



# Board of Retirement Special Meeting

## Sacramento County Employees' Retirement System

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### Agenda Item 3E

**MEETING DATE:** September 18, 2023

**SUBJECT:** Governance Workshop: Balancing Fiduciary Duties with Staff Delegation

**SUBMITTED FOR:**  Consent  Deliberation and Action  Receive and File

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#### **RECOMMENDATION**

Receive and file Reed Smith LLP presentation regarding governance issues pertaining to the Board's fiduciary duties and delegation of authority to SCERS' Staff.

#### **PURPOSE**

This item supports Strategic Management Plan goals regarding consistent compliance with laws and regulations and promoting a strong Board-Staff partnership.

#### **DISCUSSION**

Fiduciary counsel Harvey L. Leiderman of Reed Smith LLP will address the Board on this topic.

#### **ATTACHMENTS**

- Board Order
- Reed Smith LLP presentation

Prepared by:

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Jason R. Morrish  
General Counsel

Reviewed by:

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Eric Stern  
Chief Executive Officer



# Retirement Board Order

## Sacramento County Employees' Retirement System

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Before the Board of Retirement  
September 18, 2023

AGENDA ITEM:

**Governance Workshop: Balancing Fiduciary Duties with Staff  
Delegation**

THE BOARD OF RETIREMENT hereby approves Staff's recommendation to receive and file governance workshop presentation by Harvey L. Leiderman, Reed Smith LLP.

I HEREBY CERTIFY that the above order was passed and adopted on September 18, 2023 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES  
(Present but not voting)

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James Diepenbrock  
Board President

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Eric Stern  
Chief Executive Officer and  
Board Secretary

# PRUDENT DELEGATION

Board of Retirement  
Sacramento County  
Employees' Retirement  
System

September 18, 2023

Harvey L. Leiderman  
Reed **Smith** LLP



# FUNDAMENTAL FIDUCIARY DUTIES

- Primary Loyalty Rule
- Exclusive Benefit Rule
- Duty of Prudence
- Duty to Diversify
- Follow the Plan



# THE BOARD HAS A FIDUCIARY DUTY TO PRUDENTLY ADMINISTER THE PLAN

## CA Constitution Art. XVI sec. 17(a), (c)

...The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries....

\* \* \*

The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims



# WHAT DOES IT MEAN TO BE PRUDENT?

- Deliberative process matters more than results (you assure intelligence and fairness, not outcomes)
- Heightened prudence standard - you are expected to be “knowledgeable”
- Duty to delegate where appropriate
- No liability for breach of fiduciary duty, so long as you act in a prudent manner

# AUTHORITY AND DUTY TO DELEGATE

➤ **CERL sec. 31522.1**

*The board of retirement ...may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the boards.*

➤ **Probate Code sec. 16052**

*(a) A trustee may delegate investment and management functions as prudent under the circumstances. The trustee shall exercise prudence in the following:*

*(1) Selecting an agent.*

*(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.*

*(3) Periodically reviewing the agent's overall performance and compliance with the terms of the delegation.*

# WHY IS DELEGATION PRUDENT FOR TRUSTEES OF A PUBLIC PENSION FUND?



- Board meets infrequently
- Board business is conducted in public
- Board must act collectively
- Time constraints
- Expertise constraints
- Key mission is to focus on policy & strategies, not implementation & tactics
- Avoid undue influence on decision-making

# DELEGATION CONSIDERATIONS

- Mission, operational requirements & other circumstances of the trust
- Complexity and timing of the required decisions & activities
- Nature & degree of discretion or judgment to be exercised
- Delegate's ability to meet the requirements; necessary sub-delegation
- Cost effectiveness, efficient trust administration

# DELEGATION MONITORING

- Duty to set expectations & periodically review delegates' performance & compliance
- Delegates' obligation to disclose & report
- Where appropriate, may monitor overall performance, not each transaction
- Changing circumstances may require more frequent monitoring
- Trustees may need assistance in evaluating delegates' performance and compliance

# KEY ELEMENTS OF EFFECTIVE DELEGATION

- Clear & unambiguous defined roles & responsibilities
- Clearly defined processes
- Timely reporting & monitoring of performance
- Timely adjustments
- Use of risk mitigation techniques
- Effective & timely documentation

# AN EXAMPLE OF SUCCESSFUL DELEGATION

## **SCERS' Master Investment Policy Statement**

### *Sec. 5 – Investment Program Governance*

- Clear roles for Board, Staff, Consultants, Managers
- What is, is not delegated
- Asset class procedures, contracts, rebalancing reporting requirements
- Operational due diligence reports
- Board member options in manager selection process
- Portfolio monitoring
- Documentation

# WHAT DO THE OTHER GUYS DO?

- One size does not fit all
- Best examples include a Board Policy Manual;  
Resolution for delegation of authority to the CEO;  
Charters for Board, Committees, Executives;  
Administrative and Operational Policies & Protocols
  - Clarity of roles and responsibilities
  - Guidance resource
  - Institutional memory
  - Succession planning
  - Performance benchmarks
  - Due process

# WHAT DO YOU THINK?

1. Board Chair wants to speed up public meetings, so tells CIO to put quarterly investment consultant reports on consent calendar
2. Board Chair asks CIO to quietly reject 1 of 6 candidates for a private debt allocation because they don't have a diverse manager to assign to the account
3. New trustee believes she would breach her fiduciary duty if she doesn't have access to all portfolio information from the System's private equity managers
4. Trustee routinely circulates articles to other trustees, advocating positions on plan funding, ESG, investing in China, capital markets, etc.
5. Board Chair tells a CEO candidate: "We expect you to run the show here...don't bother the Board unless the building is burning down!"

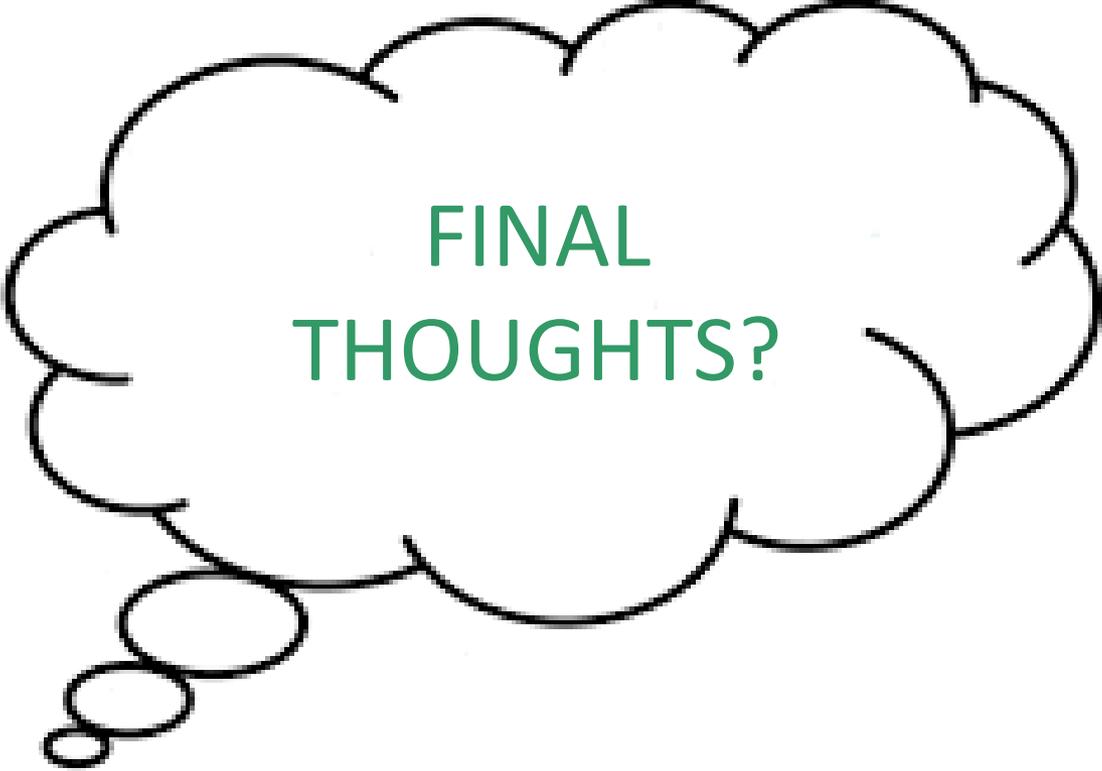
# GENERAL COUNSEL

- CERL 31529.9: *The board of retirement...may employ staff attorneys for legal services*
- Selection and evaluation process alternatives – shared or delegated?
- Dual roles: Fiduciary advisor to Board + counselor to the administrative staff
- Added wrinkle: a County employee who reports to CEO for administrative purposes
- Rules of Professional Conduct 1.13 – professional duty to report issues to Board, as the “Client”
- Bus. & Prof. Code 6068(c), (m) – duty to take actions *“only as appear to him or her to be just”* and to *“keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services”*



# WHAT DO YOU THINK?

1. Internal auditor reports to the CEO that staff is not abiding by security requirements for their personal laptops. CEO tells the General Counsel the concern is overblown, not to mention it to the Board, it will make the CEO look bad right before his annual performance evaluation. The GC agrees to say nothing until the next year.
2. General Counsel believes the CIO has been approving staff travel expenses exceeding policy limits. GC asks the CIO about it and is told “mind your own business, this is in my shop.” The GC does nothing further, but files an anonymous whistleblower complaint.
3. General Counsel discovers that the four County-appointed Board members meet privately before every Board meeting to agree on how they will vote on agenda items.



FINAL  
THOUGHTS?