Understanding Litigation through the Public Agency Perspective

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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


  - 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?