

**CITY COUNCIL OF THE CITY OF SAN DIEGO
CLOSED SESSION DOCKET
FOR
TUESDAY, DECEMBER 6, 2005 AT 9:00 A.M.
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

NOTE: In accordance with the San Diego City Council Permanent Rule for Noticing and Conduct of Closed Session Meetings, adopted on February 28, 2005, a portion of the regular open meeting agenda of the City Council has been reserved for City Attorney comment, public comment, and City Council discussion of the content of this Closed Session Docket. **Public testimony for this Closed Session Agenda will be taken on Monday, December 5, 2005, during the 2:00 p.m. Council meeting.**

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

CS-1 *SDCERS v. San Diego City Attorney Michael J. Aguirre, et al. more*
San Diego Superior Court Case No. GIC841845

DCA assigned: A. Donovan

This case was originally filed by SDCERS for declaratory relief regarding whether the City Attorney's office may serve as general counsel for SDCERS. The City Attorney cross-complained against SDCERS for declaratory relief regarding the legality of pension benefits granted under MP I and MP II. Various cross-motions were heard on August 23, 2005. Further motions are to be heard on January 2, 2006. The case is being handled jointly by the Office of the City Attorney and the outside law firm of Heller Ehrman. In closed session the City Attorney will update the Mayor and Council on the status of the matter and seek additional funding for outside counsel services.

CS-2 *SDCERS v. City of San Diego San Diego*
Superior Court Case No. GIC851286

DCA assigned: A. Donovan

This is a case for declaratory relief that was filed by SDCERS and is, essentially, a mirror image of the cross-complaint on file in the first SDCERS case. In this case SDCERS seeks a judicial declaration upholding the legality of benefits granted under MP I and MP II. Complaints in intervention have been filed by the various unions. Additionally, a separate complaint on the same issues was filed on behalf of 190 individual retirees, which has been consolidated with this case. The City Attorney's office has moved to consolidate this case with the first SDCERS case. That motion to consolidate will be heard on January 13, 2006. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

CS-3 *City of San Diego v. Callan Associates, Inc., et al.*
San Diego Superior Court Case No. 852419

DCA assigned: A. Donovan

This is a claim for monetary damages filed on behalf of the City against Callan Associates, Inc., the investment consultant for SDCERS and Gabriel, Roeder Smith, Inc., the SDCERS actuary. Discovery and investigation are ongoing; and initial settlement discussions have commenced between the City and GRS. This case is being handled jointly by the Office of the City Attorney and the outside law firm of Heller Ehrman. In closed session the City Attorney will update the Mayor and Council on the status of the matter and seek additional funding for outside counsel services.

CS-4 *William R. Newsome, III v. San Diego City Employees' Retirement System, et al.*
San Diego Superior Court Case No. GIC856841

DCA assigned: A. Donovan

This is a new claim for monetary damages filed by Attorney Michael Conger on behalf of the SDCERS beneficiaries. The complaint sets forth claims against SDCERS and the City of San Diego for breach of fiduciary duty, aiding and abetting and civil conspiracy arising from the adoption of MP I and MP II. The Office of the City Attorney is currently evaluating all potential defenses to this claim, which was served on the City on November 16, 2005. The City's response is due on December 15, 2005. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

CS-5 *Dean Marchant v. City of San Diego*
San Diego Superior Court No. GIC842364

ACA assigned: E. Gordon

This matter is a lawsuit filed by Dean Marchant against the City of San Diego to recover damages for personal injuries sustained as a result of a traffic accident involving a City vehicle. The City Attorney will brief the City Council on the status of the matter and recommend appropriate action regarding settlement.

CS-6 *City of San Diego v Orrick Herrington & Sutcliff (attorneys) Calderon, Jahan & Osborn (accountants) Caporicci & Larson (accountants) and Webster & Anderson (attorneys)*
San Diego Superior Court No. GIC 857632

ACA: D. McGrath

This matter is a pending lawsuit for money damages filed by the City of San Diego against accountants and attorneys whose legal advice and accountancy practices fell below the standard of care for similarly situated and compensated professionals. The City Attorney will brief the City Council on the status of the matter and recommend appropriate action regarding recovery of funds to compensate the City.