

**SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE
INCOMPATIBLE ACTIVITIES POLICY**

This policy is enacted pursuant to Government Code section 1126, a copy of which is attached and incorporated by reference.

Government Code § 1126 authorizes local agencies to adopt rules prohibiting employees from engaging in any employment, activity, or enterprise for compensation (collectively referred to as "outside employment") that is inconsistent with, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, function or responsibilities of his or her appointing power or the agency by which he or she is employed.

Government Code § 1126 further prohibits an employee from performing any employment, activity or enterprise for compensation outside his or her employment for the County of Sonoma ("County") where his or her efforts will be subject to approval by any employee, board or agency of the County unless approved by the employee's appointing authority using the process set out below.

I. RULES OF CONDUCT

- a) Any employee who intends to engage in any outside employment for compensation shall notify the District Attorney or his/her designee if there is a possibility that such outside employment might be incompatible with the employee's County employment, and request a determination on incompatibility. The request should include sufficient description of the proposed duties and work schedule at the desired outside employment to permit the appointing authority to reach an informed decision.

- b) Outside employment may be prohibited if it:
 - i. Involves the use of County resources, including but not limited to: facilities, equipment, and supplies; or the badge, uniform, prestige, or influence of the County or the employee's County position.

 - ii. Involves the receipt or acceptance, by the employee or any entity owned in whole or in part by the employee, of any consideration or money, to perform any act that the employee is required to perform as party of his or her County employment.

 - iii. May be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by any County employee, agency or entity unless the employee's appointing authority determines that the likelihood of any actual incompatibility, such as potential favoritism, selective enforcement, or misuse of county information, is remote.

 - iv. Is performed during the employee's regular County work schedule.

 - v. Involves work on a project under contract with the County of Sonoma.

vi. Involves time demands that would render the employee's performance of his or her duties as a County employee less efficient.

- c) A prosecutor shall not participate in the private practice of law, except as follows: Attorneys may ask the District Attorney for permission to represent someone related by blood, marriage or domestic partnership in a non-criminal matter under extraordinary circumstances. Authorization by the District Attorney must be provided prior to handling such matters. Any such approval is subject to ongoing review by the District Attorney.

Attorneys who currently have a private practice will be permitted a reasonable amount of time, as determined by the District Attorney, to wind down their practices.

This section applies to full-time, part-time and extra-help Attorneys.

- d) Any DA Investigator is prohibited from accepting outside employment as a peace officer. Peace Officer for purposes of this Policy is as defined by Penal Code Section 830.
- e) Providing outside attorney referrals to the public for compensation is prohibited. Should a member of the public request such information, they should be referred to the Sonoma County Bar Association or provide at least three names for referral.

II. WRITTEN DETERMINATION

No employment which may be incompatible shall be undertaken without the employee first obtaining a written determination from the District Attorney or his/ her designee that the employment is compatible with his or her employment at the County.

III. APPEALS

An employee may appeal from a determination of incompatible activities or from the application of this policy to him or her. If an employee wishes to appeal any such determination, he or she shall:

- 1) Except in matters involving the practice of law, or of Public Safety employment, the employee may file a written appeal with the Director of Human Resources within fifteen (15) calendar days of issuance of the written determination of incompatible activities. The employee's written appeal should include a copy of the initial request for determination, the appointing authority's response, and any other information the employee believes is relevant.
- 2) The Director of Human Resources shall issue a written determination within fifteen (15) calendar days of receiving the appeal. The Director's decision shall be mailed to the employee via first class mail and shall be conclusive, final and binding on both the employee and the appointing authority.
- 3) In matters involving the practice of law, or of Public Safety employment, the employee may file a written appeal with the District Attorney within fifteen (15) calendar days of issuance of the written determination of incompatible activities or within fifteen (15) calendar days of the application of this policy to him or her. The employee's written appeal shall include a detailed description of the proposed duties at the desired outside employment.
- 4) Within fifteen (15) calendar days of receiving the appeal, the District Attorney shall issue a written decision. This decision shall be mailed to the employee via first class mail and shall have a completed proof of service attached to it. A copy of the determination shall in addition be placed in the employee's personnel file. The department head's decision shall be conclusive, final and binding.

Nothing in this section precludes a covered employee from following the Departmental Grievance Appeal Process in the Sonoma County Law Enforcement Employees' Association Memorandum of Understanding, to appeal an alleged violation or misapplication of this Policy.

IV. VIOLATIONS

Violations of this policy may result in disciplinary action, including but not limited to suspension, demotion, or termination.

V. RECEIPT

A copy of this policy will be distributed to all current employees and all newly hired employees. Employees shall sign a receipt to show that they have been provided a copy of the policy, and return the receipt to the department. The department shall keep this receipt in the employee's personnel file.

INCOMPATIBLE ACTIVITIES POLICY RECEIPT

(to be placed in Employee's Personnel File)

I received a copy of the Sonoma County District Attorney's Office Incompatible Activities Policy. I certify that I have read and understand the Policy. I acknowledge that if I fail to follow the terms of this policy I may be subject to disciplinary action, including but not limited to, leave without pay, suspension, or termination.

DATE:

PRINTED NAME:

SIGNATURE:

WEST'S ANNOTATED CALIFORNIA CODES
GOVERNMENT CODE
TITLE 1. GENERAL
DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 1. GENERAL
ARTICLE 4.7. INCOMPATIBLE ACTIVITIES

Current through Ch. 1 of 2003-04 Reg.Sess. urgency legislation, Ch. 4 of 1st Ex.Sess. urgency legislation, & Ch. 1 of 2nd Ex.Sess.

' 1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.