



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

DATE: June 18, 2009
TO: BUSINESS AND GOVERNANCE COMMITTEE
FROM: Elaine W. Reagan, General Counsel
SUBJECT: Legal Services Report – June 2009

I. LEGAL PROJECTS

Board Charters, Policies, Resolutions and Rules: With the exception of Rule 10.70 (Contribution Rate Adjustments), Legal is presenting its final updates to the Board Rules at the June meeting. (Rule 10.70 is under review by Cheiron and will be presented to the Board for revision when Cheiron's recommendations are received.) 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 and currently plan to go live with the voting system at the July Board meeting. The June agenda and board packet were generated through the SIRE system.

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 handling 27 cases, all 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 internal procedures for reporting violations of the policy that will be presented to the Business and Governance Committee at the June meeting.

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. The City Attorney advises that they hope to have this docketed for review by the City Council in mid-June.

City's New Pension Plan: We are advised that the City Attorney expects to have this ordinance docketed for second reading and adoption by the City Council on June 16.

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. We recently received revisions from the UPD's counsel. 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.

IV. PUBLIC RECORDS REQUESTS

Last month, SDCERS received and responded to three 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 May, Sally Nadeau handled 38 phone calls and met with 8 members. She completed 21 open community property cases. She reviewed 5 Domestic Relations Orders, 31 Judgments and Marital Settlement Agreements, and 29 member files. She filed 4 joinder responses with the court. She sent 38 letters and e-mails to members, outside counsel and others, along with 5 community property information packages, and 6 community property inquiry letters. She responded to 1 subpoena for production of records. She also prepared 2 releases of interest, and 2 member indemnity agreements.

She rejected 4 Franchise Tax Board Liens. She reviewed and approved 1 spousal support order and 2 powers of attorney, and reviewed 2 death benefits.

Sally announced that she will be retiring in June. She has been an invaluable asset to the Legal Division and will be sorely missed.

VI. STAFF TRAINING AND DEVELOPMENT

None.

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: 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
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	December 9, 2008: Court of Appeal granted SDCERS' motion to dismiss appeal.	Remittitur to trial court issued February 9, 2009	July 31, 2009: Hearing on City Motion for Summary Judgment and related motions

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, MPIO 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. 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
SDPOA v. Aguirre SD Superior Court Case No.: 37-2007- 00075432-CU-MC-CTL Judge: SDCERS' Counsel: SCMV	Claims: same as in other POA cases but filed on behalf of former (retired) and current members of POA.	None.	5-16-08: SDCERS' Demurrer granted in part and overruled in part. POA filed an amended complaint on 6-23-08. 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.	None.

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>Conducting discovery.</p>	<p>None.</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: 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>September 25, 2009: Hearing on Plaintiff's Petition for Writ of Mandate.</p>

OTHER CASES OF INTEREST:				
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.
City of San Diego v. San Diego Police Officers Association 37-2009-00086499-CU-PT-CTL	Action between the City and the POA to determine if DROP is a vested benefit	None	POA's Motion for a Temporary Restraining Order and/or Preliminary Injunction set for 6-8-09	None.