

**CITY OF PORT ORANGE
POLICE OFFICERS' PENSION BOARD
October 12, 2022**

The Port Orange Police Officers' Pension Board of Trustees met in special session on Wednesday, October 12, 2022 in the Police Department Training Room, 4545 Clyde Morris Boulevard, Port Orange, Florida.

MEMBERS PRESENT: Chairman Warren Carman (fifth member)
Secretary William Proctor (police member)
Brian Cobb (resident member)
Drew Bastian (resident member)
Andrew McKay (police member)

CONSULTANTS: Ken Harrison, Attorney (*Sugarman Susskind et al*)
Madison Levine, Attorney (*Sugarman Susskind et al*)
Karan Rounsavall, Plan Administrator

OTHER: Adam Levinson, Prosecuting Counsel (*Klausner, et al*)
Victoria Zinn, Defense Counsel for Steve Braddock
Susanne McCabe, Intervening Counsel for Kim Braddock
Denise McMullin, Court Reporter (*Volusia Reporting*)

Chairman Carman called the meeting to order at 3:34 p.m. A quorum was in attendance.

The purpose of the meeting was to conduct a formal hearing to consider an order terminating and forfeiting all rights, privileges, and benefits to which Retiree Steven Braddock might be entitled from the Port Orange Police Officers' Pension Fund pursuant to section 112.3173 of *Florida Statutes* and Chapter 54, Article V, section 54-129 of the *City of Port Orange Code of Ordinances*.

The meeting began with housekeeping remarks from Attorney Levinson. Attorneys were allowed opening and closing statements, the right to cross examine and the right to question witnesses. Mr. Levinson advised that both prosecuting and defense counsel executed an agreement stipulating to certain facts and exhibits. At this point, there being no objection by attorneys present, it was appropriate to admit the stipulation agreement and all documents/exhibits referenced therein as follows.

Exhibit	Date	Description
1.	03/07/2017 Recorded 08/30/2017	Certified (08/04/22) Copy of Warranty Deed
2.	04/11/2017	Joseph Braddock Death Certificate
3.	10/01/2019	Arrest Affidavit

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| 4. | 10/23/2019 | Information |
| 5. | 10/14/2021 | Plea |
| 6. | 10/14/2021 | Video and audio recording of court proceeding/plea |
| 7. | 10/14/2021 | Transcript of court proceeding/plea |
| 8. | 11/30/2021 | Video and audio recording of court proceeding/sentencing |
| 9. | 11/30/2021 | Transcript of court proceeding/sentencing |
| 10. | 12/02/2021 | Order/Final Judgment for Charges, Costs & Fees |
| 11. | 07/19/2022 | Notice of Forfeiture Action |
| 12. | 10/8/2019-2020 | Internal Affairs Investigation Report, inclusive of FDLE report and findings |
| 13. | 3/23/2017 | Pay slip for Sherilyn Solana |
| 14. | 3/21/2016 | Invoice for \$103 to Port Orange Police Department re fees associated with Solana's notary public |
| 15. | 3/17/2016 | Payment of invoice for \$103 from City of Port Orange re fees associated with Solana's notary public |
| 16. | 3/20/1995 | Steven Braddock Oath of Office Form |
| 17. | Effective 11/2003,
Revised 11/14 | City of Port Orange Police Department Policy and Procedure Directive, Number 26-1, Standards of Conduct |
| 18. | Effective 6/1, Revised
8/18 | City of Port Orange Police Department Policy and Procedure Directive, Number 1-1, Oath of Office/Ethical Standards |
| 19. | 10/16/15 | Durable Power of Attorney for Susan Braddock |
| 20. | 9/13/2022 | Solana, Sherilyn – Deposition Transcript |
| 21. | 9/13/22 | Mynheir, Mark – Deposition Transcript |
| 22. | 9/13/22 | Aiken, Thomas – Deposition Transcript |
| 1. | 8/10/22 | Order of Satisfaction of Restitution |
| 2. | 11/30/21 | Civil Settlement Agreement |

Attorney Levinson served as special counsel to assist the board in the forfeiture proceeding. He welcomed questions. In his opening statement, he advised the trustees that when the law was clear and the facts were established, it was required that a forfeiture be ordered. This forfeiture hearing was conducted under the "catch all" provision of *Florida Statutes 112.3173(2)(6)* which stated that any public officer who was convicted of a felony involving a breach of public trust was subject to forfeiture of a benefit received under a public retirement system.

Steven Braddock pled nolo contendere (no contest) to two specified offenses being (1) exploitation of an elderly person and (2) uttering a forgery. These offenses occurred while Braddock was employed as a police officer. By definition, a nolo contendere plea was a conviction. It was Attorney Levinson's obligation to prove that a nexus existed when Mr. Braddock used his privilege, position, and access to notarization services provided by Port Orange Police Records Clerk Sherilyn Solana to obtain free notary services with an intent to defraud the public and to obtain and realize a personal gain.

Attorney Levinson meticulously reviewed the convictions, elements of a forfeiture, case law, and the individual exhibits in support of establishing a nexus in this case.

At this time, the pension board heard from Attorney Victoria Zinn, counsel for Steven Braddock. She maintained that the offenses to which her client pled nolo contendere did not rise to the level of breach of public trust wherein forfeiture was required. The alleged nexus, being use of a city notary, had nothing to do with Braddock's position as a law enforcement officer. He was personal friends with Ms. Solana. The "willful and intentional" standard was absent in this instance. There was no intent to defraud. The notarized documents contained the original signature of both parents. Mr. Braddock was unfamiliar with notary laws and was unaware that the documents he presented to Ms. Solana could not be notarized. Further, Attorney Zinn claimed that the alleged acts were not done to obtain a profit or gain nor were they done through the use of the power of Braddock's position.

Previously, the pension board granted a motion to intervene to Attorney Susanne McCabe who represented Kim Braddock in the matter. Kim Braddock was the former spouse of Steven Braddock and received a 25 percent interest in his pension benefits. Attorney McCabe argued that her client should not lose her interest in Steven Braddock's pension and cited cases in support thereof. She concurred with Attorney Zinn that the offenses did not rise to the level of forfeiture. However, should the pension board find otherwise, she maintained that Kim Braddock had a separate property interest in the pension and that her portion should be maintained.

Attorney Levinson responded to Attorney McCabe's position, stating that the State of Florida did not have any law providing an innocent spouse exception. Her argument should be addressed to the Florida Legislature.

The meeting recessed at 5:20 and reconvened at 5:24 p.m.

At this time, Attorney Zinn called her client, Steven Braddock, as a witness. Court Reporter Denise McMullin administered the oath to Mr. Braddock. Responding to his attorney's questions, Mr. Braddock advised that he was a police officer with Port

Orange for 24 years in various positions. He had a personal friendship with Ms. Solana and had helped her out in a few situations over the years, particularly following hurricane damage to her structure. Braddock testified that Ms. Solana did not indicate any problem with notarizing the documents presented to her. He felt that all had been done properly.

Attorney Levinson cross-examined the witness and focused on several exhibits. He called particular attention to a durable power of attorney (POA) executed by Braddock's mother naming Steven Braddock and his current wife as her agents which was notarized by Ms. Solana. This POA was then used by the Braddock's to access the mother's funds for multiple personal expenses and to transfer title to real property.

Attorney Levinson then proceeded with closing arguments. Cases such as these were difficult; they were not fun. In cases where the law was clear and the facts were clear, the pension board had an obligation to forfeit the public pension. He referenced Attorney Zinn's comments about there being no willful intent on her client's part. Steven Braddock's actions to utilize the POA to access his mother's assets was a purposeful action; it was not accidental. He held that taking the document to Ms. Solana to notarize was also purposeful as she was a friend and would not ask any questions. The fact that restitution had been made was not a defense.

The nexus in this case was the notary. Ms. Solana was on duty when the questioned documents were notarized and she used a notary commission that was paid for by the City of Port Orange. The final decision belonged to the board.

Procedurally, the board needed to formally accept the stipulations that were presented at the beginning of the meeting. *Member McKay moved accordingly Member Bastian seconded the motion which carried unanimously.*

Brief discussion ensued. Stating that the notarization was done by an on-duty police records clerk at the Port Orange Police Department, board members drew the conclusion that there was a nexus.

Based on a preponderance of the evidence and applicable law, Member McKay moved to proceed with forfeiture of pension benefits for Steven Braddock pursuant to Sec. 112.3173 Florida Statutes. Member Bastian seconded the motion; it carried on an all-yes vote.

Attorney Harrison would prepare a final order of the board's action and notice of appeal rights.

The board recognized Attorney McCabe who asked that Kim Braddock's share of her ex-spouse's pension benefits be retained.

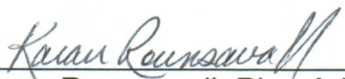
Member Proctor moved to deny to Kim Braddock any entitlement to Steven Braddock's pension benefits as she had no legal standing to receive same. Member Bastian seconded this motion; it carried unanimously.

There was no public comment.

The meeting adjourned at 6:40 p.m.



Warren Carman, Chairman



Karah Rounsavall, Plan Administrator