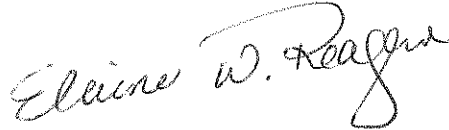


**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM**  
**MEMORANDUM**  
**LEGAL DIVISION**

**DATE:** March 6, 2009  
**TO:** The Board of Administration  
**FROM:** Elaine W. Reagan, General Counsel  
**SUBJECT:** March 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. All proposed Rules are reviewed by each member of the Executive Staff for appropriate input prior to being brought to the Business and Governance Committee for review.

**Form 700:** All Trustees must file their Form 700 with the City Clerk before April 1 of this year. Roxanne Story Parks has provided you with the Form and a link to the City's web site should you wished to complete the form on line. If you want SDCERS to file the form for you, please provide your signed original to Roxanne before or at the March Board meeting.

**SIRE Project:** We are on track to test the system in March and still expect to go live with the first phase of the system in April. The new voting system is currently targeted to go live in May.

**Overpayments/Underpayments:** Roxanne continues to work closely with Benefits Administration and Finance Division to ensure that all mistakes in member calculations resulting in overpayments and underpayments are promptly resolved and reported to the Board. Roxanne is currently working on 18 cases, the majority of which are under \$10,000.

**Sloan/Lopez Calculations:** As a result of a settlement in the *Sloan* and *Lopez* cases, SDCERS is required to recalculate pensionable salary for officers who received canine or motorcycle pay for the period July 1, 2000 through June 30, 2006. SDCERS adjusted the accounts of all of the officers who participated in the settlement and paid contributions owed on the canine or motorcycle pay. Because canine and motorcycle pay is included as pensionable salary in municipal code, SDCERS must adjust the accounts of all officers who received this pay during the applicable time period. We have asked that the City identify any additional officers who received canine and motorcycle pay. The City disagrees with SDCERS' position. We are currently working with the City's attorney to resolve this issue.

**Legal/Compliance Group Meetings:** The Legal/Compliance Working Group consisting of SDCERS' General Counsel, Chief Compliance Officer and Internal Auditor meets bi-weekly to discuss common issues. We have been working on the Fraud Policy and the Confidentiality of Member Information Policy presented to you this month.

## II. LEGISLATIVE DEVELOPMENTS

### A. City Legislation

**1981 Plan:** On January 30, 2009, the Board President sent a letter to the City requesting that the City amend SDMC section 24.1102 to allow General Members to purchase SDCERS contributions previously refunded to re-enter the 1981 Plan. The City Attorney's office has prepared a draft ordinance which they expect to present to City Council in March.

**New Pension Plan:** The City's new pension plan for City employees hired after July 1, 2009, has not yet been codified in the Municipal Code. The City Attorney's office advises that they hope to have a draft ordinance before the City Council in March. We will continue to monitor the status of this legislation.

## III. LITIGATION

**General Litigation:** The status of all current litigation is shown in the attached chart. Notice of Appeal in the PSC Litigation was filed on March 3, 2009. In the MOU Effective Date case, the City's motion for certification of a defendant class is scheduled for March 13, 2009. In the MEA/Italiano case, SDCERS' demurrer to the causes of action for infliction of emotional distress and breach of fiduciary is set to be heard on April 2, 2009. The City's Motion for Summary Judgment in the Barton litigation is now set to be heard on April 1, 2009 at 9:00 a.m. in Department 69. The City's Motion to stay and sever the cross-complaint, amend its answer and re-open discovery is set to be heard on April 10, 2009 at 9:00 a.m.

## IV. PUBLIC RECORDS REQUESTS

Last month, Legal Services received and responded to three requests for public records. Legal continues to work with IT and Benefits Administration on a voluminous public records request received from the UT in December. We continue to comply with our policy to withhold and/or redact all non-public, private and/or confidential member information pursuant to applicable laws.

## V. COMMUNITY PROPERTY AND BENEFITS

In February, Sally Nadeau handled 59 phone calls and met with 6 members. She completed 20 community property cases.

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She reviewed 3 Domestic Relations Orders, 15 Judgments and Marital Settlement Agreements, and 37 member files. She filed 3 joinder responses. She sent 46 letters and e-mails to members, outside counsel and others, along with 1 community property information package, and 14 community property inquiry letters. She also prepared 1 member indemnity agreement.

She rejected 6 Franchise Tax Board Liens, and approved 1 IRS levy. She approved 1 spousal support garnishment pursuant to court order. She reviewed and approved 2 powers of attorney, reviewed 3 death benefit cases with operations staff, and prepared 1 probate declaration. She reviewed 116 beneficiary designations for community property issues.

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

In February, Roxanne Story Parks attended the Manatt Focus Forum on Public Pension Funds in San Francisco.

Attachment

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## 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: Gibbs & Fuerst	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.	<b>Remittitur to trial court issued February 9, 2009</b>	March 13, 2009: Status conference. April 1, 2009: Hearing on City Motion for summary Judgment. April 10, 2009: Hearing on City Motions to sever/stay compulsory cross complaint, amend answer to state new affirmative defenses, and re-open discovery

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
		<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>11-15-08:</b> Court of Appeal granted SDCERS' Motion to Dismiss Appeal</p> <p><b>11-17-08:</b> City moved to "vacate" order dismissing appeal or alternatively seek review by extraordinary writ</p> <p><b>12-2-08:</b> SDCERS filed opposition to City motion</p>		
<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>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</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</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. Now that the</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
		<p>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>October 28, 2008, the Court requested further briefing regarding the impact of <i>McGuigan v. City of San Diego</i> on these proceedings, which the parties have filed.</p>	<p><i>McGuigan</i> Appeal is final, we expect a ruling by the Court of Appeals, or a request for oral argument, shortly.</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>9-3-08:</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. <b>11-26-08:</b> The two separate appeals are consolidated by the Court of Appeals and placed on one briefing schedule.</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 executed a stipulation to stay the case, and the Court subsequently granted an order staying the case.</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<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.  To date, the Complaint has not been served on SDCERS. Opposing Counsel has suggested a stipulated stay of this case pending the outcome of the action before Judge Barton. The parties are currently negotiating that stay.</p>	<p>None.</p>
<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><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>11-03-08:</b> Court denied City motion for test case procedure, set hearing for class certification motion.</p>	<p>City's motion for certification of defendant class on March 13, 2009.</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><b>11-13-08:</b> Court granted petition in part, vacating 11-16-07 Board vote as to employees who purchased service credits between 08-15 and 10-31-03, and who were still employed by</p>	<p>Judgment entered on December 12, 2008. Notice of Appeal filed March 3, 2009.</p>	<p>None.</p>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>San Diego Municipal Employees Association; Judith Italiano v. City of San Diego; SDCERS SD Superior Court Case No.: 37-2008-00096145-CU-BC-CTL Judge: Vargas SDCERS' Counsel: SCMV</p>	<p>Action by SDMEA on behalf of former president Judy Italiano to enforce right to pension on now-discontinued "Presidential Leave" retirement contribution program.</p>	<p>City as of 11-20-07. Court denied writ to extent it sought an order directing compliance with SDMC section 24.1312. None.</p>	<p>Responding to discovery propounded by SDMEA.</p>	<p>April 2, 2009: SDCERS' demurrer to causes of action for infliction of emotional distress and breach of fiduciary duty.</p>
<p>San Diego City Firefighters, Local 145, IAFF, AFL-CIO, &amp; Robert R. Blizzard v. Board of Administrators for SDCERS; City of San Diego SD Superior Court Case No.: 37-2008-00093217-CU-OE-CTL Judge: Lewis SDCERS' Counsel: SCMV</p>	<p>Action by San Diego Firefighters Local 145 on behalf of former single-role paramedics for retirement benefits calculated on the basis of combined regular and overtime income.</p>	<p>None.</p>	<p>Conducting discovery.</p>	<p>None.</p>

OTHER CASES OF INTEREST:				
<p>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>