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San Diego should pay its legal bills

By Daniel
Coffey

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On Dec. 23, the Fourth District Court of Appeal, Division One, in San Diego, issued an opinion for official publication in connection with the city of San Diego's appeal of its obligation to pay the millions of dollars in attorneys' fees incurred by a group of innocent pension board members wrongly charged, inter alia, with criminal violation of the state's conflict of interest laws.

The appellate opinion is starkly blunt and clear. It cleanly eviscerates the city's arguments that seek to avoid payment of the fees.

The court of appeal states: "the City asserts that despite its indemnity agreement, it had the right to arbitrarily deny a defense. ... We affirm the judgment [against the city]. The plain language of the City's resolution requires it to pay criminal defense costs and there is no statutory impediment."

In describing the amount of money owed by San Diego, the court of appeal explains that "the [Superior] court ... entered judgment awarding the board members attorney fees, costs, late fees, and interest, as follows: Lexin, \$1,708,621.69; Saathoff, \$774,837.12; Torres, \$434,621.86; Vattimo, \$945,696.44; Webster, \$1,060,297.51; and Wilkinson, \$495,441.91."

In October 2012, this column pointed out that nonpayment, coupled with tactics by the city and city attorney's office, had cost the city "over \$2 million for interest due to delays."

It's worth noting that the interest rate for these sums is between 7 percent and 10 percent. That fact favors early payment by the city instead of delay if it is to cut off a bill that is enlarging daily by roughly \$1,500, one with a total now marching past \$8.1 million.

Even though delay does not favor the city, City Attorney Jan Goldsmith filed a 2,437-word Petition for Rehearing on Jan. 3 challenging the opinion of the Fourth District Court of Appeal based on a few flimsy and irrelevant — even comically ridiculous — assertions that the Court of Appeal made "mistakes of fact."

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Indeed, the city's petition contains a faux gem, in which it elevates the interpretative views of the city attorney to those of the three-judge panel of the court of appeal, and states that the city attorney's view "is a fairer characterization of the facts than the one proffered by the Court."

This is a novel perspective since the court of appeal clearly has the last word with respect to interpretation of the law and circumstances described in the record, especially in light of its de novo review of dueling motions for summary judgment in this case.

More important, if the city attorney's Petition for Rehearing adds 35 days to the timeline — and that's a minimum — its mere filing will have cost the city approximately \$50,000. Unlike ordinary litigants, the city attorney employs in-house lawyers who experience no financial loss or benefit when the city loses or wins.

Practical reality might descend more rapidly if each day after the court of appeal issued its opinion the budget of the city attorney's office were simply reduced by the additional \$1,500 owed in interest.

It seems the San Diego City Council has only a murky understanding of its relative legal position in the eyes of the courts. Indeed, they have lost based on arguments which from the outset were morally reprehensible and legally unmeritorious.

Recall that it was an elected San Diego city attorney who drafted and approved all of the resolutions and agreements that are at the core of this entire matter. There is something fundamentally wrong with the city attorney challenging the legal work approved by the city attorney. The city attorney has no doppelganger!

With respect to this particular matter, it's as if city hall is a political bunker shielded from reality. If the city attorney or members of the city council think that the Supreme Court of California is ultimately going to save San Diego from paying its financial obligations, they should think again!

Let's be clear: The city doesn't have a gambler's chance of reversing this case, especially given the record and related previous opinions of the Supreme Court pertaining to this exact drama.

Perchance it's time to erect San Diego's Debt Clock in the Civic Center quad in order to display the city's increasing

and unmet daily payments of roughly \$1,500 along with further attorney's fees. In that way, in wending from the parking lot to their offices, City Attorney Jan Goldsmith and each council member can reflect upon the increasing sum. A paper clock would suffice.

Feckless legalistic delay tactics do not serve the common-sense purposes of the taxpayers or the city. Moreover, even greater legal fees will be incurred by the former pension defendants, and it is the city that will be required to pay any attorney fees incurred in collecting the unpaid sums.

End this sad chapter in San Diego's history. Cut the losses. Pay the bill!

Coffey is an attorney based in San Diego. He can be reached at daniel.coffey@sddt.com. Comments may be published as Letters to the Editor.

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