



**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM  
STAFF REPORT  
LEGAL DIVISION**

**DATE:** May 1, 2009

**TO:** BUSINESS AND GOVERNANCE COMMITTEE

**FROM:** Elaine W. Reagan, General Counsel

A handwritten signature in cursive script, appearing to read "Elaine W. Reagan", is written over the printed name in the "FROM:" field.

**SUBJECT:** May Legal Services Report

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**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:** We continue with staff training and testing of the new Board Agenda and Voting System. During April, we ran a parallel agenda for the May Board meeting. As a result, some technical issues were identified and are being corrected. We plan to generate the June agenda and board packet through the SIRE system and go live with the voting system for the Board meeting in July.

**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 25 cases, the majority of which are under \$10,000.

**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 and have been working on Internal Procedures relating to confidentiality of member documents.

## 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. Labor Relations has completed its review of the draft ordinance prepared by the City Attorney's office and we expect the ordinance to be docketed for May.

**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 are advised that the City Attorney expects to have this docketed for consideration by the City Council on May 4 or 5.

**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.

Once we have final versions of the City and Port plans, staff will provide an informational presentation to the Board on the impact of the plan changes.

## III. LITIGATION

**General Litigation:** The status of all current litigation is shown in the attached chart.

On April 8, 2009, Kenneth Vasquez filed a Writ of Mandate requesting that the court reverse the Board's decision that Mr. Vasquez was no longer eligible for a disability retirement. Mr. Vasquez is represented by David Dugan. SDCERS is represented by Steve Tisi of Gibbs & Fuerst.

On April 24, 2009, Garry Collins, Harry Eastus, William Farrar and the POA filed a complaint naming the City, City Council, SDCERS and the Board as defendants. The complaint contains causes of action for Unconstitutional Impairment of Contract, Violation of Public Policy, Breach of Contract, Negligence, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Declaratory Relief, Writ of Mandate, Promissory Estoppel aka Detrimental Reliance, Equitable Estoppel, Quasi-Contract aka Quantum Meruit or Unjust Enrichment or Restitution and Specific Performance. Plaintiffs are represented by Dan Zeidman and

Michelle L. Afont of the Law offices of Dan Zeidman. Plaintiffs' attorney provided SDCERS with a courtesy copy of the complaint but has not yet served SDCERS.

#### **IV. PUBLIC RECORDS REQUESTS**

In April, SDCERS received ten 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 April, Sally Nadeau handled 67 phone calls and met with 8 members, 2 former spouses, and 1 attorney. She completed 14 open community property cases. She reviewed 21 Domestic Relations Orders, 11 Judgments and Marital Settlement Agreements, and 67 member files. She filed 2 joinder responses. She sent 59 letters and e-mails to members, outside counsel and others, along with 3 community property information packages, and 9 community property inquiry letters. She rejected 1 subpoena for production of records. She also prepared 4 releases of interest, and 3 member indemnity agreements.

She rejected 3 Franchise Tax Board Liens. She approved 1 spousal support garnishment pursuant to court order. She reviewed and approved 2 powers of attorney and 3 trust declarations, and reviewed 4 death benefits.

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

Legal Services staff attended the SIRE system training.

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: 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.
Kenneth Vasquez v. SDCERS SD Superior Court Case No. 37-2009-00083700-CU-WM-CTL SDCERS' Counsel: Gibbs & Fuerst	Re-Examination Petition for Writ of Mandate requesting that the court reverse the Board's decision that Mr. Vasquez was no longer eligible for a disability retirement.			None.

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
<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>December 9, 2008:</b> Court of Appeal granted SDCERS' motion to dismiss appeal.	<b>Remittitur to trial court issued February 9, 2009</b>	May 8, 2009: Hearing on SDCERS motion to confirm City discovery responses  May 21, 2009: Mediation  July 31, 2009: Hearing on City Motion for Summary Judgment

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><b>5-18-07:</b> 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.  <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.  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, which the parties have filed.</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 <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>Claims: 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. 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><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>04-01-2009: SDCERS</b> 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><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>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><b>PSC:</b> 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 8, 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: Hayes  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>

Case	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
Garry Collins, Harry Eastus, Williams Farrar, San Diego Police Officers Association v. City of San Diego and its City Council, San Diego City Employees' Retirement System and its Board of Administration Case No.: 37-2009-00088422-CU-BC-CTL			Plaintiffs' attorney provided SDCERS with a courtesy copy of the complaint but has not yet served SDCERS.	

OTHER CASES OF INTEREST:	Summary	Dispositive Rulings	Current Status	Upcoming Hearings
People v. Lexin San Diego Superior Court, Case No. SCD190930 Judge: Hon. Frederick Link	Felony conflict of interest charges against six former SDCERS Board Members based on a violation of Gov. Code Sec. 1090	None.	Defendants' Motion to Dismiss denied and upheld on appeal. Supreme Court has accepted review.	None.
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.	Motion by prosecution to remove trial judge denied. Trial dates scheduled for March 2008 were vacated.	None.