

Public Officials Ethics Training

Mono County Counsel
March 1, 2016

Overview

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Ethics versus “Legal Ethics”

Conflicts & Incompatibilities

Perks & Benefits

Open Government

Fair Procedures

Ethics versus “Legal Ethics”

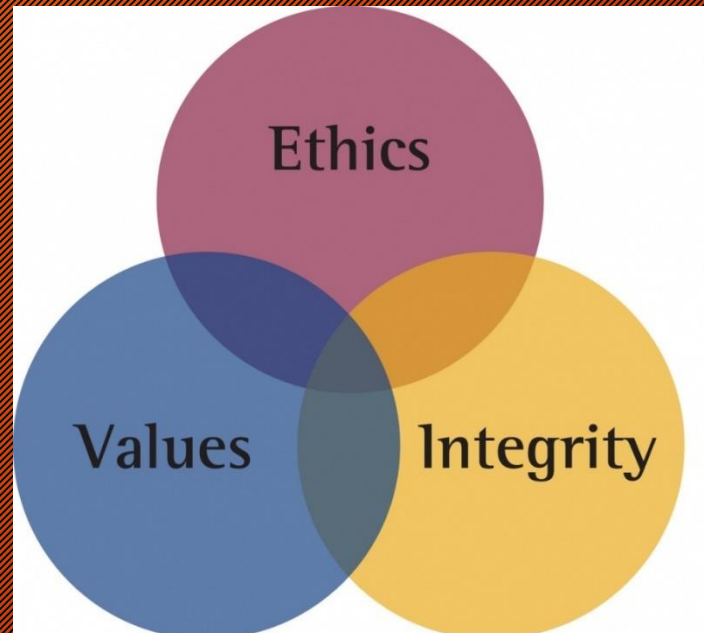
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- Ethics

- Morality: good and evil, right and wrong, virtue and vice

- Legal Ethics

- The Legislature’s attempt to assure the public that the public’s business is being conducted in an ethical manner.



Guiding Principles

- Conflict of interest laws attempt “to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation.” *U.S. vs. Mississippi Valley Generating Company* (1961) 364 U.S. 520, 550.
- “It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties.” *Witt v. Morrow* (1977) 70 Cal.App.3d 820, 823.

CONFLICTS & INCOMPATIBILITIES

Preventing Economic Conflicts

Political Reform Act
Government Code § 81000 et seq.

Political Reform Act: Basic Requirements

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- Disclosure (Form 700)
- Disqualification

Fair Political Practices Commission (FPPC)

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- The FPPC investigates alleged violations of the Political Reform Act and imposes penalties when appropriate.
 - Provides written and oral advice to public agencies and officials
- Only good faith reliance on written advice from the FPPC on the particular situation at hand provides immunity from criminal or civil prosecutions.

Disclosure of Economic Interests

Statement of Economic Interests Form 700

Who Must Disclose?

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- 87200 Filers
 - Members of Committees, Boards, etc.
 - Certain Consultants
 - Certain Employees
- Designated Employees
 - Per Local Code
- Candidates

What to Disclose?

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- By type:
 - Investments
 - Interests in real property, except personal residence
 - Sources of income, including gifts, loans and travel payments
 - Business interests & positions

Note: Some types include spouses, domestic partners & dependents

What to Disclose?

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- Reportability depends on Type of Filer
 - 87200 Filers
 - Limited by Jurisdiction (except gifts)
 - Designated Employees
 - Limited by Jurisdiction & Category

How & When to Disclose?

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- How:
 - Form 700 - Statement of Economic Interests
 - Used by 87200 Filers and Code Filers
- When:
 - Assuming office - within 30 days
 - Annually - by April 1st
 - Leaving office - within 30 days

Penalties - Failure to File

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- The filing officer can impose fines of \$10 per day to a maximum of \$100 for late filing of a Statement of Economic Interests
- The FPPC can impose fines up to \$5,000 per violation

Disqualification

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A public official shall not make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a disqualifying financial interest.

Disqualification

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- A public official has a disqualifying financial interest if:
 - the governmental decision will have a reasonably foreseeable material financial effect,
 - distinguishable from the effect on the public generally,
 - directly on the official, or his or her immediate family, or on any of the official's "financial interests"

Financial Interests

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- Business entities
 - Direct or indirect investment worth at least \$2,000
 - Management position
- Real property
 - Direct or indirect interest worth at least \$2,000
- Sources of Income
 - Over \$500 within 12 months
- Sources of Gifts
 - Over \$460 within 12 months
- Personal finances of official and his/her immediate family

4- Step Test

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- **Step 1:** Is the financial effect reasonably foreseeable?
- **Step 2:** Is it material?
- **Step 3:** Is the effect on the official different from its effect on the “public generally”?
- **Step 4:** If the answers to the above are “yes” and no exception applies, then the official may not make, participate in making, or in any way attempt to use his or her official position to influence the decision.

Step 1: Reasonably Foreseeable?

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- Subject of a governmental decision?
 - Presumed reasonably foreseeable
- If the financial effect can be recognized as a realistic possibility - reasonably foreseeable
- Not reasonably foreseeable:
 - Hypothetical or theoretical
 - Cannot be expected absent extraordinary circumstances not subject to the public official's control

Step 2: Material?

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- Material - Having real importance or consequences
- NOT material if effect is nominal, inconsequential or insignificant

The Prudent Person

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Step 3: Public Generally?

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- A governmental decision's financial effect on a public official's financial interest is indistinguishable from its effect on the public generally if the official establishes that:
 - a significant segment of the public is affected and
 - the effect on his or her financial interest is not unique compared to the effect on the significant segment.

Step 4: Making, Participating in Making, Influencing

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- Making
 - Voting
 - Appointing
 - Obligating or committing agency to any course of action
 - Entering into contract
- Participating in Making
 - Providing information, opinion, recommendation without significant intervening substantive review
 - Negotiating or advising
- Influencing (for the purpose of affecting a decision)
 - Appearances on behalf of agency
 - Contacts with staff

Legally Required Participation

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- Applies only when “no reasonable alternative is available”
 - Not for convenience
 - Not for a tie

Segmentation

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- If the decision creating the conflict of interest can be segmented from other decisions, the public official can participate in the other decisions
 - The decisions cannot be inextricably interrelated
- Examples: General Plan or Budget decisions

Recusal

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- Publicly identify each type of financial interest that is involved in the decision that gives rise to the disqualifying conflict of interest
- Recuse and **LEAVE THE ROOM!**

Penalties

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- Violation of any provision of the Political Reform Act
 - Administrative fine
 - Civil penalty
 - Criminal penalty
 - Inability to run for public office

Contractual Conflicts

Government Code § 1090

Government Code section 1090

Basic Prohibitions

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- Officer or employee may not make or participate in making a contract in official capacity if financially interested
- Board cannot make a contract in which one of its members is financially interested (recusal doesn't cure!)

Elements

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- Public Official
- Financial Interest
- Participation
- Contract
 - Includes purchases

Exceptions

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- “Remote Interest” Exceptions (Sec. 1091)
 - Special statutory definitions
 - Disqualification required
- “Non-Interest” Exceptions (Sec. 1091.5)
 - Special statutory definitions

Penalties

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- Contract is void
- Disgorgement of all monies received by the official
- Permanent bar from holding office
- Misdemeanor
- Civil or administrative penalties

- The FPPC now provides advice regarding, and enforcement of, Government Code section 1090.
 - Request for advice is forwarded to the Attorney General and local District Attorney

Common Law Doctrine

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- “A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public.”

Noble v. City of Palo Alto

- Note: Includes non-financial interests

Incompatibilities

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Incompatible Offices

Government Code § 1099

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- Three Required Elements
 - Public Official
 - Holding 2 public offices simultaneously
 - Conflicting or overlapping functions

Incompatible Offices

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- Public Office is:
 - Created or authorized by law;
 - Continuing and permanent; and
 - Exercises sovereign powers.

Incompatibility

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- Clash of duties, responsibilities or loyalties
- Overlapping functions or responsibilities
- Subordinate office
- Against public policy

Consequences of Incompatible Offices

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Automatic vacation of the first office upon acceptance of the second office

Incompatible Activities

Government Code § 1126

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- Applies to Officers and Employees
- Types of Activities Defined
- Agency to Adopt Incompatible Activities Statements

Bribery

Penal Code § 68

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- Elements:
 - Council members or Board members
 - Who ask, receive or agree to receive a bribe
 - Upon an agreement or understanding
 - For his or her vote, opinion or action

Penalties

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- Restitution
- Forfeiture of office
- Permanent ban from holding office
- Imprisonment

PERKS & BENEFITS

Campaign Contributions

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- Applies to proceedings for certain licenses, permits and entitlements
- Prohibition
 - Contribution of more than \$250
 - During pendency and 3 months after
- Disqualification
 - If received more than \$250
 - During prior 12 months

Personal Loans

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- Applies to elected officials and other 87200 filers
- Prohibits personal loans of \$250 or more from certain persons
- Requires written contract and other specified requirements

Gifts - What? When? And How?

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- Anything of value exceeding consideration to giftor
 - Based on fair market value
- Actual possession

Note: Gifts of travel have special rules

3 Rules for Gifts

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- **Disclose:**
 - Gifts totaling \$50 or more from a single source
- **The Gift Limit**
 - \$460 or more from a single source during the calendar year
- **Disqualification**
 - \$460 or more during the previous 12 months

Who is Subject to Gift Limit?

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- Officials listed in Government Code § 87200
- Designated employees

Some Exceptions to Gift Limit

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- Gifts from family members
- Reciprocated gifts
- Declined gifts

Penalties

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- Treble Damages
- Fine
- Inability to Run for Public Office

Honoraria Ban

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- Elements:
 - Public Officials
 - Cash or in-kind
 - For giving a speech or attending a meeting

Exceptions to Honoraria Ban

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- Travel costs
- Private employment income
- Under certain circumstances, an honorarium may be returned, donated or the source reimbursed

Penalties

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- Treble Damages
- Fines up to \$5,000 per violation

Free Transportation Ban

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- Elements:
 - Gifts or Discount
 - Transportation Company
 - Public Officer
 - Someone who sets or makes policy
- Covers Travel for Personal or Public Business

Exceptions

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- Gift or discount made without regard to official status, e.g.
 - Part of a larger group
 - Spouse's employment benefit
 - Prize

Forfeiture of Office

Misuse of Public Funds

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- No Public Purpose, or
- Lacks Authorization

Examples of Misuse of Public Funds

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- Using Agency car to take a pleasure trip
- Using government discounts to purchase personal items
- Using Agency staff to work on a political campaign
- Using Agency staff and car to transport political candidate, staff and family

Penalties

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- Civil
- Criminal
- Bar from holding public office

Mass Mailing

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- No mass mailing at public expense
- Mass Mailing defined:
 - Delivery of a tangible item
 - Features an elected official
 - Costs exceed \$50
 - More than 200 copies are sent

OPEN GOVERNMENT



The Public Records Act

Government Code § 6250 et seq.

What is a Public Record?

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- Public record
 - Any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by the Agency regardless of physical form or characteristics
- Writing
 - Any method of recording, including paper, tapes and computer files

Some Exemptions

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- Preliminary drafts, notes or memoranda not retained in ordinary course of business
- Pending litigation
- Personnel, medical or similar files
- Taxpayer information
- Exemptions under federal or state law; e.g., privileged documents, copyrighted materials

Response

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- Public records are open to inspection during office hours
- On request for reasonably identifiable records and duplication fee, make copy available
- 10 days for determination on the request
- 14-day time extension for “unusual circumstances”

Consequences

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- Injunction
- Court costs and attorneys' fees

Thank you for your
attention and public
service!