

Law Offices of

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LLP

Implementing the WilmerHale Recommendations for the MWD Ethics Office--Development of Best Practice Administrative Code and Policy Provisions

Metropolitan Water District Board of Directors

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Why are we here today?

- WilmerHale law firm engaged in July, 2017 as the result of concerns about the performance of the MWD Ethics Office.
- WilmerHale conducted an exhaustive review of the Ethics Office, issued their written report on February 20, 2018, and presented its recommendations to the MWD Executive Committee at its February 28, 2018 meeting.
- 24 specific recommendations across 7 issue areas.
- Olson, Hagel & Fishburn, LLP (OHF) engaged to review and analyze recommendations and, pursuant to Board direction, prepare appropriate revisions to applicable Administrative Code and MWD policy.

Our Firm, Your Team

- Founded in 1977, OHF specializes in the laws regarding elections/campaign finance, conflict of interest/ethics, governmental operations/public finance and public retirement.
- Decades of experience providing advice to clients in these areas and representing them before both administrative tribunals and state and federal courts.
- Team Members:
 - Lance Olson– Founder and Senior Partner. Specialties include conflicts of interest/ethics laws.
 - Chris Waddell– Senior Attorney and head of the Public Retirement Group. Specialties include fiduciary law and pension governance best practices.

Taking a Step Back– SB 60 Statutory Requirements for the Ethics Office

- MWD Board shall “establish and operate” the Ethics Office;
- Ethics Office “shall operate as Independent entity that is not subject to political influence”;
- Staffed with professional, qualified persons;
- Adopt rules for Board approval relating to internal disclosure, lobbying, conflicts of interest, contracts, campaign contributions, and ethics that are “consistent with the intent and spirit” of the laws and regulations of the FPPC, LA City Ethics Commission, and the LA County Metropolitan Transportation Commission;

Statutory Requirements for the Ethics Office—Cont'd

- Educate MWD Board, staff, contractors and subcontractors concerning those rules;
- Investigate alleged violations of those rules, while protecting the confidentiality of sources, the job security of “whistle blowers” and the due process rights of the “accused”;
- Subject to above protections, make investigation results public;
- Propose for Board adoption a schedule of penalties for violations of ethics rules.

WilmerHale Report– 7 Areas of Recommendations

- Role and stature of Ethics Office;
- Engagement by Ethics Office of outside counsel;
- Access by Ethics Office to attorney-client privileged information;
- Confidentiality during the investigation process;
- Making investigation results public;
- Ethics Office investigative procedures;
- Reporting structure and independence.

Role and stature of Ethics Office

- Key recommendations:
 - Clearly delineate role and responsibilities of Ethics Office;
 - Ethics Office should conduct regular ethics training;
 - Clarify jurisdictional authority of the Ethics Office to conduct investigations;
 - Promote positive culture of ethics and compliance—e.g., “tone at the top”.

Engagement by Ethics Office of Outside Counsel

- Key recommendation:
 - Codify policies and procedures in Administrative Code to guide determination of when Ethics Office may retain outside counsel to provide legal advice in addition to or in lieu of that from the General Counsel.

Access by Ethics Office to Attorney-Client Privileged Information

- Key recommendations:
 - Develop process for managing preservation of attorney-client privilege during an Ethics Office investigation;
 - Develop process for Board authorization for release of privileged documents to the Ethics Office, including potential for waiver of the privilege.

Confidentiality During the Investigation Process

- Key Recommendation:
 - Amend Administrative Code to prohibit, subject to specified exceptions, release by Ethics Office of information that 1) identifies subjects, complainants and/or witnesses in an investigation; or 2) identifies the substance of any investigation, open or closed.

Making Investigation Results Public

- Key recommendation:
 - Amend Administrative Code to balance SB 60 Ethics Office requirements to “make available to the public the results of investigations” while “protecting the confidentiality of sources, the job security of whistle-blowers, and the due process rights of the accused.”

Ethics Office Investigative Procedures

- Key recommendations:
 - Revise existing investigation guidelines for clarity and consistency of application, including process steps and notification to complainant and subject when a matter is either closed or taking longer than normal.
 - Revise Administrative Code to provide that Ethics Office must follow guidelines in all investigations absent articulated and memorialized finding of good cause for a departure therefrom.

Reporting Structure and Independence

- Key Recommendation:
 - Change reporting structure—Ethics Officer reporting to General Counsel with dotted-line reporting to Audit and Ethics Committee.

Preliminary Observations

- The WilmerHale report provides a comprehensive overview of the concerns with respect to the operation of the Ethics Office and a baseline of analysis and recommendations upon which to develop very specific revisions to Administrative Code and, if applicable, MWD policy and procedure.
- Preliminarily, we agree with many of the general recommendations of WilmerHale, but likely will differ in some of the details and/or offer additional changes.
- Based on our initial review of existing MWD Administrative Code and internal policies and procedures for the Ethics Office, we believe that they provide a strong foundation upon which to build.

Preliminary Observations

- In some instances the existing rules need to be more carefully followed and in other instances new provisions should be developed or modified to provide greater emphasis and clarity.
- There is a need to interpret/harmonize the SB 60 requirements that “the MWD Board shall establish and operate an Office of Ethics” and that the Office “shall operate as Independent entity that is not subject to political influence”.
- The role the Office should play with respect to alleged violations of state statutes such as the Political Reform Act and Government Code section 1090 remains unclear in practice and in policy and this should be clarified.

Next Steps

- OHF to identify any areas where our recommendations may differ from those of WilmerHale;
- OHF to review best practice exemplars cited by WilmerHale and confirm them or identify preferred alternatives;
- OHF to draft initial revisions to Administrative Code (and MWD policy/guidelines if applicable) for future presentation to and discussion by the Board.