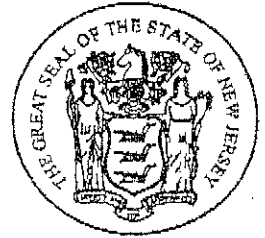




# City of Garfield

111 Outwater Lane  
Garfield, New Jersey 07026-2694

**FINANCE DEPARTMENT**



Telephone: (973) 340-2105

Fax: (973) 340-7539

To: Joseph Rotolo, Borough Attorney  
Shannon, Payroll

*Pension # 1124660*

Cc: City Manager  
Mayor and Council

From: Roy Riggitano, C.F.O.

Re: Pension Enrollment

Date: January 3, 2008

---

Today, I confirmed with the Division of Pensions, Bob Winfree, that you are considered a multiple enrollment within the PERS and as such, you will continue to be enrolled in the City of Garfield, in the PERS, and as such, will have applicable deductions from your gross pay, and be reported on the IROC quarterly report.

Please enroll as a intra enrollee in the PERS.

**Borough of Elmwood Park  
182 Market Street  
Elmwood Park, New Jersey 07407**

**Payroll Dept  
201-703-2221  
201-796-1612 Fax**

**New Jersey Division of Pensions & Benefits  
PO Box 295  
Trenton, New Jersey 08625-0295  
Attn: Ken Hartman  
Ken.hartman@treas.state.nj.us**

**Re: DCRP eligibility**

**August 5, 2009**

Dear Mr. Hartman,

Thank you for taking the time to speak with me this morning. It certainly was a pleasant and extremely informative conversation. The information provided was most helpful in resolving several issues that we had concerning pensions. Quite frankly, the law as originally presented was far beyond our capabilities to interpret legal description and we were totally unsure of what was required.

Per that conversation, it is now my understanding that persons in the capacity of Judges, Prosecutors and Public Defenders who were Members of PERS prior to 7/1/07 may remain in PERS. Those hired afterwards may be in DCRP.

Borough Attorneys, Attorneys for Planning Board and Board of Adjustment are no longer eligible for any Pension program and we must stop deducting pension contributions from any that are currently in PERS. However, they may apply for deferred pensions, or a withdrawal of contributions.

Elected Officials may be enrolled in DCRP.

If this is incorrect, please advise us in writing of any errors in the statement above as I must present the information to the CFO and Mayor and Council for dissemination to our Auditors and others who will be affected by these rules.

One last question, Can any of the people eligible for DCRP opt out and not be a member of the Pension system?

Very truly yours,

***Frank J. Santora: C.T.C.  
Tax Collector /Payroll Clerk  
fsantora@elmwoodparknj.us***

**cc: Richard Mola; Mayor  
Council members  
Keith Kazmark; Borough Clerk  
Roy Riggitano; CFO**

Text of Email from Ken Hartman  
In reply to my letter of 8/5/09 (above)

Everything is accurate with a couple of clarifications.

Elected officials MUST be enrolled in DCRP if they are newly elected after 7/1/2007 or elected to a new office after 7/1/2007. Eligible employees may not opt out unless they are already collecting a pension from another one of our systems.

Employees must be eligible (10 years or more) to apply for deferred retirement. If they are age 60 or over, they may apply for a service retirement.

New prosecutors and public defenders must meet the definition of an employee in order to be enrolled in DCRP. If they were in PERS prior to 7/1/2007, they are okay.

Enjoyed speaking with you as well. Call anytime.

Ken

Ken Hartman, Manager

Education Programs

NJ Division of Pensions and Benefits

(609)292-3452

ken.hartman@treas.state.nj.us

JOSEPH J. ROTOLO

ATTORNEY AT LAW

50 SUMMIT AVENUE

HACKENSACK, NEW JERSEY 07601

OFFICE (201) 343-0088

TELECOPIER (201) 343-0006

EMAIL: rotolo.law@verizon.net

ADMITTED TO PRACTICE  
IN NEW JERSEY & NEW YORK

February 19, 2010

City of Garfield  
111 Outwater Lane  
Garfield, New Jersey 07062  
Attn: Mr. Roy Riggitano, CFO

RE: PERS Participation / Enrollment in  
Defined Contribution Retirement Program  
PERS Membership No. 11246 60

Dear Roy:

This letter will confirm our recent telephone conversations wherein you confirmed, to me, that I am no longer eligible for participation in the Public Employees Retirement System in connection with my position as City Attorney for the City of Garfield.

As a result of having made that determination, you have removed me from this program and, as of the effective date, no pension deductions will have been made.

You have also advised me that I am eligible for participation in the New Jersey Defined Contribution Retirement Program and I have, therefore, prepared and enclose herewith the election form which is needed in order to enroll in that program.

Please let me know if there is anything else that I have to do in order to confirm my withdrawal from PERS and enrollment in DCRP. Thank you very much.

Very truly yours,

JOSEPH J. ROTOLO, ESQ.

JJR:at

enc

cc: City of Garfield

Attn: Payroll Dept.

w/encl

Attn: Thomas J. Duch, Esq., City Manager

w/encl

Lerch, Vinci & Higgins, LLC

Attn: Mr. Dieter Lerch,

City of Garfield - City Auditor

w/encl

JOSEPH J. ROTOLO

ATTORNEY AT LAW

50 SUMMIT AVENUE

HACKENSACK, NEW JERSEY 07601

OFFICE (201) 343-0088

TELECOPIER (201) 343-0006

EMAIL: rotoio.law@verizon.net

ADMITTED TO PRACTICE  
IN NEW JERSEY & NEW YORK

March 22, 2010

City of Garfield  
111 Outwater Lane  
Garfield, New Jersey 07062  
Attn: Mr. Roy Riggitano, CFO

RE: PERS Participation / Enrollment in  
Defined Contribution Retirement Program  
PERS Membership No. 11246 60

Dear Roy:

Enclosed is a copy of a letter and attachment that I sent to Dieter Lerch recently. This clearly establishes my continued pension entitlement in Garfield (and Rochelle Park). Based upon this letter and the publication issued by the New Jersey Division of Pensions & Benefits, I should remain in the pension system. Therefore, please take no action with regard to my pension enrollment.

I have vested pension rights which should continue without interruption.

Thank you.

Very truly yours,

  
JOSEPH J. ROTOLO, ESQ.

JJR:at

enc

cc: City of Garfield

Attn: Shannon Giordano, Payroll Dept.

JOSEPH J. ROTOLO

ATTORNEY AT LAW

50 SUMMIT AVENUE

HACKENSACK, NEW JERSEY 07601

ADMITTED TO PRACTICE  
IN NEW JERSEY & NEW YORK

OFFICE (201) 343-0088  
TELECOPIER (201) 343-0006  
EMAIL: rotolo.law@verizon.net

March 11, 2010

Fax and Regular Mail  
201-791-3035

Lerch, Vinci & Higgins, LLC  
17-17 Route 208  
Fair Lawn, New Jersey 07410  
Attn: Mr. Dieter Lerch,  
City of Garfield - City Auditor

RE: New Jersey State Pension Membership

Dear Dieter:

Thank you for speaking with me regarding my pension eligibility in Garfield.

By way of background, I was appointed as City Attorney in Garfield on July 1<sup>st</sup>, 1996 and have served, continuously, without any break in service, since that time. I am a strictly salaried employee. I only receive a W-2 and do not bill for any work or services beyond the salary which is paid to me.

My bi-weekly paycheck shows all employee deductions including state and federal taxes, etc. Once again, everything that I do for the City is done within my salary and there is no additional billing.

I have enclosed a copy of Fact Sheet #80 from the New Jersey Division of Pensions and Benefits. I would like you to take a look at the section entitled "Appointed Officials" which begins on the bottom of the first page. The second point in that paragraph provides as follows:

An appointed official who was already enrolled in the PERS prior to July 1, 2007, will remain a PERS member while serving in the appointed position.

Mr. Dieter Lerch  
March 11, 2010  
Page 2

This paragraph clearly, in my opinion, provides that I am entitled to remain in the PERS in connection with my Garfield appointment. I am:

- An appointed official
- Enrolled in PERS
- Enrolled prior to July 1, 2007
- My service has continued in that appointed position

I therefore meet all of the criteria for PERS membership for this position and, therefore, I would appreciate it if you would review this carefully and, if you agree, please confirm as soon as possible.

Thanks for your help.

Very truly yours,



JOSEPH J. ROTOLO, ESQ.

JJR:lp  
Encl.

A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

# DEFINED CONTRIBUTION RETIREMENT PROGRAM (DCRP)

## Elected and Appointed Officials

The Defined Contribution Retirement Program (DCRP) was established July 1, 2007, under the provisions of Chapter 92, P.L. 2007 and Chapter 103, P.L. 2007, and expanded under the provisions of Chapter 89, P.L. 2008.

The DCRP provides eligible members with a tax-sheltered, defined contribution retirement benefit, along with life insurance and disability coverage.

### ELIGIBILITY

Individuals eligible for membership in the DCRP include:

- **State or local officials** who are elected or appointed *on or after* July 1, 2007;
- **Employees enrolled in the Public Employees Retirement System (PERS) or Teachers Pension and Annuity Fund (TPAF)** *on or after* July 1, 2007, who earn salary *in excess of* established "maximum compensation" limits; and
- **Employees otherwise eligible to enroll in the PERS or TPAF** *on or after* November 2, 2008, who do not earn the minimum annual salary for PERS or TPAF Membership Tier 3 enrollment ( \$7,700 in 2010, subject to adjustment in future years) but who earn salary of at least \$1,500 annually. For an explanation of the membership tiers visit our Web site at: [www.state.nj.us/treasury/pensions](http://www.state.nj.us/treasury/pensions)

**This fact sheet addresses DCRP membership for elected and appointed officials.**

- Employees enrolled in the PERS or TPAF should refer to Fact Sheet #79, *DCRP for PERS and TPAF Members*.
- Employees eligible for the DCRP because they do not meet the minimum salary for the PERS or TPAF should refer to Fact Sheet #82, *DCRP if Ineligible for the PERS or TPAF*.

State and local officials who are *elected or appoint-*

*ed on or after* July 1, 2007 are eligible for enrollment **only** in the DCRP.

- An **elected official** is any individual who holds a State or local (county, municipal, etc.) elected public office.
- A **State appointee** is any individual appointed by the Governor, including those requiring the advice and consent of the Senate, or pursuant to an appointment by the Governor to serve at the pleasure of the Governor only during his or her term of office.
- A **local appointee** is any individual appointed by the Governor, including those requiring the advice and consent of the Senate; or an individual appointed in a substantially similar manner by the governing body of a local public entity (county, municipality, school board, etc.).

### Elected Officials

- An **elected official** who was already enrolled in the PERS *prior to* July 1, 2007 based on an elected office, will remain a PERS member while in that elected office.
- **Newly elected official** will only be enrolled in the DCRP and cannot enroll in the PERS.
- If a **retired** member of another State-administered retirement system is elected to public office, the elected official may **either** continue to receive the retirement benefit from the former employment and would not be eligible for the DCRP, **or** suspend the retirement benefit from the former employment and enroll in the DCRP while in the elected office (upon termination of the elected office, the retirement benefit from the former employment would be reinstated).

### Appointed Officials

- A **newly appointed official** who does not have an existing PERS account will only be



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3031

## Fact Sheet #80

### A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

FL-0786-0110

enrolled in the DCRP and cannot enroll in the PERS.

- An **appointed official** who was already enrolled in the PERS *prior to July 1, 2007*, will remain a PERS member while serving in the appointed position.
- Similarly, a regular employee who was enrolled in the PERS *prior to July 1, 2007*, who is appointed — without a break in membership — to a DCRP eligible position *on or after July 1, 2007*, will remain a PERS member while in the appointed position.
- An **appointed official** serving in a position that is otherwise eligible for membership in the TPAF, PFRS, SPRS, or JRS will not be enrolled in the DCRP. In these instances, application should be made to enroll in the other retirement system regardless of any former retirement system affiliations.

**Note:** Appointed titles that are ineligible for DCRP participation (see Chapter 92, P.L. 2007): Certified Health Officer, Tax Assessor, Tax Collector, Municipal Planner, Chief Financial Officer, Registered Municipal Clerk, Construction Code Official, Licensed Uniform Subcode Inspector, Qualified Purchasing Agent, or Certified Public Works Manager.

#### ENROLLMENT

The employer is responsible for enrolling an eligible elected or appointed official — as of the starting date in the elected or appointed office — by submitting a *DCRP Enrollment Application* to the Division of Pensions and Benefits, or using the online DCRP enrollment system available on the Employer Pensions and Benefits Information Connection (EPIC).

When enrolled, the elected or appointed official contributes 5.5 percent of the base salary to a tax-deferred investment account established with Prudential Financial, which jointly administers the DCRP with the Division of Pensions and Benefits. Member contributions are matched by a 3 percent employer contribution.

#### Salary Requirements and Waiver

A newly elected or appointed official must earn a minimum base salary of \$1,500 to be eligible to participate in the DCRP.

If the DCRP eligible elected or appointed official will earn less than \$5,000 annually, the official may choose to waive participation in the DCRP for that office or position by submitting a *DCRP Waiver Form* to the Division of Pensions and Benefits. However, the decision to waive participation is *irrevocable* for that office or position, and an elected or appointed official who waives participation cannot later choose to enroll based on that same office or position.

#### Vesting

If a newly elected or appointed official has an existing DCRP account, or is a member of another State-administered retirement system, the official is immediately vested in the DCRP. As a vested member, you have a right to a benefit at retirement based on both the employee and employer contributions to the DCRP.

If a newly elected or appointed official does not qualify for immediate vesting in the DCRP, the employee and employer contributions are held during the initial year of membership. Upon commencing the second year of DCRP membership, the member is fully vested. However, if a member is not eligible to continue in the DCRP for a second year of membership, the member may apply for a refund of the employee contributions from the DCRP, while the employer contributions will revert back to the employer.

#### RETIREMENT

Six months before retirement, a member should contact the employer and Prudential Financial for information regarding DCRP benefits and options.

A DCRP member may elect to receive all or a portion of his or her account in a lump-sum distribution, or in a variety of periodic payment methods. Please contact your administrative services provider for more information. **All returns of contributions and earnings are considered taxable in the year they are received;** therefore, the type of payout plan should be considered carefully prior to retirement.

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**A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS**

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There is no minimum retirement age under the DCRP. The member will automatically be considered retired, regardless of age, if there is any distribution of mandatory contributions.

A member may take a distribution at any time after termination of employment; however, if you return to public employment in New Jersey, you cannot participate in any State-administered retirement system.

### Health Benefits at Retirement

**It is important to note that service time from enrollment in the DCRP cannot be used to qualify for State Health Benefits Program (SHBP) or School Employees' Health Benefits Program (SEHBP) coverage at retirement.**

Please contact your employer's human resources office or benefits administrator to ask about health benefit coverage options available in retirement.

### **LIFE INSURANCE COVERAGE**

**While serving in an elected or appointed office,** DCRP members are covered by employer-paid life insurance, payable to their designated beneficiaries in the amount of 1½ times the annual base salary on which DCRP contributions were based. This coverage is available without a medical examination to members under age 60. Newly enrolled members 60 years of age or older must undergo a medical examination to qualify.

DCRP members will continue to be insured for up to two years if on an approved leave of absence without pay for personal illness.

**Note:** The Internal Revenue Service classifies all life insurance coverage over \$50,000 as a fringe benefit subject to taxation. The amount of the life insurance coverage is not taxable, but the premium required to pay for the life insurance coverage is taxable. Members can elect to waive insurance coverage over \$50,000 at any time. For more information on this topic, see Fact Sheet #22, *Waiver of Non-Contributory Group Life Insurance over \$50,000*.

**Upon retirement,** life insurance under the DCRP reduces to 3/16 of the annual base salary on which DCRP contributions were based.

This life insurance coverage is available in retirement only to:

- Members age 60 or older if the member has completed 10 years of participation in the DCRP;
- Members of any age if the member has completed 25 years of participation in the DCRP.

The member must also have been an active employee in the twelve months immediately preceding the initial receipt of a retirement annuity payment.

### Conversion

Other than the retired insurance benefit described above, life insurance coverage under the DCRP ceases 31 days after termination of employment. During the 31-day period following termination of employment, a member may convert existing group life insurance coverage (less any amount of coverage carried over into retirement) into an individual whole life policy, without medical examination. For more information, see Fact Sheet #13, *Conversion of Group Life Insurance*.

### **LONG-TERM DISABILITY COVERAGE**

A member is eligible for employer-paid long-term disability insurance coverage after one year of participation in the DCRP.

The member becomes eligible for the disability benefit after six consecutive months of total disability due to an occupational or nonoccupational condition.

To be considered totally disabled due to sickness or accidental bodily injury, the member must be unable to perform any and every duty pertaining to his/her occupation. The member need not be confined to home, but must be under a doctor's regular care.

If a member is totally disabled, the member is eligible to receive a regular monthly income benefit up to 60 percent of the base salary on which DCRP contributions were based during the 12 months preceding the onset of the disability. While disabled, the member's and the employer's mandatory contributions are automatically credited to the member's retirement account.

The monthly income benefit is offset by any other periodic benefit the member may be receiving, such

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## A PUBLICATION OF THE NEW JERSEY DIVISION OF PENSIONS AND BENEFITS

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as Workers' Compensation, short-term disability, or Social Security. Eighteen months after the onset of long-term disability eligibility, the member must be unable to engage in any gainful occupation for which he or she is reasonably suited by education, training, or experience. Total disability is not considered to exist if the member is gainfully employed, incarcerated,

ed, or if the disability resulted from an act of war, or was intentionally self-inflicted.

Long-term disability benefits will be paid as long as the member remains disabled or until the member attains age 70. Should the member begin receiving payments under the retirement annuity, these benefits terminate.

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This fact sheet has been produced and distributed by:  
**New Jersey Division of Pensions and Benefits • PO Box 295 • Trenton, New Jersey 08625-0295**  
(609) 292-7524 • TDD for the hearing impaired (609) 292-7718  
URL: <http://www.state.nj.us/treasury/pensions> • E-mail: [pensions.nj@treas.state.nj.us](mailto:pensions.nj@treas.state.nj.us)

This fact sheet is a summary and not intended to provide total information.  
Although every attempt at accuracy is made, it cannot be guaranteed.

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1110 1-28-11  
**JOSEPH J. ROTOLO**

ATTORNEY AT LAW

50 SUMMIT AVENUE

HACKENSACK, NJ 07601

OFFICE: (201) 343-0088

FAX: (201) 343-0006

EMAIL: rotolo.law@verizon.net

ADMITTED TO PRACTICE  
IN NEW JERSEY & NEW YORK

January 24, 2011

City of Garfield  
111 Outwater Lane  
Garfield, New Jersey 07062  
Attn: Mr. Roy Riggitano, Chief Financial Officer

**RE: Pension Issues**

Dear Mr. Riggitano:

I am in receipt of copies of various items of correspondence from the State of New Jersey Office of the State Comptroller you recently forwarded to me, a copy of a letter directed to the City Manager dated December 22<sup>nd</sup>, 2010 as well as a copy of a letter involving Elmwood Park which is identical to the Garfield letter and which is dated January 21<sup>st</sup>, 2011.

Furthermore, I received a copy of a fax from the City Manager dated January 13<sup>th</sup>, 2011 in which he requested that I assist in drafting a letter or otherwise responding to the Office of the Comptroller on behalf of the City.

In order to fully and accurately respond, I will need the following information from you and I would like this information in writing:

- List of all "part-time" employees of the City of Garfield including all professionals.
- Indication of which of such employees presently participate in PERS

Please provide me with this information, in writing, as soon as possible so that I can begin to draft a response on behalf of the City.

Thank you.

Very truly yours,

  
JOSEPH J. ROTOLO, ESQ.

JJR:lp

cc: City of Garfield

Attn: Thomas J. Duch, Esq., City Manager

Attn: Mayor and Council

Giuseppe C. Randazzo, Esq.

**JOSEPH J. ROTOLO**

ATTORNEY AT LAW

50 SUMMIT AVENUE

HACKENSACK, NJ 07601

OFFICE: (201) 343-0088

FAX: (201) 343-0006

EMAIL: rotolo.law@verizon.net

ADMITTED TO PRACTICE  
IN NEW JERSEY & NEW YORK

January 26, 2011

City of Garfield  
111 Outwater Lane  
Garfield, New Jersey 07062  
Attn: Mr. Roy Riggitano, Chief Financial Officer

**RE: Pension Issues**

Dear Mr. Riggitano:

As a follow up to my recent correspondence and our various discussions regarding pension eligibility, I enclose herewith a copy of a letter which I directed to City Auditor, Dieter Lerch, dated March 11, 2010.

I have now reviewed additional correspondence received from the State of New Jersey Office of the Comptroller. In addition, I have received a copy of a response to the Office of the Comptroller which was sent by the Town of Guttenberg on behalf of Mr. Daglian who serves as our Municipal Judge and Town Attorney in that Municipality.

My review of the applicable law reveals that although I am a professional and provide a professional service as defined in the Local Public Contracts Law, I also qualify as an employee rather than an independent contractor pursuant to the IRS Employee Test. As a result, it is my opinion that you should, as Pension Certifying Officer, determine that I qualify as an employee, and, hence, for continued Pension System Membership. Of course, the ultimate decision is yours. The purpose of this correspondence is not to tell you how to decide the issue but simply to provide you with adequate factual background upon which such a determination should be made.

Please note that if you determine that I do not qualify as an employee and must, therefore, be removed from the pension system, I would like a specific written determination with the basis for such a determination so that I can take the appropriate action by way of an appeal or any other recourse available to me. My compensation as City Attorney is based, at least in part, on the fact that I continue in the pension system.

Mr. Roy Riggiano, Chief Financial Officer

January 26, 2011

Page 3

It is not my intention to address the circumstances surrounding any other employee of the City of Garfield at this time. Upon receipt of your response to my previous correspondence regarding the identity of those part time individuals who participated in the pension system, I will analyze those facts and, if requested to do so, will provide you with my input and opinion.

Thank you.

Very truly yours,

JOSEPH J. ROTOLO, ESQ.

JJR:lp

cc: City of Garfield

Attn: Thomas J. Duch, Esq., City Manager

✓ Attn: Mayor and Council

Giuseppe C. Randazzo, Esq.

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MAILING ADDRESS:  
PO Box 295  
TRENTON, NJ 08625-0295

LOCATION:  
50 WEST STATE STREET  
TRENTON, NEW JERSEY

ANDREW P. SIDAMON-ERISTOFF  
*State Treasurer*

FLORENCE J. SHEPPARD  
*Acting Director*

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
(609) 292-7524 TDD (609) 292-7718  
[www.state.nj.us/treasury/pensions](http://www.state.nj.us/treasury/pensions)

September 29, 2014

GARFIELD CITY  
ATTN: SHANNON TARZIA  
111 OUTWATER LN  
GARFIELD, NJ 07026

Re: 02-1124660  
Joseph Rotolo

Ms. Tarzia,

In 2012, the State of New Jersey Office of the State Comptroller released a report entitled "Improper Participation by Professional Service Providers in the State Pension System." The report identified numerous local government entities that failed to comply with the 2007 legislative effort to remove inappropriately enrolled professional service providers from the State-administered retirement systems. State lawmakers enacted N.J.S.A. 43:15A-7.2<sup>[1]</sup>, which was intended to curtail the participation of professional service providers such as attorneys, engineers, auditors and health care providers in the New Jersey Public Employees' Retirement System (PERS) or the Defined Contribution Retirement Program (DCRP). This statute establishes that professional service providers retained by government entities pursuant to a professional services agreement (PSA) or otherwise acting as independent contractors are ineligible to participate in the PERS after the expiration date of their existing contract or annual appointment.<sup>[2]</sup>

In order to review the Membership Eligibility of Professional Services Providers, the Division of Pensions and Benefits, Pension Fraud and Abuse Unit, requires you to complete the attached checklist. We are currently requesting this checklist in regard to Mr. Rotolo, however we do need it to be completed and returned for anyone at your location who provides professional services as defined in the attached Fact Sheet. Please complete and return no later than October 13, 2014.

Additionally, if you mark yes to number 10, please provide copies of the PSA's and accompanying resolutions.

If you have any questions, please don't hesitate to contact me. My number is 609-292-2623, and my e-mail is [Kristin.Bell@treas.nj.gov](mailto:Kristin.Bell@treas.nj.gov).

Sincerely,

Kristin Bell  
Enclosures

<sup>[1]</sup> Chapter 92, P.L. of 2007

<sup>[2]</sup> The expiration date will generally be December 31, 2007, but in no case later than June 30, 2008.

STATE OF NEW JERSEY — DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

## EMPLOYEE/INDEPENDENT CONTRACTOR CHECKLIST

Use this form and checklist as a guide to determine the employer-employee relationship and properly classify Independent Contractors and other individuals providing "professional services."

1. Employing Location: City of Garfield 2. PERS Location #: 220810  
 3. Name of Individual: Joseph Rotolo  
 4. Social Security #: [REDACTED] 5. PERS Membership #: [REDACTED]  
 (if applicable)  
 6. Position Held: City Attorney  
 7. Hours Worked per Week: approx 15 8. First Appointment Date: 7/2/1996  
 mm / dd / yyyy  
 9. Appointment Dates Since Jan. 1, 2008: From Please see attached to that  
 mm / dd / yyyy mm / dd / yyyy

10. Is the individual working under a Professional Services Contract pursuant to the New Jersey statutes N.J.S.A. 40A:11-5, 18A:18A-5, or 18A:64A-25.5 (no bid contracts)?  No  Yes (If "Yes", this individual is not eligible for PERS or DCRP enrollment through this position.)

**INSTRUCTIONS:** Complete the Employee/Independent Contractor questions by answering "Yes" or "No" as indicated. Some facts may support an Employee relationship while other facts indicate Independent Contractor status. The final determination rests on the weight given to the factors as a whole, with the degree of importance of any particular factor dependent on the occupation and circumstances. In all cases, the Division of Pensions and Benefits may review the facts to determine if the individual is an Employee or an Independent Contractor and additional supporting documentation may be required from the location. Individuals who are found to have been improperly enrolled, will be issued a return of pension contributions and any pension service based upon an ineligible position will be canceled by Division of Pensions and Benefits. For more information see Fact Sheet #84, *Professional Services Contracts, Independent Contractors, and Pension Enrollment*.

EMPLOYEE/INDEPENDENT CONTRACTOR QUESTIONS	EMPLOYEE	INDEPENDENT CONTRACTOR
<b>A. BEHAVIORAL CONTROL</b> <i>This test determines whether the location has a right to direct and control how the work is performed. The question is whether the location has the right to control the manner in which services are performed.</i>		
1. Does the location have the right to control, supervise or direct the individual performing the services, not only as to result but as to how assigned tasks are to be performed?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. <b>Hiring.</b> Was the individual appointed by an administrator (rather than appointed by the governing body) and is there a written job description?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Was the individual hired based on the submission of a Request for Proposal?	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
4. <b>Performed Personally.</b> Is the individual permitted to provide substitute personnel in his or her absence?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
5. Is the individual required to personally attend Court sessions or meetings arranged by the location?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
6. Is the individual authorized to hire others at his own expense or that of a third party, to assist the individual in performing work for the location?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes

Continued on next page.



EMPLOYEE/INDEPENDENT CONTRACTOR QUESTIONS <i>(Continued)</i>	EMPLOYEE	INDEPENDENT CONTRACTOR
7. <b>Hours.</b> Does the individual work established and fixed hours structured by or with approval of the location?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
8. Does the location conduct performance evaluations for the individual?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
9. <b>Instructions.</b> Is the individual given instructions and directions on tasks to perform?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
10. <b>Integration.</b> Does the individual report to a certain person at the beginning of the work day or other regular basis or otherwise is required to account for attendance?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
11. Does the location maintain timekeeping records or a system of keeping time for the individual (other than via the submission of payment vouchers)?	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
12. <b>Premises.</b> Is the individual's work mostly performed on the location's premises?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
13. <b>Training.</b> Does the location require the individual to be trained related to their position (e.g. sexual harassment, ethics, etc) ?	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
14. <b>Tools and Equipment.</b> Does the location provide the individual with permanent workspace and facilities (e.g. office space, tools, secretarial support, computer, etc. at the expense of the location)?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
15. <b>Sequence.</b> Does the location direct the order and sequence of the duties to be performed by the individual?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
16. <b>Reports.</b> Is the individual required to prepare regular reports?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<b>B. FINANCIAL CONTROL</b> <i>This test considers whether the location controls the financial aspects of the individual's services, the method of payment and whether services are offered to the public.</i>		
1. <b>Payment.</b> Does the location pay for the performance of services through submission of a voucher?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
2. Is payment for services made on a regular interval, such as weekly or bi-weekly payroll?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. <b>Expenses.</b> Does the location reimburse for travel or business expenses?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Are state and federal employee taxes and employee benefit deductions taken from the individual's paycheck and are employer taxes paid?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5. Does the individual receive fringe benefits that are provided to other employees of the location (such as vacation, health benefits, administrative leave, sick leave )?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Has the compensation for the work been established by ordinance or resolution of the governing body establishing salaries for persons in similar positions?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Continued on next page.

EMPLOYEE/INDEPENDENT CONTRACTOR QUESTIONS (Continued)	EMPLOYEE	INDEPENDENT CONTRACTOR
<b>C. RELATIONSHIP TO THE PARTIES</b> <i>These factors illustrate how the entity and individual perceive their relationship. Is there a continuing, ongoing relationship understood between the parties as one of employer and employee?</i>		
1. <b>General Public/Other Employers.</b> Is the individual also employed or associated with another entity that provides services to the location by contract, retainer, or other agreement?	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
2. <b>Continuing Relationship.</b> Are the parties in a continuing relationship that is ongoing (a specific conclusion date or term indicates there may not be a continuing employment relationship)?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Is the individual covered by a contract negotiated between a union and location?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
4. Does the individual offer his services to the public at large (rather than exclusively to the location)?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
5. Does the individual perform essentially the same services for other public employers?	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
6. <b>Termination.</b> Can the individual be terminated at the will of the location?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
7. <b>Discharge.</b> Can the individual terminate the relationship at will?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Review the questions and responses and indicate a determination of the individual's classification below.

#### EMPLOYING LOCATION'S DETERMINATION

I have reviewed the factors and have determined that this individual best meets the classification of an:

Check One:  EMPLOYEE     INDEPENDENT CONTRACTOR

Name of Certifying Officer: SHANNON TARZIA Phone: 973-340-6107  
 Certifying Officer Signature: Shannon Tarzia Date: 10/8/14

Submit this completed and signed form to the Pension Fraud and Abuse Unit,  
 Division of Pensions and Benefits, PO Box 295, Trenton, NJ 08625-0295.

- Employing locations must notify the Division of Pensions and Benefits immediately of any improperly enrolled individuals and take all appropriate action to remove ineligible individuals from PERS or DCRP membership.

To remove an ineligible individual:

- Stop reporting pension contributions** for the individual on the quarterly *Report of Contributions*; and
- Immediately notify the Division of Pensions and Benefits, Pension Fraud and Abuse Unit** in writing or by sending an e-mail to [pensionfraud@treas.state.nj.us](mailto:pensionfraud@treas.state.nj.us) When writing, please identify your employing location, a contact name and phone number, the name of the independent contractor or professional service provider, the position held, and the original date of hire or appointment.
- The Division of Pensions and Benefits will also review the responses and classification of any individual regarding his/her eligibility for enrollment in the retirement system. Additional supporting documentation may be required.
- See Fact Sheet #84, *Professional Services Contracts, Independent Contractors, and Pension Enrollment*, for more information.

<b>Joseph Rotolo</b>		
<b>Appointment Dates</b>		
January 1, 2008	to	December 31, 2008
January 1, 2009	to	December 31, 2009
January 1, 2010	to	December 31, 2010
January 1, 2011	to	December 31, 2011
January 1, 2012	to	June 30, 2012