

Bond Case Briefs

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Sabey v. City of Pomona

**Court of Appeal, Second District, Division 2, California - April 16, 2013 - Cal.Rptr.3d - 3
Cal. Daily Op. Serv. 3799**

Court of appeal holds that when a partner in a law firm represents a city at a personnel arbitration, due process prohibits city from being advised on its review of the matter by a different partner from the same firm.

Police officer petitioned for writ of mandate challenging his termination.

The court of appeal held that when a partner in a law firm represents a city at a personnel arbitration, due process prohibits city from being advised on its review of the matter by a different partner from the same firm.

When a partner in a law firm represents a department within a city at an advisory arbitration regarding a personnel matter, and when the city's decisionmaking body later reviews that arbitrator's award for confirmation or rejection, the principles of due process prohibit the decision maker from being advised on the matter by a different partner from the same law firm, since there is a clear appearance of unfairness and bias rendering the risk of actual bias too high to be constitutionally tolerable.

The attorney that advised the city council owed fiduciary duties of loyalty and care both to the firm and to the attorney that represented the department at the arbitration, and the attorney that advised the city council could have couched his advice in many different ways because the city council was vested with discretion about whether to accept the arbitration decision.

An attorney cannot act as both an advocate for an administrative agency and then as an advisor to the decision maker who reviews the result that the advocate achieved, but performance of both roles by government lawyers from the same law office is appropriate if there are assurances that the adviser for the decision maker is screened from any inappropriate contact with the advocate.