The Retirement Chronicles

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News & Views

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KCERA RESPONSE

TO RULING BY THE FIRST DISTRICT COURT OF APPEAL

In August 2016, Division Two of the First District Court of Appeal (1st DCA) in San Francisco issued a ruling that has generated much conversation about pension rights in California. The case involved a lawsuit by several employee groups, including the Marin Association of Public Employees (MAPE), against the Marin County Employees' Retirement Association (MCERA).

The initial suit arose after MCERA excluded standby pay-type compensation and in-kind benefit conversions from the list of "special pays" previously considered pensionable for MCERA members employed prior to January 1, 2013, when the Public Employees' Pension Reform Act of 2013 (PEPRA) took effect. MCERA made the exclusions effective January 1, 2013 in response to legislative amendments in PEPRA (AB 197) which permitted the inclusion or exclusion of certain special pay items in retirement calculations. The MAPE Plaintiffs argued they had a vested right to those special pays and therefore AB 197 was unconstitutional unless Plaintiffs received a "comparable new benefit." The State of California also joined the case to defend the constitutionality of AB 197.

After the trial court found in favor of MCERA, the Plaintiffs appealed. On appeal, the 1st DCA held that the PEPRA legislation at issue was constitutional as written and implemented by MCERA. The court found the Appellants did *not* have a "vested right" to the special pay items and that MCERA's implementation of the PEPRA provisions was not a "substantial impairment" of their pensions.

The 1st DCA took issue with the Appellant's arguments about the scope of vested rights laws in California in a way that was materially different from what the State or MCERA argued. Specifically, the court opined on the ability of employers to alter the pensions of active members, finding that the pension "promise" that is "vested" is only a right to a "reasonable" pension, not to a specific benefit. The court also found that there is not an absolute requirement that elimination or reduction of an active member's pension "must" be counterbalanced by a "comparable new benefit," as stated by the California Supreme Court in *Allen v. Board of Administration* in 1983. The 1st DCA determined the Court in 1983 actually meant "should" instead of "must" when it addressed the issue of vested rights.

Following the August 2016 ruling, the Appellants petitioned the California Supreme Court to review the 1st DCA's opinion. In November 2016, the California Supreme Court granted the request. The matter remains deferred until Division Four of the 1st DCA rules on a separate case involving issues similar to those in *MAPE*. The California Supreme Court ruling is not expected until 2019. KCERA will update you on the issue once it is decided.

The *MAPE* decision has no direct effect on KCERA members at this time. KCERA's Board of Retirement designated special pay codes (like those addressed in the *MAPE* decision) as either pensionable or not pensionable after PEPRA took effect. While KCERA's Board is responsible for determining whether certain pay codes are included in your pension calculation, an action to change the current designations, if any, would occur during a noticed public meeting. With regard to changes to your current tier, KCERA has no ability to grant or reduce pension benefits for active members. KCERA merely administers the pension benefits approved by your employer.

INSIDE This Issue

Do *YOU* Need a POA?

A power of attorney (POA) is a legal instrument that allows someone you trust, such as a spouse or friend, to act as your representative agent on financial, familial, medical and/or retirement matters. The person you designate as your agent is called an Attorney-in-Fact.

Although there are a few types of POAs from which to choose (see below), KCERA encourages you to use its **Special Durable Power of Attorney** because it includes relevant statutory language and addresses a wide range of retirement-related duties: making benefit elections, designating beneficiaries, setting up "direct deposit," updating tax-withholding elections, etc.

You can download the "Power of Attorney Packet" at www.kcera.org. To be valid, you must have it notarized or witnessed, as required on the form, before submitting a copy to KCERA.

A **general** POA allows your Attorney-in-Fact to do anything you could do. A **special** POA limits your agent to perform only certain duties. General and special POAs expire on a date you specify in the document or when you die or become incapacitated, whichever occurs first. A **durable** POA, which can be general or special, remains in effect *after* you become incapacitated and until your death, unless you competently terminate it earlier.

KCERA urges you to execute its Special Durable POA so that your Attorney-in-Fact can conduct KCERA-related business on your behalf (e.g., filing for retirement) if you become incapacitated. However, if you are incapacitated and do not have such a POA, no one can act on your behalf without a court order. Moreover, active members who unexpectedly become incapacitated may significantly delay their family's ability to draw a KCERA pension on their behalf and could jeopardize their family's ability to receive a survivor benefit.

KCERA's Special Durable Power of Attorney provides the option of making your POA effective immediately or at the onset of your incapacitation. As long as you have the capacity to make financial decisions for yourself, you can revoke your POA at any time by submitting a written statement to KCERA. If you already have a POA, KCERA would like to review it to determine whether it is adequate for retirement purposes.

Annual Benefit Statement *Highlights*

In February, active and deferred members received annual benefit statements containing information about their KCERA account and future retirement benefits.

The first page of the benefit statement contained demographic information used by KCERA to estimate members' monthly retirement benefits. It also listed their retirement contribution balances that included all biweekly contributions and service purchases made in 2016 as well as the accrual of semiannual interest postings.

If you noticed that your demographic information was incorrect (e.g., beneficiary designation, age, etc.), please contact KCERA. Note: Your "date of entry into the system" is the first day of the pay period following your date of hire.

The second page of the benefit statement listed multiple benefit estimates. Depending on their age and service credit, most members saw three benefit amounts corresponding to three different retirement dates. The first benefit amount coincided with the earliest possible date. In general, KCERA members become eligible to retire when they reach age 50 with 10 years of service credit.

> "Most members saw three benefit amounts corresponding to three different retirement dates."

The estimated benefits of deferred members may have increased from last year because higher ages result in higher benefits. This is true up to age 50 for Safety Tier I members, up to age 55 for Safety Tier II members, up to age 60 for General Tier I members, and up to age 65 for General Tier II members.

The final sections on page 2 provided contact information for the Social Security Administration and KCERA. We hope you found the annual benefit statement useful in your retirement planning!

Your Pension and *Community Property Rights*

If your marriage overlaps with your KCERA membership, the retirement benefits earned during that period are considered "community property" assets. This means your spouse has a community property interest in those benefits. While this would have no effect on a married member, it could have a significant impact at retirement on a member who divorces or legally separates.

While the pension benefit can be addressed in many ways during court proceedings, it is generally divided between both parties or awarded to one party as "sole and separate property." If your entire KCERA benefit is awarded solely to you, such language should be clearly stated in your court order. An order that does not correctly and sufficiently reference your KCERA benefit *and* does not clearly state the parties' respective interests in the pension may be too ambiguous for KCERA to administer. KCERA may ask you to amend your order in court to explicitly identify the benefit and how it should be divided.

If your Judgment requires your KCERA benefit to be divided, you will need to join KCERA as a party in your divorce action and obtain a Domestic Relations Order (DRO). The DRO is a court order that specifies exactly how KCERA should pay your benefit to the parties. It is essential that your Judgment/Legal Separation Order and DRO do not contain conflicting language on how the benefit shall be split.

To assist in your DRO preparation, KCERA has posted a sample DRO on its website for you or your attorney to use. After your DRO has been prepared, please send a draft to KCERA for review *before* signing it. KCERA will respond within a few days with any concerns it has about your document.

Visit www.kcera.org to learn more about how divorce/legal separation can affect your KCERA benefit before and after retiring. To speak with a KCERA representative, call (661) 381-7700 or submit an inquiry via KCERA's Contact Us form.

Investment Snapshots

Although KCERA's investment portfolio finished fiscal year 2015-16 with a -0.5% return, it ended calendar year 2016 up 7.3% (net of fees), led by strong performance in domestic equity (13.6%), fixed income (7.1%) and commodities (16.1%).

In 2016, KCERA's non-U.S. equity, real estate, hedge funds and private equity allocations also saw gains but underperformed their respective benchmarks.

Some of that growth occurred in the fourth quarter of 2016, when the portfolio benefited from improved U.S. consumer and business sentiments, a stronger U.S. dollar, rising consumer spending and higher global inflation.

KCERA's performance in January 2017 benefited from an above-policy allocation to domestic equity and strong outperformance from KCERA's active-manager allocations in domestic and non-U.S. equities. KCERA's commodities allocation also significantly outperformed its benchmark that month.

At the end of January 2017, KCERA's investments totaled $3.83 billion and were allocated as follows:

Asset Class	Actual %	Target %	Policy Range
Domestic Equity	28.0	19.0	10.0 – 30.0
Non-U.S. Equity	20.9	18.0	10.0 – 30.0
Fixed Income	28.0	29.0	19.0 – 39.0
Real Estate	4.9	10.0	0.0 – 15.0
Commodities	4.1	4.0	0.0 – 6.0
Hedge Funds	8.8	10.0	0.0 – 15.0
Private Equity	3.6	5.0	0.0 – 10.0
Private Credit	1.0	5.0	0.0 – 10.0
Opportunistic	0.0	0.0	0.0 – 10.0
Cash	0.8	0.0	0.0 – 5.0

PLAN SPONSOR Spotlight

Kern County Water Agency

In 1961, the California State Legislature created the Kern County Water Agency (KCWA) to serve as the local contracting entity for the State Water Project, a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants. The agency joined KCERA as a special district in 1962.

KCWA participates in a wide range of water management activities, including water quality, flood control and groundwater operations to preserve and enhance Kern County's water supply, which is an essential ingredient for the well-being of the local economy.

As of June 30, 2016, KCWA had 62 active members in KCERA. Eligible agency employees hired on or after January 1, 2010 enter KCERA as General Tier II ("1.62% at 65") members.

Berrenda Mesa Water District

In 1963, landowners formed the Berrenda Mesa Water District (BMWD) to provide irrigation water from the State Water Project to lands within the district. After contracting with the Kern County Water Agency in 1967, BMWD commenced water deliveries the following year. The agency joined KCERA as a special district in 1995.

BMWD is located about 50 miles northwest of Bakersfield in the northwestern corner of Kern County on the eastern edge of the Temblor Range. State Highways 46 and 33 traverse the district boundaries.

As of June 30, 2016, BMWD had 6 active members in KCERA. Eligible agency employees hired on or after January 12, 2010 enter KCERA as General Tier II members.

KCERA
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