

David C Brown
25 Country Club Drive
Mill Valley CA 94941

September 14, 2015

MCERA Board of Trustees and
Administrator Jeff Wickman
Marin County Employee Retirement System
1 McInnis Parkway, #100
San Rafael CA 94903

Recently the press has been full of news about former Orinda-Moraga Fire Chief Nowicki and the action taken by the Contra Costa retirement board to reduce his pension and to recapture improper payments.

The following statement caught my eye. "It seemed to us that under the circumstances presented to this board that constituted improper behavior," said Harvey Leiderman, the board's attorney. "I'm not calling it illegal behavior. But I'm saying it is improper behavior, in our opinion." Apparently, even "improper" behavior, behavior that has not been found to be illegal, is sufficient to void a pension increase and to recover overpayments.

This takes me to the recent Marin County Civil Grand Jury report on pensions and MCERA.

If the Marin County Board of Supervisors, the San Rafael City Council, NFPD and SMFD failed to follow section 7507 in granting pension enhancements, as the Grand Jury says they did, MCERA is paying out benefits that were improperly (and perhaps illegally) granted, as was the case in Orinda-Moraga. Judging by the results, CCCERA had both the legal right and the obligation to investigate the matter.

The MCERA Board has the same legal right and obligation to investigate the questions raised by the Grand Jury. Were the required rules and statutes followed? Are the benefit enhancements, therefore, proper or improper? Are they legal or illegal? Should they remain in place or be rolled back?

The stakes in Marin are much higher than they were in Contra Costa. Presumably the obligation to investigate is higher as well.

The legal memorandums prepared by Michael Colantuono (San Rafael) and Meyers/Nave (Marin County) were presented to the public as neutral, objective analyses. They weren't. They were advocacy pieces designed to defend the agencies and absolve them of wrongdoing.* The legal memorandums written by Margaret Thum to San Rafael and the County on behalf of CSPP were also advocacy pieces, designed to support the Grand Jury's position and attack the benefit enhancements. They were presented that way.

MCERA, as a fiduciary to both its members and to taxpayers (via its duty to plan sponsors to minimize contributions), has an opportunity, and an obligation, to impartially investigate this matter in order to determine if substantial sums have been and are being paid improperly.

This letter is a formal request to the MCERA Board of Trustees to place on its agenda whether to pursue an investigation of this matter, an investigation to be performed by a respected, unaffiliated and neutral party, one not subject to political forces and pressures.

Sincerely,

David C Brown

*The only memo that played the hole down the middle, so to speak, was the memo written by Attorney Gregory Stepanicich for SMFD in which he said simply and directly, "If the future annual costs determined by the actuary were not disclosed at a public meeting two weeks prior to adoption of the benefit increases, the District did not comply with the disclosure process under the statute."