

COUNTY OF SHASTA		Number
ADMINISTRATIVE MANUAL		7-110
SECTION:	Employment	Oaths of Office; Deputization
INITIAL ISSUE DATE:	March 24, 2009	
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PURPOSE

This policy establishes the procedures by which oaths of office will be administered to County officers and employees; the responsibility for maintaining the Certificates of Appointment and Oath of Office; the procedures by which County Officers may deputize subordinate staff; and the revocation of deputizations.

BACKGROUND

The California Constitution requires that all public officers and employees take and subscribe an oath of office before assuming office or beginning their employment. Most County officers are authorized to deputize qualified subordinates to exercise the powers and duties of the officer. A deputy’s powers are independent of his or her employment. While oaths of office “expire” when a deputy’s employment ends, a deputization should be rescinded in writing when a deputy leaves employment with the department. The documents which reflect the oaths of office, deputization of subordinates, and revocation of a deputization are public records. Those documents must be filed with the appropriate official and must be available for public inspection.

POLICY/PROCEDURE

Oaths of Office

The procedures for administering and filing oaths of office differ somewhat, depending on the employee’s position.

Elected officials and appointed department heads must take and subscribe (sign) an oath of office prior to assuming office (Government Code sections 1360-1369). (See Attachment A, Certificate of Appointment and Oath of Office.) State law does not specify a time period during which the oath must be administered; the taking of the oath must simply precede the assumption of office. For that reason, a newly elected or re-elected county official or a newly appointed department head may take and subscribe the oath of office well in advance of the term of office or start of employment. The term of office of an elected County officer begins the Monday after January 1 following the officer’s election (Cal.Const.Art. II, section 20).

With regard to members of the Board of Supervisors, it has been the practice in Shasta County to hold a “swearing in ceremony” at the start of the newly elected or re-elected member’s first board meeting, during which the County Clerk administers and certifies the oath of office after it is signed by the board

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member. Members will have taken the oath prior to the ceremony, perhaps immediately after the Registrar of Voters certifies the election results. However, an elected officer cannot exercise the power of his or her office until two events have occurred: the term has commenced, and the oath has been taken.

Elected department heads are ordinarily administered a “ceremonial” oath of office at the same board meeting during which two newly elected board members take the oath. However, they, too, will have taken the oath before that time, soon after the election results are certified. In fact, the County Clerk distributes the Certificate of Election and Oath of Office to newly elected department heads immediately after certification of the election and asks that the oath be sworn and subscribed prior to the first Board meeting in January (Government Code sections 1360-1369). The oath may be administered by any County Officer, deputy officer, judicial officer, court commissioner, or notary public (Government Code section 24057, Code of Civil Procedure sections 259, 2093). Elected department heads can exercise their official powers only when two conditions exist: their term begins and they have taken the oath.

Appointed department heads may be administered the oath of office by any County Officer, a deputy officer, a judicial officer, a court commissioner, or a notary public. The oath must be taken before the new department head performs any of his or her duties.

The signed oaths of office for members of the Board of Supervisors and elected and appointed department heads are filed with and maintained by the County Clerk (Government Code section 1363).

A person who is promoted to a department head position must take and subscribe a new oath of office and file the certificate with the County Clerk. An elected or appointed officer who serves a fixed term of office should take the oath at the start of each new term, and file it with the County Clerk.

All *County employees* are considered to be “disaster service workers,” and as such, they too must take and subscribe the oath of office before they enter upon the duties of their employment. (Government Code section 3102). The oath of office for an employee may be administered by his or her appointing authority or before any other person authorized in writing by the appointing authority (Government Code section 3104). In Shasta County, that oath is administered by staff of the Personnel Division (who have been deputized by the County Clerk to administer oaths) during the new employee’s orientation session; the certificate is then filed in the employee’s official personnel file (Government Code section 3105).

An oath need not be repeated because of an employee’s promotion, or other change of class or position, unless the employee is an officer who is appointed or reappointed to a fixed term, or the employee has had a break in service (22 Ops.Cal.Attny.Gen. 79 (1953).)

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While the oath is sometimes called a “loyalty oath” in connection with a County employee, and an “oath of office” for a County Officer, the same oath is taken by all officers and employees. It can be found at section 3 of Article XX of the California Constitution. Only the first paragraph of the oath is given; the second paragraph was declared unconstitutional.

The oath of office must also be taken by persons who are appointed or reappointed by the Board of Supervisors to commissions or committees.

Certificate forms are available at the Clerk of the Board of Supervisors’ intranet page.

Deputizations

Every County Officer (except a member of a board of supervisors) may appoint as many deputies as are necessary for the prompt and faithful discharge of the duties of that office. (Government Code section 24101). Only those department heads who are specifically enumerated in Government Code section 24000, as well as any “other officers as are provided by law” are considered “County Officers” for the purposes of deputization.

A deputization ordinarily confers on the subordinate all of the powers and duties of the office of the County Officer (Government Code sections 7, 1190-1194). However, the principal may (and often should) limit the scope of the powers being delegated to the deputy.

An employee may not act as a deputy until a County Officer has deputized that employee, and the deputy has taken the Constitutional oath of office. A County Officer deputizes a subordinate by indicating on the Certificate of Appointment and Oath of Office that the employee is being appointed as a deputy. Many County positions have the term “deputy” in the title, and a separate indication of deputization is not necessary for those employees.

The certificate to be used for deputization has three places for signatures. The top portion, the Certificate of Appointment, is signed by the appointing authority. The bottom portion, the Oath of Office, is signed by the appointee and a witness (the appointing authority usually signs as the witness). Only a department head who is a County Officer may sign the appointment of a deputy; the signature of a deputy or other employee on the appointment is ineffective. However, any officer or deputy, a judicial officer, or a notary public, may administer and certify the oath,

Following deputization, the original of the certificate must be filed with the County Clerk within 10 days of appointment. (Government Code section 24102). The County Officer should keep a copy of the certificate for the employee’s personnel file.

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A deputization remains in effect when the incumbent of the public office changes because the deputy is delegated the powers of the public office, not the powers of a particular incumbent of that office.

Revocation of Deputization

Deputization does not expire when the deputy leaves County employment. Because the delegation of the principal’s powers to the deputy does not require the deputy’s continued employment, department heads must rescind the deputization of those subordinates who leave the department or who should no longer be allowed to exercise the authority that had been granted to them. (See Government Code section 24102.)

By September 1, 2009, the County Clerk will electronically distribute to each County Officer a form by which the officer may make a blanket revocation of deputization for all deputies hired prior to January 1, 1980, except for any deputies who are still employed; those pre-1980 hires whose deputization should remain in effect must be identified by the department head by name and position on the form.

The form will also allow the County Officer to rescind the deputization of persons deputized on or after January 1, 1980; the officer will need to fill in the name of each deputy who has left the department or whose deputy powers should be rescinded for some other reason. In addition, the officer may limit the scope of the powers delegated to any deputy.

In the future, as deputies leave County employment, the County Officer should routinely revoke the deputization as part of the exit process, and forward the revocation to the County Clerk.

RESPONSIBLE DEPARTMENTS

County Clerk/Registrar of Voters
Clerk of the Board of Supervisors
County Counsel

REFERENCES

BOS Policy Resolution No. 2009-01--3/24/09 (Adopted)

Attachment “A”: Exemplar of Certificate of Appointment

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ATTACHMENT "A"

For illustrative purposes only

CERTIFICATE OF APPOINTMENT

STATE OF CALIFORNIA, County of Shasta

I, **[name and title]**, County of Shasta, State of California, do hereby appoint **[name and title]** **[see below if deputy]**¹ in and for said County.

IN WITNESS WHEREOF, I hereunto set my hand
this _____ day of _____, _____.

[name]²
[title], County of Shasta, State of California

STATE OF CALIFORNIA)
) ss
County of Shasta)

I, **[name]**, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

[name of officer, employee, or volunteer]

Subscribed and sworn to before me, this ___ day of _____, _____.

[name and title]³

¹ Any County Officer (Government Code section 24000) or department head may appoint (hire) an employee. However, only a County Officer may appoint a deputy, who may be a County employee or a volunteer. If the employee or volunteer is to be deputized and "Deputy" is not part of the position's title, insert "as Deputy [insert name of principal's office]" and then insert any limitations (e.g., "for the purpose of administering oaths.")

² The appointment should be signed by the Chairman of the Board, the County Clerk, the appointee's department head, or, for new employees, a Human Resources Analyst who has been deputized to administer oaths. If the appointee will be a deputy, the appointment must be signed by the County Officer who will act as principal.

³ Any County Officer or deputy, or a judicial officer or notary public, may witness the oath.