare all of the transcripts.

We had two separate judges at Wayne Circuit Court – meaning two separate court reporters. I filed both notices with "**Room 770**" at the Circuit Court using US Postal Service Priority Mail with Confirmed Delivery on **December 18, 2017** – and I confirmed their delivery online. Room 770 then managed to "lose" them, and the court reporters were never notified.

In early January, 2018, I got a warning letter from the Court of Appeals, and realized that the court reporters had not been contacted. I began sending repeated FAXes and phone calls to

Room 770, which finally resulted in getting phone calls from each of the two court reporters. The last of the transcripts were finally filed at the Wayne Circuit Court on **April 19, 2018**. The files of this case will now be transferred to the Michigan Court of Appeals on Grand Boulevard in Detroit. We now have until **mid-June** to assemble all of the information and file our briefs at that Court.

### **[3] The 2nd APRA Retiree Lawsuit is Filed at Wayne Circuit Court**

On **April 23, 2018**, we filed the second lawsuit, on behalf of Association President Dale Covert. All non-criminal cases at Wayne Circuit Court are now electronically filed. The Summons are automatically returned by E-Mail. That meant that we were able to serve the City Clerk on the same day that lawsuit was filed.

Because of the routing system at the Wayne Circuit Court, we again drew Judge Hubbard. This time, however, we have a brand new case, with contracts that were not part of the first, original lawsuit.

This case is simply based upon the release of the City from State control on **January 27, 2017**. Its length and allegations are much more lean and compact. Its claim is very simple. The Emergency Manager Act says that changes to labor contracts must be "temporary." Therefore, Dale's retirement benefits came back into effect when the State released the City.

For the time being, only Dale has been named as a Plaintiff, and we are now waiting to see how the City responds. Some kind of a response must be electronically filed at the Court no later than **Monday, May 14, 2018**.

### **[4] The Elephant [Literally] at the Michigan Supreme Court**

Macomb County is **100%** funded for retiree health insurance benefits – thanks to a bond program that was put into place during the last 2-years. The Macomb Retirees – building on the lawsuit by the Harper Woods Retirees – won their case in the Michigan Court of Appeals in 2017. Now – although flush with money – Macomb County has appealed the issue of retiree health insurance to the Michigan Supreme Court. The case is ***Kendzierski v. Macomb County***.

This case poses a direct threat to all public sector retiree insurance benefits across the State. All of the management forces have weighed in, trying to convince the Michigan Supreme Court to get rid of guaranteed retirement insurance benefits. They include the Michigan Municipal League, as well as County and Township Associations. It appears that the Supreme Court will decide on whether to "take up" the case during its Fall 2018, docket. ***There are Supreme Court elections this Fall – think VERY carefully before you vote to re-elect the same judges who "Rode Their Elephants" into Lansing !!***

Sincerely,

/s/ *Mark A. Porter*

Mark A. Porter  
Attorney for the APRA