

SDCERS

San Diego City Employees' Retirement System

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM STAFF REPORT LEGAL DIVISION

DATE: April 16, 2009

TO: BUSINESS AND GOVERNANCE COMMITTEE

FROM: Elaine W. Reagan, General Counsel



SUBJECT: April Legal Services Report

I. LEGAL PROJECTS

Board Charters, Policies, Resolutions and Rules: Legal continues to work on updating and revising the Board Rules and is on track for completion of this project by June 2009. 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.

SIRE Project: Staff training and testing of the new Board Agenda and Voting System was conducted in March. We now expect to continue testing during April and run a parallel agenda 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 20 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.

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 continue to work on the Fraud Policy.

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 is currently being reviewed with the bargaining units by Labor Relations.

City's 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. We will continue to monitor the status of this legislation.

UPD's New Pension Plan: The UPD has developed a new pension plan for employees hired after December 31, 2008. Roxanne Story Parks prepared an initial draft of the UPD's new plan. That draft is now complete and has been sent to the UPD's counsel for review. Once the final draft is approved, it will be presented to the UPD Board for approval.

III. LITIGATION

General Litigation: The status of all current litigation is shown in the attached chart. In the Barton litigation, the City's motion to sever or stay SDCERS' cross-complaint, amend the City's answer and reopen discovery is set for April 10, 2009 with the hearing on the City's Motion for Summary Judgment set for April 23, 2009. The hearing on SDCERS' demurrer to the *Annis* complaint is set for August 7, 2009. The hearing on SDCERS' demurrer in the *Italiano* case is set for May 1, 2009.

IV. PUBLIC RECORDS REQUESTS

In March, SDCERS received nine requests and responded to eight requests for public records. 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 March, Sally Nadeau handled 57 phone calls and met with 6 members and 1 former spouse. She completed 9 open community property cases. She reviewed 12 Domestic Relations Orders, 15 Judgments and Marital Settlement Agreements, and 34 member files. She filed 2 joinder responses. She sent 37 letters and e-mails to members, outside counsel and others, along with 3 community property information packages, and 5 community property inquiry letters. She also prepared 7 releases of interest, and 4 member indemnity agreements.

She rejected 11 Franchise Tax Board Liens, and approved 1 IRS levy. She approved 1 spousal support garnishment pursuant to court order. She reviewed and approved 7 powers of attorney and 2 trust declarations. She reviewed 25 beneficiary designations for community property issues.

VI. STAFF TRAINING AND DEVELOPMENT

Legal Services staff attended the SIRE system training.

Attachment

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LITIGATION CHART

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<p>DISABILITY LITIGATION: Rochelle Glenn v. SDCERS SD Superior Court Case No. GIC 872600 Judge: Hon. Judith Hayes SDCERS' Counsel: Gibbs & Fuerst</p>	<p>Petition for Writ of Mandate challenging Board decision that Ms. Glenn failed to timely file application for disability retirement.</p>	<p>None</p>	<p>Answer filed.</p>	<p>None.</p>
<p>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</p>	<p>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</p>	<p>December 9, 2008: Court of Appeal granted SDCERS' motion to dismiss appeal.</p>	<p>Remittitur to trial court issued February 9, 2009</p>	<p>April 10, 2009: Hearing on City Motions to sever/stay compulsory cross complaint, amend answer to state new affirmative defenses, and re-open discovery April 23, 2009: Hearing on City Motion for summary Judgment. May 8, 2009: Hearing on SDCERS motion to confirm City discovery responses</p>

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 MP1, MP11 and health care benefits, violations of Brown Act, Conspiracy, Conversion and Breach of Contract</p>	<p>5-18-07: Ruling on City and SDCERS' MSI: 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. Oral Argument before the 9th 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, which the parties have filed.</p>	<p>It is unclear whether the 9th 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 <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>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 prejudice. 9-3-08: 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>9-3-08: Court's ruling on Summary Judgment. Motions granted. Case dismissed. 10-1-08: The group of plaintiffs represented by Jackson DeMarco filed their notice of appeal of the case. Plaintiffs' opening brief is due in January, 2009. 10-1-08: 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. 11-26-08: 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>Claims: same as in other POA cases but filed on behalf of former (retired) and current members of POA.</p>	<p>None.</p>	<p>5-16-08: SDCERS' Demurrer granted in part and overruled in part. POA filed an amended complaint on 6-23-08.</p> <p>10-31-08: 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>Claims: Class action on behalf of POA members represented by Jackson DeMarco. Claims: Essentially the same as those filed in other POA cases.</p>	<p>None.</p>	<p>10-02-08: The complaint was filed on this date. To date, the Complaint has not been served on SDCERS. The parties have agreed to a stay pending the outcome of the Barton litigation.</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>Claims: Class action on behalf of POA members represented by the Petersen Law Firm. Claims: Essentially the same as those filed in other POA cases.</p>	<p>None.</p>	<p>04-01-2009: SDCERS filed demurrer to First Amended Complaint.</p>	<p>August 7, 2009: Hearing on SDCERS demurrer to First Amended Complaint.</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>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>03-26-09: Court granted City motion for defendant class certification.</p>	<p>None.</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>11-13-08: 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 City as of 11-20-07. Court denied writ to extent it sought an order directing compliance with SDMC section 24.1312.</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>None.</p>	<p>Demurrer pending.</p>	<p>May 1, 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, & 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>

<p>OTHER CASES OF INTEREST:</p> <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>