

RCOC BOARD OF DIRECTORS TRAINING

BOARD GOVERNANCE, WHISTLEBLOWER, & CONFLICT OF INTEREST July 13, 2024

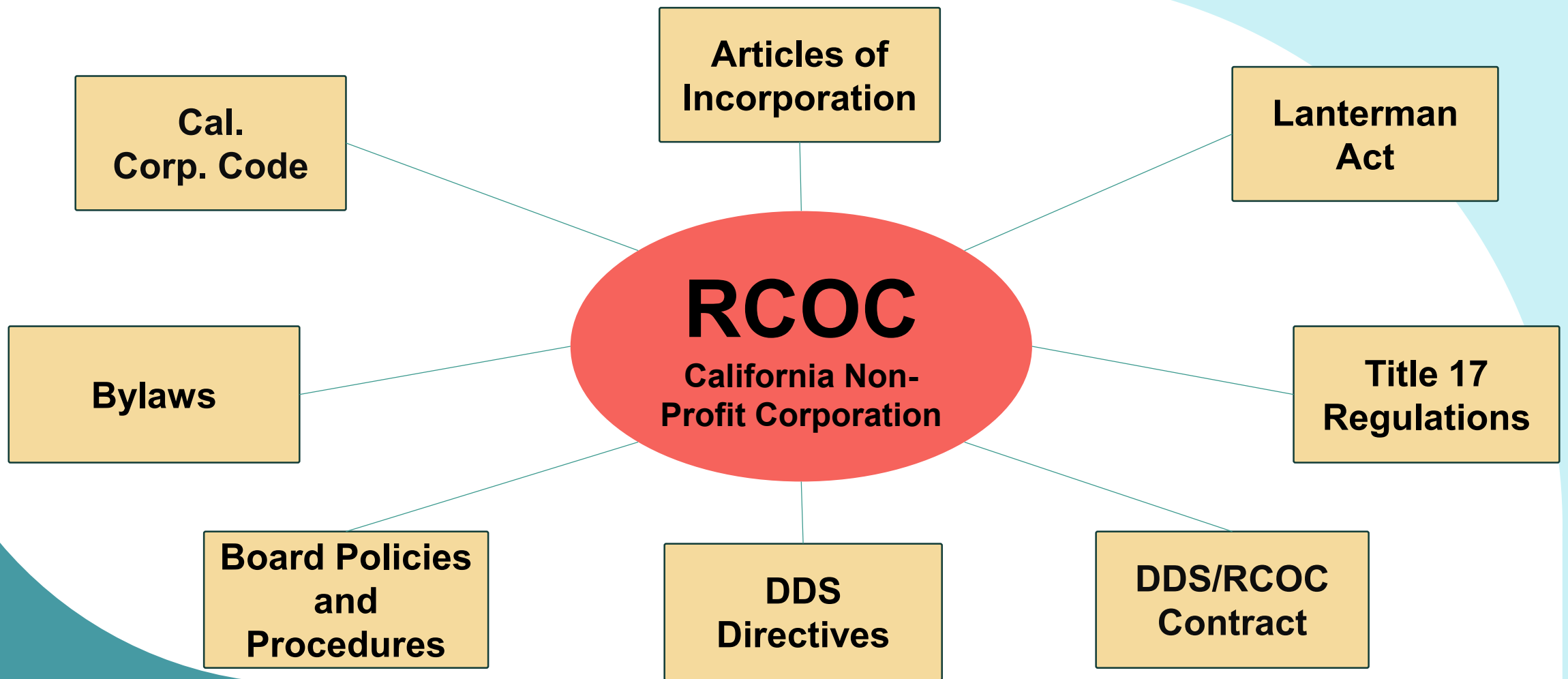
PRESENTED BY: GREGORY E. SIMONIAN,
CORPORATE COUNSEL

WOODRUFF

Woodruff & Smart
A Professional Corporation

555 Anton Blvd Suite 1200
Costa Mesa CA

714-415-1021
gsimonian@woodruff.law



BOARD GOVERNANCE



BOARD GOVERNANCE

RESPONSIBILITIES OF GOVERNING BOARD

- Establish, disseminate, and keep current the regional center's mission.
- Ensure board policies and bylaws are current.
- Recruit new members and provide them training.
- Recruit, support, and evaluate Executive Director annually.
- Ensure regional center fiscal integrity through financial audits.
- Approve annual financial audits.
- Conduct Board business professionally.
- Board is responsible for setting policy; Executive Director is responsible for implementing Board policy.
- Board does not oversee or direct regional center staff.

SPECIFIC OBLIGATIONS

- Election of Directors – Cal. Corp. Code §5220-5227.
 - Length of Service (“not more than 7 years within each 8-year period”) - WIC§4622(f) and Bylaws.
- Selection of Corporate Officers – Cal. Corp. Code §5213 (a) and (b).
- Adopt or Change Bylaws – Cal. Corp. Code §5150.
- Approve regional center contracts of \$250,000 or more before entering into the contract – WIC §4625.5.
 - (e.g. Executive Director Employment Contract)
- Documentation to DDS concerning correct composition of Board – WIC §4622.5.
- Conduct annual review of Executive Director – WIC §4622(j)(1).
- Contract with independent accounting firm annually for audit – WIC §4639.

RESPONSIBILITIES OF EXECUTIVE DIRECTOR

- **Oversee day-to-day operations, including ensuring appropriate staffing.**
- **Establish practices and procedures to implement Board policies.**
- **Ensure compliance with State Department of Developmental Services Contract – “DDS Contract”.**
- **Provide leadership to regional center staff and create positive and productive organization culture.**
- **Act as representative of regional center by creating community presence.**
- **Ensure regional center fiscal integrity.**
- **Provide Board with necessary information related to policy, strategic decisions, and performance outcomes.**
- **Serve as principal liaison between the Board and regional center staff members.**
- **Implement Board policy direction.**

EFFECTIVE BOARD MEETINGS

- Stay on topic – only address items on the agenda.
- Use the Consent Calendar for routine business items -- can be removed by a Director or members of the public.
- Refer major study topics to committees.
- Board chair should not be afraid to “Call the Question” (i.e., it’s time to vote).
- Come prepared by reviewing Board agenda packet before the meeting.
- Ask Executive Director questions about specific agenda items in advance of the meeting.
- Don’t try to learn the agenda items during the Board meeting – preparation is important.
- Limit public comment to three minutes – always enforce the “3-minute rule”.
- Ask the Executive Director or Corporate Counsel questions concerning proper motions / meeting procedures.
- In person attendance at Board meetings is strongly encouraged.

BOARD CONDUCT

- Board members should be informed, ask questions, and look for explanations when something is not clear.
- Board members should listen to all comments, questions, and opinions with an open mind.
- All Board members must be treated with respect and patience.
- Board must create a safe space for open discussion.
- Once Board action is taken, members “speak with one voice.”
- Governance decisions must be supported and not weakened by uncooperative action.
- Closed Session discussions and information must be kept **CONFIDENTIAL**.

DUTY OF CARE

- **Duty of Care**: Must use such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Cal. Corp. Code §5231.
 - Must attend meetings and spend adequate time on board duties like committee meetings and ensure using reasonable diligence and making reasonable inquiry.
 - So long as acting in good faith, and acting after reasonable inquiry, directors are not personally liable for the decisions made in reliance upon information and reports by officers or employees, committees or experts like lawyers, accountants, and consultants.
 - Keep generally informed about regional center business and policies.

DUTY OF LOYALTY

- **Duty of Loyalty**: Act in good faith, with fair dealing, and in the best interests of the corporation, taking care not to create liability for the corporation. Cal. Corp. Code §5231.
- Do not compete with regional center.
- Do not take personal advantage of regional center opportunities.
- Act as a body, not as individuals.
- Comply with laws, regulations, contracts, and policies.
- Share information with full Board.
- Conduct business during Board meetings, not in private.

PRINCIPAL SOURCES OF DIRECTOR PROTECTION

- **Business Judgment Rule**: Court generally will not evaluate or disturb business decisions where director is disinterested and independent, sufficiently informed, reasonably diligent, acted in good faith, and has rational basis for decisions.
- **Indemnification** – Cal. Corp. Code §5238.
- **No Personal Liability for Volunteer Board** members caused by negligence, if:
 - Acting within scope of director's duties.
 - Act or omission was performed in good faith.
 - Act or omission was not reckless, intentional, or grossly negligence – Cal. Corp. Code §5239.

PRINCIPAL SOURCES OF DIRECTOR PROTECTION

- **DDS Requirements Regarding Insurance:** The contract with the State requires insurance including D&O liability insurance.
 - D&O typical coverage is 5 million per claim.
 - CGL typical coverage is 4 million per claim and 7 million in aggregate.
- **Directors and Officers (D&O) Liability Insurance:** protects company executives and board members from personal financial losses if they are sued by employees, customers, vendors, or other parties. It can also cover the company's legal fees and other costs associated with the lawsuit.
- D&O insurance can help companies and non-profits attract and retain qualified executives and board members, and is an important part of a corporate risk management strategy.

OBLIGATIONS OF BOARD ARISING FROM CONTRACT WITH STATE

- Obligations under contract with State generally met by management.
- Contract provisions requiring direct action by the Board:
 - Board approved policy regarding transparency and access to public information on regional center's website
 - Post Board approved conflict of interest policy on the website.
 - Post Board approved policy specifying the circumstances under which the regional center will issue requests for proposals to address a service need.
 - Board approved policy for disbursement of start-up monies.
 - Board approved policy for Board approval of any contract of \$250,000 or more.



WHISTLEBLOWER



TYPES OF COMPLAINTS

RCOC & DDS have a variety of complaint and appeal processes available to vendors, contractors, parents, and persons served:

- **Persons Served – Rights Complaints - WIC §4731.**
- **Early Start Complaints.**
- **Due Process Requests.**
- **Mediation Conference Requests.**
- **Lanterman Act Appeals Process - Fair Hearing Requests.**
- **Title 17 Complaints.**
- **Citizen Complaints and Comments.**
- **Vendor Appeals.**
- **Whistleblower Complaints.**

WHISTLEBLOWER POLICY



- It is the policy of RCOC that employees, Board members, persons served, their families, and the vendor community have notice of and the opportunity to report alleged improper RCOC and alleged improper vendor/contractor activity through a whistleblower complaint process.
- RCOC is required to have a Board-approved Whistleblower Policy pursuant to RCOC's contract with the DDS.

TYPES OF WHISTLEBLOWER COMPLAINTS

- **Improper Regional Center Activity**

- Activity by RCOC or an employee, officer, or board member in the conduct of RCOC business that is a violation of state or federal law or regulations, violation of contract provisions, fraud or fiscal malfeasance, misuse of government property, or constitutes gross misconduct, incompetency, or inefficiency.

- **Improper Vendor/Contractor Activity**

- Activity by a vendor/contractor, employee, officer, or board member of a vendor/contractor in the provision of DDS funded services that is a violation of state or federal law or regulation, violation of contract provisions, fraud or fiscal malfeasance, misuse of government property, or constitutes gross misconduct, incompetency, or inefficiency.

WHISTLEBLOWER PROCEDURE

- A Whistleblower Complaint about alleged improper RCOC or vendor/contractor activity may be filed by contacting any of the following:
 - RCOC's Senior Management, which includes: Executive Director; Case Management Director; Chief Financial Officer; Clinical Director; Community Services Director; General Counsel; Human Resources Director and Information Technology Director.
 - RCOC's Board of Directors Executive Committee, which includes: RCOC Board Chairperson; Vice Chair; Secretary and Treasurer; and Corporate Counsel may also be contacted.
 - Members of RCOC's Board of Directors: may be contacted by phone or e-mail through the RCOC executive assistants to the Board, or attendance at a Board meeting.
 - Department of Developmental Services Community Operations Division or the Community Services and Supports Division.
- It is recommended that whistleblower complaints be submitted to RCOC's Custodian of Records.
- RCOC will utilize an established process to investigate and take appropriate action on complaints, including complaints of retaliation.

WHISTLEBLOWER COMPLAINT PROCESS

- **Clear and Concise Statement of Alleged Improper Activity:** A Whistleblower Complaint shall contain a clear and concise statement of the alleged improper activity and any evidence to support the allegation. If a name, or other information (e.g., witness or document), is not provided that clearly identifies the person alleged to have acted improperly, and where that person works, the investigating party may not have sufficient information to investigate.
- **Anonymous Complaints Are Permissible.** Although complaints may be filed anonymously, if insufficient information is provided and the investigating party has no means to contact the complainant, it may not be possible to investigate the allegation.

INVESTIGATION PROCESS

- Recipient of complaint shall obtain sufficient information to refer the complaint to the appropriate person for review and resolution.
 - Verbal complaints must be documented in writing.
- All complaints will be promptly investigated, and appropriate corrective action will be taken.
- The recipient of the complaint will notify the person who made the complaint of its conclusions and any action taken if complaint is not anonymous.
 - The information will be provided as long as it does not breach confidentiality.



CONFIDENTIALITY

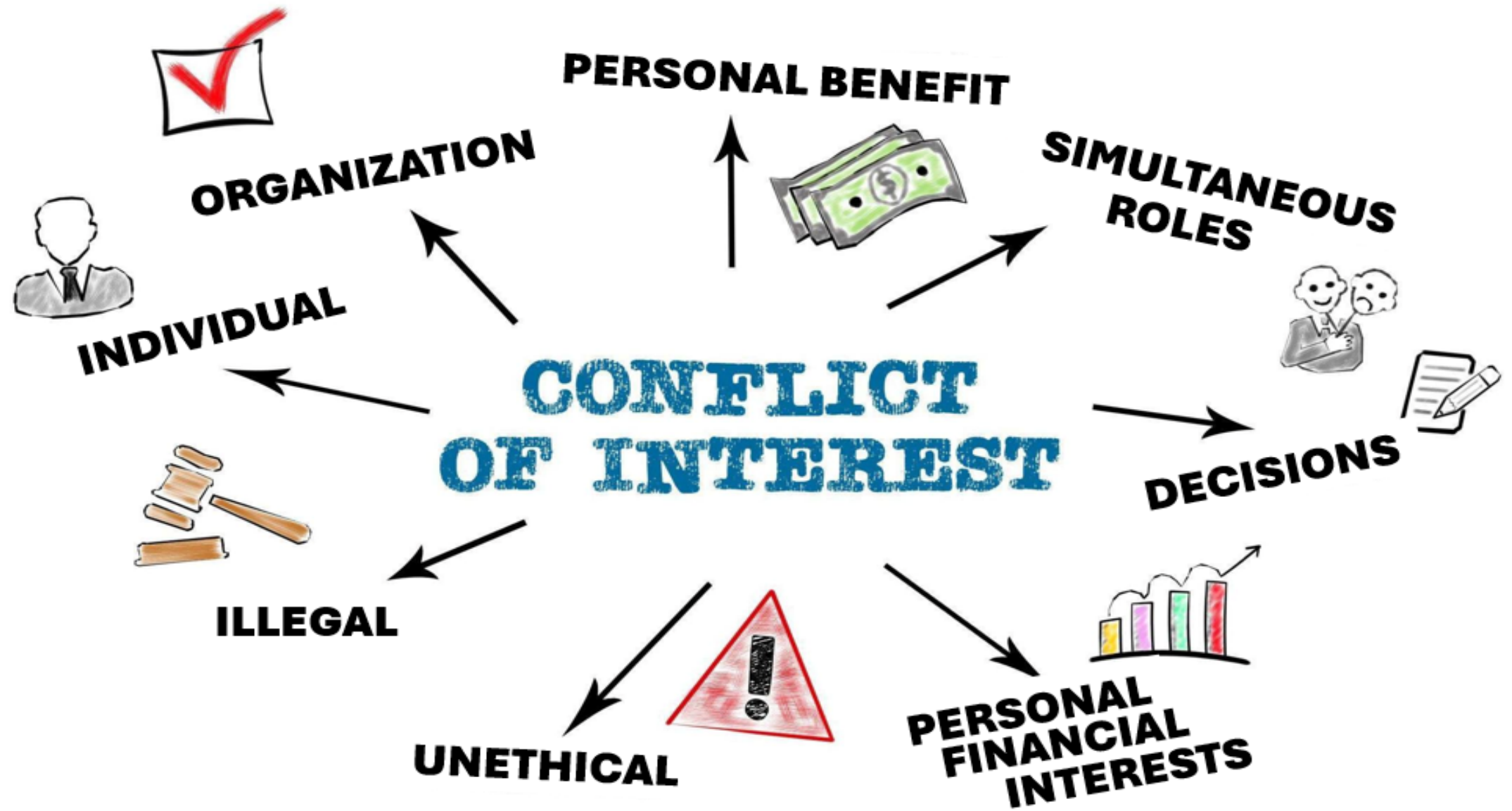
- The investigating party will make every effort to maintain the confidentiality of a complainant making a whistleblower complaint if the complainant requests confidentiality. However, in the rare circumstances where the investigating party is unable to maintain confidentiality due to its statutory responsibilities (including ensuring the health and safety of persons served and RCOC contract compliance and legally required disclosures), the investigating party will attempt to inform the complainant of its need to disclose certain information prior to releasing identifying information.
- Additionally, the identity of the complainant may be revealed to appropriate law enforcement agencies conducting a criminal investigation.

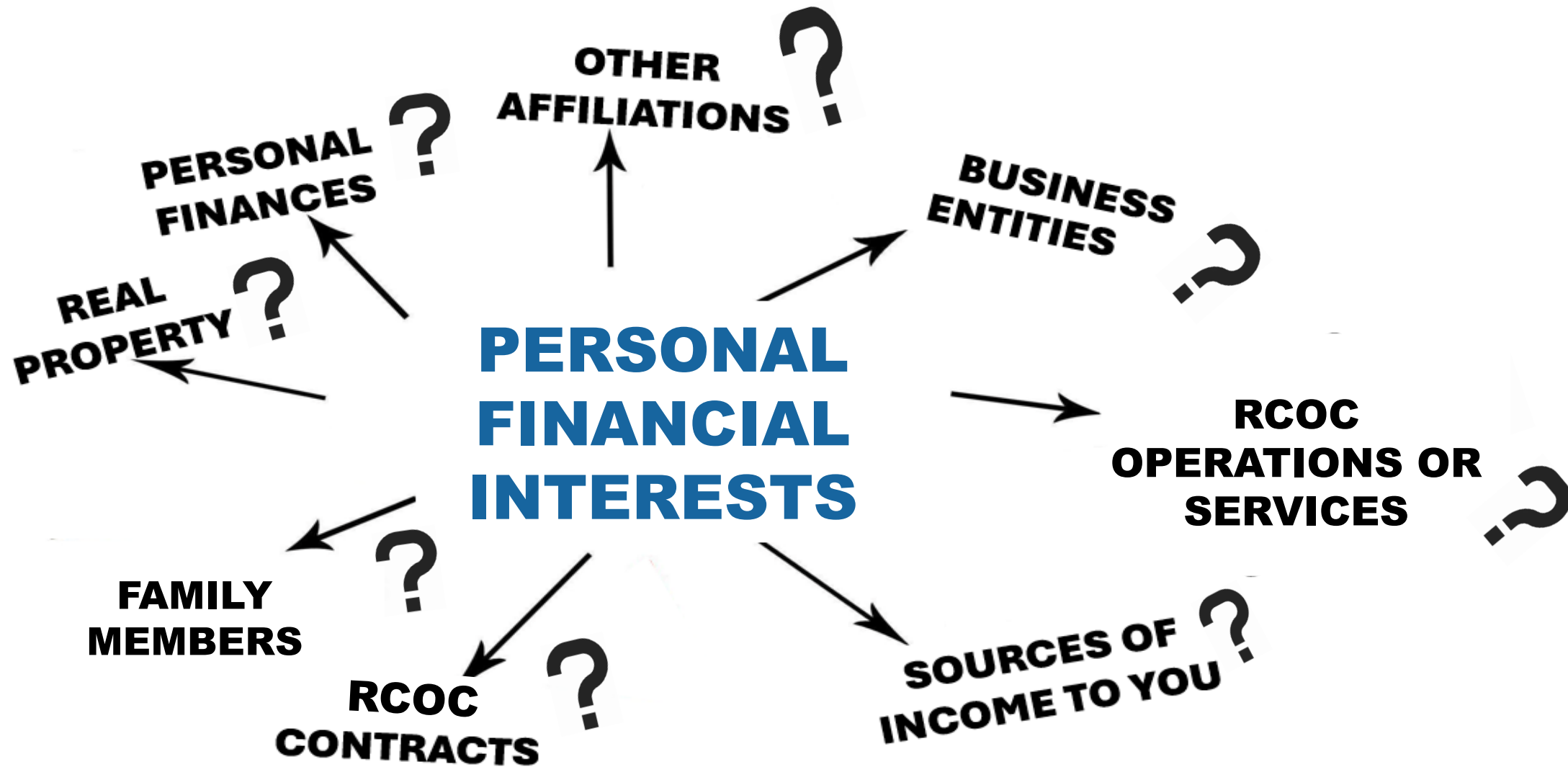
NO RETALIATION

- The Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns about alleged improper RCOC or vendor/contractor activities and to permit an investigating party the opportunity to investigate and take appropriate action.
- No person who in good faith reports a violation of the policy shall suffer harassment, retaliation or adverse employment consequences from RCOC.
- An RCOC employee who harasses or retaliates against someone who has reported a violation in good faith is subject to discipline up to and including immediate termination of employment.

NOTIFICATION

- RCOC's Whistleblower Policy, along with the DDS Whistleblower Complaint Process, are posted on RCOC's website. Notification of both RCOC's policy and DDS's Whistleblower Complaint Process will be provided annually to employees, Board members, persons served, their families, and the vendor community.
 - Can remind employees when they sign their annual performance review.
 - Board members can receive copies of the Policy in board packets.
 - Individuals served and their families can receive notification of how they can access the policies in their annual Services Cost Statement.
 - Vendors can receive their annual notification in the payment process of how they can access the policies.





WHAT IS A CONFLICT OF INTEREST?

- Board members cannot place themselves in a position where their private personal interests may conflict with their official duties.
- Board members must be guided solely by the interests of RCOC and its persons served.
- Board members and/or their “family members” cannot financially gain from RCOC operations or services.
- **Exception:** A person with a developmental disability who receives employment services through a regional center provider shall not be precluded from serving on the governing board of a regional center based solely upon receipt of these employment services – WIC §4626.

WHAT IS A CONFLICT OF INTEREST?

- DDS shall give a very high priority to ensuring that regional center board members and employees act in the course of their duties solely in the best interest of the regional center consumers and their families without regard to the interests of any other organization with which they are associated or persons to whom they are related – WIC §4626.
- Board members, employees, and others acting on the regional center's behalf, as defined in regulations issued by the department, shall be free from conflicts of interest that could adversely influence their judgment, objectivity, or loyalty to the regional center, its consumers, or its mission – WIC §4626.

WHAT IS A CONFLICT OF INTEREST?

- **A Conflict of Interest Generally Exists If:** You have one or more personal, business, or financial interests, or relationships that would cause a reasonable person with knowledge of the relevant facts to question your impartiality with respect to your regional center duties.
- **Specific Circumstances and Relationships That Create a Conflict of Interest:** Are set forth in the Cal. Code of Regulations, Title 17, Sections 54500 through 54530; and WIC §§4626 and 4622.
 - Title 17 COI determinations can be complicated and confusing – very fact specific.
 - Contact the Executive Director or Corporate Counsel immediately if you think you may have a conflict.
- **Board members must identify and disclose any relationships, positions, or circumstances involving you which may create a conflict of interest** between your regional center duties and obligations and any other financial interests and/or relationships that you may have. (DDS Form DS 6016)

WHO IS SUBJECT TO THE CONFLICT OF INTEREST REGULATIONS?

- **Board Members.**
- Executive Director.
- Advisory Committee Members.
- Employees.
- Contractors.
- Agents.
- Consultants.
- Those acting on RCOC's behalf with "Decision or Policy-Making Authority".

FINANCIAL INTERESTS IN DECISIONS CREATING A CONFLICT OF INTEREST

- **General COI Rule:** Board members shall not make, participate in making, or in any way attempt to use his or her position to influence a regional center or board decision in which he or she knows or has reason to know that he or she or a family member has a financial interest. §54522
- **“Family Member” defined broadly:** includes the individual’s spouse, domestic partner, parents, stepparents, grandparents, siblings, step-siblings, children, stepchildren, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law. §54505
- **Always Ask Yourself:** *“Do I, or a member of my family, have a “financial interest” in any Board agenda item, Board decision, RCOC operational or business matter, or proposed contract that is coming before the Board for approval?”* If yes, contact Executive Director immediately.

FINANCIAL INTERESTS IN DECISIONS CREATING A CONFLICT OF INTEREST

- **“Financial Interest”** includes any current or contingent ownership, equity, or security interest that could result, directly or indirectly, in receiving a pecuniary gain or sustaining a pecuniary loss as a result of the interest in any of the following:
 - (1) business entity worth two thousand dollars (\$2,000) or more;
 - (2) real or personal property worth two thousand dollars (\$2,000) or more in fair market value;
 - (3) stocks or bonds worth two thousand dollars (\$2,000) or more;
 - (4) intellectual property rights worth five hundred dollars (\$500) or more;
 - (5) sources of gross income aggregating five hundred dollars (\$500) or more within the prior 12 months;
 - (6) future interests for compensation of five hundred dollars (\$500) or more;
 - (7) personal finances of two hundred fifty dollars (\$250) or more.

FINANCIAL INTERESTS IN CONTRACTS CREATING A CONFLICT OF INTEREST

- **RCOC Contracts**: Regional center board members are to be guided solely by the interests of the regional center and the individuals it serves and not by their personal financial interests when participating in the making of contracts in their official capacity. §54523
- **Contract Approvals**: Regional center board members shall not be financially interested in any contract in which they participate in making in their official capacity; unless the benefits associated with the contract are available to regional center persons served or their families generally. §54523
- **You Must be Vigilant and Identify Potential COI's Early**: If you suspect a potential conflict related to your participation in the approval of a proposed contract, contact the Executive Director and Corporate Counsel immediately so that we can research the potential conflict and advise you accordingly.

PARTICIPATING IN THE MAKING OF A RCOC CONTRACT

- **Participation in the Making of a Contract:** includes any act involving preliminary discussions, development, negotiations, compromises, reasoning, planning, drawing of plans and specifications, solicitation for bids, approval and execution – not just voting on a contract.
§54523

FINANCIALLY INTERESTED IN A RCOC CONTRACT?

- **Disclosure and Recusal Rule**: If a regional center board member, or his or her family member, has a financial interest in the award of a proposed RCOC contract that creates a conflict of interest, the board member shall do all of the following prior to the first consideration of the potential contract:
 - (1) Disclose the existence and nature of the conflicting financial interest to the board;
 - (2) Have it noted in the official board records;
 - (3) Recuse yourself from making, participating in making, or in any way attempting to use your position to influence a decision on the matter;
 - (4) Leave the room during any Board discussion or deliberations of the matter; and
 - (5) Do not vote on the matter. §54523

POSITIONS CREATING CONFLICT OF INTEREST FOR BOARD MEMBERS

- A conflict of interest exists when a board member, or his/her family member, is any of the following for a business entity, entity, or provider:
 - (1) a governing board member; (2) a board committee member; (3) a director; (4) an officer; (5) an owner; (6) a partner; (7) a shareholder; (8) a trustee; (9) an agent; (10) an employee; (11) a contractor; (12) a consultant; (13) a person who holds any position of management; or (14) a person who has decision or policy making authority. §54520

CONFLICT RESOLUTION PLAN

- The Board or Executive Director shall not allow the regional center to refer a person served to any business entity, entity, or provider in which a board member has a conflict of interest, unless the board member has eliminated the conflict of interest or obtained an approved Conflict Resolution Plan prior to the referral.
- No board member who has a conflict of interest shall continue to serve as a board member in violation of the regulations, unless the individual has eliminated the conflict of interest or obtained an approved Conflict Resolution Plan.
- If the regional center identifies a conflict involving you, it will be required to prepare a Conflict Resolution Plan. §54525

CONFLICT OF INTEREST

Board Member Ineligibility

- In order to prevent potential conflicts of interest, a member of the governing board or member of the program policy committee of a regional center shall not be any of the following:
 - (1) An employee of the State Department of Developmental Services or any state or local agency that provides services to a regional center consumer, if employed in a capacity which includes administrative or policymaking responsibility, or responsibility for the regulation of the regional center.
 - (2) An employee or a member of the state council or a state council regional advisory committee.
 - (3) Except as otherwise provided in WIC §4622, an employee or member of the governing board of any entity from which the regional center purchases consumer services.
 - (4) Any person who has a “financial interest” in regional center operations, except as a consumer of regional center services – WIC §4626(b).

DDS CONFLICT OF INTEREST REPORTING STATEMENT DDS FORM 6016

- **Examples of Questions:** you must answer in writing; required DDS Form 6016 disclosures:
 - Do you or a family member work for any entity or organization that is a regional center provider or contractor?
 - Do you or a family member own or hold a position in an entity or organization that is a regional center provider or contractor?
 - Do any of the decisions you make when performing your job duties with the regional center have the potential to financially benefit you or a family member?
 - Do you, or a family member, have a financial interest in any contract with the regional center?
 - Do you have any circumstances or other financial interests not already discussed above that would prevent you from acting in the best interests of the regional center?

DDS CONFLICT OF INTEREST REPORTING STATEMENT – DS 6016

- **DDS shall develop and publish a standard conflict-of-interest reporting statement.** The conflict of interest statement shall be completed by each regional center governing board member and each regional center employee specified in regulations, including, at a minimum, the executive director, every administrator, every program director, every service coordinator, and every employee who has decision making or policymaking authority or authority to obligate the regional center's resources.
- **New Board Members:** Every new regional center governing board member shall complete and file the conflict of interest statement with his or her respective governing board within 30 days of being selected, appointed, elected, or approved. §54532
- **COI Statements Filed with DDS:** The governing board shall submit a copy of the completed conflict of interest statements of board members and the Executive Director to DDS within 10-days of receipt of the statements. §54532

DDS CONFLICT OF INTEREST REPORTING STATEMENT – DS 6016

- **Annually**: Each regional center board member and regional center employee shall complete and file the conflict of interest statement **annually by August 1 of each year**. §54532
- **Change in Status**: Every regional center board member and employee shall complete and file a subsequent conflict of interest statement upon any change in status that creates a potential or present conflict of interest. WIC §4626; §54532

DDS CONFLICT OF INTEREST REPORTING STATEMENT – DS 6016

- **False Information**: A person who knowingly provides false information on a conflict of interest statement shall be subject to a civil penalty in an amount up to fifty thousand dollars (\$50,000), in addition to any civil remedies available to the department.
- **Civil Penalty**: An action for a civil penalty under this provision may be brought by the department or any public prosecutor in the name of the people of the State of California. WIC §4626(j)

OBLIGATIONS WHEN COI DISCOVERED

- **When a present or potential conflict of interest is identified for a regional center board member, executive director, employee, contractor, agent or consultant, the present or potential conflict must:**
 - **(1) be eliminated; or**
 - **(2) be mitigated or managed through a Conflict of Resolution Plan; or**
 - **(3) the individual must resign. §54533(a)**

DDS CONFLICT OF INTEREST REPORTING STATEMENT – DS 6016

- **Executive Director Review:** The director of the regional center shall review the conflict of interest reporting statement of each regional center employee within 10 days of receipt of the statement.
- If a potential or present conflict of interest is identified for a regional center employee that cannot be eliminated, the regional center shall, within 30 days of receipt of the statement, submit to DDS a copy of the conflict of interest statement and a plan that proposes mitigation measures, including timeframes and actions the regional center or the employee, or both, will take to mitigate the conflict of interest – WIC §4626.

ROLE OF DDS IN MONITORING CONFLICTS

- **DDS and the regional center governing board shall review the conflict of interest statement of the regional center executive director and each regional center board member to ensure that no conflicts of interest exist.**
- **If a present or potential conflict of interest is identified for a regional center director or a board member that cannot be eliminated, the regional center governing board shall, within 30 days of receipt of the statement, submit to DDS and the state council a copy of the conflict of interest statement and a plan that proposes mitigation measures, including timeframes and actions the regional center governing board or the individual, or both, will take to mitigate the conflict of interest – WIC §4626.**

ROLE OF DDS IN MONITORING CONFLICTS

- **Sanctions**

- If DDS finds a violation of these COI regulations, it can provide 30 days to eliminate or resolve the violation.
- If the COI violation is not resolved or eliminated, DDS may **“take immediate action to commence procedures for termination or nonrenewal of the regional center contract”** – WIC §4635; §54535

