

MEMORANDUM OF LAW

DATE: August 19, 1986

TO: Robert P. Logan, Retirement Administrator
FROM: City Attorney
SUBJECT: Hearing Conducted by the Retirement Board
Adjudicators

In a memorandum dated June 27, 1986, you requested an opinion from this office concerning two issues raised by an attorney representing an applicant for industrial disability retirement. You indicated that the attorney is objecting to the practice of the City Attorney's office providing attorneys to advise both the Board Adjudicators and the Appointing Authority. You also indicated that he has objected to the practice of submitting prior to the hearing to the Board Adjudicator and each party, all documents that the Retirement office believes pertinent to the case.

In regard to the first issue, we believe that the attached Memorandum of Law dated April 30, 1986 from the City Attorney to Rich Snapper, Personnel Director concerning legal representation before the Civil Service Commission adequately addresses the concerns raised by this attorney's objection.

In response to your question concerning the practice of submitting to the Board Adjudicator, the City Attorney and the applicant's attorney, prior to the hearing, all documents that are pertinent to the case, we must advise you that such a procedure should not be followed absent a stipulation by the parties. In most cases, such a stipulation can easily be obtained. Rule 15(a) of the Rules of the Retirement Board of Administration of San Diego City Employees' Retirement System clearly states that all evidence concerning the matter pending before the Adjudicator is to be introduced at the hearing where each side has the opportunity to cross examine witnesses and object formally to any specific evidence. The Rules further state that once the hearing is closed, if further documentary evidence is to be filed, the Board Adjudicator may permit such documentation to be filed after copies of such documentary

evidence have been serviced on all parties who appeared at the hearing and if no party objects to such documentary evidence within ten days after it is filed.

While we understand that giving the Board Adjudicator an opportunity to read certain reports prior to the hearing may save time during the hearing and assist the Board Adjudicator in

making a speedy decision, such considerations must give way to the applicant's right to a fair hearing in accordance with the Rules of the Retirement Board of Administration.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:341.1:(x920.11):(x043.2)

Attachment

ML-86-90