

CHAPTER 4:
Transparency Laws



Chapter 4: Transparency Laws

CONTENTS

- Economic Interest Disclosure 51
 - Basic Rules..... 51
 - Penalties.....53
- Campaign Contribution Disclosure 54
 - Basic Rules..... 54
 - Penalties.....55
- Charitable Fundraising Disclosure56
 - Basic Rules.....56
 - Penalties.....57
 - Penalties for Extortion under State and Federal Law57
 - Honest Services Fraud.....57
- The Public’s Right to Access Records..... 58
 - Basic Rules..... 58
 - Penalties.....59
- Conducting the Public’s Business in Public 60
 - Basic Rules..... 60
 - Good Ethics Equals Good Politics..... 61
 - Typical Closed Session Issues 62
 - Penalties.....63
 - Nullification of Decision63
 - Criminal Sanctions63
 - Other Consequences63
- The Public’s Right to Participate in Meetings..... 64
 - Basic Rules..... 64
 - Posting and Following the Agenda..... 64
 - The Public’s Right to Materials Not Included in the Agenda Packet 64
 - Special Issues..... 64
 - Electronic Recording of Meetings is Allowed..... 64
 - Sign-In Must Be Voluntary..... 64
 - The Public’s Right to be Heard..... 64
 - Penalties..... 66
 - Nullification of Decision 66
 - Criminal Sanctions 66
 - Other Measures..... 66
 - Potential Civil Rights Violations 66
- Endnotes and Additional Information67

Economic Interest Disclosure

BASIC RULES

There is an adage about one's life being an open book. Nowhere is this truer than for public officials and their financial situations. When people become public servants, the public gets to learn a great deal about their financial lives. California voters established some of these disclosure requirements when they approved the Political Reform Act (PRA) in 1974.¹ Those entering public service sacrifice a degree of their privacy.

The disclosure requirements of the PRA apply to all "designated employees" of an agency.² "Designated employees" is broadly defined to include local elected officials (e.g., members of city councils, county boards of supervisors, and district boards), executive level agency employees (e.g., General Managers and Superintendents), and consultants and appointed members of councils, commissions, boards, committees and other local agency bodies with significant decision-making authority that exceeds a solely advisory function. "Designated employees" also includes persons in staff positions required to disclose their economic interests under the agency's local conflict of interest code because the position entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest of the employee.

This disclosure is made on a form called a "Statement of Economic Interests." It may also be referred to by the acronym "SEI" or its number, "Form 700." A web-based version of the form is available from the Fair Political Practices Commission (FPPC) website: www.fppc.ca.gov. Local agencies may adopt electronic filing procedures with FPPC oversight.³ One's local agency usually provides paper copies of the form as well.

This form is filed upon assuming office, on an annual basis while in office and upon leaving office.⁴ Local rules may impose more stringent requirements.

The following kinds of economic interests must be disclosed if they meet certain minimum thresholds:

- » Sources of income;
- » Interests in real property;
- » Investments;
- » Business positions; and
- » Sources of gifts. See the table on the following page.

ETHICS CODES VERSUS LOCAL CONFLICT OF INTEREST CODES

The PRA requires local agencies to adopt local conflict of interest codes, which supplement California law by specifying which positions in the agency are subject to which ethics laws.⁵

For more information, see "About Local Conflict of Interest Codes" (available at www.ca-ilg.org/sites/main/files/file-attachments/about_local_conflict_of_interest_codes.pdf) and FPPC materials on adopting local conflict of interest codes (see www.fppc.ca.gov/learn/rules-on-conflict-of-interest-codes/local-government-agencies-adopting-amending-coi.html).

TYPES OF ECONOMIC INTERESTS THAT MUST BE DISCLOSED

- » **Sources of Income.** Disclosure is required for income of \$500 or more provided or promised to an official from one source (including any income received from a business, nonprofit organization, government agency, or individual) for the previous calendar year (for annual disclosures) or the previous 12 months (for assuming office statements).⁶ “Income” includes a community property interest in a spouse or domestic partner’s income.⁸
- » **Personal Finances.** An official has an economic interest in that official’s expenses, income, assets or liabilities and those of his or her immediate family (spouse or domestic partner⁹ or dependent children).¹⁰
- » **Real Property.** An interest in real property must be disclosed where the interest is worth \$2,000 or more. The interest may be held by the official, the official’s spouse or domestic partner¹¹ (even as separate property) or children, or anyone acting on their behalf. Real property interests can also be created through leaseholds, options and security or mortgage interests in property.¹²
- » **Investments.** Another disclosable interest is created when the official, the official’s spouse or domestic partner¹³ (even as separate property), or dependent children or anyone acting on their behalf, has an investment worth \$2,000 or more in a business entity that has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior, even if the official does not receive income from the business.¹⁴
- » **Business Employment or Management.** If the official serves in a director, officer, partner, trustee, employee, or other management position in a business entity, an economic interest is created.¹⁵ Note that this does not apply to a member of the board of a nonprofit entity.¹⁶
- » **Related Businesses.** The official must disclose an interest in a business that is the parent, subsidiary or is otherwise related to a business in which the official:
 - Has a direct or indirect investment worth \$2000 or more; or
 - Is a director, officer, partner, trustee, employee, or manager.¹⁷
- » **Business-Owned Property.** A direct or indirect ownership interest in a business entity or trust that owns real property is another disclosable interest.¹⁸
- » **Loans.** Another type of potentially disclosable interest is created by the receipt of a loan, unless the loan is from a commercial lending Institution or indebtedness created as part of a retail installment or credit card transaction, issued on the same terms as available to anyone in the public.¹⁹
- » **Gifts.** Gifts from a single source must be totaled up over the course of a calendar year. An official’s reporting obligation is triggered when the combined value of gifts from one source totals \$50 or more.²⁰ For more information about gifts, please see Chapter 3, and www.ca-ilg.org/GiftCenter.²³

PENALTIES

Economic interest disclosure requirements are part of the PRA. Failure to report or incomplete reporting are punishable by a variety of civil, criminal and administrative penalties depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.²¹

Penalties for violation of the PRA can include one or more of the following:

- » Immediate loss of office;²²
- » Prohibition from seeking elected office in the future;²³
- » Fines of up to \$10,000 or more depending on the circumstances;²⁴ and
- » Jail time of up to six months.²⁵

In addition to the above penalties, failure to file a Statement of Economic Interests on time will result in late fees of \$10 per day, up to a maximum of \$100.²⁶

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

Campaign Contribution Disclosure

BASIC RULES

California has an extensive framework for transparency with respect to campaign contributions.²⁷ The basic reasoning behind these laws is that the public has a right to know who gives money and other forms of support to candidates for public office. Another stated justification is that the prospect of public disclosure will discourage improper influences.²⁸

These transparency requirements apply not only to candidates, but also to groups which organize to participate in the election process (known as “committees”).²⁹ Transparency requirements also apply to those who make large contributions, ten thousand dollars (\$10,000) or more in a calendar year, to influence elections.³⁰ Those who participate in campaigns to pass or defeat ballot measures are also subject to these requirements.³¹

Cities and counties may have additional campaign finance disclosure laws for candidates for offices within their jurisdiction or committees focused on local ballot measures.³² Copies of these local ordinances must be filed with the FPPC.³³

In addition, certain categories of local officials are subject to restrictions on campaign contributions received from people with business pending before the agency. Chapter 5 (pages _-_) explains these restrictions.

Chapter 3 explains the restrictions on how campaign funds may be spent.

FOR MORE INFORMATION

On campaign contribution disclosure, see the following resources:

- » The FPPC has extensive information to guide candidates and ballot measure committees on these requirements. Visit the FPPC website at www.fppc.ca.gov or call the FPPC’s toll-free number: 1-866-ASK-FPPC (1-866-275-3772).
- » The Political Reform Division of the California Secretary of State’s office issues identification numbers to campaigns and committees, provides technical assistance to filers, and maintains disclosure reports for public access. Visit the Secretary of State’s website at www.sos.ca.gov/prd or call 916-653-6224.
- » For federal elections (Presidential, U.S. Senate, House of Representatives), consult the Federal Election Commission at 1-800-424-9530 or on the web at www.fec.gov.

For specific questions, please contact the Fair Political Practices Commission.

PENALTIES

The PRA includes campaign contribution disclosure requirements. Violations of the PRA are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.³⁴

These penalties can include any or all of the following:

- » Immediate loss of office;³⁵
- » Prohibition from seeking elected office in the future;³⁶
- » Fines of up to \$10,000 or more depending on the circumstances;³⁷ and
- » Jail time of up to six months.³⁸

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

OTHER DISCLOSURE REQUIREMENTS

The California Public Records Act is the main source of authority providing public access to documents in the possession of public agencies in California. There are specific disclosure requirements that are useful to note that are discussed in more detail online and in other chapters of this guide:

- » General gifts to public agencies must be disclosed on a special form and posted on the agency website. For more information, see www.ca-ilg.org/GiftsQuestion3 and www.fppc.ca.gov/learn/public-officials-and-employees-rules-/gifts-and-honoraria.html.
- » Gifts of event tickets to public agencies must be disclosed on a special form and submitted to the FPPC for posting on its website. For more information, see www.ca-ilg.org/GiftsQuestion3 and www.fppc.ca.gov/learn/public-officials-and-employees-rules-/reporting-ceremonial-role-events-and-ticket-admission.html.
- » Campaign contributions in excess of \$250 received during the preceding 12 months from any party or participant in a pending permit or license application are discussed on chapter 5.

There are of course other disclosure and notice requirements that are not listed here; these are just some that often raise issues concerning public confidence and ethics.

Charitable Fundraising Disclosure

BASIC RULES

A frequently overlooked disclosure obligation relates to an official or candidate's charitable or other fundraising activities. This obligation is referred to as the "behested payments" requirement. The reasoning behind these laws is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

The disclosure requirement is triggered when:

- » A person or entity donates \$5,000 or more in a calendar year;
- » The donation is for a legislative, governmental or charitable purpose; and
- » The donation is made at the behest of the a public official. This means the official or candidate (or their employee or agent):
 - Has requested or suggested the donation;
 - Controls or directs the donation; or
 - Plays a cooperating, consulting, or coordinating role with respect to the donation.³⁹

The report must contain the following information:

- » The contributor's name and address;
- » The dollar amount or fair market value of the contribution;
- » The date or dates on which the contributions were made;
- » The name and address of the recipient of the contribution;
- » If goods or services were contributed, a description of those goods and services; and
- » A description of the purpose or event for which the contribution was used.⁴⁰

The official must make this report once contributions from a single donor (whether an individual or an organization) have reached the \$5,000 aggregate threshold for any calendar year. Once this occurs, all contributions the donor makes or made for the calendar year must be disclosed within 30 days after: 1) the date the \$5,000 threshold was reached, or 2) the date the payment was made, whichever occurs later.⁴¹

Within 30 days of the donor reaching the \$5,000 threshold, the elected official must file a report with his or her agency (typically through the agency's filing officer)⁴². The FPPC's "Form 803 - Behested Payments Report" should be used to make this disclosure.⁴³

What is a "legislative, governmental or charitable" purpose? The law does not define these words, but charitable causes typically involve Internal Revenue Code section 501(c)(3) organizations. A "governmental" cause might include such things as fundraising for a new public library. The reference to a "legislative" cause apparently has its roots in a 1996 FPPC advice letter which addressed a situation in which a State Senator asked a private party to pay the airfare and expenses for a witness to come testify at a legislative hearing.⁴⁴

Of course, when a public servant conditions his or her official actions on a contribution to a worthy cause it is criminal extortion under both state and federal law.⁴⁵

See discussion in the next section.

FOR MORE INFORMATION

On charitable fundraising, see the following resources:

- » "Raising Funds for Favorite Causes," available at www.ca-ilg.org/fundraising.
- » "Using Public Resources for Gifts and Charitable Purposes," available at www.ca-ilg.org/PublicResourcesforGifts.
- » "Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder," available at www.ca-ilg.org/nonprofits.
- » "Understanding the 'Behested Payments' Issue," available at www.ca-ilg.org/BehestedPayments.

For specific questions, contact the FPPC or agency counsel.

PENALTIES

These disclosure requirements are part of the PRA. PRA violations are punishable by a variety of civil, criminal and administrative penalties, depending on the severity of the violation and the degree of intent to violate the law that enforcement entities are able to demonstrate.⁴⁶

Penalties for Extortion under State and Federal Law

California Law

If an official demands, solicits, or otherwise compels a contribution to a charitable organization in exchange for performing an official act favorable to the person making the contribution, the official's act of compelling the contribution could be prosecuted as extortion. Extortion under color of official right is a misdemeanor under California law.⁴⁷ Misdemeanors are punishable by up to six months in county jail, a fine of up to \$1,000, or both.⁴⁸ Extortion can also be the basis for a grand jury to initiate removal-from-office proceedings for official misconduct.⁴⁹

Federal Law

If the official's extortion affects interstate commerce, it is chargeable as a federal offense, which, under federal law, has a maximum penalty of 20 years in prison and a \$250,000 fine.⁵⁰

Honest Services Fraud

Under federal wire and mail fraud laws, the public has the right to the "honest services" of public officials.⁵¹

The basic concept is that a public official owes a duty of loyalty and honesty to the public—similar to that owed by a trustee or fiduciary.⁵² That duty is violated when a public official makes a decision that is not motivated by his or her constituents' interests but instead by his or her personal interests.⁵³

In one instance, federal authorities prosecuted a city treasurer whose decisions to award contracts were motivated in part by whether the firm contributed to political and charitable causes favored by the treasurer.⁵⁴

The maximum penalty for wire and/or mail fraud includes a jail term of up to 20 years and a \$250,000 fine.⁵⁵

FOR MORE INFORMATION

On penalties for violations of ethics laws, see www.ca-ilg.org/consequences.

The Public's Right to Access Records

BASIC RULES

There are two sets of laws and regulations that govern public records in California. One set governs the public's right to access public records.⁵⁶ The other set governs which records an agency must retain and for how long.⁵⁷

Pursuant to the California Public Records Act ("CPRA"), the public has the right to access materials that are created in the course of conducting the people's business.⁵⁸ These materials include any writing prepared, owned, used or retained by a public agency, with some exceptions.⁵⁹ "Writings" include, among other things, documents, computer data, e-mails, facsimiles and photographs.⁶⁰

Public agency records are generally subject to public disclosure unless a specific exemption applies.⁶¹ A few of the exemptions worth noting are:

- » The "pending litigation" exemption, which exempts from disclosure documents prepared in support of ongoing litigation (but for this protection, lawyers suing an agency could obtain all documents containing the agency's legal strategy just by asking for them).⁶²
- » The "drafts" exemption, which exempts from disclosure preliminary drafts, notes or other interagency or intra-agency memoranda not retained in the agency's ordinary course of business. The public agency also must be able to demonstrate that the public's interest in nondisclosure clearly outweighs the public's interest in disclosure.⁶³
- » The "personal privacy" exemption, which exempts from disclosure personnel files, medical records or other such files, the disclosure of which would constitute an unwarranted invasion of personal privacy.⁶⁴

Despite these exceptions, the safe assumption is that most materials used, prepared, or simply maintained by a public agency—including e-mails—are records subject to disclosure.

A person may make a request for records in any manner, whether orally in person or over the phone, or in a writing mailed, emailed, faxed or personally delivered to the agency.⁶⁵ There are two ways for a person to gain access to requested records, and the requester may choose either or both: 1) inspecting the records at the local agency's

office during regular business hours; and 2) receiving copies of the requested records.⁶⁶

A request for records must be specific and clear enough for the local agency to be able to determine what records the requester seeks.⁶⁷ However, if the request is overly broad or unclear, the local agency must assist the requester with revising the request so that it seeks more easily identifiable records; for instance, the local agency can describe the kind of records it possesses that may be relevant given the purpose of the request and how those records are maintained.⁶⁸

Within ten calendar days of receiving a CPRA request, a local agency must respond to the requester notifying them of whether there are records responsive to the request that the agency will disclose.⁶⁹ If the agency is withholding any records pursuant to one or more applicable exemptions, the response must be in writing and identify the exemption(s) invoked to justify the nondisclosure.⁷⁰ Sometimes records will contain both nonexempt and exempt information, and the agency must redact a writing to conceal the portions that are exempt before disclosing the writing.⁷¹ Although the CPRA sets a specific deadline for *responding* to a records request, the CPRA simply states that the nonexempt records must be actually *disclosed* to the requester "promptly."⁷²

RECORDS RETENTION

Counties and cities generally must retain public records for a minimum of two years, but for special districts, the duration of time varies based on the type of records sought to be destroyed.⁷³ Most local agencies adopt record retention schedules as part of their records management system. These define which records must be retained and for how long. The California Secretary of State provides local agencies with record management guidelines.⁷⁴



A safe assumption is that most materials involved in one's public service are public records subject to disclosure.

FOR MORE INFORMATION

On Public Records, see the following resources:

- » *The People's Business: A Guide to the California Public Records Act*, 2008. Available at the League of California Cities website at www.cacities.org/PRAGuide or in hardcopy form from www.cacities.org/publications or by calling (916) 658-8217.
- » *The People's Business December 2014 Guide Supplement*, 2014. Available at the League of California Cities website at www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.
- » *The People's Business: 2014 Chart of Frequently Requested Information and Records*, 2014. Available at the League of California Cities website at www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys/Publications.
- » *Summary of the California Public Records Act*, 2004. Available on the California Attorney General's website at http://ag.ca.gov/publications/summary_public_records_act.pdf.

For specific questions, please contact agency counsel.

PENALTIES

Anyone can sue the agency to enforce the right to access public records which are subject to disclosure.⁷⁵ If the agency loses, it must pay costs and attorney's fees.⁷⁶

FOR MORE INFORMATION

On penalties for violations of ethics laws, see www.ca-ilg.org/consequences.

Conducting the Public's Business in Public

BASIC RULES

The underlying philosophy of California's open government laws is that public agency processes should be as transparent as possible. Such transparency is vital in promoting public trust in government.

The Ralph M. Brown Act (Brown Act) is California's open meeting law for the governing bodies of nearly all local agencies.⁷⁷ The Brown Act provides minimum legal requirements for local agency transparency in decision-making.⁷⁸ (Please note that community college boards are subject to less stringent requirements than are other local agencies. Check the endnotes for specific references to open meeting laws pertaining to community college districts.)⁷⁹

Under the Brown Act, elected and most appointed local agency decision-making bodies, including many advisory committees, must conduct their business in open and public meetings to assure that the local decision-making process is observable by the public.⁸⁰ The issue of what kinds of bodies are subject to open meeting laws may require careful legal analysis. For purposes of clarity, this guide uses the term "decision-making body" and "decision-makers," but the reader should be aware that this term is imprecise.

A "meeting" is any congregation of a majority of the members of a decision-making body to discuss, hear, deliberate, or make a decision on any item within the agency's jurisdiction. In other words, a majority of a decision-making body cannot hear a presentation or talk privately about an issue within its subject matter jurisdiction, no matter how the conversation occurs, whether by telephone or e-mail, on a private blog, or at a local coffee shop.⁸¹

The following are some key things to keep in mind:

» **Committees and Advisory Bodies.** Advisory groups or committees formally created by a governing body are subject to the open meeting laws. Standing committees are subject to the open meeting laws if they have a continuing subject-matter jurisdiction or have a meeting schedule fixed by charter or formal action of the governing body.⁸²

» **Serial Meetings.** Avoid unintentionally creating a "serial" meeting—a series of communications that result in a majority of decision-makers conferring on an issue. For example, if two members of a five-member decision-making body consult with each other outside of a public meeting (which is not in and of itself a violation) about a matter of agency business, and then one or both of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue and a violation of the open meeting law has occurred. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling decision-makers members in a way that reveals the members' positions to one another.⁸³

However, separate communications of an employee or official of a local agency with individual decision-makers to answer questions or provide information are permissible, as long as those communications do not communicate information about other decision-makers' comments or positions.⁸⁴ For example, the General Manager of a special district may have an individual meeting with Board Member A to answer questions or provide information about a proposal, and then the General Manager may have a similar meeting with Board Member B, as long as the General Manager does not communicate Board Member A's comments or position on the proposal to Board Member B.

GOOD ETHICS EQUALS GOOD POLITICS



The media is highly vigilant in monitoring compliance with open government requirements—and quick to report on perceived violations.

- » **Posting and Following the Agenda.** The Brown Act requires that at least 72-hours before a regular meeting, and 24-hours before a special meeting, a local agency must post an agenda for the meeting, including on the agency's website, if the agency maintains one.⁸⁵ In general, public officials may only discuss and act on items included on the posted agenda for that meeting.⁸⁶ However, decision-makers or staff may briefly respond to questions or statements during the public comments section of the meeting even if the questions or statements are unrelated to any agenda items. Officials can also request staff to look into a matter or place a matter on the agenda of a subsequent meeting.⁸⁷ Action may be taken on a matter not on the agenda only when the decision-making body determines by a majority vote that an emergency situation exists or the decision-making body determines by a two-thirds vote of those officials present at the meeting that there is a need to take immediate action and the need for action came to the attention of the local agency subsequent to the agenda being posted.⁸⁸
- » **Permissible Gatherings.** Not every gathering of members of a decision-making body outside of a noticed meeting violates the law. For example, an open meeting violation would not occur if a majority of a decision-making body attends the same educational conference or a meeting not organized by the local agency as long as certain requirements are met.⁸⁹ Neither is attendance at a social or ceremonial event in and of itself a violation.⁹⁰ The basic rule to keep in mind is a majority of members of a decision-making body cannot discuss agency business (including at conferences or social events) except at an open and properly noticed meeting.
- » **Closed Sessions.** The open meeting laws allow for closed discussions only under very limited circumstances.⁹¹ For example, a governing body may generally meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation.⁹² However, the reasons for holding the closed session must be noted on the

agenda and different disclosure requirements apply to different types of closed sessions.⁹³ See the table on the next page for information on what kinds of closed sessions are permissible.

Because of the complexity of the open meeting laws, close consultation with the agency's legal advisor is necessary to ensure that all requirements are met.

FOR MORE INFORMATION

On open meeting laws, see the following resources:

- » Open and Public V: A Guide to the Ralph M. Brown Act, 2016. Available on the League of California Cities website at www.cacities.org/OpenandPublicV or in hardcopy form by visiting www.cacities.org/publications or by calling (916) 658-8217.
- » The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at <http://oag.ca.gov/open-meetings>.
- » "Closed Session Leaks: Discretion is the Better Part of Valor - and Ethics," available at www.ca-ilg.org/closed-session-leaks.
- » The use of technology and public meetings is discussed in Meetings and Technology: Finding the Right Balance, 2013. Available at www.ca-ilg.org/technology-and-meetings.

For specific questions, please contact agency counsel.

TYPICAL CLOSED SESSION ISSUES

Local agency open meetings laws vary in terms of what kinds of closed sessions are allowed. Below is a list of matters that generally may be addressed in closed session. The list is illustrative, but not comprehensive, and in many cases, there are statutory limitations and requirements that must be considered. Consult with agency counsel concerning 1) whether a particular type of closed session is permissible and 2) under what circumstances.

- **Personnel.** To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints against an employee; however, where the body will be hearing complaints against an employee, at least 24-hours before the time for holding the session, the employee must receive a written notice of his or her right to require that the hearing be in open session.⁹⁴
- **Pending Litigation.** To confer with or receive advice from the agency's legal counsel with respect to existing, threatened or potential litigation.⁹⁵
- **Real Estate Negotiations.** To grant authority to the agency's negotiator regarding the price and terms for the purchase, sale, exchange, or lease of real property on the agency's behalf.⁹⁶
- **Labor Negotiations.** To meet with the agency's labor negotiator regarding salaries, benefits, and other matters within the scope of labor negotiations.⁹⁷
- **Student Disciplinary Issues (for School Districts and Community College Districts).** To consider discipline of a student if a public hearing would result in the prohibited disclosure of private information, after notifying the student (and his or her parents in the case of minor students) and not receiving in response a request for a public hearing.⁹⁸
- **Grand Jury Proceedings.** To allow testimony in private before a grand jury (either individually or collectively).⁹⁹
- **License Applicants with Criminal Records.** To allow an agency to determine whether an applicant for a license or license renewal with a criminal record is sufficiently rehabilitated to obtain the license.¹⁰⁰
- **Public Security.** To confer with designated law enforcement officials regarding threats to public facilities or services, or the public's right of access to those facilities or services.¹⁰¹
- **Multi-jurisdictional Law Enforcement Agency.** To discuss ongoing multi-jurisdictional criminal investigations.¹⁰²
- **Hospital Peer Review and Trade Secrets.** To discuss issues related to medical quality assurance or involving hospital trade secrets.¹⁰³

Just because a topic may be discussed in closed session does not mean that it always must be discussed in closed session. However, sometimes there are reasons for discussing a matter during a permissible closed session. For example, the governing body should discuss an employee disciplinary matter in a closed session meeting to protect the privacy interests of the employee, unless the affected employee gives permission for the governing body to discuss the matter in open session. Other times, the governing body may decide that an open session is in the public's best interest, even if not required (for example, in determining negotiating positions for the agency). Keep in mind that the decision of whether a meeting should be open or closed (where the governing body has authority to decide) is a collective one, not an individual one. However, also keep in mind that a closed session is permissible only where a statute specifically allows it. Otherwise, the matter must be discussed in open session.

PENALTIES

Nullification of Decision

Many decisions that are not made according to the open meeting laws are voidable.¹⁰⁴ After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.¹⁰⁵

Criminal Sanctions

Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.¹⁰⁶ The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months or a fine of up to \$1,000 or both.¹⁰⁷

Other Consequences

Either the District Attorney or any interested person may sue to remedy past, and prevent future, violations of the open meeting laws.¹⁰⁸ Another remedy, under certain circumstances, is for a court to order all closed sessions be electronically recorded.¹⁰⁹ Costs and attorney fees may be awarded to those who successfully challenge open meeting law violations.¹¹⁰

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

A NOTE ABOUT BLOGGING AND SOCIAL NETWORKING SITES

Decision-makers who are covered by open meeting laws must avoid situations in which the majority of a decision-making body uses the Internet to communicate with each other about a matter of agency business. For this reason, decision-makers must take special care when responding to each other's emails, blogs, or posts on social networking sites (such as Facebook or LinkedIn).

The so-called "Web 2.0" creates opportunities for people to present information on websites in the form of a journal. These sites also allow visitors to make comments or ask questions (called "posts" or "postings") in response to the others' comments.

For many decision-makers, blogging offers an effective way to share information with and communicate with constituents. For example, rather than having to respond to 10 e-mails asking the same question, an official can simply post a response on his or her blog and refer folks to the answer. Blogging can also be a good way to keep the public informed, especially as fewer people turn to traditional media for information.

However, a majority of decision-makers participating in a blog or other web-based conversation could constitute a "meeting" within the meaning of the open meeting laws. This means that the meeting must be held in accordance with all open meeting requirements, in an appropriate (accessible to those with disabilities) location, with prior notice and an agenda.

What is the reasoning underlying these restrictions? One is that the public has a right to know about discussions and decision-making on any issue that may affect them. There is also an underlying belief that decision-makers should deliberate on issues in front of, and facing, their constituents. Another proposed justification is that officials should hear the thoughts of the full range of constituents (not just those on the Internet), should constituents choose to offer them. Further, public discussions and decision-making prevents fears of secret backroom deals made without public knowledge.

For more information, see "Legal Issues Associated with Social Media" (available at www.ca-ilg.org/SocialMediaLegalIssues) and "Taking the Bite Out of Blogs: Ethics in Cyberspace" (available at www.ca-ilg.org/blogs).

The Public's Right to Participate in Meetings

BASIC RULES

Another element of open meeting laws is the public's right to address the governing body at any open meeting. An elected official's duty is to both hear and evaluate these communications. There are a number of basic rules that govern this right. (Again, check the endnotes for specific references to requirements for community college boards.)¹¹¹

Posting and Following the Agenda

The open meeting laws provide requirements for informing the public of the date, time, and location of meetings, and the items of business to be addressed at the meetings.¹¹² The agenda must be posted at least 72-hours in advance of a regular meeting.¹¹³

Members of the public may request that a copy of the agenda packet be mailed to them at the time the agenda is posted or upon distribution to the governing body.¹¹⁴ Local agencies must post these materials on their website, if the agency has a website.¹¹⁵

There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances.¹¹⁶ These exceptions, where applicable, also permit an agency to take action on or discuss items not on the agenda.¹¹⁷ The agency may also hold special meetings on 24-hours' notice¹¹⁸ or on less than 24-hours' notice if a true emergency exists.¹¹⁹

The Public's Right to Materials Not Included in the Agenda Packet

Any documents or other materials relating to an agenda item for an open session of a regular meeting of a governing body distributed less than 72 hours before the meeting must be made available to the public. This must occur when the materials are distributed to the members of the governing body at a public office or location that the agency designates for this purpose. Local agencies must list the address of this office or location on the agendas for all meetings of their governing body.¹²⁰

Any documents distributed during a public meeting must also be made available to the public. This must occur at the meeting if the document is prepared by the agency, or after the meeting if the document is prepared by someone else, such as a member of the public.¹²¹

SPECIAL ISSUES

Electronic Recording of Meetings is Allowed

Anyone attending a meeting may photograph or record it with an audio or video recorder unless the governing body reasonably finds that the noise, illumination, or obstruction of view would disrupt the meeting.¹²²

Any audio or video recording of a meeting made by the local agency becomes a public record that must be made available to the public for at least 30 days.¹²³

Sign-In Must Be Voluntary

Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.¹²⁴

The Public's Right to be Heard

Generally, every agenda must include an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.¹²⁵ If the issue of concern is one pending before the governing body, the opportunity must be provided before or during the body's consideration of that issue.¹²⁶

Reasonable Time Limits May Be Imposed

Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.¹²⁷

When many people wish to comment on an issue, for example, an agency may assign a time limit to each speaker to ensure that everyone has a chance to be heard and the agency can complete its business (individuals using a translator must be allotted at least twice the amount of time of a English speaker). However, every effort should be made to avoid artificially short time limits; this gives the public a reasonable chance to share their views and demonstrates the agency's commitment to considering the public's perspectives.

Handling Disruptions

If an individual or group willfully interrupts a meeting and order cannot be restored, the room may be cleared.¹²⁸ Members of the media must be allowed to remain (except those participating in the disturbance) and only matters on the agenda can be discussed.¹²⁹

The chair may encourage everyone to be civil and mutually respectful during the meeting and have disruptive individuals removed from the room.¹³⁰ However, speakers may not be prevented from criticizing the governing body.¹³¹

Finally, note that other California laws may provide additional, subject-specific notice requirements.

GOOD ETHICS EQUALS GOOD POLITICS

Community relations—and the public's opinion of an official's responsiveness—are seriously undermined when it appears an official is not listening to input provided by the public. There can be even more damage if an official expresses disagreement in a hostile or disrespectful way with a position that is being advocated.

Even if one disagrees with the views being offered, the statesperson-like approach is to treat all speakers with the same respect one would like to be treated with if the roles were reversed. This is an application of the value of respect.

FOR MORE INFORMATION

On public participation in meetings, see the following resources:

- » The Brown Act: Open Meetings for Local Legislative Bodies, 2003. Available on the California Attorney General's website at <http://oag.ca.gov/open-meetings>.
- » Institute resources on civility, see www.ca-ilg.org/civility.

For specific questions, please contact agency counsel.

PENALTIES

Nullification of Decision

As a general matter, decisions that are not made according to the open meeting laws are voidable.¹³² After asking the agency to cure the violation, either the District Attorney or any interested person may sue to have the action declared void.¹³³

Criminal Sanctions

Additionally, members of the governing body who intentionally violate the open meeting laws may be guilty of a misdemeanor.¹³⁴ The penalty for a misdemeanor conviction is imprisonment in county jail for up to six months, a fine of up to \$1,000, or both.¹³⁵

Other Measures

Either the District Attorney or any interested person may sue to remedy past and prevent future violations of the open meeting laws.¹³⁶ Another remedy, under certain circumstances, is for a court to order that all closed sessions be electronically recorded.¹³⁷ Costs and attorney's fees may be awarded to those who successfully challenge open meeting law violations.¹³⁸

Potential Civil Rights Violations

By implementing policies or taking actions to regulate or limit the public's right to participate in meetings, other than those regulations and limitations specifically allowed under California law and constitutional law principles, the governing board exposes the local agency to liability for violations of individuals' civil rights¹³⁹ including liability for attorney fees.¹⁴⁰

FOR MORE INFORMATION

On penalties for ethics law violations, see www.ca-ilg.org/consequences.

VOTERS SUPPORT OPEN GOVERNMENT

In 2004, California voters made public agency transparency a state constitutional and statutory requirement. The California Constitution now provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."¹⁴¹

Endnotes and Additional Information

Note: The California Codes are accessible at <http://leginfo.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- 1 Political Reform Act. Cal. Gov't Code §§ 87200-10.
- 2 Cal. Gov't Code § 82019.
- 3 See Cal. Gov't Code § 87500.2.
- 4 Cal. Gov't Code §§ 87202-04, 87302. See 2 Cal. Code Regs. § 18722.
- 5 Cal. Gov't Code § 87300.
- 6 See Cal. Gov't Code § 87103(c).
- 7 2 Cal. Code Regs. § 18229.
- 8 Cal. Gov't Code §§ 82030, 87103(c).
- 9 2 Cal. Code Regs. § 18229.
- 10 Cal. Gov't. Code § 82029.
- 11 2 Cal. Code Regs. § 18229.
- 12 See Cal. Gov't Code §§ 82033, 87103(b).
- 13 2 Cal. Code Regs. § 18229.
- 14 Cal. Gov't Code §§ 82034, 87103(a) .
- 15 Cal. Gov't Code § 87103(d).
- 16 See Cal. Gov't Code § 82005.
- 17 Cal. Gov't Code §§ 82034, 87103(a), (d).
- 18 Cal. Gov't Code § 82033 (pro rata interest, if own 10 percent interest or greater).
- 19 Cal. Gov't Code § 82030(a),(b)(8), (10).
- 20 Cal. Gov't Code § 87207(a)(1).
- 21 See *generally* Cal. Gov't Code §§ 91000-14.
- 22 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 23 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 24 Cal. Gov't Code § 91000(b).
- 25 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 26 Cal. Gov't Code § 91013.
- 27 See *generally* Cal. Gov't Code §§ 84100-511.
- 28 See Cal. Gov't Code § 81002(a).
- 29 See, e.g., Cal. Gov't Code §§ 82013, 84101.
- 30 See Cal. Gov't Code § 82013(c).
- 31 See Cal. Gov't Code § 84202.3.
- 32 See Cal. Gov't Code §§ 81013, 81009.5.
- 33 Cal. Gov't Code § 81009.5(a). Local disclosure requirements can be found on the Fair Political Practices Commission's website, available at <http://www.fppc.ca.gov/learn/campaign-rules/local-campaign-ordinances.html>.
- 34 See *generally* Cal. Gov't Code §§ 91000-14.
- 35 See Cal. Gov't Code § 1770(h) (providing a vacancy occurs upon conviction of a felony or of any offense involving a violation of official duties).
- 36 See Cal. Gov't Code § 91002 (providing no person convicted of a misdemeanor under the Political Reform Act shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction).
- 37 Cal. Gov't Code § 91000(b).
- 38 See Cal. Penal Code § 19 (providing misdemeanors are punishable by imprisonment in county jail up to six months, a fine not exceeding \$1,000, or both).
- 39 See Cal. Gov't Code § 82015(b)(2)(B)(iii); 2 Cal. Code Regs. § 18215.3(a). See also Cal. Fair Political Practices Commission, *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*, at 8 (2015), available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/StateGiftFactSheet.pdf>.
- 40 See Cal. Gov't Code § 82015(b)(2)(B)(iii). See also Fair Political Practices Commission, California Form 803 – Behested Payments Report Instructions, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 41 Cal. Gov't Code § 82015(b)(2)(B)(iii).
- 42 Cal. Gov't Code § 82015(b)(2)(B)(iii); Fair Political Practices Commission, California Form 803 – Behested Payments Report Instructions, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 43 Fair Political Practices Commission, California Form 803 - Behested Payments Report, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/Form803.pdf>.
- 44 See *Schmidt Advice Letter*, No. A-96-098 (March 26, 1996); S. Rules. Comm., S.B. 124 S. Floor Analysis, 1997-1998 Sess., (Cal. Sept. 2, 1997).
- 45 Cal. Penal Code § 518; *In re Shepard*, 161 Cal. 171 (1911). See also 18 U.S.C. § 666(a)(1)(B) .

- 46 See generally Cal. Gov't Code §§ 91000-14.
- 47 Cal. Penal Code § 521.
- 48 Cal. Penal Code § 19.
- 49 Cal. Gov't Code §§ 3060-3074.
- 50 18 U.S.C. §§ 1951(a), 3571(b).
- 51 18 U.S.C. §§ 1341 (mail fraud), 1343 (wire fraud), 1346 (honest services).
- 52 *U.S. v. Sawyer*, 239 F.3d 31, 39 (1st Cir. 2001) (finding sufficient evidence of guilt apart from proof of violation of state law).
- 53 *U.S. v. Lopez-Lukis*, 102 F.3d 1164, 1169 (11th Cir. 1997) (noting that effort to improperly control composition of decision-making body constituted an effort to deprive public of honest services); *McNally v. U.S.*, 483 U.S. 350 at 362-63 (Justice Stevens, dissenting).
- 54 *U.S. v. Kemp*, 379 F.Supp. 2d 690, 697-98 (E.D. Penn. 2005). In *Skilling v. U.S.*, 130 S.Ct. 2896, 2931 (2010), the U.S. Supreme Court held that in order to avoid unconstitutional vagueness 18 USC §1346 (honest services fraud) only criminalizes bribes and kick-back schemes.
- 55 18 U.S.C. §1341 (“... shall be fined under this title or imprisoned not more than 20 years, or both.”).
- 56 See Cal. Gov't Code §§ 6250-70.
- 57 See Cal. Gov't Code §§ 34090-34090.8.
- 58 See generally Cal. Gov't Code §§ 6250-70.5. See also Cal. Const. art. I, § 3(b)(1).
- 59 See Cal. Gov't Code §§ 6252-53.
- 60 Cal. Gov't Code § 6252(g) (“‘Writing’ means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”)
- 61 *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778, 117 Cal. Rptr. 726 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773, 127 Cal. Rptr. 712 (1976).
- 62 Cal. Gov't Code § 6254(b).
- 63 Cal. Gov't Code § 6254(a).
- 64 Cal. Gov't Code § 6254(c).
- 65 League of California Cities, *The People's Business: A Guide to the California Public Records Act*, 11 (2008), available at <http://www.cacities.org/PRAGuide> (citing *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381).
- 66 *Id.* at 10.
- 67 *Id.* at 11 (citing *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159).
- 68 *Id.* at 12 (citing Cal. Gov. Code § 6253.1; *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177).
- 69 *Id.* at 11 (citing Cal. Gov't Code § 6253(c)).
- 70 *Id.* at 13 (citing Cal. Gov't Code § 6255).
- 71 *Id.* (citing Cal. Gov. Code § 6253(a); *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440).
- 72 *Id.* (citing Cal. Gov. Code § 6253(b); 88 Ops.Cal.Atty.Gen. 153 (2005); 89 Ops.Cal.Atty.Gen. 39 (2006)).
- 73 Cal. Gov't Code §§ 26202 (counties), 34090(d) (cities), 60201 (special districts). Note that in California, the Public Records Act is not a records retention statute. See *Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661 (1977).
- 74 The Secretary of State's Local Government Records Management Guidelines may be viewed at <http://www.sos.ca.gov/archives/admin-programs/local-gov-program>.
- 75 Cal. Gov't Code § 6258.
- 76 Cal. Gov't Code § 6259(d).
- 77 See generally Cal. Gov't Code §§ 54950-63 (for cities, counties, special districts and school districts).
- 78 See Cal. Gov't Code § 54953.7.
- 79 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).
- 80 See Cal. Gov't Code § 54952.2(a).
- 81 Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.
- 82 Cal. Gov't Code § 54952(b).
- 83 Cal. Gov't Code § 54952.2.
- 84 Cal. Gov't Code §§ 54954.2; 54956.
- 85 Cal. Gov't Code § 54952.2(b)(2).
- 86 *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 50 Cal. Rptr. 3d 524 (2006); see also S.B. 1732, 2007-2008 Leg., Reg. Sess. (Cal. 2008) (clarifying Cal. Gov't Code § 54952.2 to include both communications that result in a collective concurrence and those that are part of the process of developing collective concurrence).
- 87 Cal. Gov't Code § 54954.2; Cal. Educ. Code § 72121.5.
- 88 Cal. Gov't Code § 54954.2(a)(2), See Cal. Educ. Code § 72121.5.
- 89 Cal. Gov't Code § 54954.2(b).
- 90 Cal. Gov't Code § 54952.2(c)(2).
- 91 Cal. Gov't Code § 54952.2(c)(5).
- 92 See, e.g., Cal. Gov't. Code §§ 54956.5-54957, 54957.6, 54957.10, 54962; Cal. Educ. Code § 72122.
- 93 Cal. Gov't Code § 54956.9.
- 94 Cal. Gov't Code §§ 54957(b)(1), (2).
- 95 Cal. Gov't Code § 54956.9.
- 96 Cal. Gov't Code § 54956.8.
- 97 Cal. Gov't Code §§ 3549.1 (school and community college districts), 54957.6 (other local agencies).

- 98 Cal. Educ. Code §§ 35146, 72122.
- 99 Cal. Gov't Code § 54953.1.
- 100 Cal. Gov't Code § 54956.7.
- 101 Cal. Gov't Code § 54957(a).
- 102 Cal. Gov't Code § 54957.8.
- 103 Cal. Gov't Code §§ 37606, 37624.3; Cal. Health & Safety Code §§ 1461, 1462, 32106, 32155.
- 104 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- 105 *Id.*
- 106 Cal. Gov't Code § 54959.
- 107 See Cal. Penal Code § 19.
- 108 Cal. Gov't Code § 54960(a).
- 109 Cal. Gov't Code § 54960(b).
- 110 Cal. Gov't Code § 54960.5.
- 111 Cal. Educ. Code §§ 72121-29 (for community college district governing boards).
- 112 Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72121.
- 113 *Id.*
- 114 Cal. Gov't Code § 54954.1.
- 115 See Cal. Gov't Code § 54954.2. This requirement currently only applies to:
- » The governing body of a local agency or any other local body created by state or federal statute; or
 - » A commission, committee, board, or other body of a local agency, created by charter, ordinance, resolution, or formal action of a legislative body, if the members are compensated for their appearance, and at least one member is also the member of a governing body created by state or federal statute.
- However, per 2016 Cal. Stat. ch. 265, § 1 (amending Cal. Gov't Code § 54954.2), beginning January 1, 2019, the agenda for a meeting of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state must be posted on the local agency's "primary Internet Web site homepage" if the local agency has a webpage.
- 116 Cal. Gov't Code § 54954.2(b).
- 117 Cal. Gov't Code § 54954.2(b)(2).
- 118 Cal. Gov't Code § 54956.
- 119 Cal. Gov't Code § 54956.5.
- 120 Cal. Gov't Code § 54957.5.
- 121 Cal. Gov't Code § 54957.5(c).
- 122 Cal. Gov't Code § 54953.5(a).
- 123 Cal. Gov't Code § 54953.5(b).
- 124 Cal. Gov't Code § 54953.3.
- 125 Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.
- 126 Cal. Gov't Code § 54954.3(a).
- 127 Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
- 128 Cal. Gov't Code § 54957.9.
- 129 *Id.*
- 130 Cal. Gov't Code § 54957.9; *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010).
- 131 Cal. Gov't Code § 54954.3(c); *Perry Educational Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983); *Acosta v. City of Costa Mesa*, 718 F.3d 800 (9th Cir. 2013).
- 132 Cal. Gov't Code § 54960.1; Cal. Educ. Code § 72121(b).
- 133 *Id.*
- 134 Cal. Gov't Code § 54959.
- 135 See Cal. Penal Code § 19.
- 136 Cal. Gov't Code § 54960(a).
- 137 Cal. Gov't Code § 54960(b).
- 138 Cal. Gov't Code § 54960.5.
- 139 See 42 U.S.C. § 1983.
- 140 See 42 U.S.C. § 1988.
- 141 Cal. Const. art. I, § 3(b)(1).