

Role of General Counsel

Resources for Public Agency Attorneys

A. The Ralph M. Brown Act (“Brown Act”)

- The Brown Act is found in sections 54950 *et seq.* of the Government Code. (<https://codes.findlaw.com/ca/government-code/gov-sect-54950/>)
- Three Purposes of the Brown Act:
 - To ensure that the decision-making process of legislative bodies is conducted in public.
 - To guarantee the right of the public to address legislative bodies on matters within the jurisdiction of those bodies.
 - To provide notice of the items to be discussed or the action to be taken by the legislative body by posting agendas in advance of the scheduled meeting
- Additional resources: <https://www.calcities.org/resource/open-public-v-a-guide-to-the-ralph-m.-brown-act>

B. California Public Records Act (“CPRA”)

- The California Public Records Act is found in sections 7920 *et seq.* of the Government Code. (<https://codes.findlaw.com/ca/government-code/gov-sect-7920-000/>)
- The CPRA subjects local agency records to public review and scrutiny.
- The public may request copies of records in the possession of local agencies, including records on a board member’s personal device or account that are related to agency business.
- The Public Records Act includes numerous provisions and exceptions and is shaped by court decisions.
- Additional resources: <https://www.calcities.org/resource/the-people's-business-a-guide-to-the-california-public-records-act>

C. Conflict of Interest Laws

- Government officials owe loyalty to the public, and thus personal or private financial considerations on the part of government officials should not be allowed to enter the decision-making process.

1. Political Reform Act

- The Political Reform Act is found in sections 81000 *et seq.* of the Government Code. (<https://codes.findlaw.com/ca/government-code/gov-sect-81000/>)
- Prohibits public officials from participating in making or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.
- A public official has a conflict of interest as to a particular government decision if it is foreseeable that the outcome of the decision will have a financial impact on the official's personal finances or other private financial interests.
- To prevent a conflict of interest, a public official should: (1) Identify and disclose financial interests, (2) Understand different types of financial interests that may be the basis for a conflict, and (3) Consider whether the decision's effect on the official's financial interest is reasonably foreseeable and material.
- Additional resources: <https://www.fppc.ca.gov/learn/conflicts-of-interest-rules.html>

2. Government Code section 1090 (Contracts)

- Government Code Section 1090 *et seq.* conflicts (<https://codes.findlaw.com/ca/government-code/gov-sect-1090/>)
- Prohibits public officers from making contracts in which they are financially interested, with limited exceptions.
- Board Members may not avoid a section 1090 violation by recusal, since the conflict is deemed to apply to the entire Board. There are some limited exceptions to this rule.
- Additional resources: <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2017/Spring-Conf-2017/Woodside-Section1090OverviewandRecentDevelopments.aspx>

3. Statement of Economic Interests ("Form 700")

- Annual Form 700 disclosures are required by the Political Reform Act (Government Code section 81000 *et seq.* [<https://codes.findlaw.com/ca/government-code/gov-sect-81000/>].)
- Public Officials must annually disclose their financial interests, including personal assets and income, to the FPPC on a Form 700
- Types of financial interests include business investment, employment or management; real property; sources of income; certain gifts; personal finances

- Additional resources: <https://www.fppc.ca.gov/Form700.html>

4. Conflicts of Interest and Campaign Contributions

- “Pay-to-play” activities are prohibited by section 84308 of the Government Code (<https://codes.findlaw.com/ca/government-code/gov-sect-84308/>)
- Public officials are prohibited from participating in decisions involving licenses, permits, or other entitlements for use if they have received contributions exceeding \$250 from parties or participants in the proceeding within the preceding 12 months.
- Additional resources: <https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html>

5. California Rules of Professional Conduct

- The current list of Rules may be found here: <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>
- **Rule 1.7** (Current Clients): Prohibits a lawyer from representing a client if that representation is directly adverse to another client, unless the lawyer obtains informed written consent from all affected clients and adheres to specific conditions. Additionally, a lawyer must avoid representing a client if there is a significant risk that their responsibilities to another client, former client, third person, or their own interests will materially limit their representation, unless informed written consent is given and certain conditions are met. Even without such risks, if the lawyer or their firm has a relationship with a party or witness in the matter, or if a lawyer in the firm has a close personal relationship with another party’s lawyer, the lawyer must disclose this relationship in writing. Representation is only allowed if the lawyer can still provide competent and diligent service, if it’s not prohibited by law, and if it does not involve claims between clients represented in the same case. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.7-Exec_Summary-Redline.pdf)
- **Rule 1.9** (Duties to Former Clients): forbids a lawyer from representing a client whose interests are materially adverse to a former client in a matter (whether contentious or transactional) that is the same or substantially the same as the matter in which the lawyer represented the former. Similarly, a lawyer moving to a new firm cannot represent a client of the new firm whose interests are materially adverse to a client represented by the former firm in a matter that is the same or substantially related to the matter involving the former firm. The new firm can’t either, if the new lawyer’s conflict is imputed to the rest of the firm. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.9-Exec_Summary-Redline.pdf)
- **Rule 1.10** (Imputation of Conflicts): Proper screening (defined in Rule 1.0.1 (k)) can avoid imputing the knowledge (under Rule 1.9(b)) of a newly-hired lawyer to the

remainder of the firm, at least where the new hire did not play a substantial role in the matter prior to joining the new firm, and where the affected former client(s) of the new lawyer are provided prompt written notice of the screen.

(https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.10-Exec_Summary-Redline.pdf)

- **Rule 1.18** (Duties to Prospective Client): The receipt of confidential information from a prospective client, who does not become an actual client, can disqualify the attorney (and the firm) from later being adverse to the prospective client. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.18-Exec_Summary-Redline.pdf; *SkyBell Technologies Inc. v. Ring Inc.*, No. 18-cv- 00014 (C.D. Cal Sept. 18, 2018)).

6. Conflicts of Interest When Leaving Office

- Post-employment restrictions are governed by Government Code sections 87406.1 (air pollution control district or air quality management district) [<https://codes.findlaw.com/ca/government-code/gov-sect-87406-1/>]; section 87406.3 (local government officials) [<https://codes.findlaw.com/ca/government-code/gov-sect-87406-3/>]; 87407 (public official) [<https://codes.findlaw.com/ca/government-code/gov-sect-87407/>].
- The Political Reform Act places two restrictions on the post-governmental activity of officials who have left state service. They are called the “one-year ban” and the “permanent ban.”
- The one-year ban prohibits certain officials, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods.
- The permanent ban on “switching sides” prohibits former state officials from working on proceedings that they participated in while working for the state. The ban prohibits appearances and communications to represent any other person, as well as aiding, advising, counseling, consulting or assisting in representing any other person, for compensation, before any state administrative agency in a proceeding involving specific parties (such as a lawsuit, a hearing before an administrative law judge, or a state contract) if the official previously participated in the proceeding.
- The ban on influencing prospective employment prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement.

- Additional resources: https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf

D. Ethics Training

- Ethical training is required by Government Code section 53235 (<https://codes.findlaw.com/ca/government-code/gov-sect-53235/>)
- Every board member that receives compensation, salary, stipend, or reimbursement for expenses from a local agency is required by law to complete at least two hours of ethics training every two years.
- Ethics trainings cover laws related to conflicts of interest, gifts, reimbursements, government transparency, and fair processes, including but not limited to incompatible offices and competitive bidding practices.
- Additional resources: <https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/ethics-training.html>

E. Sexual Harassment Prevention Training

- If a local agency provides any type of compensation, salary, or stipend to a local agency official of that agency, then every board member is required by law to complete sexual harassment prevention training at least once every two years.
- Sexual harassment prevention training is mandated by Government Code 53237 *et seq.* (<https://codes.findlaw.com/ca/government-code/gov-sect-53237/>)
- Board members must receive the required Sexual harassment prevention training two-hour training within the first six months of taking office, and then at least once every two years thereafter.
- Additional resources: https://civildrights.ca.gov/wp-content/uploads/sites/32/2022/11/Sexual-Harassment-Prevention-Training-For-Employees-FAQ_ENG.pdf

F. Perks (Limitations and restrictions on Gifts, Honoraria, Travel and Loans)

- Local elected officers' disclosure requirements are governed by sections 87200 *et seq.* of the Government Code.
- State and local officials and employees are prohibited from receiving a gift or gifts totaling more than \$590 in a calendar year from certain sources (Gov. Code section 89503 available at <https://codes.findlaw.com/ca/government-code/gov-sect-89503/>)

- State and local elected officers are prohibited from receiving honoraria payments. Some limited exceptions apply. (Government Code section 89502 available at <https://codes.findlaw.com/ca/government-code/gov-sect-89502/>)
- Certain payments for travel are excluded from the gift limits and honoraria prohibition.
- Public officials who are required to file Form 700s may not receive any personal loan aggregating more than \$250 or receive any personal loan aggregating more than \$500 from a single lender unless certain terms of the loan are specified in writing. (Government Code section 87460 available at <https://codes.findlaw.com/ca/government-code/gov-sect-87460/>)
- Additional resources: <https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html>; https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/gift-fact-sheet/Local_Gift_Fact_Sheet_Final_2023.pdf

G. Bribery

- Bribery involving public officials is governed by section 68 of the Penal Code (<https://codes.findlaw.com/ca/penal-code/pen-sect-68/>)
- It is a felony for any executive or ministerial officer, employee, or appointee of the State of California, or any of its political subdivisions, to ask for or receive a bribe in exchange for influencing their official actions.

H. Misuse of Public Funds

- Misappropriation of public funds is governed by Penal Code section 424 (<https://codes.findlaw.com/ca/penal-code/pen-sect-424/>); Government Code section 8314 (<https://codes.findlaw.com/ca/government-code/gov-sect-8314/>).
- It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for campaign activities or personal purposes not authorized by law.
- Violations under the Government Code may result in civil penalties, including fines up to \$1,000 per day and three times the value of unlawful use.
- Violations under the Penal Code may result in imprisonment for two, three, or four years and disqualification from holding any office in the state.
- Additional Resources: <https://bbklaw.com/resources/california-supreme-court-clarifies-who-is-liable-for-prosecution-for-misuse-of-public-funds>

I. Laws related to Fair Process

1. Common Law Bias Prohibition

- The prohibition of bias in common law is a fundamental principle ensuring that public officers exercise their powers impartially and without personal or financial interests influencing their decisions.
- An elected official has a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of private interests.
- Any public officer must act with disinterested skill, zeal, and diligence, prioritizing the public's benefit over any personal gain.
- This prohibition extends beyond financial interests to include any non-financial interests that might compromise impartiality.
- Kinds of impermissible bias include Personal Interest in the Decision's Outcome; Personal Bias (people/belief/ideology); Factual Bias; Dual Role Influence
- Additional Resources: <https://www.lawinsider.com/dictionary/common-law-bias>; https://www.ca-ilg.org/sites/main/files/chapter_5.pdf; <https://www.ca-ilg.org/document/when-elected-official-feels-passionately-about-issue-fair-process-requirements-adjudicative>.

2. Due Process Requirements

- Due Process is found in Article 1, section 7 of the California Constitution; Code of Civil Procedure section 1732 (<https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-1732/>); Amendment 14, section 1 to the U.S. Constitution (<https://www.law.cornell.edu/constitution/amendmentxiv>); Amendment 5 to the U.S. Constitution (https://www.law.cornell.edu/constitution/fifth_amendment)
- Generally, as notice and an opportunity to be heard
- Constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a “Quasi-judicial” capacity.
- Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions and licenses.
- If the violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorney's fees.
- Additional Resources: <https://www.ca-ilg.org/consequences>

3. Doctrine of Incompatible Offices

- The common law prohibition against the holding of “incompatible offices” is codified in section 1099 of the Government Code.
- The Doctrine of Incompatible Offices forbids someone from holding two public offices that have even a potential conflict in the duties, unless there is a specific exemption in the law.
- The Doctrine has been a part of English common law for hundreds of years and began appearing in California judicial opinions over 70 years ago.
- Offices are considered incompatible if: (1) There is a significant clash of duties or loyalties between the offices, (2) Holding both offices would be improper for reasons of public policy, or (3) One office exercises supervisory, auditory, or removal power over the other.
- For example, a person cannot serve on both a city council and a school board if the city council has authority over the school district’s budget
- Additional Resources: <https://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/holding-two-positions.html>;
<https://www.cacities.org/UploadedFiles/LeagueInternet/01/01562a25-374e-4bd2-b871-148a170ef624.pdf>

4. Competitive Bidding Requirements for Public Contracts

- Requirements are governed by the CA Public Contract Code.
- Public contracts are generally subject to competitive bidding requirements to ensure fairness, transparency, and the best use of public funds.
- The main objectives are to prevent favoritism, fraud, and corruption, and to ensure that all qualified bidders have a fair opportunity to participate.
- For general law cities, public works projects worth more than \$5,000 must follow competitive bidding procedures. Special districts have their own specific thresholds and requirements.
- There are statutory exceptions to competitive bidding, such as for emergency work or projects of limited scope. Additionally, professional services contracts often do not require competitive bidding.
- Contracts are typically awarded to the lowest responsible bidder who submits a responsive bid.

- Additional Resources: https://www.ca-ilg.org/sites/main/files/file-attachments/purchasing_and_contracting_practices.pdf; <https://www.lorman.com/resources/public-contracts-and-procurement-regulations-in-california-introduction-16992>; <https://www.cacities.org/getattachment/ce501b8d-ff7e-4fcf-a093-96accb7b0857/LOCC-Webinar-Public-Bidding-Process-Paper.aspx>

5. Anti-nepotism Laws

- Article VII of the California State Constitution, statutes and State Personnel Board rules provide that all civil service appointments shall be made according to a merit-based selection process
- [California Code of Regulations, title 2, section 25; California Code of Regulations, title 2, section 250; Government Code sections 18500 to 18502; Government Code sections 19800 to 19811; California Code of Regulations, title 2 section 83.5; California Code of Regulations, title 2 section 83.6; California Code of Regulations, title 2, section 11057; California Code of Regulations, title 2, section 86; California Code of Regulations, title 2, section 87; Government Code sections 12940 to 12951](#)
- Additional Resources: <https://hrmanual.calhr.ca.gov/Home/ManualItem/1/1204>

J. Generally Applicable Model Rules Of Professional Conduct

- **Rule 1.1 (Competence):** Requires lawyers to provide competent legal services by applying the necessary learning, skill, and mental, emotional, and physical abilities. If a lawyer lacks the required skills at the outset, they can still deliver competent representation by consulting with or referring the matter to a more skilled lawyer, acquiring the necessary skills themselves, or seeking guidance from a competent lawyer. In emergencies, where it's impractical to consult or refer to another lawyer, a lawyer may provide limited assistance beyond their usual skills, but only to the extent reasonably necessary given the circumstances. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.1.pdf)
- **Rule 1.2 (Scope of Representation and Allocation of Authority):** Requires a lawyer to follow the client's decisions regarding the objectives of the representation and consult with them on how to achieve those objectives. The lawyer must communicate effectively, as outlined in Rule 1.4, while also adhering to any legal limits or ethical obligations, such as confidentiality under the Business and Professions Code. This rule ensures that the client has authority over the goals of the representation, while the lawyer advises on how to pursue them. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.2-Exec_Summary-Redline.pdf)
- **Rule 1.2.1 (Advising or Assisting the Violation of Law):** Prohibits a lawyer from counseling or assisting a client in conduct that the lawyer knows is criminal, fraudulent, or illegal. However, the rule allows a lawyer to discuss the legal consequences of a proposed action with a client and assist the client in making a good faith effort to

understand or challenge the validity, scope, or application of a law or ruling. This ensures that while lawyers guide their clients, they must not support illegal actions.

(https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.2.1-Exec_Summary-Redline.pdf)

- **Rule 1.3 (Diligence):** Requires lawyers to act with commitment and dedication to their clients, avoiding neglect or undue delays in their representation.
(https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.3-Exec_Summary-Redline.pdf)
- **Rule 1.4 (Communication with Clients):** Requires lawyers to communicate effectively with their clients. This includes promptly informing the client of important decisions or circumstances, consulting with the client on how to achieve their objectives and keeping them updated on significant developments. Lawyers must also explain matters clearly so the client can make informed decisions. Additionally, lawyers may delay sharing information if it could cause imminent harm, and their duty to provide information is subject to legal restrictions, such as protective orders or non-disclosure agreements.
(https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.4.pdf)
- **Rule 1.13 (Organization as Client)** The lawyer's duty is to the organization itself, not to its individual members or employees. If the lawyer becomes aware that an individual within the organization is acting or intends to act illegally or in a way that violates the organization's obligations, and this could cause substantial harm to the organization, the lawyer must act in the organization's best lawful interest. This may involve reporting the matter to higher authorities within the organization. The lawyer cannot disclose confidential information unless permitted by law and may be required to resign if the organization insists on acting unlawfully despite the lawyer's efforts. When representing both the organization and one of its constituents, the lawyer must ensure that there is no conflict of interest, and if dual representation occurs, it must be approved by an appropriate authority. (https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.13-Exec_Summary-Redline.pdf)
- **Rule 8.3 (Reporting Professional Misconduct):** Requires a lawyer to report another lawyer's misconduct when they have credible evidence that the lawyer has engaged in criminal acts or conduct involving dishonesty, fraud, deceit, or misappropriation of funds. The misconduct must raise substantial questions about the lawyer's honesty, trustworthiness, or fitness to practice law. Reporting is mandatory only if the conduct meets these serious thresholds, and there are exceptions for confidentiality, such as information protected by privilege or obtained through certain assistance programs. ([Rule 8.3 Reporting Professional Misconduct \(ca.gov\)](https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_8.3-Reporting_Professional_Misconduct.pdf))

K. General Additional Resources

- Orientation Materials for Introducing Local Government to New Audiences:
<https://www.ca-ilg.org/newly-elected-officials-orientation-materials>