


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

DATE: August 4, 2008
TO: The Board of Administration
FROM: Elaine W. Reagan, General Counsel 
SUBJECT: August Legal Services Report

I. LEGAL PROJECTS

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. Legal is 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. The "new and improved" version of the rules book is in process of being distributed to the Trustees and staff. Legal 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. LEGISLATIVE DEVELOPMENTS

Waterfall Ordinance: Article 4, Division 15 of the Municipal Code, otherwise known as the "Waterfall" sets forth the requirements for payment of the 13th check, Corbett, COLA and Supplemental COLA benefits. On July 21, 2008, the City Council passed Version A of an ordinance to amend Division 15 and eliminate the concept of surplus undistributed earnings as a source of paying benefits outlined in the Waterfall. Second reading of the ordinance is currently scheduled for September 2, 2008. The passage of this ordinance will bring the plan document into harmony with SDCERS' current practice of including these benefits as actuarial liabilities to be paid out of plan assets but will not otherwise change the way SDCERS has paid the benefits in past years.

Drop Interest Crediting: On July 9, 2008, the House passed H.R.6382, the Pension Protection Technical Corrections Act of 2008. Included in that bill was a provision providing that for governmental plans, a rate of return or method of crediting interest established pursuant to any provision of Federal, State or local law, including any administrative role or policy adopted in accordance with such law, would be treated as a market rate of return and a permissible method of crediting interest. It also provides that it will take effect as if included in the provisions of the Pension Protection Act of 2006 (PPA). The bill was received in the Senate on July 10, 2008. If passed, this Act would allow SDCERS to set a rate of return for crediting of DROP interest by an administrative process pursuant to the local Municipal Code. Staff will continue to monitor this Act and advise you of further developments.

State Public Agency Legislation: Senate Bill 1696 was chaptered on 7-3-08. It prohibits any public agency, including SDCERS, from allowing another party to control disclosure of information subject to disclosure under the Political Reform Act (PRA). This would prohibit SDCERS from entering into non-disclosure agreements if information is subject to disclosure under the PRA. The bill also requires that any contract entered into by SDCERS that requires a private entity to review, audit or report on any aspect of SDCERS shall be public and subject to disclosure, unless an exception applies.

III. LITIGATION

The status of all current litigation is shown in the attached chart. SDCERS filed its answer to the MOU Effective Date litigation on July 31, 2008. On July 30, 2008, the City filed its Reply Brief on Appeal in the Barton litigation.

IV. PUBLIC RECORDS REQUESTS

No requests for public records were received in July.

V. COMMUNITY PROPERTY AND BENEFITS

In July, Sally Nadeau, the community property/benefits legal assistant handled 62 phone calls and met with 6 members. She filed 3 joinders with the court. She reviewed 11 Domestic Relations Orders, 20 Judgments and Marital Settlement Agreements, and 50 member files. She sent 60 letters and e-mails to members, outside counsel and others, along with 3 community property information packages, and 9 community property inquiries. She prepared 3 Indemnity Agreements and 2 Releases. She reviewed 92 beneficiary designations for community property issues. She examined 3 estate documents, and 2 name changes.

VI. STAFF TRAINING AND DEVELOPMENT:

There was no staff training this month. Merlita Hilario and Cheryl Wilson will attend the CALAPRS Disability Round Table in September. Olivia Zatarain will attend advanced training on Word in September as well.

Attachment

LITIGATION CHART

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
DISABILITY LITIGATION: 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.
GENERAL LITIGATION: 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	SDCERS Complaint: Declaratory Relief on Right to Employ Counsel City's Cross-Complaint: Validity of MPI and MPII and certain retirement benefits. SDCERS' Cross-Complaint: 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 of debt limit laws. City to join all necessary parties. 8-14-07: City's 6 th Amended Cross-Complaint dismissed as barred by Statute of Limitations	City's Appeal on 8-14-07 ruling pending. City's Reply Brief filed on 7-30-07. 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>Claims Alleged: unfair labor tactics and claims related to MPI, MPH and health care benefits, violations of Brown Act, Conspiracy, Conversion and Breach of Contract</p>	<p>5-18-07: 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. 6-25-07: 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 9th Circuit Court of Appeals. POA has filed its opening brief. SDCERS' counsel will file an opposition brief.</p>	<p>None.</p>
<p>Aaron v. Aguirre U.S. District Court Case No. 06CV1451 Judge: Judge Huff SDCERS' Counsel: SCMV</p>	<p>Class Action on behalf of POA members in Southern District of Cal. Claims: substantially same as in the POA case above but seeking individual damages on behalf of class members.</p>	<p>3-8-07: SDCERS' 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. 6-11-07: SDCERS' Motion to Dismiss Fourth Amended Complaint granted. Conspiracy claims against SDCERS dismissed with</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>7-7-08: SDCERS' Motion for Summary Judgment.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>SDPOA v. Aguirre SD Superior Court Case No.: 37-2007- 00075432-CU-MC-CTL Judge: SDCERS' Counsel: SCMV</p>	<p>Claims: same as in other POA cases but filed on behalf of former (retired) and current members of POA.</p>	<p>prejudice.</p>	<p>5-16-08: SDCERS' Demurrer granted in part and overruled in part. POA to file amended complaint by 6-23-08.</p>	<p>None.</p>
<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>MOU Effective Date: 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>6-25-08: City's First Amended Complaint filed designating Benjamin Vernon and Richard Haas as representatives of Class A and Class B (represented and unrepresented employees, respectively, who are impacted by litigation).</p> <p>7-30-08: SDCERS' Answer filed.</p>	<p>9-12-08: 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>PSC: 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 has stipuled to file a First</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
USA v. Saathoff U.S. District court 06CR0043-BEN	Indictments against former SDCERS' Board members, Administrator and General Counsel for conspiracy to commit wire and mail fraud, mail fraud, aiding and abetting.	None.	Amended Writ conforming to those instructions. Motion by prosecution to remove trial judge denied. Trial dates scheduled for March 2008 were vacated.	None.