



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 16

MEETING DATE: January 15, 2020

SUBJECT: Disability Retirement Counsel Request for Proposals

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board authorize SCERS to issue a request for proposals (RFP) for disability retirement legal services.

PURPOSE

This item supports the 2019-20 Strategic Management Plan objective to minimize administrative expenses and demonstrate fiscal stewardship.

BACKGROUND

Disability retirement applications are subject to multiple stages of review. Legal counsel plays a role in each of those stages.

- When a member submits an application, staff must first decide whether to accept it or reject it on the basis of certain defects (e.g., incompleteness). If the application is acceptable, staff must form a recommendation to the Board about whether to grant or deny the application. Staff sometimes consults with counsel—currently, General Counsel or a Deputy County Counsel—about those decisions.
- If staff intends to recommend denial, it must notify the member, who may then initiate an adversarial hearing process before an Administrative Law Judge (ALJ). During the administrative hearing process, SCERS is represented by counsel—currently, a Deputy County Counsel or Nossaman LLP.
- Once the ALJ issues a Proposed Findings of Fact and Recommended Decision, the Board must decide whether to adopt it. In that regard, the Board receives a recommendation from SCERS' General Counsel.

- If the Board votes to adopt an ALJ decision denying the application, the member may seek judicial review. Specifically, the member may file a petition for writ of mandate in superior court, pursuant to Code of Civil Procedure section 1094.5. SCERS is represented by counsel in such writ litigation—currently, a Deputy County Counsel or Nossaman LLP.

DISCUSSION

I. Current Service-Providers

SCERS’ engagement of County Counsel and Nossaman on disability retirement matters has generally yielded positive results. However, staff believes that more cost-effective service-providers may be available.

Disability retirement litigation is relatively straightforward, both at the administrative level and the superior court level. The procedural issues tend to be routine, and the substantive legal issues discrete and predictable. Often, the applying member is not represented by counsel. Consequently, disability retirement litigation is not particularly resource-intensive and can be handled competently by non-specialists. Other county systems routinely assign these cases to generalist in-house counsel or to local sole practitioners under a flat fee arrangement.

SCERS’ experience has been that Nossaman provides excellent lawyering and customer service. However, disability retirement cases do not necessarily require the firepower or expense of an elite national law firm. The County Counsel also provides strong lawyering, but it is not clear that its costs have always been commensurate with the volume and complexity of the cases.

The following chart provides of breakdown of disability legal costs over the last five fiscal years:

Fiscal Year ending June 30	County Counsel	Nossaman LLP
2015	\$311,365	\$248,800
2016	\$349,660	\$250,516
2017	\$342,793	\$295,299
2018	\$302,393	\$251,006
2019	\$303,772	\$168,207

Outside of investment-related expenses, disability retirement counsel costs represent one of the largest line items in SCERS’ budget. These costs have prompted staff to consider whether more cost-effective alternatives may be available.

II. Reason for RFP

Staff seeks authorization to issue an RFP for legal services relating to disability retirement litigation at the administrative and superior court level. Such an RFP is appropriate for several reasons.

Foremost, SCERS is a steward of public funds and has a duty to seek out cost-effective ways to meet its legal needs. A competitive RFP process is a natural way for SCERS to identify cost-effective solutions. The RFP process is particularly appropriate where, as here, the services sought are straightforward, do not require elite specialists, and can be handled by a broad range of practitioners. In addition, Sacramento is home to a large and sophisticated legal community with substantial experience in administrative, writ, and/or medical litigation. Because SCERS is a reliable bill-paying client and can offer an ongoing stream of work (typically, SCERS sees about 10 to 12 new disability retirement administrative cases and two writ cases a year), the RFP is likely to attract multiple qualified candidates offering competitive rates. A flat fee arrangement seems particularly viable, because—per SCERS Fiduciary Counsel Lance Kjeldgaard—disability retirement cases can be handled by an efficient lawyer in 40 to 50 hours on average.

To be clear, in issuing an RFP, SCERS would not necessarily be looking to sever its relationship with the County Counsel or Nossaman on retirement disability cases. Indeed, the County Counsel and Nossaman are both free to submit their own proposals regarding fee arrangements if they wish. Moreover, SCERS remains open to the possibility that County Counsel and/or Nossaman offer an optimal combination of expertise and cost-effectiveness that no other service-provider can match. Nevertheless, under the circumstances, SCERS has a responsibility to gather and consider information about alternative service-providers and fee arrangements. It is expected that the RFP process will yield that valuable information.

III. Next Steps

If the Board authorizes staff to proceed, General Counsel will draft an RFP describing the scope of legal services sought by SCERS. The RFP will also request the following information from the respondents:

- The respondent's qualifications, including education, job history, and prior experience with disability retirement law, administrative litigation, writ litigation, and litigation involving medical conditions;
- Any clients or cases the respondent has handled that might pose a conflict of interest to its representation of SCERS;
- Information about the respondent's history of bar discipline and/or court sanctions;
- The respondent's references, particularly among governmental clients;
- The respondent's proposed hourly rates and/or alternative fee arrangements (e.g., flat or capped fees).

Staff intends to publish the RFP through the State Association of County Retirement Systems, the National Association of Public Pension Lawyers, and local bar associations. Staff will, at its discretion, pick three or four respondents to interview. The Chief Executive Officer, General Counsel, and Chief Benefits Officer will then recommend a respondent or respondents for approval by the Board at the following Board meeting.

To avoid duplication of effort, it is anticipated that the successful respondent(s) would take on new cases only, and that County Counsel and Nossaman would litigate to conclusion any disability retirement cases they are already handling.

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