



**SANTA CLARA COUNTY BAR ASSOCIATION
JUDICIAL ELECTION CAMPAIGN CODE OF ETHICS**

And

FAIR ELECTION PRACTICES COMMISSION PROCEDURES

I. Statement of Purpose

A. Judicial Election Campaign Code of Ethics

The purpose of the Judicial Election Campaign Code of Ethics is to promote the discussion of issues and qualifications in fair and open public debate and to encourage candidates to conduct campaigns for judicial office mindful of the honor and dignity of the Judiciary and the legal profession. As a participant in the election of judges through the endorsement of candidates for judicial office, the Santa Clara County Bar Association recognizes that the campaign process lies at the heart of our democracy. The Santa Clara County Bar Association maintains that campaign conduct reflects a candidate's integrity and values and only those candidates willing to abide by this Code of Ethics merit consideration for endorsement by the Santa Clara County Bar Association and election by the people of Santa Clara County.

B. Fair Judicial Election Practices Commission

The purpose of the Santa Clara County Fair Judicial Election Practices Commission is to evaluate the campaign practices and conduct of candidates for judicial office and their supporters so that each campaign will be conducted in a dignified manner. While recognizing a candidate's right to free expression, the Commission may be expected to speak out when the use of that right violates the Judicial Election Campaign Code of Ethics promulgated by the Santa Clara County Bar Association. The Commission shall seek to meet this goal by receiving complaints, evaluating them and taking appropriate action. The Commission is impartial, and it has no power to impose financial or legal sanctions.

The Commission acts as a forum to resolve disputes between candidates over the interpretation of the Standards of Conduct in this Code. It is prepared to examine the truthfulness and fairness of a candidate's statements which are alleged to be false or misleading.

II. Standards of Conduct for Judicial Candidates

Recognizing that Canons of the Code of Judicial Conduct relating to judicial elections are binding on both judges and candidates for judicial office, and that the dignity and integrity of judicial office requires that candidates for that office conduct their campaigns on a level which is commensurate with those requisite characteristics of conduct in a campaign for judicial office, the following are set forth as the minimum standard of such campaign conduct. Candidates should be primarily concerned with overall ability to perform judicial tasks in an impartial, competent, and effective fashion.

- A. Candidates and their supporters shall not to engage in, or permit any statement, campaign material or advertisement which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate, including himself or herself.
- B. A statement of a candidate's political, social, or legal views shall not be made under circumstances or in a manner that could reasonably be constructed as a promise, or as an indication of how the candidate would decide specific cases as a judge.
- C. Statements concerning the change or modification of court structure, calendar or programs, which require the concurrence of fellow judges or legislative enactments shall be qualified as such and not imply that the candidate alone can accomplish those goals.
- D. Candidates and their supporters shall not to make any statements about individual cases or matters involving conduct by the opposing candidate, whether a judge or a lawyer, which has no bearing upon one's ability to perform in the judicial position being sought. Candidates and their supporters shall not to make any statements concerning personal character or traits of opposing candidates which have no bearing upon one's ability to perform the judicial position being sought.
- E. Candidates and their supporters shall not to engage in, or permit, defamatory attacks upon the character of any opponent.
- F. Candidates and their supporters shall not to engage in, or permit any unwarranted invasions of personal privacy.
- G. The candidate shall immediately and publicly repudiate support or independent expenditures deriving from independent third parties, such as political action committees, organizations or individuals acting on their own, which resorts, on behalf of the candidate or in opposition to opponents of the candidate, to methods and tactics prohibited by this Code. In addition, the candidate has an affirmative obligation upon learning of such methods and tactics to request that the independent third party cease such conduct, including but not limited to requesting that any content in printed or publicly accessible electronically stored data, such as webpages and social media pages be revised or removed.

- H. The candidate shall accept responsibility to take firm action against any subordinate who violates any provision of this Code or the laws governing elections.
- I. The candidate shall not use or permit any appeal to negative prejudice based upon race, sex, religion, ethnicity, sexual orientation, physical health status, or age.
- J. Candidates shall strictly comply with all relevant campaign laws.
- K. All campaign materials which include excerpts from newspaper articles or editorials shall not be used in such a context as to imply the newspaper's endorsement unless such excerpt is from an actual newspaper editorial making such an endorsement
- L. No candidate shall include the judicial evaluation poll or any excerpts therefrom in any campaign material, advertisement or presentation.
- M. Should a hearing be conducted by the Commission, the candidates shall not discuss the conduct of the proceedings and shall keep the determinations of the Commission strictly confidential, unless the information is released by the Commission.

III. Campaign and Advertising Materials

A. Definitions

1. "Campaign materials"

"Campaign materials" includes flyers, brochures, position papers, literature which reproduces any newspaper or other articles or editorials, and letters whose contents is duplicated to 25 or more recipients. It also includes electronic mail or messages to 25 or more recipients, publicly accessible electronically stored data/content such as web pages, social media sites (such as Facebook, LinkedIn and Twitter), bulletin boards, or "fax-back" devices. It includes all material of this kind either produced by the candidate, the candidate's committee, or other parties acting with the knowledge of the candidate.

"Campaign materials" do not include thank you letters or invitations to events (unless the content of the invitation is more substantive than normal place, date, time); the responses to surveys submitted by organizations to candidates, unless such survey is used as a campaign document; buttons; bumper stickers; or signs (unless they communicate more than the candidate's name and the office for which he or she is running).

2. Advertising

"Advertising materials" consists of all copy, illustrations, photographs, etc., which the candidate intends to publish in any newspaper, magazine, or advertising mailer or broadcast on radio or television.

An "advertisement" consists of the finished version of assembled advertising materials which will actually appear in the print or , publicly accessible electronically stored data/content such as web pages, social media sites (such as Facebook, LinkedIn and Twitter), bulletin boards, or "fax-back" devices.

3. Unauthorized materials

Unauthorized material produced by individuals other than the candidate or the candidate's campaign is "campaign material" 24 hours after coming to the attention of the campaign and must be exchanged as in Section B-below, and, if it is in violation of Section II of this Code, must be repudiated by the candidate.

B. Exchange of Campaign Materials

1. Candidates may provide their opponents with an eMail address and agree to the means of service, including eMail, to satisfy this Section. In the absence of such an agreement, service shall be made as set forth below to the campaign's address on file with the County Registrar of Voters.
2. A copy of all campaign materials distributed by or with the consent of the candidate will be mailed to opposing candidate(s), by first class certified mail or personally delivered, within 24 hours of the first distribution of the material. If the distribution occurs within 7 days of the election, personal delivery is required. "Distribution" includes physical delivery to the US Postal Service or other distribution service regardless of the actual date the material is received by the intended recipients.
3. The wording and content of any advertisement which names or clearly makes reference to another candidate or candidates must be submitted to the opposing candidate(s), three (3) business days before the publication or broadcast date.

The purpose of this provision is not to discourage the use of comparative ads or the legitimate reference to the positions or qualifications of other candidates, but rather minimize the possibility of an unfair, last-minute attack with no opportunity for response.

4. In the case of publicly accessible electronically stored data/content such as web pages, social media sites (such as Facebook, LinkedIn and Twitter), or bulletin boards, the candidates must exchange the Internet address or other information necessary to allow the opponent access to the information available to the public. This exchange must be within 24

hours of the data becoming publicly accessible and must be provided by fax or personal delivery.

IV. Reporting on Compliance with Code

The Santa Clara County Bar Association may publicly report or comment on any violation of this Code and the manner in which this Code is implemented and utilized.

V. Santa Clara County Bar Association Fair Election Practices Commission

A. Composition and Appointment of the Commission

1. The Commission shall consist of the President of the Santa Clara County Bar Association, the Judge who will be Presiding Judge of the Superior Court at the time of the election and 10 members and up to 3 alternate members, appointed by the President with approval of the Board of Trustees, including judges, lawyers, and community representatives. The Chief Executive Officer of the Bar Association shall serve as Clerk of the Commission.
2. The President and the Presiding Judge shall serve as co-chairs of the Commission. In the event the President cannot serve as co-chair, the immediate past president shall serve as co-chair and in the event the immediate past president cannot serve, the president-elect shall serve as co-chair. In the event the Presiding Judge cannot serve as co-chair, the immediate past presiding judge shall serve as co-chair and in the event the immediate past presiding judge cannot serve, the assistant presiding judge shall serve as co-chair. In the event, none of these can serve; the Board of Trustees will appoint co-chairs from the Board of Trustees and from the Superior Court's Executive Committee.
3. Commissioners are appointed in their personal, not representative, capacity.
4. The President shall appoint the Commissioners at the earliest possible time. The Commission shall be convened within 30 days of appointment for an organizational meeting. The Commission shall consider its educational role for the coming election in accordance with Section H below.
5. The President shall have the power to appoint the approved alternates to achieve the required quorum of the Commission and to fill any vacancies that occur during the term of the Commission.

B. Neutrality

1. In accepting membership, Commissioners agree not to endorse or publicly support any candidate for District Attorney or Judge; not to attend any events on behalf of any District Attorney or judicial candidate;

and not to make any financial contribution to any campaign for that either of those elected offices. Commissioners shall avoid the appearance of partiality.

2. Commissioners, prior to deliberations, shall have the duty to disclose any facts that could give rise to an inference of partiality. The Commission shall determine if recusal is appropriate.

C. Confidentiality

1. All meetings of the Commission are confidential. No statements may be made by any member of the Commission as to the Commission's activities unless a quorum of the Commission has approved the specific public statement.
2. Candidates for District Attorney or judges and their supporters or other attorneys who may be involved in the Commission hearing are encouraged not to make any public comment about a matter referred or proposed to be referred to the Commission, pending action by the Commission. The Commission may consider any such disclosure in determining its course of action.

D. Consideration of Complaints

1. The Commission shall consider complaints referred to it by a candidate. A complaint by a candidate against another candidate shall be in writing and shall set forth the details of the grievance. Complaints shall be filed with the Chief Executive Officer of the SCCBA.
2. In addition to complaints referred by the candidates, individual Commissioners can refer potential violations to the attention of the entire Commission, but only if the Commissioner is convinced that the failure of the Commission to address the matter could undermine the public perception of the honor and dignity of the judiciary and the legal profession.
3. Complaints about material issued by an Independent Committee, as defined by Government Code [insert correct code section] , can also be submitted in accordance with Subsections 1 and 2 above.
4. If a lawsuit is filed by one candidate against another, the Commission may still consider a complaint filed with it by either candidate. The Commission may also consider the circumstances and timeliness of the filing of a lawsuit in deciding whether there has been a violation of the Standards of Conduct.

E. Procedure for Review of Complaints made to the Commission

1. Upon receipt of the complaint from a candidate or a Commissioner, the Chief Executive Officer shall contact the co-chairs of the Commission and schedule a meeting of the full Commission. The Chief Executive Officer shall notify the candidates of the date and time of the Commission meeting.
2. The co-chairs should hold a pre-hearing telephone conference call with the candidates, if time permits, to explain the procedures and to identify any outstanding procedural issues.
3. The candidates will be invited to appear at the meeting of the Commission at which the complaint is reviewed. Only the candidates may appear at the Commission meeting.
4. The Commission shall first meet privately. Commissioners shall review all written material. The questions which the Commissioners wish to have answered will be provided to the co-chairs.
5. If the complaint is from one candidate regarding another, the candidates will jointly be invited into the meeting. If the complaint concerns an attorney or attorneys not associated directly with a candidate's campaign, the attorney(s) will be invited into the meeting. The candidates or attorney(s) will be given an opportunity to make a brief statement on the issue(s) to the Commission, to present any additional evidence and to answer the questions presented by the co-chairs.
6. The Commission deliberations will be private. Once a decision is reached by the Commission, a Chair of the Commission shall notify the candidates or attorneys of the decision and the intended action of the Commission.
7. The co-chairs can modify these procedures as needed to best fulfill the goal of the Commission.

F. Quorum

The Commission may act as long as at least 6 members are present. A quorum shall be the majority of the members present and may include alternate members as selected by the President.

G. Action by the Commission

1. Where the Commission finds a violation of the Guidelines, the Commission shall determine an appropriate remedy, including, but not limited to the following:
 - a. a public statement by the Commission;
 - b. a public retraction of the statement by the offending candidate or attorney;

- c. an agreed upon resolution by the candidates or attorney(s) involved; and/or in the event that the group addressed by the offending candidate was relatively small, then a reference back to that particular group itself may be deemed sufficient.
- 2. Any statement on behalf of the Commission shall be made by the co-chairs. There shall be no comment made on the deliberations themselves.
- 3. At the end of the election period, the Commission shall provide the Bar Association with a follow up report including any recommended changes to the Code of Ethics or Commission procedures.

H. Educational Role of the Commission

The Commission shall provide any educational programs and/or materials with regard to this Code and Commission procedures for candidates as it deems appropriate.

I. Procedure for filing of the Pledge

In order to participate, a candidate and the candidate’s campaign manager must both carefully read the Santa Clara County Bar Association Judicial Election Campaign Code of Ethics or District Attorney Election Campaign Code of Ethics, whichever is applicable, and the Fair Election Practices Commission Procedures.

A copy of the Pledge below must be signed both by the Candidate and his or her Campaign Manager and returned to the Chief Executive Officer of the SCCBA at the Offices of the Santa Clara Bar Association by email, fax, mail or personal delivery.

CANDIDATE'S PLEDGE

I am committed to a fair and open public debate and will conduct my campaign for district attorney or judicial office in a manner that maintains the honor and dignity of the Judiciary and the legal profession. I have read and agree to abide by all of the provisions of the Santa Clara County Bar Association's Judicial Election Campaign Code of Ethics or the District Attorney Election Campaign Code of Ethics, whichever is applicable, and the determinations of the Fair Election Practices Commission.

Candidate

Date

Campaign Manager

Date

Adopted October 20, 2005(replaces all earlier versions)
Amended January 26, 2012