


**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM**  
**MEMORANDUM**  
**LEGAL DIVISION**

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

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**I. LEGAL PROJECTS**

**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 revisions will not be complete by December 2008, as originally estimated, but should be complete by March of 2009.

**Overpayments/Underpayments:** Sheila Jacobs continues to work 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.

**Sloan/Lopez Calculations:** As a result of a settlement in the *Sloan v. City of San Diego* and *Lopez v. City of San Diego* cases, Legal is assisting Benefits Administration with issues arising out of the need to recalculate pensionable salary for 41 canine and motorcycle officers. Sheila Jacobs is coordinating the legal issues with Benefits Administration and Roxanne Story Parks is working with Ice Miller to ensure that any tax compliance issues arising out of this settlement are resolved. Staff determined that 9 of the 41 officers were not covered by the settlement agreement because did not fall within the time frames set forth in the agreement. Staff has completed calculations for 20 of the 32 officers affected by the settlement and provided that to the attorney for the members. Staff is waiting on data from the City to complete calculations in the remainder. Staff is still on track to ensure that all tasks associated with the settlement are completed by January 12, 2009, the deadline set forth in the settlement agreement.

**Legal/Compliance Group Meetings:** We have formed a Legal/Compliance Group consisting of SDCERS' General Counsel, Chief Compliance Officer and Internal Auditor. This group will meet on a weekly basis to discuss various projects relevant to the group. We are currently working on development of an audit plan and our internal compliance process. Roxanne Story Parks is in the process of drafting a specific policy on fraud prevention and internal investigation as reported in more detail in her November Compliance Report.

## **II. LEGISLATIVE DEVELOPMENTS**

There is nothing new to report.

## **III. LITIGATION**

The status of all current litigation is shown in the attached chart. In the POA litigation (Case No. CV-5-01581-H), the Appellate Court has requested supplemental briefing on the separate issue of claim and issue preclusive effective of the McGuigan. Supplemental Briefing is complete in the PSC case with the hearing date set for November 14, 2008. On October 1, 2008, Plaintiffs in *Aaron v. Aguirre* (Aaron I, Case No. 06-CV-1451 H) filed a Notice of Appeal in the 9<sup>th</sup> Circuit Court of Appeals. In the POA state court cases, counsel for both sides stipulated to stay all proceedings until there is a final judgment in *SDCERS v. City* (GIC 841845).

NCPERS has filed an amicus brief in the *Lexin* case.

## **IV. PUBLIC RECORDS REQUESTS**

Last month, SDCERS received and responded to two requests 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.

## **V. COMMUNITY PROPERTY AND BENEFITS**

In October, Sally Nadeau, the community property and benefits legal assistant handled 49 phone calls and met with 2 members. She filed 4 responses to joinders with the court. She reviewed 13 Domestic Relations Orders, 20 Judgments and Marital Settlement Agreements, and 50 member files. She produced documents in response to 4 Authorizations for Release of Information. She sent 33 letters and e-mails to members, outside counsel and others, along with 4 community property information packages, and 5 community property inquiry letters.

She also reviewed 37 beneficiary designations for community property issues. She reviewed and approved 3 powers of attorney. She reviewed 3 death benefit matters with operations staff and prepared 2 Probate Declarations. She rejected one child support garnishment and 2 FTB collections. She prepared 1 disability exhibit book in preparation for a disability hearing before an adjudicator. She attended the City's Employee Performance Review Training for Supervisor on October 24<sup>th</sup>.

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

None for October.

## 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	<b>3-6-06:</b> Granted SDCERS' Motion for Summary Adjudication (attorney issue) <b>10-25-06:</b> 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.	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><b>Claims Alleged:</b> unfair labor tactics and claims related to MP1, MPH and health care benefits, violations of Brown Act, Conspiracy, Conversion and Breach of Contract</p>	<p><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.</p> <p><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.</p> <p>Oral Argument before the 9<sup>th</sup> Circuit Court of Appeals took place on October 23, 2008. On October 28, 2008, the Court requested further briefing regarding the impact of <i>McGuigan v. City of San Diego</i> on these proceedings.</p>	<p>It is unclear whether the 9<sup>th</sup> Circuit Court of Appeals will require a further hearing on the impact of <i>McGuigan v. City of San Diego</i> on these proceedings, or whether the matter will be under submission after supplemental briefing.</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:</b> 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.  <b>6-11-07:</b> SDCERS' Motion to Dismiss Fourth Amended Complaint granted.  Conspiracy claims against SDCERS dismissed with prejudice.  <b>9-3-08:</b> Motions for Summary Judgment filed by SDCERS, Aguirre and the City granted. Federal claims dismissed based on issue and claim preclusion. Court exercised discretion to dismiss remaining state law claims. Case dismissed in its entirety.</p>	<p><b>9-2-08:</b> Motions for Summary Judgment filed by SDCERS, Mr. Aguirre and the City heard. All three motions seek disposition of the entire case based on claim and issue preclusion.  <b>9-3-08:</b> Court's ruling on Summary Judgment. Motions granted. Case dismissed.  <b>10-1-08:</b> The group of plaintiffs represented by Jackson DeMarco filed their notice of appeal of the case. Plaintiffs' opening brief is due in January, 2009.  <b>10-1-08:</b> The group of plaintiffs represented by the Petersen Law Firm filed their notice of appeal of the case. Plaintiffs' opening brief is due in March, 2009.</p>	<p>None.</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><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:</b> SDCERS' Demurrer granted in part and overruled in part. POA filed an amended complaint on 6-23-08.</p> <p><b>10-31-08:</b> The court heard SDCERS' demurrer and motion to strike. During the hearing, the court stated it would not try the issues currently pending before Judge Barton. The parties agreed, therefore, to stay all proceedings in this case until there is a final judgment in Judge Barton's case. The parties are currently executing a stipulation to stay the case.</p>	<p>None.</p>
<p>Aaron et al. v. City of San Diego, et al. SD Superior Court Case No: 37-2008- 00093078-CU-OE-CTL SDCERS' Counsel: SCMV</p>	<p><b>Claims:</b> Class action on behalf of POA members represented by Jackson DeMarco. <b>Claims:</b> Essentially the same as those filed in other POA cases.</p>	<p>None.</p>	<p><b>10-02-08:</b> The complaint was filed on this date.</p> <p>To date, the Complaint has not been served on SDCERS. Opposing Counsel has suggested a</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>Annis et al. v. City of San Diego, et al.  SD Superior Court  Case No: 37-2008-00092949-CU-BC-CTL  Judge: Hon. Jay M. Bloom  SDCERS' Counsel: SCMV</p>	<p><b>Claims:</b> Class action on behalf of POA members represented by the Petersen Law Firm.  <b>Claims:</b> Essentially the same as those filed in other POA cases.</p>	<p>None.</p>	<p>stipulated stay of this case pending the outcome of the action before Judge Barton. The parties are currently negotiating that stay.  <b>10-02-08:</b> The complaint was filed on this date.  To date, the Complaint has not been served on SDCERS.</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 Richard Haas as representatives of Class A and Class B (represented and unrepresented employees, respectively, who are impacted by litigation)</p> <p><b>7-30-08:</b> SDCERS' Answer filed.</p>	<p><b>None. Awaiting ruling on class certification procedure.</b></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>After writ was fully briefed the Court requested additional briefing on third sentence of Charter section 143, which was completed by the parties on 10/31/08.</p>	<p><b>11-14-08:</b> Hearing on Writ</p>
<b>OTHER CASES OF INTEREST:</b>				
<p>People v. Lexin San Diego Superior Court, Case No.</p>	<p>Felony conflict of interest charges against six former SDCERS</p>	<p>None.</p>	<p>Defendants' Motion to Dismiss denied and upheld on appeal.</p>	<p>None.</p>

<p>SCD190930  Judge: Hon. Frederick  Link</p>	<p>Board Members based  on a violation of Gov.  Code Sec. 1090</p>		<p>Supreme Court has  accepted review.</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>