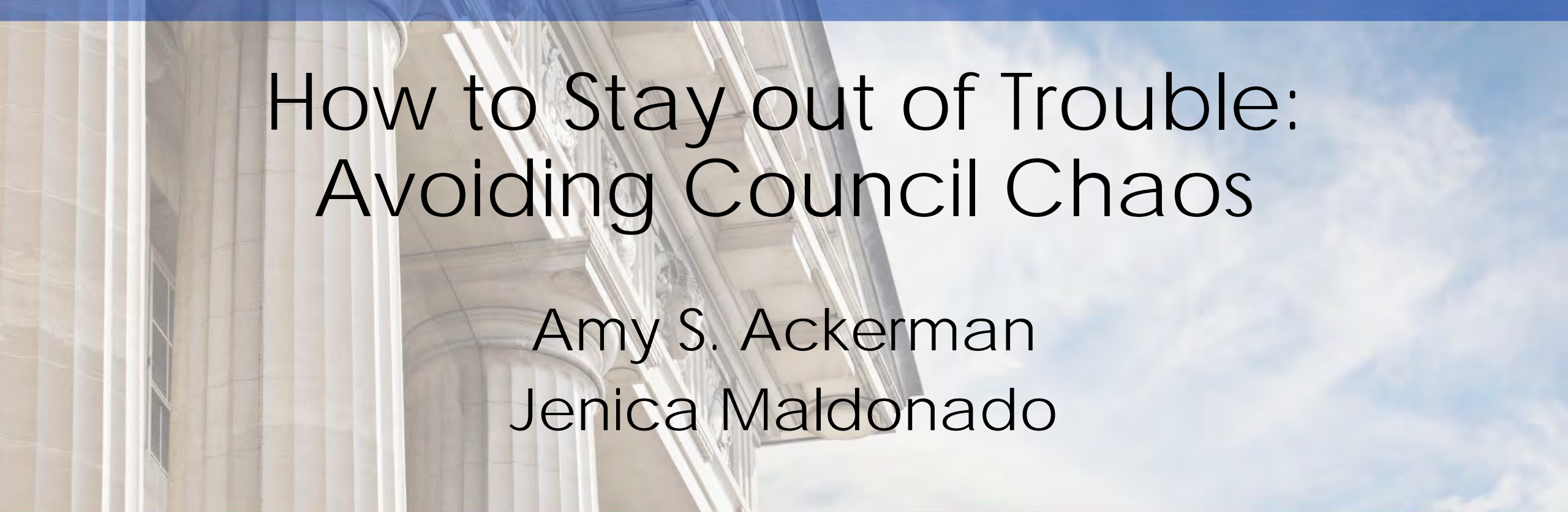


The logo for Renne Public Law Group (RPLG) features the letters "RPLG" in a bold, blue, serif font, centered within a white rectangular box.

**RPLG**

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The background of the slide is a photograph of a classical building with tall, white columns and a pediment, set against a blue sky with light clouds. The image is slightly faded to allow the text to be read clearly.

# How to Stay out of Trouble: Avoiding Council Chaos

Amy S. Ackerman  
Jenica Maldonado

# Today's Discussion

- Is ripped from the headlines
- Only the names are changed to protect the innocent.

**THE STORY YOU HAVE JUST HEARD IS  
TRUE. ONLY THE NAMES HAVE BEEN  
CHANGED TO PROTECT THE INNOCENT.**

**- JACK WEBB -**

# Scene One . . .

Jean is elected to City Council

It's on!



# What's wrong with that?



# A public office is a public trust

“A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated to discharge their responsibilities with integrity and fidelity.”

*City Council v. McKinley* (1978) 80 Cal.App.3d 204, 213.)

# Public Trust

## **Duty of loyalty** to the City

- Act in the best interest of the City
  - Do not put **personal interests** ahead of City's interests.
- 
- Conflict of Interests Laws
  - Misuse of Public Resources
  - Unlawful Compensation

Laws set minimum standards

# Public Trust

- Duty to *behave* in a manner consistent with the public trust.
- Don't: *Clark v. City of Hermosa Beach*



# Power is vested in Council

- Individual Council members have no power
- Council may only act at a public meeting by a majority vote (the Brown Act)





# Power to Direct City Manager



# No Interference in Administrative Services

Example:

The City Council and its members shall deal with the administrative services of the City **only through the City Manager**, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager.

# Scene Two . . .



# What's wrong with that?



# Who's the client?

The **client is the organization itself**, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.

California Rules of Professional Conduct, Rule 1.113(a);

*Ward v. Superior Court* (1977) 70 Cal. App. 3d 23.

# Who's the Client

While the city acts through its city council, its officers, and its employees, the individual actors do not establish an attorney-client relationship with the city attorney.

*Ward v. Superior Court* (1977) 70 Cal. App. 3d 23

# The City is the Client

- The City is the client acting through the highest officer, employee, or constituent part overseeing each particular.
- The highest decision maker is Council or City Manager depending on the issue.

# Scene Three . . .



You only  
advise me  
and my  
friends!



# What's wrong with that?



# Extortion

“Extortion is the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.”

Penal Code §518.

# The Client is the City

The City Attorney represents the City and not individual Councilmembers.

# Scene Four . . .



# What's wrong with that?



# The Client is the City

Communications between an attorney and client are confidential. The “client” holds the privilege to refuse to disclose the communication.

(Evid. Code sec. 952-954.)

The **Client is the City** and not an individual Councilmember.

Only the Council – as a body – can waive the privilege.

# The Brown Act

“A person may not disclose confidential information that has been acquired by being present in a closed session authorized by [the Brown Act] unless the legislative body authorizes disclosure of that confidential information.”

Govt. Code section 54963

# Violation is Official Misconduct

- Can enjoin official from disclosure
- Can refer to grand jury for indictment for misconduct



# Scene Five . . .



You are just a  
pea-brained  
dumb jock who  
I'm going to get  
fired

# What's wrong with that?



# City is an Employer

- Duty to employees to maintain a work environment free from harassment and bullying
- Employees can sue costing City \$\$
- It's just bad government

# Bullying is on the Rise

2021-2022 Censuring for bullying:

- Cypress
- South Lake Tahoe
- Laguna Beach
- San Bruno
- Hollister
- Flint
- Big Bear Lake
- Langlely

# Scene Six . . .



Not on my  
watch!

# What's wrong with that?



# Fair Process for Quasi-Judicial Proceedings

## **Legislative Acts:**

Adopt rules of general application on basis of broad public policy

## **Quasi-Judicial Acts:**

Determination and application of facts in a particular case



# Quasi-Judicial Decisions

Decisions must be made:

- Based on the evidence presented at hearing

Members:

- Avoid ex parte contacts
- May not prejudge specific facts
- Must be free of prejudice against or for any party
- Must refrain from advocacy



# Scene Seven . . .

Anything for my  
son



# What's wrong with that?



# It's likely criminal

- Conspiracy
- Bribery
- Fraud



# Government Code section 1090

- Prohibits public officials and public employees from “making” public contracts in which they have a financial interest.
  - Direct and indirect interests
  - Includes preliminary discussions, planning and any action up to and including voting.



# Thank you!

*Additional questions?*

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