

PUBLIC CEMETERY ALLIANCE

Update

HELP YOURSELF:

HOW PROPER DOCUMENTATION CAN PROTECT YOU

By: Colleen Howard and Dylan Dewit



The first things employment lawyers seek from their clients are the employee's personnel file and any supporting documents. For attorneys, documents are worth their weight in gold, and oftentimes valued more highly than witness testimony. This is because memories fade and are fallible. Documents generated at or near the time of an event are the best way to chronicle an employee's tenure with an organization and provide a solid shield when defending an employment claim. Conversely, it is equally important to recognize that the lack of documentation makes an employment claim very difficult to defend.

What Should You Document?

Although the types of documents you

maintain may vary, most employment lawyers will request a copy of your employee's personnel file, and more specifically request performance evaluations and any warnings issued to the employee.

Performance Evaluations

Performance evaluations are invaluable to your attorney if they are prepared consistently, honestly, accurately, and with adequate detail. Well-written and honest performance evaluations

give the reader a holistic understanding of the employee's performance, placing the organization in the best position to defend against the employee's claims.

To create an *honest* evaluation, supervisors need to take a realistic view of their employee's performance. All too often, supervisors gloss over an employee's deficiencies to avoid hurt feelings or avoid tension in the workplace. However, failing to document performance issues leaves the employer vulnerable to claims of unlawful ulterior motives for future disciplinary actions.

Evaluations should also include a section for the employee to sign to acknowledge receipt. Some entities take it further and provide

check boxes for the employee to either: (1) approve the evaluation; (2) refuse to sign; and/or (3) include a response. By including a "refuse to sign" box but still requesting a separate signature to acknowledge receipt, the evaluation verifies that the employee received the evaluation and had the opportunity to respond.

In cases where the employee refuses to sign, it is best to document the employee's refusal and immediately email the evaluation to the employee. By keeping a copy of the email, you can unequivocally confirm that the employee received a copy of their evaluation.

Warnings

All warnings – including written and verbal warnings – should be documented. Some supervisors may feel verbal warnings or conversations about performance are inconsequential and unworthy of being preserved. However, in the event of a lawsuit brought by an employee, well-detailed, consistent verbal warnings can play a major role in successfully defending the case, as it shows the employee was counseled about their deficiencies before corrective action was taken.

Like performance evaluations, written-

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This edition of the *Update* is jam-packed with info that you need to know:

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(Please let us know if you have particular issues or questions you would like to see addressed in a future edition of the *Update*.)

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So Long, Old Friend



Mel Lewis

As you all know, on August 20th we lost a man who was a friend to us all. The weekend prior to his untimely passing Mel spent three days with us at our 25th Anniversary Annual Conference at Lake Tahoe—the last of many, many conferences Mel participated in California and throughout the U.S.

Mel wasn't "just a salesman"—although he was a master marketer—he was a wealth of knowledge about cemetery practices, trends, marketing and just about everything else. He was full of information and ideas and shared them freely.

And Mel was a straight shooter. He was never mean spirited; he was honest and direct and we loved him for that. Most of all, Mel was a great friend.

Our deepest sympathy goes out to Mel's lovely wife, Rita, his children and beautiful grandchildren. All of us will hold him in our hearts and memories.

FROM THE PRESIDENT

Hello Everyone,

I want to say a big THANK YOU! to all who were a part of our 25th Annual Meeting Celebration. Cheryl Smith and Bob Hunt did an outstanding job putting the program together. The Board of Directors help with the program and helping out was very much appreciated. To our members—I want to thank you for your participation in this great conference. Our vendors were also very supportive of the Public Cemetery Alliance. Attendees were given a lot of valuable information and several opportunities to ask questions, including sharing information about your District and how you operate.

I would also like to welcome Don Neufeld of the Fair Oaks Cemetery District as the newest member of our Board of Directors.

One of the Public Cemetery Alliance's primary goals is education. The PCA is once again sponsoring two events early

next year. Madera Cemetery District will be hosting a Safety Training day on February 5, 2020, and Fair Oaks Cemetery District is hosting an Equipment Show on March 26, 2020. These two events are held annually for our members. It is an opportunity for safety training and to see the latest equipment available.

If you would like more information on how you can host a regional training meeting let us know.

Like all of you I was overwhelmed when I heard the news of Mel Lewis passing away. He was a good friend and advocate of the Public Cemetery Alliance. He will be greatly missed.



John Anderson

Volunteering for Transparency: All Special Districts Must Have a Website

By Sloane Dell'Orto, Streamline



The California Special District Association (CSDA), which typically resists state-mandated programs that could burden special districts, sponsored a bill that requires all special districts to have a website by Jan 1, 2020. **SB 929 – The Special Districts Transparency Act** – goes into effect January 2020.

Why would an association that works so hard to protect its members from unfunded state mandates draft a bill that requires all districts to have websites? It may seem counterintuitive, but it's actually a brilliant way of protecting our districts from even more onerous state requirements!

In May 2000, the Little Hoover Commission investigated special districts and released a report titled, *Special Districts: Relics of the Past or Resources for the Future?* The report offered many recommendations, including requiring website and financial transparency:

Through this review, the Commission has come to understand that thousands of special districts provide valuable services to millions of Californians. But it also found reason to be concerned that the government closest to the people is not always visible or accountable to the people.

Recently the Commission turned their attention back to special districts, and the 2018 report offers a multitude of suggestions for additional oversight, including that all districts maintain a website with specific posting requirements to encourage transparency.

Adopting those particular guidelines (instead of those in SB 929) would have increased the amount of items required from five to fifteen.

Special district websites must also comply with WCAG 2.0 AA, which outlines the requirements for website accessibility enforced by the Americans with Disabilities Act (Section 508/ADA). This is often the most challenging part for special districts - it's a bunch of pretty technical requirements. Noncompliance isn't an option, however, because lawsuits over inaccessible websites are on the rise and can be very expensive to settle.

While the news may seem daunting, it really isn't. The bill provides assistance to special districts in a number of ways: first, the only *new* requirement is to include contact information for the district on the website; second, any district that feels they face an undue hardship (e.g. no access to broadband internet, no staff) can pass a resolution during a public meeting annually to exempt their district from the requirement.

In a nutshell: to comply with all California requirements, special districts need to:

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Scenes from Lake Tahoe





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THE IMPORTANCE OF POLICIES AND PROCEDURES, RULES AND REGULATIONS – AND KEEPING THEM UPDATED

By: Vicki Warren and Elizabeth Martyn, Esq.

Bob Dylan was right: The Times, They Are A-Changin'. District Rules, Policies and Practices must also change.

We are all busy and sometimes forget to review and update the various policies and rules our Districts need to adopt in order to meet state law requirements (or the District's operational needs) but the adoption and regular review and updating of those District policies and procedures is critical to ensure efficient District operation and to protect the District against legal consequences.

Districts must also adopt, update and enforce operating rules designed to protect District property and/or resources and to promote a safe environment for their users/patrons. That's where Bob Dylan's words ring the truest.

Times have changed. Gone are the days when Districts can simply assume that everyone will respect their surroundings, respect others or indeed behave with "common sense." Districts can no longer operate as if everyone lives by the Golden Rule. To protect yourselves, protect your District and protect the public, District leaders must closely monitor and update the rules that govern the use of the District's grounds and/or resources.

State law generally contains specific authorization for a special district to make its own rules and regulations. For example, Cemetery District Law specifically provides for the Board to adopt and enforce rules and regulations. (Health & Safety Code Section 9041(k).) Such rules and regulations may address the operation of the District as well as interaction with guests, visitors and the public and are key to providing the terms and conditions on which services are provided.

Special Districts have the right (and responsibility) to tailor their rules to suit their District's specific needs and indeed to control the behavior of their patrons. Absent a specific set of rules, even the most logical and common sense restrictions are difficult to enforce.

Using Cemetery Districts as an example, common sense might sug-



Vicki Warren



Elizabeth Martyn

gest it is unnecessary to adopt a rule prohibiting barbecuing on cemetery grounds. Unfortunately, our changing times prove otherwise and now, in order to protect the serenity, reverence and privacy of all visitors, Cemeteries are having to adopt rules specifically prohibiting barbecues and picnics.

Without such tailored rules, a Cemetery District cannot easily disperse a group that has chosen the cemetery for a large gathering that is now disturbing other patrons. (Rules: No EZUps, no coolers, supervise children). Or break up a card table full of drunk visitors, perched on top of other people's graves. (Rules: no alcohol, no trespassing on other graves, no tables). Worse, without specifically setting out prohibited/dangerous behavior, if a Cemetery patron is harmed, right or wrong, the District may ultimately pay the price.

Tailored rules might include:

- The use of cooking apparatus (including but not limited to: barbecues, camp stoves and/or fire pits) is strictly prohibited.
- Coolers of any shape, size or capacity are not allowed on Cemetery grounds regardless of content.
- Barbecues and picnics, and all items and activities asso-

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Panel wrap-up discussion to close out PCA's 25th Anniversary Conference at Lake Tahoe.



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For more information please contact:

Jennifer Peters at
(530) 934-5633 or memberservices@gsrma.org
Visit our website at www.gsrma.org



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1. **Establish and maintain** a website that is accessible to visitors with disabilities by January 2020.
2. **Post contact information** for the district on the website.
3. **Post agendas to the website** at least 72 hours in advance of each regular meeting, in a format that is searchable, indexable, and platform-independent. Put a link to the most recent agenda directly on the home page.
4. **Post a link to the State Controller's PublicPay website** (or include the district's most recent Compensation Report on the site).
5. **Post a link to the State Controller's ByTheNumbers website** (or include the district's most recent Financial Transaction Report on the site).

6. **Post a link to the district's Enterprise System Catalog** in a "prominent location" on the website (required by July 2016).

Streamline has been providing affordable, compliant websites to special districts in California since 2015. We've also created a free **tool to help local government agencies comply with SB 272**, the Enterprise System Catalog requirement (which must be done even if you don't have a site).

Regardless of what platform you use to maintain your district website, we want to help you stay on top of state mandates. This resource page is a great place to start: <https://engage.getstreamline.com/929-webinar> or you can always email us at questions@getstreamline.com for help.

Sloane Dell'Orto is the Co-Founder and Chief Operating Officer of Streamline. sloane@getstreamline.com.

PREPARING YOUR CEMETERY FOR FALL & WINTER

By: Harley Forrey

PCA member cemeteries are found in a wide range of geographic areas and deal with a variety of weather conditions. Winter brings challenges for all of us, but if your cemetery is located in higher altitudes or more northern latitudes, then winter brings special challenges. Roadway and facility maintenance, landscape care, and even daily operations must be adjusted.

The sources of these difficulties are the simple but unalterable forces of cold temperatures, strong winds, rain, snow, and ice. Preparing for winter needs to be more than protecting your plant materials. Every district must create strategies and procedures to prepare for, and deal with, the impacts of these natural elements.

It may be valuable to step back and assess your facilities and grounds, your equipment, your policies, and your history with respect to how you prepare your cemetery for winter. This fresh look can reveal opportunities to update and tailor your strategies to enhance operational efficiency and reduce costs. Consider the following issues in your assessment and your planning:

MAINTENANCE PROCEDURES

Fall is the time to take advantage of reduced routine lawn and garden maintenance requirements to prepare your facilities, infrastructure and equipment for winter. During this period, you can focus on the following activities:

- Drain and clean irrigation lines and hoses; if necessary winterize fountains and unheated toilets with antifreeze additives or turn off and drain all supply lines; insulate all active and exposed water supply lines and faucets that are subject to freezing under extreme conditions;

winterize and perform routine maintenance on all trucks, backhoes and other motorized equipment.

- Clean the underside and moving parts of all lawn mowing equipment. Fertilizers, herbicides and pesticides are very corrosive to metal and paint. Clean, sharpen and oil all blades and tools to enhance their life and improve their performance.
- Seal cracks in sidewalks and walls, and patch pot holes in roads; clean all drainage inlets.
- Remove leaves and clean gutters.

PROTECTING LAWN & LANDSCAPE

To prepare your lawns and landscape to survive the winter and recover quickly in the spring you should:

- Raise the cutting height of your mowers for late fall grass cuttings.
- Weed and feed key lawn areas and overseed lawn areas with weak turf.
- Water all newly planted trees, shrubs and ground covers into the fall and winter for as long as the ground is frost free.
- Trim weak or damaged tree limbs.
- Thoroughly cut and remove all seasonal garden debris.

A good time to plant new trees in your cemetery is in the fall when they are dormant. It is very important to adequately water these fall plantings.

Conditions for plant materials and turf will vary dramatically, even within your own site, with respect to soils, rainfall and snowfall, ground moisture, sun and shade, and wind exposure.

OPERATIONAL STRATEGIES

The effectiveness of winter preparation is enhanced by having a supporting set of policies to define and manage these procedures. These might include:

- Create a check list of all winterizing requirements and procedures;
- Train and retrain the staff, especially new hires.
- Have a record-keeping system to document and monitor the maintenance and training procedures.
- Establish priority service contracts and procedures with outside providers for immediate turn around on emergency tree trimming and cleanup services if needed.

This planning and these procedures will help your cemetery weather the weather and be ready for Spring.



Harley Forrey is the Manager of the Newcastle, Rocklin, Gold Hill Cemetery District. hforrey@nrgcemetery.com.

(Continued from page 1)

warnings should include a place for the employee to sign and date to acknowledge receipt and give the employee an opportunity to respond.

What Should Documentation Include?

When documenting issues for employment matters, the key is to provide as much information as necessary so the author can recall the event at a later date, and so a person completely unrelated to the entity – like your lawyer – can understand what was going on at the time. Although typed documents are preferred, handwritten documents are acceptable so long as they are clearly legible. Always date the document and, if the situation warrants it, include the time. Identify

any witnesses, and if possible, secure written statements from those witnesses as well.

Steer clear of personal attacks; stick to the facts. Include quotes from the participants, if appropriate, but avoid commentary like “Eddie Employee is a jerk.” A better description would be to say, “two co-workers, Carrie Coworker and Carl Colleague, complained that Eddie Employee called them ‘old timers.’”

When You Should Document?

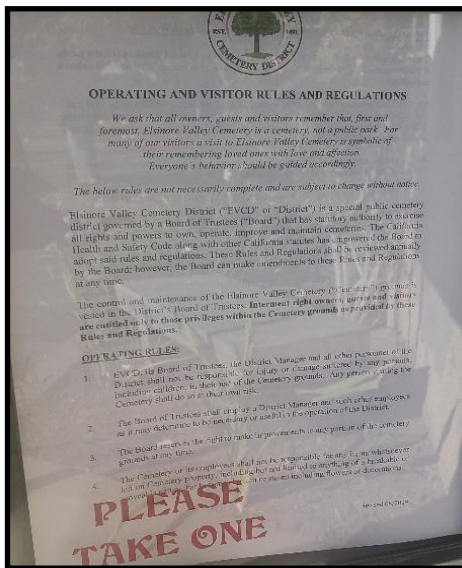
The most effective documentation is made at or close in time to the events in question. This minimizes memory gaps and provides the most accurate account. Additionally, contemporaneous documentation bolsters the report-writer’s credibility.

Conclusion

Protecting your organization from liability begins on day one. Employers with the strongest defenses have consistent, detailed, and contemporaneous documents that allow an unrelated third party to understand the issue at hand. If you have questions about what, when, or how to document an employee situation, contact your employment lawyer immediately.

Colleen Howard is a Partner with Porter Scott, attorneys. choward@porterscott.com

Dylan Dewit, currently awaiting his bar results, hopes to become an Associate with Porter Scott. ddewit@porterscott.com.



Signage posted at Elsinore Valley Cemetery



Elsinore Valley Cemetery

(Continued from page 5)

ciated with barbecues and picnics, are not allowed on cemetery grounds.

The duty of all District leaders is to protect the District, including protecting the District from the public. Your rules might contain language such as:

- The control and maintenance of the Elsinore Valley Cemetery grounds is vested in the District’s Board of Trustees. **Interment right owners, guests and visitors are entitled only to those privileges within the Cemetery grounds as provided by these Rules and Regulations.**
- EVCD, its Board of Trustees, the District Manager and all other personnel of the District

shall not be responsible for injury or damage suffered by any persons, including children, in their use of the Cemetery grounds. Any person visiting the Cemetery shall do so at their own risk.

Other specific rules include posted hours of operation and reservation/use of facilities for park and community services districts.

Finally, the policies, rules and regulations should be clear and posted or otherwise available to those governed by them. Once adopted, a public agency should follow its policies. Real or imagined, an allegation that a policy was not followed can cause ill will at least and often is cited as the basis for litigation.

Adapting to our changing times by adopting tailored rules is essential to the protection and preservation of each Special District. Look for upcoming articles about policies

required by state law and good practice.

Vicki Warren is the District Manager of the Elsinore Valley Cemetery District. District.manager@evcd.org.

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Ask Bob . . . Question: What's this we hear about all employees now being required to have sexual harassment training?

By Bob Hunt



Just to be clear—it's Sexual Harassment Prevention Training—focus on prevention.

First, the bad news—in case you aren't already aware, California law now requires that ALL non-supervisory employees receive one (1) hour of sexual harassment prevention training every two years. Current employees were required to have the training by January 1, 2020.

Now, the good news—the Governor signed SB-778 on August 30th extending the time to comply until January 1, 2021.

Training is required every two years. If your employees have already received the training, they will need it again every two years. All new employees must receive the training within six (6) months of hire, and again every two years thereafter. Temporary or seasonal or other employees hired to work for less than six (6) months must receive the training within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. However, if you use temps from an agency, the agency is responsible for providing the training—not your district. Nonetheless, you should always ensure that the agency has actually provided the required training.

Nothing has changed for trustees, managers or supervisors—they have been and still are required to have two (2) hours of sexual harassment prevention training every two (2) years.

Training isn't the only requirement—every employer must have a written sexual harassment policy, it must contain certain elements, and it must be given to and discussed with every employee.

Now retired from the firm he founded over 20 years ago, as PCA General Counsel Bob continues to field questions from PCA members. He may be contacted at 916-801-4401 or hunt@pacbell.net.

This article is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of any information contained in this article does not create an attorney-client relationship between Robert W. Hunt and the reader.

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Area Meetings

And, remember, if your district is planning to hold an area meeting, please let us know. PCA wants to help! Let President John Anderson or one of the PCA Board members know if you're planning an area meeting, and PCA will be happy to assist you.



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