

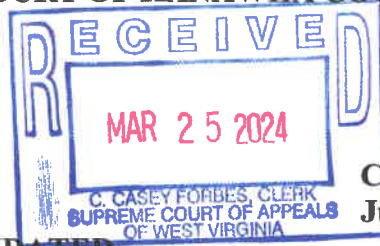
IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ROBERT CLARK, et al.,

Plaintiff,

v.

WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD



Civil Action No. 18-AA-9
Judge Jennifer F. Bailey

SCA Filed: Apr 18 2024
10:45AM EDT
Transaction ID 72774149

CERTIFICATION ORDER

Pursuant to West Virginia Code §58-5-2 and Rule 17 of the West Virginia Rules of Appellate Procedure, the Court certifies the following questions for the Supreme Court of Appeals of West Virginia's consideration:

1. The West Virginia Supreme Court held in *West Virginia Consolidated Retirement Board v. Clark*, 245 W. Va. 510, 859 S.E.2d 453 (2021) that Respondent Consolidated Public Retirement Board failed to timely correct the inclusion of statutory subsistence pay in calculating the officers' pensionable compensation. Does this holding mean that the subsistence pay received by all retired *and active* DNR law enforcement officers as of the date of the mandate order issued on July 14, 2021, must be included in calculating their pensionable income?

Yes X

No

2. Under the facts of this case, is Petitioner entitled to recover reasonable attorneys' fees from Respondent Consolidated Public Retirement Board?

Yes X

No

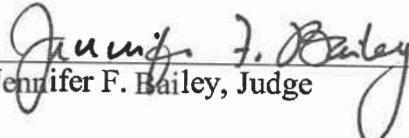
After considering the written pleadings and oral arguments, the Court finds that the issue presented is a matter of first impression in West Virginia and that there is no clear controlling West Virginia precedent to guide its decision. Accordingly, the Court is certifying this question of law to the West Virginia Supreme Court of Appeals.

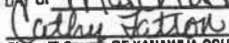

The Court **ORDERS** that further proceedings in this matter are stayed until such questions have been decided by the Supreme Court of Appeals of West Virginia and the decision is certified

back to this Court. The Court **DIRECTS** the parties to prepare a joint appendix of the record sufficient to permit review of the certified question within fifteen (15) days of the entry of this order.

The Court **DIRECTS** the Circuit Clerk to distribute certified copies of this order to all counsel of record and to the Clerk of the Supreme Court of Appeals of West Virginia.

Entered this 21st day of March, 2024.


Jennifer F. Bailey, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 22
DAY OF March 2024

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  CLERK