

1 MARIANNE REINHOLD (CSB 106568) and  
2 KENT MORIZAWA (CSB 260453), Members of  
3 REICH, ADELL & CVITAN  
4 A Professional Law Corporation  
5 2670 N. Main Street, Suite 300  
6 Santa Ana, California 92705  
7 Telephone: (800) 386-3860  
8 Facsimile: (714) 834-0762

9 Attorneys for Petitioner  
10 ORANGE COUNTY ATTORNEYS ASSOCIATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF ORANGE

13 ORANGE COUNTY ATTORNEYS  
14 ASSOCIATION,

15 Petitioner,

16 vs.

17 COUNTY OF ORANGE; BOARD OF  
18 SUPERVISORS OF THE COUNTY OF  
19 ORANGE,

20 Respondents.

Case No.

**VERIFIED PETITION FOR WRIT  
OF MANDATE**

**[Civ. Proc. Code § 1085]**

21 Petitioner ORANGE COUNTY ATTORNEYS ASSOCIATION ("ASSOCIATION") seeks a  
22 writ of mandate directing the COUNTY OF ORANGE ("COUNTY") and the BOARD OF  
23 SUPERVISORS OF THE COUNTY OF ORANGE ("BOARD") to cease violating the Public  
24 Employees Pension Reform Act ("PEPRA") and other portions of the Government Code, and to rescind  
25 its unilateral imposition on employees of retirement plan contribution requirements that were not agreed  
26 to in a memorandum of understanding between the ASSOCIATION and the COUNTY which was  
27 thereafter approved by the BOARD; and to make the employees represented by the ASSOCIATION,  
28 and the ASSOCIATION, whole for damages caused by the unilateral imposition of the retirement plan  
contribution requirements. In support of its petition, the ASSOCIATION alleges as follows:

VERIFIED PETITION FOR WRIT OF MANDATE

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[PARTIES]

1. Petitioner ASSOCIATION is an “employee organization” within the meaning of Government Code Section 3501(a). The ASSOCIATION is the “recognized employee organization,” within the meaning of Government Code Section 3501(b), representing employees in the Attorney Unit of the COUNTY.

2. Respondent COUNTY is a county within the State of California, and is organized and operated pursuant to the laws of the State of California. The COUNTY is a “public agency” within the meaning of Government Code Sections 3501(c) and 31478.

3. Respondent BOARD is a local board organized and operated pursuant to the laws of the State of California. The BOARD exercises legislative and executive powers in overseeing the governance of the COUNTY.

[FACTS]

4. The Orange County Employees’ Retirement System (“OCERS”) is a public employees’ retirement trust fund, an independent entity that administers the COUNTY’s retirement system. OCERS and the County are governed by the County Employees Retirement Law of 1937 (“CERL”), codified at Government Code Section 31450 *et seq.* COUNTY employees receive retirement benefits pursuant to CERL.

5. The COUNTY and OCERS fund the retirement benefits paid to COUNTY employees through employee and employer contributions to OCERS, as well as OCER’s investment and other earnings. The benefits that an employee is entitled to receive upon retirement from the COUNTY are established and calculated according to a number of statutory formulas.

1           6.       For employees in the COUNTY's Attorney Unit, since the ASSOCIATION became the  
2 recognized employee organization, the employee contribution rates and benefit levels for retirement  
3 benefits have been set forth in the Memorandum of Understanding ("MOU") between the  
4 ASSOCIATION and the COUNTY. These contribution rates and benefit levels have changed over time  
5 when the COUNTY and the ASSOCIATION have collectively bargained and agreed to changes in  
6 contribution rates and/or benefit levels.

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8           7.       Since approximately 1980, the ASSOCIATION and COUNTY have entered in a series  
9 of MOUs providing in relevant part that employees in the Attorney Unit would be eligible to receive one  
10 of two retirement benefit formulas depending on their date of hire (collectively, these two retirement  
11 benefits will be referred to as the "basic retirement benefit"). Those hired prior to September 20, 1979  
12 received a retirement benefit (a one-fiftieth retirement formula) calculated pursuant to the formula  
13 contained in Government Code Section 31676.12, and their corresponding employee contributions were  
14 calculated pursuant to Government Code Section 31621.5. Those hired after September 20, 1979  
15 received a retirement benefit (a one-sixtieth retirement formula) calculated pursuant to the formula  
16 contained in Government Code Section 31676.1, and their corresponding employee contributions were  
17 calculated pursuant to Government Code Section 31621.

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19           8.       The provisions governing the basic retirement benefit were agreed to by the  
20 ASSOCIATION and the COUNTY and memorialized in an MOU between the ASSOCIATION and the  
21 COUNTY and thereafter approved by the BOARD and have continued intact in all successor MOUs,  
22 including the most recent MOU which has expired.

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24           9.       In 2000, the ASSOCIATION agreed to a COUNTY proposal that effective June 28,  
25 2002, in lieu of a 3.5 percent pay raise to employees in the Attorney Unit, the COUNTY would instead  
26 pay or "pick up" all employee contributions required to fund the basic retirement benefit.

1           10.       The provisions governing COUNTY “pickups” were agreed to and memorialized in the  
2 2000-2003 MOU between the ASSOCIATION and the COUNTY and thereafter approved by the  
3 BOARD and have continued intact in all successor MOUs, including the most recent MOU.  
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5           11.       On or about June 25, 2004, the ASSOCIATION and COUNTY agreed that employees  
6 in the Attorney Unit retiring on or after July 1, 2005 would receive an enhanced retirement benefit  
7 calculated pursuant to the formula contained in Government Code Section 31676.19. This formula is  
8 commonly referred to as the “2.7% at 55” benefit formula. Employee and employer contributions  
9 toward the “2.7% at 55” retirement benefit are higher than those for the basic retirement and include: (1)  
10 a normal employee contribution calculated pursuant to Government Code Section 31621.8; and (2) an  
11 additional contribution equal to 0.54 percent of compensation earnable pursuant to Government Code  
12 Section 31678.3(d). The “2.7% at 55” retirement benefit also results in an increase to the employer’s  
13 required contribution to the retirement system.  
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15           12.       The COUNTY and ASSOCIATION agreed in the 2004-2007 MOU that implementation  
16 of the “2.7% at 55” benefit formula would not result in any additional cost to the COUNTY. The  
17 COUNTY and the ASSOCIATION agreed that the COUNTY would only continue to “pick up” the  
18 portion of employee contributions that were equivalent to what it “picked up” under the prior basic  
19 retirement benefit formulas and calculations. The ASSOCIATION agreed in the 2004-2007 MOU that  
20 the employees would pay the additional employee contribution required to fund the “2.7% at 55”  
21 benefit. In addition, the ASSOCIATION agreed that the employees would also pay the portion of the  
22 COUNTY’s contribution for “2.7% at 55” to the retirement system that was greater than what the  
23 COUNTY contributes to OCERS to fund the basic retirement benefit.  
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25           13.       The provisions governing the “2.7% at 55” retirement benefit which were agreed to in  
26 an MOU between the ASSOCIATION and the COUNTY and thereafter approved by the BOARD have  
27 continued intact in all successor MOUs, including the most recent MOU.  
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1           14.     The most recent MOU between the ASSOCIATION and COUNTY was initially  
2 effective from June 22, 2007, through June 18, 2009, and thereafter extended through June 16, 2011.  
3 The ASSOCIATION and the COUNTY began negotiations for a successor MOU on May 13, 2011.  
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5           15.     On or about March 5, 2013, the BOARD passed and enacted Resolution 13-015  
6 imposing terms and conditions of employment on all employees in the Attorney Unit. The imposed  
7 terms and conditions of employment provide that the "2.7% at 55" retirement benefit remains the  
8 retirement formula for employees of the COUNTY hired prior to January 1, 2013, but eliminates the  
9 COUNTY's paying of the "pickups" of employee contributions to fund the basic retirement benefit and  
10 requires that employees begin to make these contributions. In addition, while unilaterally imposing this  
11 additional cost on employees, Resolution 13-015 continues to require that the employees in the Attorney  
12 Unit make the following contributions toward their retirement: (1) a normal employee contribution  
13 calculated pursuant to Government Code Section 31621.8 to cover the "2.7 at 55" benefit; (2) an  
14 additional contribution equal to 0.54 percent of compensation earnable pursuant to Government Code  
15 Section 31678.3(d); and (3) the portion of the employer's contribution to the retirement system which is  
16 greater than what the COUNTY would contribute to fund the basic retirement benefit.  
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18           16.     The ASSOCIATION is informed and believes that the provisions in Resolution 13-015  
19 regarding employee contributions to their retirement accounts will result in a 5.42 percent to 11.33  
20 percent reduction in annual salary for employees in the Attorney Unit.  
21

22           17.     The COUNTY's imposition of the terms and conditions of employment in Resolution  
23 13-015 resulted in the COUNTY contributing at a greater rate to the retirement plans of nonrepresented  
24 and managerial employees than it does to the retirement plans for employees in the Attorney Unit. The  
25 nonrepresented and managerial employees are in related retirement membership classifications to  
26 employees in the Attorney Unit.  
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1 22. The ASSOCIATION has no plain, speedy and adequate remedy in the ordinary course  
2 of law, other than the relief sought in this Petition.

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4 23. The unilateral implementation of increased employee contribution requirements by the  
5 COUNTY and BOARD has damaged the employees in the Attorney Unit represented by the  
6 ASSOCIATION in an amount to be proven at the hearing in this matter.

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8 24. The unilateral implementation of increased employee contribution requirements by the  
9 COUNTY and BOARD is arbitrary and capricious, and the ASSOCIATION's petition seeks  
10 enforcement of an important right affecting the public interest, thereby entitling the ASSOCIATION to  
11 recover its attorney's fees.

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13 [SECOND CAUSE OF ACTION]

14 VIOLATION OF GOVERNMENT CODE SECTION 31678.3

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16 25. Government Code Section 31678.3 predates the enactment of the PEPRA and applies to  
17 counties adopting the "2.7% at 55" benefit formula. It states in relevant part:

18 A resolution adopted pursuant to subdivision (b) may require members to pay a  
19 portion of the contributions attributable to past service liability, that would have  
20 been required if the benefits specified in the resolution, as adopted by the board of  
21 supervisors . . . had been in effect during the period of time designated in the  
22 resolution. Any payments required of represented employees shall first be  
23 approved in a memorandum of understanding made under the Meyers-Milias-  
24 Brown Act and executed by the board of supervisors . . . and the employee  
25 representative. Cal. Gov't. Code § 31678.3(d).

26 26. By its plain terms, Government Code Section 31678.3 permits a county board of  
27 supervisors to require that represented employees make an additional contribution to their retirement  
28 accounts for purposes of funding the "2.7% at 55" retirement benefit *only if* those increases are  
collectively bargained and then memorialized in an MOU executed by the board of supervisors and the  
collective bargaining representative.

1           27.     Pursuant to Government Code Section 3505.7, unilateral imposition of terms and  
2 conditions of employment does not result in an MOU. Thus, the COUNTY and BOARD violated  
3 Government Code Section 31678.3 when it passed Resolution 13-015 and imposed terms and conditions  
4 of employment including unilaterally requiring employees in the Attorney Unit to make an additional  
5 employee contribution equal to 0.54 percent of compensation earnable.

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7           28.     There are no administrative remedies available to the ASSOCIATION to challenge the  
8 failure of the COUNTY and BOARD to comply with Government Code Section 31678.3.

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10          29.     The ASSOCIATION has no plain, speedy and adequate remedy in the ordinary course  
11 of law, other than the relief sought in this Petition.

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13          30.     The unilateral implementation of the additional employee contribution equal to 0.54  
14 percent of compensation earnable by the COUNTY and the BOARD has damaged the employees in the  
15 Attorney Unit represented by the ASSOCIATION in an amount to be proven at the hearing in this  
16 matter.

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18          31.     The unilateral implementation of an additional employee contribution equal to 0.54  
19 percent of compensation earnable by the COUNTY and the BOARD is arbitrary and capricious, and the  
20 ASSOCIATION's petition seeks enforcement of an important right affecting the public interest, thereby  
21 entitling the ASSOCIATION to recover its attorney's fees.

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1 [THIRD CAUSE OF ACTION]

2 VIOLATION OF GOVERNMENT CODE SECTION 7522.30

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4 32. Government Code Section 7522.30 was enacted as part of the PEPRA and became  
5 effective on January 1, 2013. It states in relevant part:

6 The employer shall not contribute at a greater rate to the plan for nonrepresented,  
7 managerial, or supervisory employees than the employer contributes for other  
8 public employees, including represented employees, of the same employer who  
9 are in related retirement membership classifications. Cal. Gov't. Code §  
7522.30(e)(1).

10 33. The COUNTY and BOARD violated Government Code Section 7522.30 when, after the  
11 BOARD adoption of Resolution 13-015, the COUNTY began contributing to the retirement plans of  
12 nonrepresented and managerial employees at a greater rate than it contributes to employees in the  
13 Attorney Unit. The COUNTY's nonrepresented and managerial employees are in related retirement  
14 membership classifications to employees in the Attorney Unit.

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16 34. There are no administrative remedies available to the ASSOCIATION to challenge the  
17 failure of the COUNTY and BOARD to comply with Government Code Section 7522.30.

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19 35. The ASSOCIATION has no plain, speedy and adequate remedy in the ordinary course  
20 of law, other than the relief sought in this Petition.

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22 36. The failure of the COUNTY and BOARD to comply with Government Code Section  
23 7522.30 has damaged the employees in the Attorney Unit represented by the ASSOCIATION in an  
24 amount to be proven at the hearing in this matter.

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26 37. The failure of the COUNTY and BOARD to comply with Government Code Section  
27 7522.30 is arbitrary and capricious, and the ASSOCIATION's petition seeks enforcement of an  
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1 important right affecting the public interest, thereby entitling the ASSOCIATION to recover its  
2 attorney's fees.

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4 [Prayer for Relief]

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6 WHEREFORE, Petitioner ASSOCIATION prays for judgment as follows:

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- 8 a. That the Court grant a writ of mandate directing the COUNTY and BOARD to rescind its
  - 9 unilateral imposition of retirement plan contribution requirements that were not approved
  - 10 in an MOU between the ASSOCIATION and the COUNTY;
  - 11 b. For interest on any damages suffered by attorneys in the Attorney Unit based on the
  - 12 COUNTY and BOARD's violation of the law;
  - 13 c. For reasonable attorney's fees;
  - 14 d. For costs of suit incurred herein; and
  - 15 e. For such other relief as the Court may deem proper.
- 16

17 Respectfully submitted,

18 Dated: March 15, 2013

19 REICH, ADELL & CVITAN  
A Professional Law Corporation

20 By: Marianne Reinhold  
21 MARIANNE REINHOLD  
22 Attorneys for Petitioner  
23 ORANGE COUNTY ATTORNEYS  
24 ASSOCIATION  
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VERIFICATION

I, the undersigned, declare:

I am the President of the ORANGE COUNTY ATTORNEYS ASSOCIATION/Petitioner in this action. I have read the above Petition for Writ of Mandate and know its contents. All facts alleged in the Petition are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 15, 2013, at Orange County, California.

  
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LARRY YELLIN