

Understanding Litigation through the Public Agency Perspective

CALAFCO University

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Two Types of Lawsuits

- Writs of Mandate
- Civil Complaint for Money Damages

Writs of Mandate

- Seeks to compel or set aside a governmental action
- Based on evidence contained in an administrative record
- Bench trial
- Esoteric process for response, certifying record, and briefing

Complaint for Damages

- Governmental claims process
- Importance of notice and tender to insurer
- Evidentiary trial
- Bench or jury trial

Attorney-Client Privilege

- Communications aren't discoverable unless privilege is waived
 - “Firewall” fiction where stakeholders are commissioners
 - Possibility of confidentiality agreement
 - Local policy for participation by alternate commissioners

Governmental Immunity and Commissioner Indemnity

- Government Code Section 995: “Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, *in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.*”

Litigation Housekeeping

- Determine whether LAFCO officers are named individually
- Have officers tender their defense (see sample)
- Have LAFCO determine whether officers are entitled to defense (see Assumption of Defense Agreement sample)
- Reserve rights
- Monitor alignment of interests (see sample Waiver)
- Coordinate with insurers and “home” agencies

Risk-Shifting

- Consider asking applicant(s) to defend and indemnify LAFCO (see sample Indemnification Agreement form)
- 56375(a)(1) The Commission shall have the power to approve with or without amendment, whole, partially, . . .
- What to do with modified proposals, i.e., “That ugly baby’s not mine!”

New Public Records Act Concerns

- *Ardon v. City of Los Angeles* (2014) 232 Cal. App. 4th 175 (S. Ct. review granted)
 - Public Records Act Broader than Civil Discovery
 - No selective disclosure: Govt. Code 6254.5
Produce for one, produce for all
 - But what if production is inadvertent?