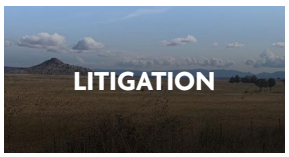
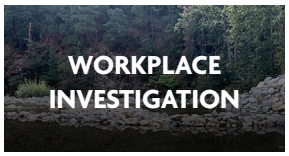
prentice|LONG PC

WINTER 2023

NEWSLETTER

Prentice|LONG PC - a law firm founded on the principle of service.





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THANKFULLY, WINTER!

Why thankfully winter? Because with this particular winter comes rain and, more importantly, snow. Most of our jurisdictions are celebrating a better than average snow pack which, of course, is water storage for the spring and summer months ahead. So, thank you nature!

At PLPC we are also thankful for the continued success of our family of hardworking attorneys and staff members who contribute to our vision of truly serving our clients. The firm continued to grow in 2022, adding three attorneys, two paralegals and a receptionist. In addition, two members of our team are taking the leap and beginning law school at Northwestern California University. Gretchen Dugan, legal assistant, and Jill Villalobos, paralegal, began this adventure on January 25 and we look forward to them becoming PLPC attorneys. We are also proud of our Partner Margaret Long who finished an employment lawsuit in the federal court, keeping the trial at two weeks instead of the two months suggested by plaintiff. This saved the client a good deal of money and showcased the efficiency of our trial team.

All of us at PLPC wish you a wonderful winter!

BROWN ACT
Changes for The New Year

By Margaret E. Long, Partner

Remote meetings appear to be here to stay. AB 2449 allows local entities to hold remote public meetings without identifying each teleconference location and without making each location accessible to the public. This alternative option can only be used under limited circumstances and expires on Jan. 1, 2026.

AB 2449

This measure may only be used if "just cause" is met or if "emergency circumstances" exist.

"Just cause" is defined as any one of the following:

- Child care or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability.
- Travel while on business of the legislative body or another state or local agency.

An "emergency circumstance" is a physical or family medical emergency that prevents a member of a legislative body from attending in person.

In order to participate remotely for "just cause", a member must notify the legislative body at the earliest possible opportunity — including at the start of a meeting — of their need to participate remotely and provide a general description of the circumstances related to one of the four items above. A member may only use the just cause provision up to two meetings per calendar year.

To participate remotely under "emergency circumstances," the member must request that the legislative body allow them to participate in the meeting remotely because of emergency circumstances and the legislative body must take action to approve the request. The legislative body must request a general description of the circumstances relating to the member's need to appear remotely. This description does not have to be more than 20 words and does not need to include any personal medical information.

The following rules also apply when meeting under just cause or emergency circumstances:

- Members participating remotely must do so through audio and visual technology.
- The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body.
- The legislative body must provide notice of how the public can access the meeting and offer comment.
- The agenda must identify and include an opportunity for the public to attend and directly address the legislative body through a call-in option, an internet-based service option, and in person at the meeting.
- The legislative body cannot require comments to be submitted before the start of the meeting. The public must be allowed to make "real time" public comment.
- If there is a disruption to the meeting broadcast or in the ability to take call-in or internet-based public comment, no further action can be taken on agenda items until the issue is resolved.
- The legislative body must implement a procedure for receiving and resolving requests for reasonable accommodations for individuals with disabilities and must give notice of these procedures.
- A member may not participate in meetings remotely for more than three consecutive months or 20% of the agency's regular meetings within a calendar year. If the legislative body regularly meets less than 10 times a year, a member may not participate remotely for more than two meetings.
- Additionally, members participating remotely must publicly disclose at the meeting whether anyone else 18 years or older is present with the member and the general nature of the member's relationship with the individual.

Article continues on next page

AB 2647

Supplementary materials and public meetings

Under the Brown Act, any documents that are distributed to a majority of a legislative body less than 72 hours before a meeting must be distributed to the public at the same time. To meet this requirement, some local governments posted these materials online. However, the Third District Court of Appeal recently held that this does not meet the Brown Act's requirements.

This measure clarifies that supplementary materials distributed less than 72 hours before a meeting can be posted online if the following requirements are met:

An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the designated office or location at least 72 hours before the meeting;

The agency immediately posts the writing on its website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting;

The agency lists the web address of the agency's internet website on the agendas for all meetings of the legislative body of that agency; and

The agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at the designated office or location. This requirement is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

SB 1100

Disruptive conduct and public meetings

In response to the recent rise in disruptive and threatening behavior in public meetings, legislature passed SB 1100 prescribes the following process for removal:

Warn the individual that their behavior is disrupting the meeting and their failure to cease their behavior may result in removal.

Remove the individual if they do not "promptly" cease their disruptive behavior.

The bill defines disruptive behavior as that which disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. This includes, but is not limited to:

A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.

Engaging in behavior that constitutes the use of force or a true threat of force. "True threat of force" means a threat that a reasonable observer would perceive to be an actual threat to use force by the person making the threat.

However, existing statutory and case law already specifies other avenues for addressing public meeting disruptions. Under existing law — and as interpreted by the courts — a city council may adopt rules governing the conduct of their public meetings, including the removal of a person who makes slanderous, profane, or threatening remarks or other disorderly conduct that disrupts the meeting.

Additionally, legislative bodies can adopt reasonable regulations to ensure that people can address a legislative body on any item of interest to the public. However, the legislative body may not prohibit public criticism of its policies, procedures, programs, or services.

SPOTLIGHT

KIM PIKE

Paralegal

Prentice|LONG PC is pleased to celebrate six months of working with Kim Pike, a paralegal based in our Redding office. Since joining PLPC, Ms. Pike's tasks have included various areas of business, municipal, non-profit, corporate, civil litigation, and private sector law.

After receiving an Associate's Degree in Legal Secretarial Science at O.I.T. and Paralegal Certificate from University of San Diego, Ms. Pike garnered over 25 years of legal experience, working in various corporate arenas such as business, transactional, and real estate law. Ms. Pike is a Commissioned Notary Public, owning her own notary signing business for many years.

In her free time, Kim loves spending time with her husband, adult twin sons and grandson, cuddling with four-legged family members, kayaking, exploring nature, and traveling- especially to Hawaii! *"I am passionate about helping people and feel this desire fits nicely with PLPC's mission statement of 'A Law Firm Founded on the Principle of Service.' I love working here as I feel appreciated, there is a huge spirit of camaraderie, and we are treated like family; everyone here is amazing!"* The feeling is mutual; we are so thankful to have Ms. Pike on our legal team at *Prentice*|LONG PC.

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Life After "The Respect for Marriage Act" & Estate Planning for Same-Sex Couples

By Jill Villalobos, Paralegal

Each U.S. state has its own laws that govern the process of distributing an individual's personal belongings upon death. Out of the fifty states and the District of Columbia, there are only nine that are considered to be community property states. In community property states, such as California, each spouse is entitled to an equal share of assets acquired during the marriage upon divorce or death; unless a prenuptial agreement was signed prior to the marriage.

However, until the passage of *Obergefell v. Hodges (2015)* a same-sex married couple was not entitled to this same benefit among states that had not legalized gay marriage. In fact, the Defense of Marriage Act, in 1996, actually defined marriage as a legal union between a man and a woman; states did not have to recognize same-sex marriages that had been performed lawfully in other states. Not only were states not required to recognize the marriages, but even the federal government denied benefits to the spouses of government employees in same-sex marriages. In addition, same-sex spouses were not permitted to file joint tax returns, nor were they entitled to Social Security survivor's benefits.

In O*bergefell*, the court ruled that bans on same-sex marriage, as well as bans on recognizing same-sex marriages that had been lawfully performed in other states, are unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution.

Seven years after *Obergefell*, a majority conservative Supreme Court overruled the landmark case *Roe v. Wade* with their decision in *Dobbs v. Jackson Women's Health Organization (2022)*, allowing states to ban and criminalize abortions performed in their state. In Justice Clarence Thomas's opinion, he suggested a review of the *Obergefell* ruling, which then led lawmakers to write the Respect for Marriage Act.

The Respect for Marriage Act ("HR 8404") repeals the Defense of Marriage Act and includes a provision for states to recognize any marriage between two individuals, as long as it was legal in the state where it was performed. Furthermore, HR 8404 prohibits states from denying full faith and credit, or any right or claim relating to out-of-state marriages on the basis of sex, race, ethnicity, or national origin. HR 8404 does not require any religious organizations to recognize any marriage by providing services or goods though.

The Act also provides federal recognition that allows same-sex married couples to receive the same spousal benefits as opposite-sex couples. Benefits include joint property rights, exemptions on state and federal estate taxes, and the ability to act as your spouse's agent with regard to financial and medical decisions.

On December 13, 2022, President Biden signed HR 8404 into law, where it officially became known as Public Law No: 117-228.

ANOTHER
Campain Contribution Law to Trip Over

By Dave Prentice, Partner

SB 1439

Since 1982, the Levine Act has imposed campaign contribution prohibitions upon certain public agency officials – but it has not been applicable to legislative members. Senate Bill (SB) No. 1439 (signed on September 29, 2022; effective January 1, 2023) extends these prohibitions to those legislative members (council members and board members) as follows:

If you are aware, or if you should reasonably be aware (explained below) that an individual or entity has a financial interest in a proceeding involving a "license, permit, or other entitlement," then the you cannot accept, solicit, or direct a contribution of more than $250 from the individual or entity while a proceeding is pending before the agency (e.g., before the board of supervisors or city council for decision) and for 12 months (originally 3 months) after the decision. This includes any contribution on your behalf, or on behalf of any other official, or on behalf of any candidate for office/committee.

If 12 months prior to the decision involving a license, permit, or other entitlement you accepted a contribution in an amount greater than $250 in which you know that the contributing party has a financial interest in the decision, then you must disclose the contribution and recuse yourself from the decision. However, participation may be permitted if the contribution is returned within 30 days from the time the official knows, or should have known, about the contribution and the proceeding. This is interpreted as to practically mean that if a legislator learns on month nine after the contribution that the contributing party will be before the legislative body for a permit decision, the legislator can return the contribution and participate in the decision if done within 30 days of having that knowledge.

SB 1439 also imposes a duty on the applicant to disclose campaign contributions in excess of $250 before proceeding, if that contribution was made within 12 months of the hearing or application. So, a party or agent may not anticipate an application by contribution to the decision maker or makers.

Nor can a party or agent make a contribution with 12 months after the decision.

The bottom line here, is that both the applicant and the legislator are prohibited from making or accepting contributions of $250 or more if there will be or there was a decision made regarding a permit, license, or other entitlement, if within 12 months on either side of that decision.

The term "license, permit, or other entitlement" includes entitlements for land use, business licenses/permits, franchises, and contracts (except competitively bid, labor, or personal employment contracts). The term "should know" or "'reasonably aware" refers to a situation where you did not have actual knowledge that the party before you for a permit, for instance, was a contributor. In this situation the law imposes a reasonable standard of knowing and implies an obligation that this is your business, and you should have known, meaning you may not be negligent in these matters. A violation of these prohibitions is a misdemeanor. The California Fair Political Practices Commission (FPPC) has further oversight and may also impose fines.

However, a violation may be cured. If you accept a contribution within 12 months after a decision, then the violation can be cured if the contribution (or portion in excess of $250) is returned within 14 days of acceptance. So, if you did not willfully accept a donation, knowing it was prohibited, within the proscribed period you may cure the infraction.
Best advice-always check your contributions before appearing in a hearing or proceeding concerning the discussed issues. Then you may timely cure the situation or recuse yourself as necessary.

MORE NEWS

We continue to update our website, click *here* to see further news and updates from *Prentice*|LONG PC.