

Oaths of Office Frequently Asked Questions

1) What is an Oath? An oath (from Anglo-Saxon *ād*, also called plight) is either a promise or a statement of fact calling upon something or someone that the oath maker considers sacred, usually God, as a witness to the binding nature of the promise or the truth of the statement of fact. To swear is to take an oath.

In law, oaths are made by a witness to a court of law before giving testimony and usually by a newly-appointed government officer to the people of a state before taking office. In both of those cases, though, an affirmation can be usually substituted. A written statement, if the author swears the statement is the truth, the whole truth, and nothing but the truth, is called an affidavit. The oath given to support an affidavit is frequently administered by a notary public who will memorialize the giving of the oath by affixing her or his seal to the document. Breaking an oath (or affirmation) is perjury. (Source, Wikipedia)

What it means to be sworn in?

Government Code

3100. It is hereby declared that the protection of the health and safety and preservation of the lives and property of the people of the state from the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and resources is of paramount state importance requiring the responsible efforts of public and private agencies and individual citizens. In furtherance of the exercise of the police power of the state in protection of its citizens and resources, all public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.

3101. For the purpose of this chapter the term "disaster service worker" includes all public employees and all volunteers in any disaster council or emergency organization accredited by the California Emergency Council. The term "public employees" includes all persons employed by the state or any county, city, city and county, state agency or public district, excluding aliens legally employed.

3108. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison for two, three, or four years.

3109. Every person having taken and subscribed to the oath or affirmation required by this chapter, who, while in the employ of, or service with, the state or any county, city, city and county, state agency, public district, or disaster council or emergency organization advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the **government** of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison.

2) What's in an Oath?

Code of Civil Procedure

2094. (a) An oath, affirmation, or declaration in an action or a proceeding, may be administered by obtaining an affirmative response to one of the following questions:

(1) "Do you solemnly state that the evidence you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth, so help you God?"

(2) "Do you solemnly state, under penalty of perjury, that the evidence that you shall give in this issue (or matter) shall be the truth, the whole truth, and nothing but the truth?"

(b) In the alternative to the forms prescribed in subdivision (a), the court may administer an oath, affirmation, or declaration in an action or a proceeding in a manner that is calculated to awaken the person's conscience and impress the person's mind with the duty to tell the truth. The court shall satisfy

itself that the person testifying understands that his or her testimony is being given under penalty of perjury.

Elections Code

12321(3)

State of California)

County of _____) ss.

I do hereby solemnly declare that I will support the Constitution of the United States and the Constitution of the State of California, and that I will to the best of my ability, faithfully discharge the duties of.....

Signed in the presence of _____ on _____, 20__.
(Signature)

Government Code

3103. The oath or affirmation required by this chapter is the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

3108. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison for two, three, or four years.

3109. Every person having taken and subscribed to the oath or affirmation required by this chapter, who, while in the employ of, or service with, the state or any county, city, city and county, state agency, public district, or disaster council or emergency organization advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the **government** of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison.

CALIFORNIA CONSTITUTION

ARTICLE 20 MISCELLANEOUS SUBJECTS

SEC. 3. Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I, _____, 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.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

(If no affiliations, write in the words "No Exceptions")

and that during such time as I hold the office of _____

I will not

(name of office)

advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.

3) What are the requirements to take Oath?

Government Code

1360. Unless otherwise provided, before any officer enters on the duties of his office, he shall take and subscribe the oath or affirmation set forth in Section 3 of Article 20 of the Constitution of California.

1368. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison for two, three, or four years.

1369. Every person having taken and subscribed to the oath or affirmation required by this chapter, who while holding office, advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the **government** of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison.

3102. (a) All disaster service workers shall, before they enter upon the duties of their employment, take and subscribe to the oath or affirmation required by this chapter.

(b) In the case of intermittent, temporary, emergency or successive employments, then in the discretion of the employing agency, an oath taken and subscribed as required by this chapter shall be effective for the purposes of this chapter for all successive periods of employment which commence within one calendar year from the date of that subscription.

(c) Notwithstanding subdivision (b), the oath taken and subscribed by a person who is a member of an emergency organization sanctioned by a state agency or an accredited disaster council, whose members are duly enrolled or registered with the Office of Emergency Services, or any accredited disaster council of any political subdivision, shall be effective for the period the person remains a member with that organization.

3106. Compliance with this chapter shall, as to state employees, be deemed full compliance with Chapter 4, Part 1, Division 5, Title 2 of this **code**, requiring taking of oaths by state employees.

4) When are Oaths administered?

Government Code

1367. No compensation nor reimbursement for expenses incurred shall be paid to any officer by any public agency unless he has taken and subscribed to the oath or affirmation required by this chapter.

3104. The oath or affirmation may be taken before any officer authorized to administer oaths. The oath or affirmation of any disaster service worker may be taken before his appointing power or before any person authorized in writing by his appointing power. No fee shall be charged by any person before whom the oath or affirmation is taken and subscribed.

3107. No compensation nor reimbursement for expenses incurred shall be paid to any disaster service worker by any public agency unless such disaster service worker has taken and subscribed to the oath or affirmation required by this chapter. It shall be the duty of the person certifying to public payrolls to ascertain and certify that such disaster service worker has taken such oath or affirmation. Whenever there is more than one officer certifying to public payrolls the governing body of a city or county or school district may designate and make it the duty of a certain officer or officers to ascertain and certify that such disaster service worker has taken such oath or affirmation. The governing body of a city or county or school district may designate and make it the duty of a local

disaster service officer to ascertain and certify that each volunteer disaster service worker has taken such oath or affirmation. Nothing in this chapter, however, shall prevent the correction of any technical error or deficiency in an oath taken pursuant to this chapter; provided, such correction is made before the disaster service worker is actually paid or reimbursed.

5) Who is authorized to administer oaths?

Government Codes

1225. Every executive and judicial officer and every Member of the Legislature may administer and certify oaths. A former judge of a court of record in this state who retired or resigned from office, other than a judge who was retired by the Supreme Court for disability, shall be deemed a judicial officer for purposes of this section, if the former judge requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification. No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

1226. When the records in the office of any public board or officer authorized to issue certificates show the issuance of a certificate other than a certificate of acknowledgment and it appears by affidavit that the certificate has been lost or destroyed by conflagration or other public calamity, the board or officer may issue a duplicate of the certificate. The duplicate shall recite the issuance and loss or destruction of the original and has the same force as the original.

1362. Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths.

3104. The oath or affirmation may be taken before any officer authorized to administer oaths. The oath or affirmation of any disaster service worker may be taken before his appointing power or before any person authorized in writing by his appointing power. No fee shall be charged by any person before whom the oath or affirmation is taken and subscribed.

24000. The officers of a county are:

- (a) A district attorney.
- (b) A sheriff.
- (c) A county clerk.
- (d) A controller.
- (e) An auditor, who shall be ex officio controller.
- (f) A treasurer.
- (g) A recorder.
- (h) A license collector.
- (i) A tax collector, who shall be ex officio license collector.
- (j) An assessor.
- (k) A superintendent of schools.
- (l) A public administrator.
- (m) A coroner.
- (n) A surveyor.
- (o) Members of the board of supervisors.
- (p) A county veterinarian.
- (q) A fish and game warden.
- (r) A county librarian.
- (s) A county health officer.
- (t) An administrative officer.
- (u) A director of finance.

- (v) A road commissioner.
- (w) A public guardian.
- (x) Such other officers as are provided by law.

24057. Every county officer and the officer's deputies may administer and certify oaths.

Code of Civil Procedure

259. Subject to the supervision of the court, every court commissioner shall have power to do all of the following:

(a) Hear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(d) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, on stipulation of the parties litigant. While acting as temporary judge the commissioner shall receive no compensation therefore other than compensation as commissioner.

(e) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(f) Hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.

(g) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (d).

Code of Civil {Procedure

2093. (b) (1) Every shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths or affirmations and may perform the duties of the deposition officer pursuant to Chapter 9 (commencing with Section 2025.010) of Title 4.

The certified shorthand reporter shall be entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(c) A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification. No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

Elections Code

12321(c) Any precinct board member may administer and certify oaths required to be administered during the progress of an election. This authorization shall include the power to give any type of oath required of a public employee. There shall be no fee or charge for administering an oath.

(d) In lieu of signing and returning the declaration of the inspector, as provided in this chapter, the county **elections** official may require the inspector to sign the declaration on the day of election and before entering upon the performance of these duties.

12327. (a) If the precinct board members for any precinct have not been appointed or cannot serve, or the polling place has not been designated prior to an election, the county **elections** official shall, by written order, immediately appoint the precinct board members or designate the polling place for the precinct, as the case may require, and shall notify each precinct board member of the appointment.

CALIFORNIA CONSTITUTION

ARTICLE 20 MISCELLANEOUS SUBJECTS

SEC. 3. Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the oath or affirmation.

6) Which Oaths need to be filed?

Code of Civil Procedure

2093. (a) Every court, every judge, or clerk of any court, every justice, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

Elections Code

12321. (a) (1) Each inspector shall sign a declaration of intention to faithfully discharge the duties of inspector and shall return it to the **elections** official at least 15 days before election day. If the inspector fails or refuses to sign and file the declaration, the **elections** official shall appoint a substitute who shall make and file the application.

(2) The declaration of an inspector and each of the declarations of other members of the precinct board provided for in this article shall be signed in the presence of a witness and shall be as binding on the signer as would be an oath of office.

Government Code

3102. (a) All disaster service workers shall, before they enter upon the duties of their employment, take and subscribe to the oath or affirmation required by this chapter.

7) Where to file?

Government Code

1363. (a) Unless otherwise provided, every oath of office certified by the officer before whom it was taken shall be filed within the time required as follows:

(1) The oath of all officers whose authority is not limited to any particular county, in the office of the Secretary of State.

(2) The oath of all officers elected or appointed for any county, and, except as provided in paragraph (4), of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the office of the county clerk of their respective counties.

(3) Each judge of a superior court, the county clerk, the executive officer or court administrator of the superior court, and the recorder shall file a copy of his or her official oath, signed with his or her own proper signature, in the office of the Secretary of State as soon as he or she has taken and subscribed his or her oath.

(4) The oath of all officers for any independent special district, as defined in Section 56044, in the office of the clerk or secretary of that district.

(b) Every oath of office filed pursuant to this section with the Secretary of State shall include the expiration date of the officer's term of office, if any. In the case of an oath of office for an appointed officer, if there is no expiration date set forth in the oath, or the officer leaves office before the expiration

date, the appointing authority shall report in writing to the Secretary of State the officer's date of departure from office.

3105. (a) The oath or affirmation of any disaster service worker of the state shall be filed as prescribed by State Personnel Board rule within 30 days of the date on which it is taken and subscribed.

(b) The oath or affirmation of any disaster service worker of any county shall be filed in the office of the county clerk of the county or in the official department personnel file of the county employee who is designated as a disaster service worker.

(c) The oath or affirmation of any disaster service worker of any city shall be filed in the office of the city clerk of the city.

(d) The oath or affirmation of any disaster service worker of any other public agency, including any district, shall be filed with any officer or employee of the agency that may be designated by the agency.

(e) The oath or affirmation of any disaster service worker may be destroyed without duplication five years after the termination of the disaster service worker's service or, in the case of a public employee, five years after the termination of the employee's employment.

8) What if the certificate has been lost?

1226. When the records in the office of any public board or officer authorized to issue certificates show the issuance of a certificate other than a certificate of acknowledgment and it appears by affidavit that the certificate has been lost or destroyed by conflagration or other public calamity, the board or officer may issue a duplicate of the certificate. The duplicate shall recite the issuance and loss or destruction of the original and has the same force as the original.

9) Revocation of an Oath and Retention Period

Government Code

24102. A revocation of the appointment of any deputy shall be made and filed in the same manner as the appointment.

Five years after the date of revocation of appointment of a deputy, the written oath of office subscribed to by such deputy may be destroyed and no reproduction thereof need be made or preserved.

10) Retention Period

Government Code

3105.

(e) The oath or affirmation of any disaster service worker may be destroyed without duplication five years after the termination of the disaster service worker's service or, in the case of a public employee, five years after the termination of the employee's employment.

Additional Notes and Codes relative to Oaths

In relation to Government Code § 3109

The second paragraph of the oath prohibiting affiliation with organizations advocating the overthrow of the government was struck by the California Supreme Court as an unconstitutional infringement on first amendment rights of the US Constitution in **Vogel vs County of Los Angeles (1967) 68 Cal.2d 18, issued December 21, 1967, and final January 20, 1968** – Therefore only the first paragraph is administered for either the Oath of Office to officers/deputies and Loyalty Oath to employees. Since the constitution itself was not actually amended, however, both paragraphs are still codified.

Government Code §

1364 Additional test or qualification; prohibition against removal from office or position for noncompliance

1365 Removal of appointing officer for failure to require additional test or qualification

1366 Remedies for removal or threat of removal additional test or qualification provisions

Quick Reference Code Guide

Constitution Article 20 Section 3*

Government Code

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- 1360 Necessity of taking constitution oath
- 1362 Administration by authorized officer
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- 1364 Additional test or qualification; prohibition against removal from office or position for noncompliance
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- 24000 Officers of a county
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Code of Civil Procedure

- 259 Powers and duties
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Elections Code

- 12321 Signing of declaration; form; administration of oaths