

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
M E M O R A N D U M
LEGAL DIVISION

DATE: December 1, 2006
TO: The Board of Administration
FROM: Christopher W. Waddell, General Counsel
SUBJECT: December Legal Services Report

I. ADMINISTRATIVE DISABILITY HEARINGS (Unless otherwise noted, Sheila Jacobs represents the Board in administrative hearings.)

Adjudicator Hearings:

Max Camberos: Judge Stephen Hjelt's (OAH) decision is pending.

Constantino Delimitros: Judge Raymond Zvetina heard part of Mr. Delimitros case on October 5. The hearing will conclude at a later date. Debra Odom Kuttner represents the Board.

Heleodoro Lopez: Judge Alan Alvord (OAH) has recommended that the Board approve Mr. Lopez's application. Based on an error of law, the Board filed an objection to the recommended decision. Mr. Lopez's responded to that objection. Judge Alvord's final recommendation is pending.

Francisco Torres: Judge Kevin Midlam heard Mr. Torres' case on October 26. The hearing concluded November 30, 2006. Debra Odom Kuttner represented the Board. A recommended decision is pending.

The following applicants have been referred for hearing, but no dates have been set: Charlene Anderson, Daniel Bishop, Cathy Griggs, Peter Hepburn, Llanina Medina, Ernest Mercado and Frank Montano.

Adjudicator Hearings on Calendar:

Michael Wahl, December 7, 2006 (OAH)
Robert Neal, December 11, 2006 (OAH)
Donovan Knapp, January 18, 2007 (JAMS)

Pre-Hearing Completed, Adjudicator Hearing to be Calendared:

Norma Diaz, Alan Fragoso, Harvey Kitchel, Debra Mattie, Scott Naliboff, Brad Ruff and Christopher Smith.

Affidavit and Re-Examination Project Chart

MONTH	NUMBER OF AFFIDAVITS MAILED	NUMBER OF AFFIDAVITS RETURNED	RETIREE NOTIFIED OF FAILURE TO RETURN AFFIDAVIT	AFFIDAVIT 60 DAYS OVERDUE	RETIREE SUBJECT TO SUSPENSION
May, 2006	11	11	2	0	0
June	20	20	2	0	0
July	32	32	0	0	0
August	22	20	2	2	1
September	39	37	2		
October	28**	18			
November	20***				
TOTAL	172	138			

* % of Disability Recipients Currently Employed is 60%
 ** Includes 6 in 2nd Re-exam group
 *** Includes 1 from Dec. Group

II. LITIGATION

Superior Court – Miscellaneous

Michael Abramsky, et al. v. Alstom S.A. et al.: 03-CV-6595 (VM) United States District Court, Southern District of New York (Manhattan): SDCERS has been appointed co-lead plaintiff, along with 3 other public retirement funds in this securities fraud class action lawsuit against the French corporation, Alstom and a number of its affiliates. A second-amended Complaint was filed in March 2006. Motions to Dismiss were also filed to the Second Amended Complaint. In late September 2006, the court denied the motions to dismiss. The court's decision allows the lead plaintiffs, including SDCERS, to proceed with claims against the individual defendants relating to fraud at ATI, and to proceed with discovery on the securities fraud claims against other defendants. The New York City office of Berstein, Litowitz, Berger and Grossman is representing SDCERS.

SDCERS v. City of San Diego & City Attorney, Michael Aguirre, San Diego Superior Court Case No. GIC841845. On January 27, 2005, the Board filed a lawsuit against the City of San Diego and its City Attorney, Michael Aguirre, seeking a judicial declaration that SDCERS is entitled to retain its own legal counsel and demanding return of SDCERS' privileged documents seized from certain SDCERS' Board members' City offices. The case is assigned to Judge Jeffrey Barton. Seltzer Caplan McMahon & Vitek ("SCMV") represents SDCERS.

The City Attorney filed a cross-complaint on behalf of the City seeking declaratory relief regarding the validity of Manager's Proposals I and II and certain retirement benefits. SCMV also filed a compulsory cross-complaint to the City's cross-complaint. SDCERS' cross-complaint seeks recovery of the all monies owed by the City to SDCERS but not paid because of Manager's Proposal I and II.

SDCERS' Motion for Summary Adjudication on its first cause of action for a declaration that SDCERS is empowered to employ legal counsel of its own choosing for all purposes, separate and independent from the City of San Diego and Office of the City Attorney of the City of San Diego was granted on March 6, 2006. The Petition for Writ of Mandate filed on April 3, 2006 by the City Attorney seeking to set aside Judge Barton's ruling was denied.

Trial of this action has commenced. The Court divided the trial into three phases; trial on Phase 1 began October 25, 2006 and finished on November 29, 2006. The Phase 1 issues are under submission. Phase 2, if necessary, will not begin until after the Court has issued his ruling on Phase 1.

SDCERS v. City of San Diego, San Diego Superior Court Case No. GIC851286. On July 22, 2005, the Board voted unanimously (8-0) to file an action for declaratory relief seeking a judicial determination of the legality of paying contested retirement benefits to its members. The lawsuit was filed on July 26, 2005, and has since been consolidated with Case No. GIC841845 before Judge Jeffrey Barton.

SCMV filed a Motion for Summary Judgment on the GIC851286 complaint. The Court granted judgment in SDCERS' favor, holding that SDCERS may continue to pay the challenged benefits until they are otherwise declared illegal.

San Diego Police Officers' Association v. Michael Aguirre, et al., United States District Court Case No. 05CV1581. On August 9, 2005, the San Diego Police Officers' Association (POA) filed a complaint in federal court for Damages, Declaratory and Injunctive Relief against the City Attorney, City of San Diego, Retirement System, former Retirement Administrator Larry Grissom, past and present members of the City Council, certain former SDCERS Board Members, the former City Auditor and the past and present City Manager.

This case appears to be primarily based upon what the POA alleges have been unfair labor negotiation tactics by the city (e.g., docking police DROP participants 3.2% to match the decrease in the City "pick up" of employee contributions by active employees). In addition, however, it asserts claims related to MP1, MP11 and health care benefits. After various pleading challenges, on April 17, 2006, SDCERS filed its Answer to the POA's Third Amended Complaint.

Mr. Aguirre, the City Council and the individual City Council Members and Employees appealed portions of the District Court's denial of their respective Motions to Dismiss with respect to the Qualified Immunity Doctrine. That matter is now pending before the 9th Circuit Court of Appeals. The District Court did not stay the proceedings upon notice of the appeals.

The Court and the parties participated in an Early Neutral Evaluation conference in which the parties discussed various issues including the status of pleadings, written discovery and depositions. Significantly, any claim for money damages on behalf of POA members has been eliminated, leaving only a theoretical monetary claim by the

POA itself, and a claim for declaratory relief. SCMV will continue to discuss with POA's attorneys the issue of dismissing SDCERS completely.

Through November, the parties have continued to exchange written discovery, and various depositions are scheduled for December. Additionally, SCMV believes it will have a Motion for Summary Judgment filed with the Court before the end of the year.

Aaron, et al. v. Aguirre, et al., Case No. '06CV1451. On July 18, 2006, the attorneys for the POA filed a class action lawsuit on behalf of the members of the POA in the Southern District of California naming SDCERS. The case originally was assigned to the Honorable James Miller, but was transferred to Judge Huff's court as a matter related to the POA case.

The lawsuit is essentially identical in substance to the POA's representative action, though some of the allegations have been reworded, and other allegations have been added in an attempt to satisfy the class action pleading requirements. The primary difference between the class action and the representative action is that class members are permitted to seek their individual alleged damages from defendants, which is an amount that far exceeds what the POA could seek as a representative body. SCMV is representing SDCERS.

In October, 2006, the POA filed its Second Amended Class Action Complaint. Despite the Court's strong recommendation that the POA limit the class it sought to have certified, the POA kept the broad class allegations that had appeared in the First Amended Complaint. The only real changes to the Complaint involved allegations pertaining to KPMG. Shortly after the Second Amended Complaint was filed, SCMV filed a Motion to Dismiss. That motion, along with motions filed by the City, Mr. Aguirre and KPMG are all set to be heard on December 4, 2006.

The class representatives also filed a motion to certify the class on August 25, 2006. That motion was set for hearing on September 22, 2006, but the Court declined to formally rule on that motion due to the fact that the POA had filed an amended complaint.

SDCERS v. City of San Diego, San Diego Superior Court Case No. GIC861125. On January 20, 2006, the Board voted to file an action for subrogation seeking the recovery of monies paid by SDCERS for attorneys fees incurred in the *Gleason* litigation and the various City investigations on behalf of various former board members. The complaint was filed on February 9, 2006. The case was assigned to Judge Linda Quinn. Seltzer Caplan McMahon Vitek is representing SDCERS. At the Board's direction, SCMV dismissed this case without prejudice on November 22, 2006.

Court of Appeal

Alcala v. SDCERS, San Diego Court of Appeal Case No. D048569: After the Board adopted an adjudicator recommendation to deny Mr. Alcala's application for industrial disability retirement, Mr. Alcala filed a Petition for Writ of Mandate in the Superior Court. The court denied the Petition, thus sustaining the Board's decision. Mr. Alcala filed his Notice of Appeal in the Appellate Court. Alcala's opening brief was due September 15. It was not filed timely. On September 19, the appellate court provided notice that it would dismiss the appeal on October in mid-September, but was not filed. The Appellate Court has indicated that it would dismiss his appeal on October 4. SDCERS received the dismissal on November 7, 2006.

Other Cases of Interest:

City of San Diego v. Callan Associates, Inc., Gabriel Roeder Smith & Company, San Diego Superior Court Case number GIC852419. On August 16, 2005, the City of San Diego filed a Complaint for Damages against SDCERS investment consultant and actuary for professional negligence, intentional fraud-affirmative misrepresentation and intentional fraud-concealment. The City sought damages in excess of \$50 million. On November 29, 2006 the City and Callan announce that they had agreed to settle the case for a payment to the City by Callan or its insurance carrier of \$4.5 million, with no admission of liability by Callan. They payment is to be made to the City by December 18, 2006.

People of the State of California v. Cathy Lexin, et. al., The District Attorney filed felony conflict of interest charges against six former SDCERS Board Members alleging a violation of California Government Code section 1090. The case was assigned to Judge Frederick Link. SDCERS is not a party to this suit. The Preliminary Hearing concluded and Judge Link has found that there is sufficient evidence for the matter to proceed to trial. On August 2, Judge Roger Kravel issued a tentative ruling upholding Judge Link's decision. On September 25, 2006, the 4th DCA denied the defendants' petition for review. On November 29, 2006, the California Supreme Court ordered the 4th DCA to issue an order to show cause why the case should not be dismissed.

McGuigan v. the City of San Diego, San Diego Superior Court case number GIC849883. Plaintiff William J. McGuigan filed the complaint on June 28, 2005. Plaintiff claims Defendant City of San Diego failed to fund the retirement plain as required by the City Charter and SDMC § 24.0801. The case is assigned to Judge Richard Strauss. Although a tentative settlement was purportedly reached in this case, it has not been finalized.

The City of San Diego v. Loraine Chapin, San Diego Superior Court case number GIC863096. The City Attorney in the name of the City filed a complaint on March 21, 2006 against Ms. Chapin alleging violation of Government Code section 1090. The City alleges that Ms. Chapin as a City Attorney had a conflict of interest when she opined on whether SDCERS was entitled to legal counsel independent from the City Attorney's office. The case has been assigned to Judge Linda Quinn. Although a formal settlement has not been approved, this case has tentatively been settled with the City paying a portion of Ms. Chapin's legal fees and the action being dismissed.

Upcoming Hearing Dates

SDCERS v. City of San Diego (Legality of benefits) consolidated with SDCERS v. City & City Attorney (Attorney for SDCERS)	Ongoing	Trial (D-69)
	12/07/06	Status Conference (3:00 PM D-69)
SDPOA v. Aguirre, et al. (Declaratory & Injunctive Relief)	03/26/07	Pretrial Conference (10:30 AM D-13); and hearing on motions in limine
	04/02/07	Trial Status Conference (10:30 AM D-13)
	04/03/07	Trial (9 AM, D-13)
Aaron et al. v. Aguirre, et al.	12/04/06	Hearing on Motion to Dismiss (10:30 AM D-13)

III. PUBLIC RECORDS REQUESTS

In November, the Legal Services Division received 2 and responded to both California Public Records Act requests. In all cases, non-public, private and/or confidential member information was withheld or redacted pursuant to applicable laws. The requested records include: a list of all the outside legal counsel paid for by SDCERS for current and former pension system officials and board members from January 2002 to October 31, 2006. The request also includes the officials' names, the firm representing each official, the amount invoiced by the firm, the amount paid to the firm, date of hire, date of completion and the description of the need for representation. In addition, there was a request for a list of all the outside legal counsel hired by SDCERS for pension/benefit related cases and issues from January 2002 to October 31, 2006, as well as the name of the law firm hired, the amount invoiced by the firm, the amount paid

to the firm, the date of hire, the date of work completion and a brief description of the case. Staff provided Board members copies of the responses.

IV. COMMUNITY PROPERTY AND BENEFITS

In November, the community property/benefits legal assistant handled 50 phone calls, met with 7 members, and had 9 conferences with internal staff. She handled 5 workflows from operations staff, reviewed 27 member files, 11 domestic relations orders, and 13 judgments. Two responses to joinders were filed with the court. Fifteen formal staff memos were prepared, and 27 e-mails were sent to members, staff, outside counsel, and others. Two letters to the Franchise Tax Board were prepared; 3 garnishments were approved and authorized; 3 Powers of Attorney were reviewed and approved for staff, 3 public record searches were done to locate beneficiaries. Sally Nadeau, our senior legal assistant, assists with community property and benefits issues.

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