



## County of Santa Clara

Policy Name: Legal Services Policy

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**Policy Type:** Administrative

**Category:** Legal

**Policy Name:** Legal Services Policy

**Policy Owner:** County Counsel

### **Policy Purpose**

This policy outlines the responsibilities of the County Counsel's role as the chief legal counsel for the County, County departments, and County employees. The County Ordinance Code, Division A-22, Chapter II; Board of Supervisors Policy Manual, sections 3.27, 3.55, and 3.56; the County Counsel's *Client Legal Guide*; and this policy provide County employees and department heads with the procedures for obtaining legal advice and information if legal action is brought against a department or employee.

### **Policy Summary**

The County Counsel is the attorney for the County, including the Board of Supervisors and all County officers, departments, agencies, boards and commissions. The County Counsel's Office defends the County in civil actions involving the County or its employees. The Office will defend an employee or former employee in a lawsuit brought against the employee involving acts or omissions occurring in the course and scope of employment, subject to certain limitations. Additionally, the Office obtains restraining orders to address workplace violence and initiates affirmative litigation in matters involving consumer protection, zoning enforcement, and elder abuse.

The Office represents County agencies and departments in matters that do not involve litigation, including handling labor arbitrations and personnel board hearings, drafting ordinances and resolutions, reviewing contracts,



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preparing written legal opinions on specific legal questions, coordinating public record act requests, reviewing formal written responses to state and federal investigative agencies, helping clients develop departmental policies and strategies to minimize legal risks, reviewing draft legislation and changes in the law for impact on client operations, and providing other legal services. Departments/agencies are expected to involve County Counsel in significant transactions as well as any matter in which an attorney is handling a matter adverse to the County. (Board of Supervisors Policy Manual section 3.27.)

The Office also represents the Social Services Agency's Department of Family and Children's Services (DFCS) in Juvenile Court dependency cases involving allegations of child abuse and neglect, the Public Administrator/Guardian in conservatorship, decedent estate, and trust proceedings, and the Workers' Compensation Division of the Employee Services Agency in proceedings related to workers' compensation claims filed by County employees.

The Office is responsible for accepting, screening, documenting, analyzing, investigating and reporting complaints concerning possible improper government activities relating to the quality and delivery of government services, wasteful and inefficient County government practices, misuse of County government funds, and improper activities by County government officers and employees. (See Reporting of Improper Government Activity – Board Policy 3.50,

<https://connect.sccgov.org/sites/policies/policypages/Pages/Board-Policy-3.50-Reporting-of-Improper-Government-Activity.aspx>).

The County Counsel's Office represents the Grand Jury and dependent special districts of the County. The Office also operates the Independent Defense Counsel (IDO), providing legal counsel to indigent criminal



defendants in cases where the Public Defender and Alternative Defender's Offices have a legal conflict.

The County Counsel's Office does not provide advice or any legal services to the general public. However, the County, through the County Counsel, has the discretion to provide legal services to various other persons, organizations, or local public entities, such as school districts, joint powers authorities and independent special districts, and to charge a fee for such services.

For more information about County Counsel's representation and advisory roles, consult the *Client Legal Guide*, available at <https://connect.sccgov.org/sites/cco/Pages/home.aspx>.

### Procedures

#### *Seeking Legal Advice*

- 1) Each **employee**—including appointees, department heads, supervisors, and managers—seeking legal advice on a County matter not involving litigation shall first follow departmental policies and procedures regarding obtaining legal advice from the Office of the County Counsel.
- 2) Before seeking legal advice, the **employee** should determine whether their department has established a policy regarding the issue upon which advice may be sought.
- 3) If the department has no policy, the **employee** should consult the County Counsel's *Client Legal Guide*, available at <https://connect.sccgov.org/sites/cco/Pages/home.aspx>, for preliminary advice and frequently asked questions.



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- 4) Before taking any action that may have legal consequences and before relying on prior legal advice, memoranda, or the *Client Legal Guide*, the **employee** should contact the Office of the County Counsel to ensure they reflect the current state of the law.
- 5) If the legal advice relates to specific documents or contracts, the **employee** should provide the Office of the County Counsel copies of the documents when seeking advice and before taking any action.
- 6) Unless otherwise directed, the **employee** should treat communications with the Office of the County Counsel as confidential.

### Summons and Complaint

- 1) Directed Toward the County or a Department:
  - 1a) Only the **Clerk of the Board** may accept service of a claim or summons and complaint against the County, unless County Counsel agrees to accept service on behalf of the County.
  - 1b) A lawsuit against a department is a legal action against the County; service of process must be accomplished through the **Clerk of the Board**, not the department.
  - 1c) An **employee** should not accept service if someone comes to their department with a summons and complaint for the County. Instead, employees should direct the person to the Clerk of the Board.
- 2) Directed Toward an Employee:
  - 2a) **Departments** are not authorized to accept personal service of a summons and complaint for an individual employee.



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- 2b) Upon receiving a summons or complaint that names an employee in a work-related matter, the **employee** shall immediately inform the County Counsel's Office and forward all of the original documents to the Office.

### Subpoenas

- 1) Generally, service of subpoenas must be made by delivering a copy of the subpoena by hand to the **person named in the subpoena**.
- 2) Upon receiving a subpoena in a work-related matter, the **employee** must immediately notify the Deputy County Counsel who represents the employee's department. If the identity of the Deputy County Counsel is unknown, employees should instead immediately contact the County Counsel's Office.
- 3) The County Counsel's Office will work with the **employee** to determine whether it is necessary and appropriate for County Counsel to represent an employee in a legal proceeding.
- 4) If the subpoena directs an employee to bring specific documents to a legal proceeding, the **employee** must first consult with the County Counsel's Office before responding to the subpoena in order to ensure protection of any privileged or confidential information.

### Litigation Holds

- 1) The **County** is required to preserve existing and future records that are in any way related to pending or reasonably-anticipated lawsuits.
- 2) **Departments/agencies** must follow the procedures discussed in the Litigation Hold Policy - Board Policy 3.56,



<https://connect.sccgov.org/sites/policies/policypages/Pages/Board-Policy-3.56-Litigation-Hold-Policy.aspx>.

*Disclosure of Public Records*

- 1) The **County Counsel's Office** is designated as the office responsible for coordinating department/agency responses to California Public Records Act requests to ensure the County complies with all legal requirements (Ordinance Code section A17-12).
- 2) **Departments/agencies** must follow the procedures provided in the Open Government Ordinance Procedures for Disclosure of Public Records.

**Definitions**

- 1) "**California Public Records Act**" means California Government Code section 6250, *et seq.*, and related code sections that give the public the right to inspect and to obtain copies of public records.
- 2) "**Client Legal Guide**" means the publication created by the Office of the County Counsel to provide employees, department heads, and supervisors with general preliminary legal guidance. It is available online at <https://connect.sccgov.org/sites/cco/Pages/home.aspx>.
- 3) "**Claim**" is a document filed with the Clerk of the Board by an individual or organization intending to take legal action seeking money or damages from the County.
- 4) "**Complaint**" means a legal document explaining the legal basis for the lawsuit.
- 5) "**Legal Advice**" means advice regarding anything that may affect the County's rights, obligations, or responsibilities under any federal, state, or local law, or any court ruling.
- 6) "**Litigation Hold**" means a legal directive to cease destruction processes and preserve all records, regardless of form, related to the nature or subject



of pending or reasonably-anticipated litigation involving the County, its departments, or employees.

- 7) **"Subpoena"** means an order by a court or government agency demanding information in the form of answers to specific factual questions, witness testimony, or production of documents.
- 8) **"Summons"** means a court order to appear before a judge, commissioner, or magistrate.

## Frequently Asked Questions

None.

## Related Policies

- Subpoenas of Information on Public Assistance Recipients – Board Policy 3.15 - <https://connect.sccgov.org/sites/policies/policyPages/Pages/Board-Policy-3.15-Subpoenas-on-Public-Assistance-Recipients.aspx>
- Policy Relating to Confidentiality of Documents – Board Policy 3.25 - <https://connect.sccgov.org/sites/policies/policyPages/Pages/Board-Policy-3.25-Policy-Relating-to-Confidentiality-of-Documents.aspx>
- Policy Regarding County Counsel Review of Documents and Transactions; Participation in Contested Matters – Board Policy 3.27 - <https://connect.sccgov.org/sites/policies/policyPages/Pages/Board-Policy-3.27-County-Counsel-Review-of-Documents-and-Participation.aspx>
- Reporting of Improper Government Activity – Board Policy 3.50 - <https://connect.sccgov.org/sites/policies/policyPages/Pages/Board-Policy-3.50-Reporting-of-Improper-Government-Activity.aspx>
- Defending Professionally Licensed Employees in Administrative Proceedings - Board Policy 3.55 - <https://connect.sccgov.org/sites/policies/policyPages/Pages/Board-Policy-3.55-Defending-Professionally-Licensed-Employees.aspx>



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- Litigation Hold Policy – Board Policy 3.56 - <https://connect.sccgov.org/sites/policies/policypages/Pages/Board-Policy-3.56-Litigation-Hold-Policy.aspx>
- County Ordinance Code sec. A22-11 through A22-30
- County Ordinance Code sec. A17-12

### Related Forms and Information

- *Client Legal Guide*, available online at <https://connect.sccgov.org/sites/cco/Pages/home.aspx>
- County's 24/7 Whistleblower Program Information and Complaint Form, available online at <http://www.sccgov.org/sites/wp/Pages/Whistleblower-Program.aspx>

### History

Date	Changes Made
3/11/2014	Policy uploaded. (John Myers)
12/08/2014	Test History Bookmark