

**MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES  
OF THE  
TAMPA FIREFIGHTERS & POLICE OFFICERS PENSION BOARD  
3001 North Boulevard  
Tampa, FL 33603 (813) 274-8550  
Thursday, April 23, 2009 1:30 p.m.**

The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa met in the Pension Office Conference Room on Thursday, April 23, 2009 at 1:30 p.m. for a regular meeting with the following members present:

Patrick Lynch, Chairman	Mark McRae
Mark Bogush, Vice Chairman	Jimmy Meier
John Moors, Secretary	Cindy Miller
Sharon Fox	Tracy Walker
P.J. Gray	

Also present were Dr. Bruce Bohnker, Medical Director, Mr. Jay Bowen, Investment Manager, Mr. Ron Cohen, Board Counsel, Mr. Mark Lenker, CPA, and active and retired plan members.

1. Approval of the minutes of the March 26, 2009 board meeting. **It was moved by Mr. Moors, seconded by Ms. Fox and by unanimous vote to approve the minutes of the March 26, 2009 board meeting as written.**

**Consent Agenda** Items on the consent agenda shall be acted upon in one motion. If an item requires additional discussion, that item shall be removed from the consent agenda for discussion. [Items 2 – 5]. **It was moved by Mr. Gray, seconded by Mr. Walker and by unanimous vote to approve consent agenda items 2 through 5.**

2. Ratified pension benefits.
3. Approved payment to Counsel R. Cohen for legal services rendered during March 2009 in the amounts of:
  - a. \$5,205.81 General Counsel
  - b. \$6,696.25 Parker lawsuit
  - c. \$632.50 Pena lawsuit
4. Bi-ennial (every other year) Pension Verification Questionnaires (PVQ) mailed 2/13/2009, 2nd notices mailed 3/18/2009 to 235 non-respondents, 3rd and final notices sent certified mail, return receipt requested on 4/7/09 to 76 non-respondents, followed by telephone campaign.
  - a. Noted receipt of memo dated 4/15/2009, as of 4/15/2009 at noon, 37 names listed remain outstanding.
5. Noted receipt of flyer for educational sessions to be conducted by Jeff Helms in May at The Corporate Training Center at Hillsborough Community College (HCC) on Davis Islands, 39 Columbia Drive, Tampa, FL 33606.
  - a. Wednesday 05/06/2009 10:00 am & 7:00 pm
  - b. Thursday 05/07/2009 10:00 am & 2:00 pm

Medical Disability

6. Initial hearing for LOD disability applicant David Bjelke, TPD. Noted receipt of bate-stamped disability application, qualifying letter, notices of injury, pre-employment physical, police officer job description, disability process timeline, summary review outline by independent medical case manager, sample letter to Medical Board, Medical Board reports, and Medical Director's summary.

Mr. Bjelke was sworn in and responded to questions from the board. Mr. Meier referred to page 35 which stated that Mr. Bjelke is a former deputy of Pasco County. Mr. Meier asked if there was ever any injury similar to the one that he currently suffers from? Mr. Bjelke said no. Mr. Gray referred to page 70 and asked why Dr. Yamokoski's medical records are unavailable? Ms. Campbell stated that the doctor was a sole practitioner and has died so his records are not available. Mr. Lynch followed, saying that this isn't the first time a situation like this has occurred.

**It was moved by Mr. Meier, seconded by Ms. Fox and by unanimous vote that the board finds that there is a disability which permanently incapacitates Mr. Bjelke from the regular and continuous duties of a police officer.**

**It was moved by Mr. Meier, seconded by Mr. Gray and by unanimous vote that the board finds that the disability was incurred in the line of duty.**

**It was moved by Mr. Meier, seconded by Ms. Fox and by unanimous vote to grant a line of duty (LOD) disability to Mr. Bjelke for a shoulder injury effective close of business today.**

7. Initial hearing for LOD disability applicant Michael Brower, TPD. Noted receipt of bate-stamped disability application, qualifying letter, notices of injury, pre-employment physical, police officer job description, disability process timeline, summary review outline by independent medical case manager, sample letter to Medical Board, section 112.18 Florida Statutes presumption language, Medical Board reports, and Medical Director's summary.

Mr. Brower was sworn in and responded to questions from the board. Mr. Lynch, referring to page 89, asked Dr. Bohnker if all three of the doctors of the Medical Board saw the extra test that was performed? Dr. Bohnker responded that two of the three doctors requested the test, but all three doctors saw the results. Ms. Campbell explained that Dr. Bohnker provided Dr. Dormois with additional information about the pension fund's California Post medical standards for post-offer, pre-employment medicals. Dr. Bohnker explained that the standard requires that a police officer be able to achieve 12 MET; MET being a metabolic unit of measurement of oxygen consumption of the body per minute per body surface area. Mr. Brower was able to reach only 8.7 MET. Ms. Fox asked if this information will be presented to all of the doctors in the future? Dr. Bohnker agreed that it could be. Ms. Campbell elucidated that the medical standards are an extensive amount of information – about a 3" thick notebook – and asked what precisely would be furnished? Mr. Lynch asked Dr. Bohnker what kind of document he gave to the doctor in this situation? Was it a quick reference? Dr. Bohnker replied that it was 2 pages.

Mr. Meier addressed page 2 of the addition to the COMBI report. The report said that Dr. Mokotoff believed there is a cardiac disability, but did not see why Mr. Brower could not return to work. Did he mean that he could return to work as a full time employee? Dr. Bohnker confirmed that his understanding is that Dr. Mokotoff said that there is permanent damage, there is a disability, but Dr. Mokotoff believes Mr.

Brower can go back to work. People who have had heart attacks often return back to work full time. Dr. Mokotoff is saying that there is something wrong with his heart, but it could potentially be overcome. Dr. Bohnker noted that two of three doctors initially felt that Mr. Brower could work his way back to full duty. Mr. Gray asked why Mr. Brower is at MMI if he can improve? Dr. Bohnker restated that Mr. Brower is at 8.7 MET now, but can he make it back to 12? Is that a reasonable medical expectation? Ms. Fox asked if Dr. Mokotoff also received this information? Dr. Bohnker confirmed that Dr. Mokotoff did receive it.

Dr. Bohnker continued by saying that some people feel emotionally that they cannot do things. It's what you call "cardiac confidence level." The issue of being "cardiac crippled" is a vague issue, but a real issue. The important question is, can you do everything you need to do all of the time? Mr. Gray asked if Mr. Brower is disabled emotionally, but not physically? Dr. Bohnker said that this appears to be more of a confidence disability rather than an emotional disability. Mr. Gray asked if that is something that can be overcome? Dr. Bohnker replied that is not easily done. Mr. Moors pointed out that the doctor said that Mr. Brower is permanently incapacitated *physically* and emotionally.

Ms. Fox referenced page 74 where Dr. Casellas reported that the patient has shown significant CAD (coronary artery disease) and is unable to perform the following continuous duties of a police officer including running and lifting over 20 pounds. Ms. Campbell asked Dr. Bohnker if Mr. Brower, in his current medical condition, would be able to pass the New Hire Post-Offer, Pre-Employment Physical? Dr. Bohnker attested that people who cannot achieve 12 MET are declined. Ms. Campbell introduced the concept of estoppel, saying that her understanding is that one can't be too disabled to work and then be fired, but then not be disabled enough for a disability pension and left out in the cold with nothing. Mr. Cohen entered the conversation by saying that estoppel is the idea that a person is terminated for not being able to fulfill duties due to physical reasons, but the pension board says that he or she is not permanently and totally disabled. The issue is the permanency not the totality.

Mr. Lynch then inquired about the yearly physicals given to the firefighters, asking if these include a stress test? How do we handle a bunch of cops that can't meet the 12 MET requirement? Dr. Bohnker explained that the symptoms of this condition are shortness of breath, chest pain, and fatigue. Mr. Lynch asked if he and the other police trustees could perform at only 8 MET, should they then expect other symptoms? Dr. Bohnker said yes. Mr. Gray asked about the additional stress test; at some point Mr. Brower stopped due to fatigue. Can the doctors prove the fatigue other than Mr. Brower stopping himself? Dr. Bohnker explained that Mr. Brower achieved 100% of the expected heart rate. Mr. Lynch asked if during the stress test Mr. Brower just quit? Can his heart rate or blood pressure prove that he wasn't faking? Dr. Bohnker clarified that the maximum heart rate is 220 minus your age.

Mr. McRae asked Mr. Cohen, in relation to the heart and lung bill, what is our responsibility as far as the presumption goes when tobacco use is involved? Mr. Cohen stated that the presumption is in the line of duty, but the presumption can be subject to a rebuttal with substantial evidence. It is presumed that the condition occurred in the line of duty, but if there is evidence that it is from another incident, such as smoking, could overcome the presumption.

Ms. Campbell asked Mr. Brower when he reaches one year of light duty after reaching MMI? Mr. Brower responded he reaches it tomorrow. Mr. Lynch asked how long his extension is? Mr. Brower said 3 months. Ms. Campbell explained that we have had issues like this in the past. Ms. Fox reiterated that, according to her reading, not one of the doctors believes there isn't a disability.

Mr. Bogush said that the case isn't clean and it never will be. You only have one chance when your heart is concerned. There is a difference between the tests and what goes on in the streets. The members of the board know he has had a heart attack, there is damage to his heart and that it won't get any better, he has a disability, and the doctors say he is limited. It is up to the board to determine what happens in the streets

versus a seven-minute treadmill test. Mr. Lynch agreed with Mr. Bogush and then asked him if he is a paramedic? Mr. Bogush confirmed that he is.

Mr. Meier asked what Mr. Brower's MET was when he was hired? Dr. Bohnker relayed that Mr. Brower was at 14 MET. Mr. Gray addressed Mr. Cohen by agreeing that all three doctors said that there is a disability but two of three said that he could return to duty. He stopped the test on his own; isn't it Mr. Brower's responsibility to prove the disability? Mr. Cohen advised that the burden of proof is in fact on the disability applicant, and the determination is made by each trustee. Mr. Walker said that Mr. Brower reached 102% of his heart rate. Once a person has four stents, it is time to go home. Mr. Walker then asked Dr. Bohnker if there is any reason to believe in two years that he can get to 12 MET? Dr. Bohnker said that would be unrealistic.

**It was moved by Mr. Meier, seconded by Mr. Walker that the board finds that there is a disability which permanently incapacitates Mr. Brower from the regular and continuous duties of a police officer. Upon voting, the motion carried by a vote of 7-1 with Mr. Bogush, Ms. Fox, Mr. Lynch, Mr. Meier, Mr. McRae, Mr. Moors and Mr. Walker in favor of the motion and Mr. Gray opposed to the motion.**

**It was moved by Mr. Meier, seconded by Mr. Walker that the board finds that the disability was incurred in the line of duty. Upon voting, the motion carried by a vote of 6-2 with Mr. Bogush, Ms. Fox, Mr. Lynch, Mr. Meier, Mr. Moors, and Mr. Walker in favor of the motion and Mr. Gray and Mr. McRae opposed to the motion.**

**It was moved by Mr. Meier, seconded by Mr. Walker to grant a line of duty (LOD) disability to Mr. Brower for a heart condition under the heart and lung presumption effective close of business today. Upon voting, the motion carried by a vote of 6-2 with Mr. Bogush, Ms. Fox, Mr. Lynch, Mr. Meier, Mr. Moors, and Mr. Walker in favor of the motion and Mr. Gray and Mr. McRae opposed to the motion.**

[Ms. Miller entered the meeting at 2:13 p.m.]

[Brief recess from 2:14 p.m. to 2:23 p.m.]

8. Noted receipt of letter dated 3/26/2009 from Medical Director. Authorized referral to Medical Board composed of Drs. Casellas, Dormois, and Mokotoff for TPD LOD disability applicant George Saponari. **It was moved by Mr. Gray, seconded by Ms. Miller and by unanimous vote to authorize referral to medical board composed of Drs. Casellas, Dormois, and Mokotoff as recommended by Medical Director for LOD disability applicant George Saponari.**
9. Noted receipt of disability applications in process status report. **It was moved by Mr. Moors, seconded by Ms. Miller and by unanimous vote to receive and file item 9.**
10. Securities Litigation & Monitoring Presentation & Q&A by Atara Hirsch of Abraham, Fruchter & Twersky LLP. Noted receipt of "We See What Others Miss" Microsoft PowerPoint presentation by Abraham, Fruchter & Twersky LLP provided by Ms. Hirsch.

- a. Noted receipt of article posted on April 16, 2009 from *The D&O Diary*, "Judge Calls Plaintiffs' Firm's 'Monitoring' Services 'Shocking Conflict of Interest'" by Kevin LaCroix. Handed out by Mr. Bowen at the meeting.
- b. Noted receipt of Executive Summary of Securities Class Action Litigation from 2008 Securities Class Action Litigation. Handed out by Mr. Bowen at the meeting.
- c. Noted receipt of email dated 4/20/2009 from Mary Lou Dixon of Wachovia, the fund's custodian regarding the current Wachovia process relating to class actions. Handed out by Ms. Campbell at the meeting.

Ms. Hirsch presented to the board and meeting attendees what her company could do for our fund. Abraham, Fruchter & Twersky LLP and companies similar to named company, monitor the portfolios of their clients and look for potential and new claims. She explained that the custodian does do this, however, they are not always lawyers and they may not be actively looking for future claims. In her opinion, Ms. Hirsch thinks that funds lose billions of dollars by relying solely on their custodian for various reasons including deliverance of notices, lack of legal database, and lack of experience. Ms. Hirsch stated that law firms monitor the portfolio by obtaining real-time access to custodial reports. She expressed that everyone falls under attorney-client privilege. If fraud is found, the firm investigates and then makes recommendations whether to be a part of the lawsuit or not. Quarterly reports are sent out to show how the firm is actively monitoring the portfolio. Ms. Hirsch gave a variety of examples of her firm collecting monies for clients. She explained that a portfolio must have significant losses in order to sue and the law firm plays an active role in protecting the funds assets. She also mentioned that the fund may have a fiduciary obligation to sue. She concluded by adding that Abraham, Fruchter, and Twersky, LLP caters to smaller and mid-sized funds. They monitor and look for fraud cases.

Mr. Bowen of Jay Bowen, Hanes & Co. was invited by the board members to speak to Ms. Hirsch's presentation and to provide his thoughts on securities litigation and monitoring. Mr. Bowen referred to two items that he handed out today (item 10a and 10b).

Mr. Bowen clarified that his words were coming from a solely philosophical standpoint. He expressed that he thinks hiring a securities litigation monitoring firm would be a mistake. There is an inherent conflict of interest between securities monitoring and the incentive to bring litigation. The incentive is to bring litigation because that is where the compensation comes from. There is a bigger incentive to be the lead plaintiff. Mr. Bowen believes that class action lawsuits are damaging to the country and to Corporate America. The fund's portfolio would be much larger without these lawsuits. In addition to damages, diverting management attention leads to catastrophic liabilities. Excessive securities litigation is weakening the U.S. in comparison to our competitors.

Mr. Bowen expressed concerns of the hidden costs of recovering money. Current and potential costs are huge. It was clarified that there are other, more efficient ways to pursue securities fraud other than through securities litigation. The Department of Justice, the Securities Exchange Commission, and the State Attorney General all protect against security fraud. There has been corruption in prosecution recently. It is an invitation for "pay or play" abuses. Mr. Bowen is opposed to these schemes. The basis is if you qualify, you need to participate. Our fund has participated in 9 or 10 cases over the years and Wachovia has a department that handles that. He added that 70-80% of the time, the custodian has received the notice. Mr. Bowen could not recall a time our fund hasn't participated when it should have. The question to ask when you are hit with these proposals is, who is the ultimate beneficiary? In this case, it would be the monitoring law firm. We need radical reform for litigation process. This is a big problem and has made us very uncompetitive globally.

Ms. Campbell advised that Mary Lou Dixon from Wachovia could not be in attendance today but sent an email explaining how Wachovia handles class actions on behalf of clients. Ms. Campbell handed the email out to the board members (item 10c). Ms. Campbell agreed with Mr. Bowen's philosophical standpoint. She simplified that Mr. Bowen's fundamental top-down approach and thorough research is such that we don't own questionable companies. According to today's addendum, our highly concentrated portfolio contains 64 common stocks, most of which are solid blue chip stocks. The excellent research by BH&Co. means that we do not own the Enrons, the WorldComms, or Bernie Madoff hedge funds. She expressed that our portfolio does not conform to the traditional portfolio model, and we do not own any index funds, such as S&P 500, the Russell or Wilshire 1,000, 2,000 or 5,000 where it is more likely to find a bad apple in such a large basket of stocks. Securities monitoring law firms want real-time access, which would provide them direct access to Bowen's proprietary investment strategy and trades immediately and for free, something that this fund pays 25 basis points for. She advised that since we are not a typical multi-manager portfolio model, trades would not be masked by multiple managers trading simultaneously. Years ago we stopped giving Solomon Smith Barney a copy of the custody statement at the request of Bowen, Hanes because they were becoming a competitor with Bowen, Hanes, and Company. Ms. Campbell doesn't believe that real-time access to our custodial account is necessary or that a separate securities monitoring firm is necessary because our custodian already provides the services. Ms. Campbell requested that if the board chooses to go in the direction of a securities monitoring firm over Mr. Bowen's and the Plan Administrator's objections, to please not give the firm real-time access to the custody statements.

Ms. Hirsch then asked if she could provide a rebuttal to Mr. Bowen's comments and observations. Mr. Bogush responded, saying that he doesn't want a rebuttal situation due to the fact that the board is not prepared to make a decision. **It was moved by Ms. Miller, seconded by Mr. Walker and by unanimous vote to receive and file all of the information received and to put the topic on a later agenda for general discussion without a presentation.** Ms. Miller added that this would require a request for proposal. Mr. Bogush added that he wants to table this until after the June FPPTA conference. It was agreed to move to the July agenda.

[Brief recess from 3:07 p.m. to 3:11 p.m.]

11. Investment Management Presentation by Jay Bowen of Bowen, Hanes & Co.

Noted receipt of investment performance report for the month ended 3/31/2009. Market value of *investments* as of 3/31/2009 was \$1,022,629,122.34. Investment return as of 3/31/2009 has been -24.5% so far this fiscal year.

- a. Noted receipt of investment summary dated 3/26/2009 by Jay Bowen.
- b. Noted receipt of 4/14/2009 bond listing, approve recommendation to hold.
- c. Noted receipt of Addendum received 04/22/2009.
- d. Noted receipt of article from February 9, 2009 issue of *Pensions & Investments*, "Pension Funds Stung by Securities Lending Mess" by Christine Williamson.

Mr. Bowen began by announcing that it's been a sharp down year, but 6 months into the fiscal year we have made progress in recovering losses. In the next 6 months, it is hard to say where we will end up. Mr. Bowen has two different points of view. On the short-term, he believes there will be an economic recovery by liquidity being pumped into the system. Mr. Bowen said that almost on a daily basis he comes across municipal funds that are in really bad shape, but he is confident that we will recover over the short-term.

Visiting the long-term side, Mr. Bowen is more concerned with the potential tax and regulatory policies being submitted. He hopes that these will hit before the end of the 2009 fiscal year. Mr. Bowen is very concerned about potential legislation being crammed into the budget document. The budget reconciliation only needs 50 votes. The motion passed for health care leading to major implications on how we position the portfolio long-term. This situation is similar to the 1970's situation with modified stagflation and we should watch for these things.

We have been unusually active in terms of trading over the last few months. Mr. Bowen has raised some cash reserves to take advantage of opportunities in stocks and bonds. Other things ongoing include intense focus on dividends because the period is similar to 1950's where two thirds of return is from dividends. Dividends yield better than what you would receive in the treasury market.

Mr. Bowen expressed that the Canadian Banking System is the envy of the world because they have none of the same problems. We are focusing on infrastructure of companies. Power generation, communications, construction and engineering, energy infrastructure is valid for the long-term. Another area of focus is tangible assets if we move into high inflation implications. This is looking out 2-3 years at a higher inflationary environment where tangible assets do relatively well. The five main areas of focus over the last few months are metals, mining, energy, agriculture commodity, and timber. In conclusion, Mr. Bowen feels that in the short-term we will recover but in the long-term, there will be a lag between when it's done and when we feel the effects. Mr. Moors asked if higher inflation automatically translates into higher interest rates? Mr. Bowen said yes, they will move up in anticipation and oftentimes overshoot. He confirmed that the only treasury exposure we have is in the inflation-protected indexes. There was an internet bubble, a housing bubble, and now a treasury bubble because of what the Fed is doing. Mr. Lynch asked about the Wrigley bonds? Mr. Bowen is convinced that they are very attractive and is committed to holding these. **It was moved by Ms. Fox, seconded by Mr. Gray and by unanimous vote to receive and file item 11 and to approve item 11b.**

### New Business

12. Noted receipt of listing of upcoming conferences. Disclosure of planned attendance, if any. Mr. Moors and Mr. Bogush disclosed for the FPPTA Annual Conference as well as Mr. Lynch and Ms. Campbell. Ms. Campbell also disclosed for two staff members. She announced that Ginny O'Keefe will receive her Certified Public Pension Trustee (CPPT) certificate at FPPTA. Mr. Moors and Ms. Campbell disclosed for the Division of Retirement Trustees School in May. Mr. Lynch reminded everyone of the Financial Planning and Educational Workshops on May 6-7. **It was moved by Ms. Miller, seconded by Ms. Fox and by unanimous vote to receive and file item 12.**

13. Chair's call for any new business items from trustees to be placed on next agenda. None.

[Brief recess from 3:37 p.m. to 3:42 p.m. for Public Comment cards to be turned in.]

14. Chair's report.

Mr. Lynch brought up the McCoy issue. He announced that more letters have been received threatening lawsuits to staff and police officers.

15. Attorney's report.

Mr. Cohen will report under item 18.

16. Plan Administration.

- a. 2009 Board meeting schedule:  
May 28, 2009  
June 25, 2009  
July 23, 2009  
August 27, 2009  
September 24, 2009  
October 22, 2009  
November 19, 2009 \*early due to holidays  
December 17, 2009 \*early due to holidays
- b. F&P pension office priorities, projects, deadlines.

Ms. Campbell reported that there are seven pension verification questionnaires (PVQ) that are yet to be received. The only person that we have not been able to contact in any way is Donna Gullede. We have done home, hospital and nursing home visits for the PVQs. ECM and BPMN are on-going. Monthly activity was due at the same time as board packages this month.

Our customer base is stressed and emotions are running high due to the down market, litigation, income tax time, and tight credit. We have received a fair amount of unusual requests that we cannot comply with. Divorce calculation requests and pension verification letter requests are also coming in. Staff is doing a bang up job in a high stress time. Ms. Miller asked if the actuarial report is next month? Ms. Campbell confirmed that it is.

Public Comments Limited to two (2) minutes per person and maximum of ten (10) persons. None.

Litigation

17. Parker Lawsuit, Case No. 07-007198, John N. Parker, for himself and all others similarly situated vs. the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa. Noted receipt of the following:
  - a. Letter dated 3/23/2009 to Wayne Lee Thomas transmitting opt outs received to date.
  - b. Letter dated 4/6/2009 to Wayne Lee Thomas transmitting opt outs received to date.

Mr. Lynch reiterated that the deadline for the exclusion forms is May 15, 2009. He also declared there may be a possible executive session next month to discuss the litigation. **It was moved by Ms. Miller, seconded by Mr. Gray and by unanimous vote to receive and file item 17.**

18. Pena Lawsuit, Case No. 08-013997, Fred Pena, for himself and all others similarly situated vs. the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa. Noted receipt of Order Disqualifying James B. Loper, Esq. As Counsel of Record signed by the Judge 3/17/2009.

Mr. Cohen announced that he received a notice of appearance for attorney Jack Townsend who now represents Mr. Pena. He also stated there is a need for an executive session for the Parker lawsuit next month and maybe on the Pena lawsuit, which would be short. **It was moved by Mr. Gray, seconded by Mr. Moors and by unanimous vote to receive and file item 18.**

Motion to adjourn made by Ms. Miller at 3:47 p.m.

Notice

Any person who desires to appeal any decision of the Board of Trustees with respect to any matter considered at this Board meeting will need a record of the proceedings and for this purpose, may need to ensure that a verbatim record of the proceedings is made which includes testimony and evidence upon which the appeal is based.

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Patrick S. Lynch, Chairman

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John Moors, Secretary

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Jennifer Molitor  
Recording Secretary