

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 15-0320

OBER E. SPEAR,

Plaintiff and Appellant,

v.

MONTANA PUBLIC EMPLOYEE
RETIREMENT ADMINISTRATION
and the STATE OF MONTANA,

Respondents and Appellees.

BRIEF OF APPELLEES

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Gregory R. Todd, Presiding

APPEARANCES:

MELANIE A. SYMONS
Special Asst. Attorney General
100 N Park STE 200
P. O. Box 200131
Helena, MT 59620-0131
Fax No. 406-444-5428
E-mail: msymons@mt.gov

ATTORNEY FOR DEFENDANTS
AND APPELLEES

OBER E. SPEAR
769 Fallow Lane, Apt. 119
Billings, MT 59102

PLAINTIFF AND APPELLANT,
PRO SE

MATT COCHENOUR
Assistant Attorney General
215 N Sanders
P. O. Box 201401
Helena, MT 59620-1401

ATTORNEY FOR THE STATE

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUES 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

STANDARD OF REVIEW 6

ARGUMENT 7

SUMMARY OF THE ARGUMENT 7

 I. THE DISTRICT COURT CORRECTLY RULED THAT
 THE EVIDENCE, TOGETHER WITH THE MONTANA
 SUPREME COURT’S DECISION IN *SPEAR V. STATE*,
 2012 MT 161N, SUPPORTS A FINDING THAT OBER
 SPEAR IS NO LONGER EMPLOYED BY THE MONTANA
 HIGHWAY PATROL 8

 II. THE DISTRICT COURT ALSO CORRECTLY RULED
 THAT THE MONTANA PUBLIC EMPLOYEE RETIREMENT
 ADMINISTRATION DID NOT WRONGFULLY DISBURSE
 PAYMENTS FROM OBER SPEAR’S HIGHWAY PATROL
 OFFICERS’ RETIREMENT SYSTEM ACCOUNT 9

CONCLUSION 12

CERTIFICATE OF COMPLIANCE..... 13

CERTIFICATE OF SERVICE 13

TABLE OF AUTHORITIES

CASES

United States Supreme Court

<i>Moragne v. Sts. Marine Lines, Inc.</i> , 398 U.S. 375 (1970).....	10
---	----

Montana Supreme Court

<i>Allstate Ins. Co. v. Wagner-Ellsworth</i> , 2008 MT 240, 344 Mont. 445, 188 P.3d 1042	10
---	----

<i>Certain v. Tonn</i> , 2009 MT 330, 353 Mont. 21, 220 P.3d 384	10
---	----

<i>Denny Driscoll Boys Home v. State</i> , 227 Mont. 177, 737 P.2d 1150 (1987).....	6
--	---

<i>Fleming v. Fleming Farms</i> , 221 Mont. 237, 717 P.2d 1103 (1986).....	7
---	---

<i>Holter Lakeshores Homeowners' Ass'n v. Thurston</i> , 2009 MT 146, 350 Mont. 362, 207 P.3d 334	7
--	---

<i>Kaiser v. Town of Whitehall</i> , 221 Mont. 322, 718 P.2d 1341 (1986).....	6
--	---

<i>Richman v. Gehring Ranch Corp.</i> , 2001 MT 293, 307 Mont. 443, 37 P.3d 732	6
--	---

<i>Small v. McRae</i> , 200 Mont. 497, 651 P.2d 982 (1982).....	7
--	---

<i>Sparling v. Hitsman</i> , 99 Mont. 521, 44 P.2d 747 (1935).....	10
---	----

<i>Spear v. State Hwy. Patrol Ret. Bd.</i> , 149 Mont. 7, 422 P.2d 348 (1967).....	3
---	---

<i>Spear v. State</i> , 2012 MT 161N, 2012 Mont. <i>LEXIS</i> 210	1, 2, 7, 8, 9, 12
--	-------------------

OTHER AUTHORITIES

Federal

26 U.S.C. § 401(a)	4, 10
26 U.S.C. § 401(a)(9).....	5, 7, 10, 11

Montana

Montana Constitution

Mont. Const. Art. VIII, Sec. 15(2)	11
--	----

Montana Code Annotated

§ 2-9-105.....	12
§§ 19-2-303(30) and -303(53)	4
§ 19-2-908(1)(a).....	11, 12
§ 19-2-1007.....	5, 10, 12
§ 39-2-903.....	8
§§ 44-1-601 to 44-1-602	8
§§ 44-1-611 to 44-1-612.....	8

Montana Rules of Civil Procedure

Mont. R. Civ. P. 56(c)	6
------------------------------	---

STATEMENT OF THE ISSUES

The District Court correctly granted the motion of the Montana Public Employee Retirement Administration and the state of Montana for summary judgment. Specifically:

1. The District Court correctly ruled that the evidence, together with the Montana Supreme Court's decision in *Spear v. State*, 2012 MT 161N, 2012 Mont. LEXIS 210, supports a finding that Ober Spear is no longer employed by the Montana Highway Patrol.

2. The District Court also correctly ruled that the Montana Public Employee Retirement Administration did not wrongfully disburse payments from Ober Spear's Highway Patrol Officers' Retirement System (HPORS) account.

STATEMENT OF THE CASE

This case comes as a result of the Montana Public Employee Retirement Administration's (MPERA's) commencement of "required minimum distribution" (RMD) payments from the Montana Highway Patrol Officers' Retirement System (HPORS) to appellant, Ober Spear (Spear). Spear refused to cash the RMD payment and filed a complaint against MPERA and the state of Montana (collectively referred to as MPERA) on July 29, 2010, alleging the

wrongful disbursement of Spear's HPORS retirement account funds and requesting punitive damages.

RMDs are required April 1 of the year following the calendar year the member either (1) attains age 70 ½ or (2) terminates retirement system-covered employment, whichever occurs later. Spear believes he is “on leave without pay” from the Montana Highway Patrol (MHP) and that acceptance of the RMD payment(s) would be an admission by Spear that he is no longer employed by the MHP. However, this Court's unpublished July 24, 2012, decision in *Spear v. State*, 2012 MT 161N, ¶ 10, 2012 Mont. LEXIS 210¹ (hereinafter referred to as *Spear v. State* to avoid confusion with other cited opinions where Spear is a party), upholding the Thirteenth Judicial District Court's determination that Spear is no longer an employee of the MHP, renders this appeal essentially moot.

STATEMENT OF FACTS

Ober Spear was born in 1928 and exceeded the age of 70 ½ in 1999. (Admitted in Spear's Answer to the Plaintiff's [sic] Statement of Relevant Facts dated June 30, 2011 (D.C. Doc. 25, Fact No. 1; Appendix Ex. 1). Spear's

¹ Appellees recognize that *Spear v. State* is a nonciteable memorandum opinion. However, the “employment” issue decided in that case is the dispositive issue in this matter. For this reason, Appellees request the Court to reference the *Spear v. State* decision for the limited purpose of applying *stare decisis* in this matter and granting Appellees' request for summary judgment.

Answer responds in numerical order to the “Statement of Relevant Facts” in MPERA’s Brief in Support of Motion for Summary Judgment filed with the District Court on June 10, 2011 (D.C. Doc. 25, pp. 4-6; Appendix Ex. 2).

Spear was employed by the MHP as a highway patrol officer starting on September 11, 1958 and placed in a leave without pay status with the MHP in December 1962 (Appendix Ex.1; Fact No. 2). He applied with the State Highway Patrol Retirement Board for disability retirement on October 17, 1962. The application was ultimately denied and that denial was upheld by the Montana Supreme Court on January 10, 1967 (*Spear v. State Highway Patrol Retirement Board*, 149 Mont. 7, 422 P.2d 348 (1967); (D.C. Doc. 20, Ex. C; Appendix Ex. 3)).

Spear accepted employment with the Missoula County Sheriff’s Office as a dispatcher and worked for a short time as a dispatcher and polygraphist for Missoula County, Montana (Appendix Ex. 1; Fact No.4).

By letter dated November 27, 1964, Alex B. Stephenson, Supervisor of the Montana Highway Patrol, notified Spear that the Montana Highway Patrol Board would be unable to reinstate Mr. Spear as a Patrolman because he was apparently not of sound and active physical condition. (D.C. Doc. 20, Ex. D; Appendix Ex. 4).

Additionally, Montana Highway Patrol Colonel Mike Tooley certified on August 31, 2009, that Ober Spear was no longer an employee with the Highway Patrol and that he had not been an employee of the Highway Patrol during Colonel Tooley's tenure with the Patrol, starting in 1982 (D.C. Doc. 20; Ex. E; Appendix Ex. 5).

Although Spear does not agree (Appendix Ex. 1, Fact No. 6; Appendix Ex. 2), MPERA contends Spear is currently an inactive member of the Highway Patrol Officers' Retirement System (HPORS). "Inactive member" means "a member who terminates service and does not retire or take a refund of the member's accumulated contributions." § 19-2-303(30), MCA. "Termination of service" for retirement purposes is defined at §19-2-303(53), MCA as a complete severance of covered employment for at least 30 days with no agreement to return in the future and the complete payout of all compensation owed. Spear has never claimed that he is owed compensation from MHP and in fact contends that he does not need to receive compensation in order to be in an employment relationship (Appellant's Opening Brief, p. 3).

HPORS is a qualified Internal Revenue Code (IRC) § 401(a) (26 U.S.C. § 401(a)) retirement plan which provides its members the opportunity to make tax-deferred contributions and to earn tax-deferred interest on those contributions, in order to fund their retirement benefit (IRS Determination

Letter dated March 3, 2000; D.C. Doc. 20, Exhibit I; Appendix Ex. 6). MPERA must administer HPORS according to Internal Revenue Service requirements in order to remain a tax qualified retirement plan.

MPERA's tax counsel, Terry A. M. Mumford and Albert J. Lee of Ice Miller LLP issued an opinion on June 7, 2010, instructing MPERA that pursuant to Internal Revenue Code § 401(a)(9) (26 U.S.C. § 401(a)(9)) and Mont. Code Ann. § 19-2-1007, Spear was required to begin to take distributions from HPORS no later than April 1 of the year following the calendar year he either (1) attained age 70½; or (2) terminated HPORS-covered employment, whichever occurred later (D.C. Doc. 20, Ex. F; Appendix Ex. 7).

MPERA determined that Spear was terminated from employment in December 1962 and turned age 70 ½ in 1999. Therefore, his required minimum distributions should have commenced on or before April 1, 2000 and continued every year thereafter (D.C. Doc. 20, Exhibit G; Appendix Ex. 8). Pursuant to Ice Miller's opinion and advice, MPERA paid Spear his required minimum distribution payments for 1999 through 2010, less federal taxes owed, by check dated July 19, 2010 (D.C. Doc. 20, Exhibit H; Appendix Ex. 9).

Spear refused to cash the check and filed a complaint against MPERA alleging wrongful disbursement of retirement funds on July 29, 2010 (D.C. Doc. 1; Appendix Ex. 10). Spear also filed a complaint against the State of

Montana and the Montana Highway Patrol alleging “wrongful dismissal”. (D.C. Doc. 20, Ex. K; Appendix Ex. 11). Thirteenth Judicial District Court Judge Susan Watters found and this Court confirmed in *Spear v. State*, ¶ 10 that Spear’s employment with MHP was terminated in 1962 (Appendix Ex. 12).

STANDARD OF REVIEW

A motion for summary judgment can be granted only if the moving party establishes the lack of any genuine issue of material fact and entitlement to judgment as a matter of law. Mont. R. Civ. P. 56(c); *Holter Lakeshores Homeowners Ass’n v. Thurston*, 2009 MT 146, ¶ 17, 350 Mont. 362, 207 P.3d 334(citing *Richman v. Gehring Ranch Corp.*, 2001 MT 293, ¶ 14, 307 Mont. 443, 37 P.3d 732).

This Court provided a detailed analysis of the summary judgment test in *Denny Driscoll Boys Home v. State*, 227 Mont. 177, 178-179, 737 P.2d 1150, 1151 (1987). The lack of any genuine issue of material fact can be supported by the pleadings, depositions, answers to discovery and admissions on file, and affidavits. Mont. R. Civ. P. 56(c). The moving party has the burden of making a clear showing of the absence of any genuine issue of material fact. *Kaiser v. Town of Whitehall*, 221 Mont. 322, 325, 718 P.2d 1341, 1342 (1986). Once the moving party meets this initial burden of proof, the opposing party must produce substantial evidence raising a genuine issue of material fact. *Holter*,

2009 MT 146, ¶ 17. Bare assertions and conclusory statements are not sufficient to defeat a motion for summary judgment. *Small v. McRae*, 200 Mont. 497, 522, 651 P.2d 982, 995 (1982). The opposing party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy nor merely suspicions. *Fleming v. Fleming Farms, Inc.*, 221 Mont. 237, 241, 717 P.2d 1103, 1106 (1986).

ARGUMENT

SUMMARY OF THE ARGUMENT

The facts of this case support a determination that Spear is no longer an employee of the MHP. Based on those facts, District Judge Todd correctly determined that MPERA totally repudiated any of Spear's allegations regarding his alleged continued employment with the MHP. Judge Todd further determined that this Court's decision in *Spear v. State* supports granting summary judgment against Spear based on the doctrine of *stare decisis*. Because he is no longer an employee of the MHP, MPERA was required by IRC 401(a)(9) (26 U.S.C. § 401(a)(9)) to issue RMD payments to Spear and therefore did not wrongfully or maliciously disburse funds from Spear's HPORS retirement account.

I. THE DISTRICT COURT CORRECTLY RULED THAT THE EVIDENCE, TOGETHER WITH THE MONTANA SUPREME COURT'S DECISION IN SPEAR V. STATE, 2012 MT 161N, SUPPORTS A FINDING THAT OBER SPEAR IS NO LONGER EMPLOYED BY THE MONTANA HIGHWAY PATROL

Both issues raised by Spear contest the District Court's finding that Spear is no longer employed by the MHP. Despite Spear's unsupported assertions to the contrary, the facts before this Court support the District Court's determination that Spear has not been employed by MHP since at least 1982, but most likely 1962. Spear stopped working for MHP in 1962 and filed for disability retirement. Although the application was denied, Spear never returned to work with the MHP after December 31, 1962. However, he did serve a short time as a dispatcher for the Missoula County Sheriff's Department. Alex Stephenson, Supervisor of the MHP, notified Spear in November of 1964 that he would not be reinstated as a Patrolman due to his physical condition. Colonel Tooley also certified to MPERA that Spear had not been an employee of the MHP since at least 1982.

In his argument, Spear alleges that he has been continuously on "leave without pay" or in "limbo" since 1962 and that as a permanently appointed MHP officer, he remains employed by the MHP. Spear cites Mont. Code Ann. § 39-2-903, §§ 44-1-601 to 44-1-602, and §§ 44-1-611 to 44-1-612 in support of his position. However, he fails to mention that this Court has already

considered those same arguments and ruled against him in *Spear v. State*, 2012 MT 161N.

In *Spear v. State*, this Court concurred with the District Court's dismissal of Spear's wrongful discharge claim against MHP because "Spear's employment had been 'severed' in 1962 when he quit reporting to duty" and that a "March 2000 letter effectively had put him on notice that MHP no longer consider him an employee." *Spear v. State*, ¶ 8. Thus, the one-year statute of limitations for a wrongful discharge case had long since expired.

Relying on *Spear v. State* and the doctrines of claim and issue preclusion, District Judge Gustafson likewise dismissed Spear's July 27, 2012 Complaint alleging "termination of tenure without cause" stating ". . . it is clear this action is identical to Spear's prior action in DV 10-543 which was fully adjudicated." *Spear v. Montana. Highway Patrol*, No. DV 12-0940, (MT. 13th Jud. Dist. Court Feb. 26, 2013) (dismissed).

II. THE DISTRICT COURT ALSO CORRECTLY RULED THAT THE MONTANA PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION DID NOT WRONGFULLY DISBURSE PAYMENTS FROM OBER SPEAR'S HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM

The doctrine of *stare decisis* provides that:

[P]rinciples of law should be positively and definitely settled in order that courts[,] lawyers, and above all, citizens may have some assurance that important legal principles involving their highest

interests shall not be changed from day to day, with the resultant disorders that of necessity must accrue from such changes.

Certain v. Tonn, 2009 MT 330, ¶ 19, 353 Mont. 21, 220 P.3d 384, citing *Sparling v. Hitsman*, 99 Mont. 521, 525, 44 P.2d 747, 749 (1935).

Although *stare decisis* is not a rigid doctrine, “weighty considerations underlie the principle that courts should not lightly overrule past decisions.” *Certain*, 220 P.3d ¶ 19, citing *Allstate Ins. Co. v. Wagner-Ellsworth*, 2008 MT 240, ¶ 39, 344 Mont. 445, 188 P.3d 1042 (quoting *Moragne v. Sts. Marine Lines, Inc.*, 398 U.S. 375, 403 (1970)).

Three years ago, relying on many of the same facts now before it, this Court determined that as of December 1962, Spear was no longer an employee of the MHP. Based on that determination and the undisputed facts in the record of this case, the District Court order finding that Spear is no longer employed by the MHP should be affirmed.

As an Internal Revenue Code (IRC) section 401(a) (26 U.S.C. § 401(a)) qualified retirement plan, HPORS must comply with the required minimum distribution mandates found in IRC § 401(a)(9) (26 U.S.C. § 401(a)(9)) and adopted in Mont. Code Ann. § 19-2-1007. Specifically, a participant who has tax-deferred contributions or interest in a pension plan must begin to take distributions from the plan no later than April 1 of the year following the calendar year in which the member either (1) attains age 70 ½ or (2) terminates

employment with an MPERA-covered employer, whichever occurs last. The April 1 date of the applicable calendar year is considered “the beginning date” for the member.

Spear attained age 70½ in January 1999. Therefore, Spear’s “beginning date” for required minimum distribution purposes was April 1, 2000. MPERA has repeatedly attempted to pay retirement benefits to Spear based on his “beginning date”. Spear has never cashed those checks and instead filed the underlying action against MPERA alleging wrongful disbursement of funds.

As fiduciaries of the public retirement systems it administers (Mont. Const. Art. VIII, Sec. 15(2)), the Montana Public Employees’ Retirement Board and its administrative staff, MPERA, were required to commence payment of Spear’s HPORS account to Spear or risk HPORS being found in violation of the Internal Revenue Code and losing its tax-qualification status. See Mont. Code Ann. § 19-2-908(1)(a): “[T]he board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.”

Therefore, the distribution of retirement funds to Spear is required by federal and Montana law. There is nothing “wrongful” or “malicious” on which to base this Complaint. Additionally, Spear’s request for punitive damages should be denied as MPERA has done nothing wrong. Even if MPERA’s

activities were not supported by law, MPERA, as a state agency, is immune from exemplary and punitive damages under Mont. Code Ann. § 2-9-105, MCA.

CONCLUSION

There are no genuine issues of material of fact. It is abundantly clear from the documents presented and this Court's decision in *Spear v. State* that Ober Spear has not been an employee of the Montana Highway Patrol since substantially before he turned 70 ½ years of age. Pursuant to IRC § 401(a)(9) (26 U.S.C. § 401(a)(9)) and Mont. Code Ann. §§ 19-2-908 and 19-2-1007, MPERA was required to commence required minimum distribution payments in April of the year following the year he turned 70 ½, April 2000. MPERA is entitled to summary judgment in this case as a matter of law.

RESPECTFULLY SUBMITTED this 22nd day of July, 2015.

Melanie A. Symons
Special Assistant Attorney General
for the State of Montana
100 N. Park Avenue, Suite 200
P O Box 200131
Helena MT 59620-0131

By _____
Melanie A. Symons

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Answer Brief of Respondent is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,012 words, excluding Certificate of Service and Certificate of Compliance.

MELANIE A SYMONS

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellees to be mailed to:

Mr. Ober E. Spear
769 Fallow Ln., Apt. 119
Billings, MT 59102

DATED: _____

RECEIVED

AUG 03 2015

MPERA

Name

Ober E. Spear

Billings, Mt 59102

City

State

Zip

769 Fallow Ln. Apt. 119

[e-mail address]

Pro Se

[Designation of Party]

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 15-0320

[to be assigned by Clerk of Supreme Court]

Ober E. Spear

Appellant,

RESPONSE TO THE

BRIEF OF APPELLES

v.

State of Montana
and Montana Public Employee

Retirement Administration

Appellee.

Prior courts have ruled that the employer-employee relationship cease when their monetary compensation stops (MCA 39-3-903). This is the basis the appellee's have used to submit their evidence which the courts have used to rule the plaintiff would lose his employee status as being on time off without



pay or to day called administrative leave.

Montana Highway Patrol Officers are employed under statute MCA 44-1-601 & 44-1-611 (Exhibit A). Under these statutes after they receive their permanent appointment employee status they can only lose that status by positive action provided in statute MCA 44-1-612 (Exhibit A).

The Plaintiff prays that the MONTANA SUPREME COURT will deny the Appelles brief and grant the Plaintiff his day in District Court, 13 Judicial District, County of Yellowstone a trial by jury to determine which statute MCA 39-3-309, or statutes MCA 44-1-601, MCA 44-1-611, MCA 44-1-612 apply to the the Montana Highway Patrol Officers.

Respectfully submitted this 30th day of July, 2015.

Ober E. Spear

Ober E. Spear



THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND BURGUNDY ARE PRESENT.

90 0036 0929

5704824

83 104
B20

MONTANA

STATE OF MONTANA
TREASURY

MEMBER CODE: 807 DOLLARS AND CENTS

112466

\$0.00 *****

\$0.00 *****

AMOUNT

Janet P. Spear

PAYABLE
THROUGH
U.S. BANK

⑈5704824⑈ ⑈098001046⑈

137⑈

Check #: 5704824
Location: 662-265
Agency: 662
State of Montana
PO Box 200127
Helena MT 59620-0127

Presort First-Class Mail
US Postage Paid
Permit #89
Helena, MT

6665

RETURN SERVICE REQUESTED

LORETTA E SPEAR
7607 Trego PL
Billings, MT 59106



STATE OF MONTANA

90-0038/0929

5697797

93-104
920

DEPT OF ADMINISTRATION - STATE PAYROLL
VOID 180 DAYS AFTER ISSUE DATE

NUMBER	DATE	LOCATION	EMPLOYEE CODE	DOLLARS AND CENTS
5697797	07/01/2009	662	012466	\$0.00 *****

\$0.00 *****

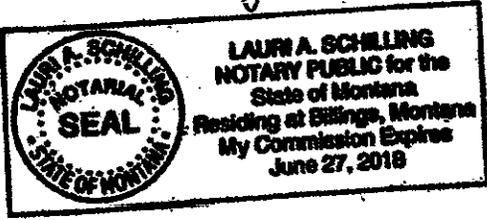
***** AND 00/100 DOLLARS *****
PAY LORETTA E SPEAR
TO THE 7407 Trego PL
ORDER OF: Billings, MT 59106

PAYABLE
THROUGH
U.S. BANK

AMOUNT
Janet R. Kelly

⑈5697797⑈ ⑆092001046⑆ 137⑈

State of Montana
County of Yellowstone
I certify this to be a true and correct copy of
check # 5697797 payable to Loretta E. Spear, made
by me on May 13, 2015



Laura A. Schilling

Exhibit C

CERTIFICATE OF SERVICE

I certify that I filed this

Petition

Motion

Other RESPONSE TO THE BRIEF OF APPELLES

[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Yellowstone County Clerk of Court
P.O.Box 35030
Billings, Mt 59107

MELANIE A. SYMONS

[Name of opposing counsel]

Special Asst. Attorney General

P.O.Box 200131

Helena, Mt 59620-0131

[Address]

Counsel for MONTANA PUBLIC EMPLOYEE
RETIREMENT ADMINISTRATION

MATT COCHENOUR

Assistant Attorney General

ATTORNEY FOR THE STATE

P.O.Box 201401

Helena, Mt 59620-1401

[Address]

DATED this 30th day of July, 2015.

Ober E Spear

[Signature]

Ober E. Spear

[Print name]

