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VANOVERBEKE  
MICHAUD &  
TIMMONY, P.C.

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ATTORNEYS AND COUNSELORS

MICHAEL J. VANOVERBEKE  
THOMAS C. MICHAUD  
JACK TIMMONY  
FRANCIS E. JUDD  
AARON L. CASTLE

79 ALFRED STREET  
DETROIT, MICHIGAN 48201  
TEL: 313-578-1200  
FAX: 313-578-1201  
WWW.VMTLAW.COM

## M A P E R S

### RECENT LEGAL ISSUES AND DECISIONS

#### SPRING 2010 CONFERENCE

This summary is presented to provide a general reference to recent legal decisions of interest to Michigan public retirement and healthcare plans.

#### ADMINISTRATION

**Brooks, et al. v. Detroit Police and Fire Retirement System, et al.**

*Michigan Court of Appeals - Decided April 20, 2010*                      *2010 Mich. App. LEXIS 695*

A member was terminated from employment and began application for early retirement benefits. He was reinstated to employment before his application was completed, and pursuant to Plan provisions he was treated as a new hire upon his reinstatement. The member sued the City and the Retirement System requesting that the Retirement System allow him to begin receiving his early retirement benefits. The Court of Appeals dismissed the member's case against the Retirement System and determined that because the member did not complete the process of applying for his pension, the Retirement System could neither grant nor deny his benefits. Therefore, the member did not suffer any injury from the Retirement System.

**Conkright v. Frommert, et al.**

*U.S. Supreme Court - Decided April 21, 2010*                      *2010 U.S. LEXIS 3479*

A group of rehired retirees brought an action against their former employer regarding the calculation of lump sum payments the retirees had received before they were rehired. The Supreme Court held that when a trust instrument gives the trustee authority to construe and interpret plan provisions, the trustee's interpretation will not be disturbed if reasonable. A deferential standard of review applies to a Plan Administrator's interpretation of the plan even when the Administrator's prior interpretation of plan provisions was found to violate applicable law.

**Gravelle v. Bank One Corp, et al.**

*6<sup>th</sup> Circuit Court of Appeals - Decided June 11, 2009*                      *2009 U.S. App. LEXIS 14552*

A beneficiary sued the Plan and the Plan Administrator after the Plan Administrator denied her request for 100% survivorship benefits. The Plan Administrator's denial was based on its use of the Summary Plan Description to interpret an ambiguous plan provision. The Court of Appeals upheld the denial and stated that in the absence of conflicting language, Summary Plan Descriptions provide a reasonable basis for a Plan Administrator's interpretation of the plan.

**Redd, et al. v. Brotherhood of the Maintenance of Way Employees Pension Plan, et al.**

*U.S. Dist. Court E.D. of Michigan - Decided March 31, 2010*    *2010 U.S. Dist. LEXIS 31671*

A group of retirees brought action against the Plan after the Plan Administrator retroactively decreased the retirees' pensions consistent with a new interpretation of Plan provisions. The Court reasoned that pension benefits calculated at time of retirement constituted "accrued benefits" under ERISA. Accordingly, the Court held that the Plan Administrator's reinterpretation of Plan provisions constituted an amendment to the Plan violating ERISA's anti-cutback provision.

**Richardson v. State Employees Retirement System**

*Michigan Court of Appeals - Decided April 13, 2010*

*2010 Mich. App. LEXIS 621*

The State Employees Retirement Board denied a surviving spouse's request for 100% survivorship benefits. At the time of retirement, the member had elected the Plan's 50% survivorship benefit, but a clerical error mistakenly provided for a 100% survivor benefit. The Court upheld the Retirement Board's denial, stating that the Board's denial was not arbitrary and capricious and was supported by sufficient evidence.

**Thornton v. Board of Trustees of the Int'l Bro. of Teamsters Supp. Ret. and Dis. Fund, et al.**

*6<sup>th</sup> Circuit Court of Appeals - Decided May 14, 2009*

*566 F.3d 597*

A retiree sued the Plan after the Board rescinded an increase of retirement benefits that was introduced after the individual had retired. The Court held that a post-retirement benefits increase does not constitute an "accrued benefit" under Section 411(a)(7)(A)(i) of the Internal Revenue Code or the anti-cutback provision of ERISA unless it is made in accordance with plan provisions in effect while the employee works in the service of the employer.

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**DISABILITY**

**Dockery v. USG Corp Retirement Plan**

*U.S. Dist. Court E.D. Michigan - Decided September 11, 2009*    *2009 U.S. Dist. LEXIS 82790*

A member appealed the Plan Administrator's decision to deny his application for disability retirement benefits. The Plan Administrator failed to offer a reasoned explanation for its decision. The Court found that this was an abuse of discretion because the Plan Administrator engaged in a selective review of the administrative record. Plan Administrators may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician.

**Nowacki v. State Employees' Retirement System**

*Michigan Supreme Court - Decided January 22, 2010*

*485 Mich. 1033*

The Retirement System requested that a duty disability retiree repay \$157,357.50 in overpayments after the Retirement System realized it had been mistakenly paying the retiree approximately \$6,000 per month for almost two years rather than the \$500.00 per month in benefits to which he was entitled. The member had in the past received duty disability benefits in the amount of approximately \$500.00 per month. The retiree had also been required to repay overpaid benefits in the past. The Supreme Court held that the member could not show that the Retirement System's miscalculation of his duty disability retirement benefits was the proximate cause of his alleged damages as he should have been aware that he was being overpaid.

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## DOMESTIC RELATIONS

### **Gonzales v. Gonzales**

*Michigan Court of Appeals - Decided December 3, 2009*

*2009 Mich. App. LEXIS 2521*

Pursuant to a divorce proceeding, an alternate payee was in receipt of her share of the participant's supplemental retirement benefits. The Court of Appeals ordered the participant's employer to stop paying the alternate payee her share of the member's supplemental retirement benefits and further ordered the alternate payee to repay amounts she had wrongfully received. The Court held that early retirement benefits are a separate and distinct component of a pension plan that must be specifically awarded in a judgment of divorce to be included in a QDRO.

### **Joyce v. Joyce**

*Michigan Court of Appeals - Decided November 19, 2009*

*2009 Mich. App. LEXIS 2402*

A participant appealed the trial court's determination that there had been a mutual mistake in the parties' consent judgment of divorce. The trial court's determination allowed for a reference in the parties' judgment of divorce to "early retirement subsidies" to include the "early retirement supplement" of the participant's retirement benefit. Although the two were separate and distinct components of the participant's pension, ERISA plans commonly do not distinguish between the two. The Court of Appeals upheld the trial court's decision noting that there was no evidence that any part of the participant's pension was to be excluded from the division of property.

### **Nale v. Ford Motor Co UAW Retirement Plan**

*U.S. Dist. Court E.D. Michigan - Decided March 31, 2010*

*2010 U.S. Dist. LEXIS 32001*

The Retirement Board denied a surviving spouse's application for survivorship benefits under Michigan's slayer statute. The surviving spouse had been convicted of voluntary manslaughter in the death of her husband. The Court upheld the Retirement Board's decision because voluntary manslaughter is an intentional killing under Michigan law and is sufficient to invoke application of Michigan's slayer statute and the federal common law slayer's rule.

### **Starling v. Starling**

*U.S. Dist. Court E.D. Michigan - Decided October 30, 2009*

*2009 U.S. Dist. LEXIS 101358*

A member's surviving spouse brought a breach of contract claim against her deceased husband's ex-wife because the ex-wife was in receipt of the husband's pension benefits. The deceased husband failed to change the designated survivor beneficiary of his pension after a divorce despite language in the judgment of divorce purporting to waive the ex-wife's right to any of his retirement benefits. The Court dismissed the claim because the ex-wife did not in any way control the administration of the Retirement Plan.

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## FREEDOM OF INFORMATION ACT/OPEN MEETINGS ACT

### **Howell Ed Ass'n MEA/NEA, et al. v. Howell Brd of Ed, et al.**

*Michigan Court of Appeals - Decided January 26, 2010*

*2010 Mich. App. LEXIS 143*

During collective bargaining, an individual requested personal and union-related emails of three teachers who were also union leaders. The school board initiated the lawsuit to determine if it was appropriate to disclose the communications. The Court of Appeals held that personal and internal union emails were not public records subject to disclosure under the FOIA. The Court reasoned that such a ruling would essentially render all personal emails sent by governmental employees while at work subject to public release upon request.

**Lewis v. St Joseph Cty Med Control Auth**

*Michigan Court of Appeals - Decided December 1, 2009*

*2009 Mich. App. LEXIS 2492*

The Medical Control Authority entered into a closed session to discuss disciplinary action against an employee even though the employee had requested that the discussion be held in an open meeting. While the Open Meetings Act permits a public body to conduct a closed meeting to hear complaints or charges and discuss discipline, suspension or dismissal against a public officer, employee or individual agent, it may do so only if the named individual requests a closed meeting. The Court of Appeals determined that the Defendant violated the Open Meetings Act as the employee had not requested a closed meeting.

**Michigan Attorney General Opinion No. 7235**

*Mike Cox, Attorney General - Issued October 9, 2009*

A city council established a committee of the whole to hear testimony from the public and city administration outside of a regular city council meeting. The Attorney General concluded that a committee or subcommittee that lacks a quorum when it actually convenes may listen to testimony from the public and municipality administration. While such a committee may ask questions or make comments when it properly notices a meeting under the Open Meeting Act, but lacks a quorum, the committee may not, however, render any decision in the absence of a quorum.

**Michigan Attorney General Opinion No. 7244**

*Mike Cox, Attorney General - Issued March 3, 2010*

After receiving a request, a public body must make open meeting minutes available for inspection within the time periods specified in the Open Meetings Act. The public body may, under rules established and recorded by the public body, request advance notice of and require supervision of any inspection of the public body's record copy of open meeting minutes to protect the record from loss, unauthorized alteration, mutilation, or destruction. Generally, neither advance notice nor supervision should be required for the inspection of copies of open meeting minutes.

**Myerscough v. Chippewa County Brd of Commissioners**

*Michigan Court of Appeals - Decided October 20, 2009*

*2009 Mich. App. LEXIS 2180*

A County resident, who was also a Township Supervisor within the County, alleged numerous violations of the Open Meetings Act by the County Board of Commissioners because they failed to provide for public comment at three separate meetings. To bring an action under the Open Meetings Act an individual must have suffered: (1) an "injury in fact"; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be remedied by a favorable decision. The Court of Appeals affirmed the trial court's holding that the County resident did not meet these criteria and therefore could not bring an action.

**Williams v. Michigan Pub School Employees Retirement Brd**

*Michigan Court of Appeals - Decided September 29, 2009*

*2009 Mich. App. LEXIS 2040*

An employee brought action against the Retirement Board for violations of the Open Meetings Act when the steering committee met without public notice regarding an issue she had brought before the Retirement Board. The steering committee of the Retirement Board was comprised of only four of twelve board members, and did not exercise any governmental or proprietary authority. The Court concluded that a steering committee of the Retirement Board that met prior to board meetings for the purpose of moving meetings along was not a public body subject to the Open Meetings Act. The Court reasoned that there was no evidence that the steering committee made conclusions on cases, decided how members would vote, decided how to vote as a group, or controlled the votes of the other eight board members.

THE FOREGOING SUMMARIES ARE PRESENTED FOR GENERAL INFORMATION PURPOSES ONLY AND ARE NOT TO BE CONSIDERED LEGAL ADVICE. PLEASE REFER TO THE TEXT OF THE FULL OPINION OR CONTACT VANOVERBEKE, MICHAUD & TIMMONY, P.C., AT THE ABOVE ADDRESS IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS MATERIAL.