

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

**DATE:** July 3, 2008  
**TO:** The Board of Administration  
**FROM:** Elaine W. Reagan, General Counsel  
**SUBJECT:** July Legal Services Report

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**I. LEGAL PROJECTS**

**Form 700 Filings:** Legal staff has worked closely with Investments to assist SDCERS' investment consultants with questions relating to the filing of their assuming office, leaving office and annual Statement of Economic Interest forms (Form 700). Legal has also conducted research to determine what, if any, requirements there are under the Political Reform Act that SDCERS' consultants be designated on SDCERS' Conflict of Interest Code as Form 700 filers in anticipation of the biennial requirement that SDCERS review and amend its Conflict of Interest Code.

**Biennial Review and Amendment of Conflict of Interest Code:** SDCERS is required to review and amend its Conflict of Interest Code by August 22, 2008. As part of the review and amendment process, SDCERS must ensure that its designation of employees and officers is current and complete. In her capacity as SDCERS' Form 700 liaison, Lynette Belle attended a Workshop presented by the City Clerk's office on June 24, 2008, to discuss all the necessary guidelines for overseeing the code update process. Legal will be working closely with the SDCERS' Compliance Officer to ensure that this is accomplished within the deadline.

**Board Charters, Policies, Resolutions and Rules:** Legal continues to work on updating and revising of the Board Rules and is on track for completion of this project as part of the FY09 Action Plan. Olivia Zatarain is diligently working with Robyn Bullard in Member Services on the recent revisions and our "new and improved look" for the rules book. We hope to have a current version of the rules book available by the end of July and will then continue to update the book as new revisions are approved by the Board.

**Overpayments/Underpayments:** The Board recently passed the Overpayments and Underpayments Policies. Sheila Jacobs is working closely with Benefits Administration, Finance and the Internal Auditor to ensure that all mistakes in member calculations resulting in overpayments and underpayments are promptly

resolved and reported to the Board. Ms. Jacobs is currently working on 25 cases, the majority of which are under \$5,000.

## **II. LITIGATION**

The status of all current litigation is shown in the attached chart, with the highlights of any important developments reported here as well.

In the MOU Effective Date litigation (City vs. SDCERS, Case No.: 37-2007-00077604-CU-MC-CTL), the City has filed its amended complaint naming two individuals (a current firefighter and a recent retiree) as representatives of the classes of employees who might be affected by the litigation. The city has stated a separate cause of action for declaratory relief against SDCERS seeking an order that SDCERS is required to administer the plan in accordance with the 2005 MOUs.

We have received written notice under the Government Tort Claims Act that Judie Italiano, the MEA, Garry Collins, Harry Eastus, James "Bill" Farrar and the POA are asserting claims against SDCERS for breach of contract, breach of pension agreements, negligence, breach of fiduciary duty, misrepresentation and, in the case of Italiano/MEA, deprivation of due process. The claimants are seeking specific performance and/or damages, including damages for emotional distress and attorney's fees.

## **III. PUBLIC RECORDS REQUESTS**

In June, Legal Services division received two and responded to one request for public records. All non-public, private and/or confidential member information was withheld or redacted pursuant to applicable laws. Sheila Jacobs manages the public records project with the assistance of Merlita Hilario.

## **IV. COMMUNITY PROPERTY AND BENEFITS**

In June, the community property/benefits legal assistant handled 95 phone calls and met with 16 members. She filed 6 joinders, and responded to 2 requests for information. She reviewed 9 Domestic Relations Orders, 12 Judgments and Marital Settlement Agreements, and 56 member files. She sent 67 letters and e-mails to members, outside counsel and others, along with 6 community property information packages, and 14 community property inquiries. She prepared 5 Indemnity Agreements and 1 Release. She reviewed 87 beneficiary designations for community property issues. She examined 3 estate documents, and approved 3 support garnishments. She handled 6 FTB liens.

## **V. STAFF TRAINING AND DEVELOPMENT:**

I attended the CALAPRS Attorney Round Table in Oakland on May 30, 2008. The topics presented were Legislation on Iran Divestment, DROP Implementation and Tax Issues; FTB Requests for Information and IRS treatment of disability benefits. The Round Table was most interesting and I received valuable information by attending. I also presented information to the group on the IRS guidelines for collection of overpayments and underpayments which was well received. The general consensus was that SDCERS is once again at the forefront of addressing these types of issues. The systems attending the Round Table, who are just beginning to wrestle with their own overpayments policies, requested copies of SDCERS' policies for their review.

On May 14, 2008 Sally Nadeau attended a training session presented by Roxanne Parks on Required Minimum Distributions and DROP payments. The information she received in this training session will help Sally when assisting members with questions involving the impact of divorce on the member's retirement benefits.

During the week of June 23<sup>rd</sup>, Sheila Jacobs attended the NAPPA Conference in Boston. The conference included presentations on correction of errors, an overview of best practices in fund governance, ethical responsibilities of outside counsel, the impact of USERRA on retirement benefits and an update on litigation involving pension systems.

Attachment

## LITIGATION CHART

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<b>DISABILITY LITIGATION:</b> Rochelle Glenn v. SDCERS SD Superior Court Case No. GIC 872600 Judge: Hon. Judith Hayes SDCERS' Counsel: Sheila Jacobs	Petition for Writ of Mandate challenging Board decision that Ms. Glenn failed to timely file application for disability retirement.	None	Answer filed.	None.
<b>GENERAL LITIGATION:</b> SDCERS v. City of San Diego and City Attorney, Michael Aguirre SD Superior Court Case No. GIC 841845 Consolidated with: SDCERS v. City of San Diego, GIC 851286 Judge: Hon. Jeffrey Barton SDCERS' Counsel: SCMV	<b>SDCERS Complaint:</b> Declaratory Relief on Right to Employ Counsel <b>City's Cross-Complaint:</b> Validity of MPI and MPII and certain retirement benefits. <b>SDCERS' Cross-Complaint:</b> Recovery of monies owed by City to SDCERS but not paid because of MPII	3-6-06: Granted SDCERS' Motion for Summary Adjudication (attorney issue) 10-25-06: Trial, Phase I: City is (1) estopped from challenging MPI benefits by <i>Corbett</i> , (2) barred from contesting benefits of MP2 as to class members in <i>Gleason I</i> , (3) cannot pursue a remedy against SDCERS for violation	City's Appeal on 8-14-07 ruling pending.  City's Opening Brief filed. SDCERS has filed a Motion to Dismiss Appeal.	None.

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>SDPOA v. Michael Aguirre  U.S. District Court  Case No.: 05CV1581  Judge:  SDCERS' Counsel:  SCMV</p>	<p><b>Claims Alleged:</b> unfair labor tactics and claims related to MPI, MPII and health care benefits, violations of Brown Act, Conspiracy, Conversion and Breach of Contract</p>	<p>of debt limit laws. City to join all necessary parties.  <b>8-14-07:</b> City's 6<sup>th</sup> Amended Cross-Complaint dismissed as barred by Statute of Limitations</p> <p><b>5-18-07:</b> Ruling on City and SDCERS' MSJ: POA's unfair labor tactics claims dismissed. POA cannot pursue monetary damages against SDCERS. All claims against SDCERS dismissed except those relating to underfunding issues.  <b>6-25-07:</b> Court declined to exercise supplemental jurisdiction over remaining state law claims. Action dismissed as of 8-25-07.</p>	<p>POA's Appeal pending before 9<sup>th</sup> Circuit Court of Appeals.  POA has filed its opening brief.  SDCERS' counsel will file an opposition brief.</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>Aaron v. Aguirre U.S. District Court Case No. 06CV1451 Judge: Judge Huff SDCERS' Counsel: SCMV</p>	<p><b>Class Action</b> on behalf of POA members in Southern District of Cal. <b>Claims:</b> substantially same as in the POA case above but seeking individual damages on behalf of class members.</p>	<p><b>3-8-07: SDCERS'</b> Motion to Dismiss Third Amended Complaint as to causes of action for Breach of Contract, Interference with Contract, Conversion and Conspiracy granted in its entirety with leave to amend only as to the Conspiracy claim. <b>6-11-07: SDCERS'</b> Motion to Dismiss Fourth Amended Complaint granted. Conspiracy claims against SDCERS dismissed with prejudice.</p>	<p>POA's attorneys dispute who represents POA. Motions filed with District Court seeking order to resolve dispute. Motions referred to Magistrate. Hearing dates unknown.</p>	<p><b>7-7-08: SDCERS'</b> Motion for Summary Judgment.</p>
<p>SDPOA v. Aguirre SD Superior Court Case No.: 37-2007-00075432-CU-MC-CTL Judge: SDCERS' Counsel: SCMV</p>	<p><b>Claims:</b> same as in other POA cases but filed on behalf of former (retired) and current members of POA.</p>	<p>None.</p>	<p><b>5-16-08: SDCERS'</b> Demurrer granted in part and overruled in part. POA to file amended complaint by 6-23-08.</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>City of San Diego v. SDCERS SD Superior Court Case No.: 37-2007-00077604-CU-MC-CTL Judge: Hon. Jeffrey Barton SDCERS' Counsel: SCMV</p>	<p><b>MOU Effective Date:</b> City seeks judicial declaration that changes to municipal code eliminating certain benefits became effective on 7-1-05 and not 2-16-07 when the ordinance eliminating those benefits became effective.</p>	<p>None.</p>	<p><b>6-25-08:</b> City's First Amended Complaint filed designating Benjamin Vernon and James Barrett as representatives of Class A and Class B (represented and unrepresented employees, respectively, who are impacted by litigation)  City has advised it will file a Second Amended Complaint to delete Barrett and name Benjamin Vernon, a more appropriate representative.</p>	<p><b>7-18-08:</b> City's Motion Re Amended Complaint (procedures for joining additional defendants).  <b>9-12-08:</b> Status Conference</p>
<p>City of San Diego v. SDCERS SD Superior Court Case No.: 37-2007-00081912-CU-WM-CTL Judge: Nevitt SDCERS' Counsel: SCMV</p>	<p><b>PSC:</b> City seeks declaratory relief to set aside Board's 11-16-07 vote regarding treatment of PSC costs.</p>	<p>None.</p>	<p>SDCERS demurrer on grounds that City Attorney did not have authority to file litigation pending. Subsequently, City Attorney has received authority from City Council to proceed as to non-retirees only. City</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p><b>OTHER CASES OF INTEREST:</b>            People v. Lexin            San Diego Superior Court, Case No. SCD190930            Judge: Hon. Frederick Link</p>	<p>Felony conflict of interest charges against six former SDCERS Board Members based on a violation of Gov. Code Sec. 1090</p>	<p>None.</p>	<p>Defendants' Motion to Dismiss denied and upheld on appeal. Supreme Court has accepted review.</p>	<p>None.</p>
<p>USA v. Saathoff            U.S. District court            06CR0043-BEN</p>	<p>Indictments against former SDCERS' Board members, Administrator and General Counsel for conspiracy to commit wire and mail fraud, mail fraud, aiding and abetting.</p>	<p>None.</p>	<p>Motion by prosecution to remove trial judge denied. Trial dates scheduled for March 2008 were vacated.</p>	<p>None.</p>