

**CSDREA NEWFLASH!**  
**Highlights from the Advocacy Committee**  
**August 9, 2005**

**SDCERS TURMOIL/BOARD ACTIONS**

Despite much turmoil, the SDCERS Board held four meetings in July; two special closed session meetings on July 5 and July 11, a special business meeting on July 22, and the regular business meeting on July 29. Items discussed included changes for processing disability retirements, a request for a State audit of SDCERS (refused), and approval to hire a consultant to evaluate SDCERS business practices and the allegations raised by the City Attorney.

**SDCERS TURNOVER:** July witnessed the resignation of four Board members, the sudden death of Assistant Administrator Paul Barnett, and Larry Grissom's announcement of a December retirement. The Board members who resigned cited lack of Council support and the *Aguirre v. SDCERS* lawsuit, which named the current Board

There will probably be additional changes today. The City Council Docket for August 9 includes a resolution to remove SDCERS Board President Peter Preovolos from office (the reason given is failure of fiduciary duty by not conducting an illegal acts investigation). Also on the Docket are the proposed appointments of four new SDCERS Board members: Diann Shipione, Richard Rider, Ezekiel Cortez and Thomas Hebrank.

The Board has still not approved a waiver of attorney-client privilege, and there has been public criticism of President Preovolos by three other Board members for not scheduling the waiver issue in closed session, for calling meetings without proper noticing, and for taking actions without Board approval.

**UPCOMING MEETINGS:** The Board's monthly meeting schedules have been revised to eliminate committee meetings for the near future and instead hold two full board meetings, one meeting on the second Friday for investments and another on the third Friday for other business. **August Meetings:** The SDCERS Board will meet on August 12 and August 19. Discussion on **new IRS rules for DROP retirees** is tentatively scheduled for August 19.

**KPMG AUDIT AND INVESTIGATIONS**

Troy Dahlberg of Kroll, Inc. came to the City Council on Monday August 1 to request waiver of attorney-client privilege for the 'work product' of Vincent & Elkins (V&E), so it could be made available to the investigating agencies and KPMG. After vigorous discussion about the lack of information from Kroll, Inc., the Council nonetheless waived the privilege and V&E's summary report was made public. In brief, the report reiterated V&E's earlier conclusions that the City's failure to disclose information to the SEC was not intentional, but through oversight and poor judgment. The City Attorney objected to the conclusions. (V&E has been paid more than \$5 million to date.)

**Summit Meeting August 9** - Today all of the consultants and auditors will be in Council Chambers to give progress reports, answer questions, and - of course - request more money! This joint meeting is a first, and will probably take place this afternoon. Turn on Channel 24 if you live in San Diego City; it should be interesting!

**LAWSUITS, LAWSUITS!**

**SDCERS v. City of San Diego City** - New! This declaratory relief lawsuit was filed by SDCERS on July 26, asking the court to decide if the benefits SDCERS administers are legal (specifically MPI and MPII).

**People of the State of California vs. Grissom et al** - Filed on July 6 by City Attorney Michael Aguirre under the California Political Reform Act of 1974, the lawsuit asks the court to fine eight City officials for taking part in creating "illegal" pension benefits. The lawsuit also requests the court to roll back the "illegal" benefits created in MPI (1996) and MPII (2002). The defendants are Larry Grissom and Lori Chapin of SDCERS, Bruce Herring, and five of the six persons indicted by District Attorney Dumanis for conflict of interest.

**Aguirre v. SDCERS** - was filed on July 8 as a cross-complaint to the lawsuit by SDCERS v. Aguirre (filed in January 2005), and includes as defendants all current SDCERS Board members, as well as the eight defendants in the *People v. Grissom* lawsuit. Aguirre asks the court to appoint him as SDCERS legal advisor, to consider appointing a receiver, to roll back MPI and MPII benefits and to waive attorney-client privilege.

**Gleason, Woods, McGuigan v. Roeder** - filed by retirees on June 28, against Rick Roeder, the SDCERS actuary for the past 13 years. The suit claims that Roeder concealed from the SDCERS Board the potential damage to the pension fund caused by the 2002 underfunding proposal. No Change

**McGuigan v. City of San Diego** - also filed on June 28, asks the court to force the City to pay into the pension fund an actuarially determined amount that would reconcile the fund's deficits from 1997 to 2004. This suit seeks to hold the City responsible for its own mistakes of underfunding the pension system and then covering it up. No Change

**Status of Other Lawsuits:** August 8 is the deadline for the six pension board members to file challenges to the criminal conflict-of-interest charges filed against them by DA Bonnie Dumanis. Judge Frederic Link will review the challenges on August 29.

(over)

## **RECEIVERSHIP – NO PUBLIC DISCUSSION YET**

Receivership for the pension system was first mentioned by City Council members as a way to produce a waiver of attorney-client privilege. However, the cross complaint lawsuit filed by the City Attorney – Aguirre v. SDCERS - envisions much broader powers for a receiver, including the power to roll back 1996 and 2002 benefits. So far, the Council has hired the Heller Ehrman LLP law firm to advise them on receivership, but all discussion and decisions have been conducted in closed session. The Advocacy Committee spoke at two recent City Council meetings, urging the Council to schedule a public discussion on the specifics of receivership: e.g., how much time and money would be needed, what rights retirees would have, and alternatives to receivership. Our speaker today, Richard Kipperman, is a professional receiver, and will hopefully provide answers to at least some of our questions.

## **ADVOCACY COMMITTEE**

You can't win them all but we tried. In May we spoke to the City Council and the SDCERS Board in support of a waiver of attorney-client privilege by the SDCERS Board. Since then we have written or spoken five times to the City Council, asking the Council to indemnify the current SDCERS Board members, and thus encourage the Board to waive (as noted we also added our concerns about receivership.) On August 2, the Council finally voted against specifically indemnifying the current Board in response to the Aguirre v. SDCERS cross complaint.

One positive result may emerge from the effort. City Attorney Mike Aguirre asked for a meeting with CSDREA members, and we with Aguirre twice. The first meeting was not productive, but the second meeting was more cordial.

Interesting comments/proposals from Mr. Aguirre included: 1) Stepping back from receivership if new SDCERS Board members are appointed and the administrator leaves; 2) Establishing a separate fund for pre-1997 retirees, 100% funded so that funding uncertainties would be borne by the post MP1 beneficiaries. 3) For post-1997 retirees, pare down some 'egregious' benefits and examine others on a class-by-class basis (it was vague here, no details). Aguirre said his main concern was restoring the pension funding level using several strategies (land sales, third party lawsuits, tax increases), and that there may be better solutions than receivership and/or declaring benefits illegal.

It should be emphasized that we listened to his comments, but made no commitment to any of them. We were encouraged by a more cooperative approach from him, his apparent willingness to consider alternatives to receivership and to look at other ways to improve the funding situation. We will wait to see what happens next.

(Visit our website at [www.csdrea.com](http://www.csdrea.com). Email comments to Virginia Silverman at [VirginiaLA35@cox.net](mailto:VirginiaLA35@cox.net)).

## **UPCOMING MEETINGS**

### **August 9, 2005 - CITY COUNCIL MEETING**

Items 330-332 Reports from Kroll, V&E, KPMG; Items S500, S501, S502 - Removal of SDCERS Board President Preovolos; Appointment of four new SDCERS Board Members

(Note: The Council will be in recess from August 15 – September 6, 2005)

### **August 12, 2005 - RETIREMENT BOARD MEETING (Investments)**

### **August 19, 2005 - RETIREMENT BOARD MEETING (Business)**

Board meetings begin at 1:30 p.m. SDCERS Meeting Room, Wells Fargo Bldg, 4th Floor, 4th & B Streets

*Note: Retirement Board meetings are videotaped and usually replayed the same Friday, beginning at 7 p.m., on Cox Cable Ch. 24 or Times Warner, Ch. 24*

*City Council meetings are broadcast live and replayed the same evening, and on Saturday morning at 7 a.m. (Monday Council) and Sunday morning at 7 a.m. (Tuesday Council). Available only to San Diego City residents.*

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