



OF COUNSEL

Zachary Scalzo

He/Him

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Of Counsel Zachary Scalzo is a member of Best Best & Krieger LLP's Municipal Law practice group. After initially representing primarily public school districts in facilities matters, Zach's primary practice now involves providing advice and transactional services to school districts, cities, counties, and a state agency in the area of public works construction, businesses, services, general procurement and related litigation. However, he also regularly advises public agency clients in general governance matters, business services and procurement, real estate, and risk management, including general tort liability and the presentation and processing of government claims. Also, Zach has significant experience, and particular interest, in writs and appeals.

Construction and Litigation Counsel

Zach routinely advises public agencies through the process of constructing public improvements, including pre-project planning, preparation of solicitations and related agreements for consultants construction contracts and the pre-solicitation preparation of project construction documents. Additionally, Zach routinely assists clients in resolving bid protests, analyzing change orders and providing risk management advice, and resolving disputes and claims. He also provides risk management and dispute resolution advice related to architect indemnity and fault and advises clients to ensure that federally funded contracts comply with federal law.

CORE PRACTICES

Municipal Law

EDUCATION & ADMISSIONS

Education

University of the Pacific,
McGeorge School of Law, J.D.,
with great distinction

University of San Francisco, B.A.,
politics, magna cum laude

Bar Admissions

California

In addition to traditional construction delivery methods, Zach has extensive experience in alternative construction delivery methods, including lease-leaseback, construction-manager-at-risk and design-build. He recently advised one of the largest state agencies on establishing their design-build program and assisted in drafting related procurement and contract documents. Similarly, Zach leverages his experience in alternative delivery methods to advise clients in procuring engineering and construction services in the area of energy efficiency improvements, including contracts for energy conservation measures as well as solar energy improvements (as design-build or power purchasing contracts). He recently assisted an agency in procuring agency-wide design-build services valued at \$50 million to upgrade HVAC systems and advised the agency on using COVID-19-related federal funding to pay for the project. He also advises clients in conflicts of interest arising from these sorts of procurements.

LANGUAGES

English

Business Services and Procurement

Zach also advises clients in matters pertaining to procurement of non-construction goods and services and other general business services matters. These issues range from the procurement of education materials (for public school districts) to software licenses and other related services. Given this breadth, Zach has firm grasp on the various methods a public agency can utilize to procure goods and non-construction services, ranging from competitive bids or solicitations, piggyback, and cooperative purchasing contracts. In addition, Zach regularly advises clients in general contract disputes arising from these contracts and participates in related litigation.

General Municipal Liability and Other Litigation

Zach also assists in providing risk management advice and litigation support in the area of general municipal tort liability. He regularly advises clients in connection with the claims presentation requirements of the Tort Claims Act and has experience defending claims related to dangerous conditions of public property and negligent supervision and hiring.

In addition, Zach has defended and prosecuted writs of mandate and appeals. His writ experience not only allows him to provide litigation support in that area, but also allows him to counsel clients in the agency decision-making processes to ensure the agency can articulate its decision in a way that leverages the favorable review standards applicable to the review of agency decisions.

Zach is admitted to practice in California. Zach graduated from the University of the Pacific, McGeorge School of Law with great distinction, and as a member of the Order of the Coif (top 10% of graduating class from law school) and Traynor Honors Society (honor roll every year in law school). During law school, Zach served an extern/student clerk drafting opinions for the Honorable Ronald B. Robie of the California Court of Appeal Third District. After law school, Zach worked as a volunteer clerk performing research and drafting orders for the Honorable Edmund Brennan of the United State District Court, Eastern District of California.

Notable Experience

- **Contract negotiations:** Negotiated or assisted in negotiated hundreds of millions dollars in public agency contracts related to public works construction, including consultant and construction contracts. Recently, assisted an agency in procuring agency-wide design-build services valued at \$50 million dollars to upgrade HVAC systems and advised the agency so it could use COVID-19 related federal funding to pay for the project.
- **Construction claim and indemnity/defense:** Defended a \$6 million claim by a general contractor against a public school district seeking additional compensation for delay and extra work arising from a \$25 million school renovation.
- **Project labor agreements:** Defended a public agency against a breach of contract claim by a local trades council when the agency rescinded a project labor agreement (PLA).
- **Public works labor laws:** Defended a writ of mandate against a public agency by a trade union at the pleading stage alleging the agency and a general contractor failed to comply with the reporting requirements of the skilled and trained workforce requirements on a design-build project. The agency leveraged arguments related to mootness to convince the trade union to dismiss the case in return for agreeing to a small, permanent withholding of retention from the contractor.
- **Dangerous condition of public property:** Assisted in negotiating a settlement of a dangerous condition of public property claim involving a bicycle accident during a recreational cycling event on a city's streets, while a renewed motion for summary judgment was pending advancing novel legal arguments. The procedural posture resulted in significantly reduced settlement amount.
- **Appeal (police excessive use of force):** Assisted in the defense of a police officer on appeal in the Ninth Circuit in an action arising from an unfortunate death in an officer-involved shooting. The Ninth Circuit affirmed the trial court's decision to dismiss the case.
- **Appeal (writ of mandate):** Prosecuted a writ of mandate against a state agency for improperly applying laws pertaining to \$3 million of public school construction funding. This litigation resulted in a published decision in favor of the school district (*San Bernardino City Unified School District* (2022) 79 Cal.App.5th 12).
- **Arbitration (breach of contract):** Defended a public agency client in an arbitration arising from a contract entered into by a public agency to provide bus transportation services to a joint powers authority. The matter settled with payment to the public entity in an amount that made the agency whole for predetermined out-of-pocket expenses without burdening both public agencies of a costly arbitration.

Accolades

- Order of the Coif (Top 10% of Law School Graduating Class)
 - Traynor Honors Society (Honors Every Year in Law School)
 - Multiple Writing Awards and Scholarships in Law School
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Thought Leadership

Presentations

- “The Vital Importance of Compliance in the Cannabis Industry,” League of California Cities City Leaders Summit, April 18, 2024
- “California Uniform Construction Cost Accounting Act,” California Public Procurement Officials Santa Clara Valley Chapter Meeting, Aug. 16, 2023