



## FACT SHEET ON PROFESSIONAL EXPENSE COMMITTEES

The City's Election Campaign Control Ordinance (ECCO) includes laws allowing candidates and elected officeholders to raise professional expense funds ("legal defense funds") over and above regular campaign contributions. This fact sheet is designed to help such individuals and their treasurers gain a better understanding of these laws, but should not be considered a substitute for the actual language contained in San Diego Municipal Code sections 27.2965 through 27.2969.

### General Rules

- ❖ Elected city officials and candidates for elective City office may establish and maintain professional expense committees for the purpose of defraying professional fees and costs. Such committees may solicit and accept contributions over and above those obtained by the candidate for campaign purposes.
- ❖ ECCO defines "professional fees and costs" to mean any expenses related to the retention of an attorney, treasurer, fundraiser, or any other person retained to perform services reasonably related to the purpose for which a professional expense committee is created.
- ❖ The funds raised by a professional expense committee may only be used to defray professional fees and costs associated with a campaign audit conducted by the ethics commission, the Fair Political Practices Commission, or the California Franchise Tax Board, or to defray professional fees and costs incurred in connection with the defense of one or more civil, criminal, or administrative proceedings arising out of the conduct of a campaign, the electoral process, or the performance of a city official's governmental duties.
- ❖ Professional expense funds may not be used to pay any portion of a fine, sanction, or penalty. In addition, such funds may not be transferred to any other committee, including the candidate's campaign committee. Moreover, any candidate or official held liable for sexual assault, sexual abuse, or sexual harassment in a civil, criminal, or administrative proceeding must reimburse the committee for all legal costs and expenses paid by the committee with respect to such violations.

### Establishing a Professional Expense Committee

- ❖ A professional expense committee must be maintained separate and distinct from the candidate's controlled committee that was created to seek elective office.
- ❖ Before accepting professional expense fund contributions, a candidate must:
  - ✓ create a professional expense committee by filing a statement of organization (Form 410) with the Secretary of State and the City Clerk; and
  - ✓ open a professional expense committee checking account at a bank or other financial institution providing checking account services located in California. This account must be separate from any other account held by the candidate.

- ❖ A candidate may create only one professional expense committee, even if he or she has multiple legal proceedings. As described below, the committee’s Form 410 will be amended to reflect the various legal proceedings that relate to the committee.
- ❖ The words “Legal Defense Fund” and the candidate’s name must be included in the name of the professional expense committee.
- ❖ The statement of organization must describe the specific audit or civil, criminal, or administrative proceeding for which the committee is being established.
  - ✓ If the candidate or elected official wishes to solicit and accept contributions for additional audits or proceedings, the statement of organization must be amended within ten calendar days to describe the new audit or proceeding.
  - ✓ If a committee has multiple audits or proceedings, and one of them is concluded, the statement of organization must be amended within ten calendar days to reflect the conclusion of that audit or proceeding.

### **Contribution Limits**

- ❖ Individuals may make contributions to a professional expense committee in amounts up to \$750 per calendar year for each audit or legal proceeding.
- ❖ The \$750 limit applies to each proceeding. In other words, an individual may contribute up to \$1,500 per calendar year to a candidate who is a defendant in two separate and distinct legal actions. When accepting contributions for multiple legal proceedings, the committee must maintain separate ledgers for each proceeding to ensure that contribution limits are not exceeded.
- ❖ The \$750 limit is not aggregated with election campaign contribution limits. An individual may make a contribution to support a candidate’s election, and also give that candidate \$750 for legal defense purposes.
- ❖ Only individuals may make contributions to professional expense committees. Corporate entities, partnerships, non-profit organizations, etc. may not contribute any funds to a professional expense committee. Note that a contribution from a sole proprietorship is considered a contribution from the individual who owns the sole proprietorship.

### **Recordkeeping and Filing Requirements**

- ❖ The professional expense committee must keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in its statement of organization.
- ❖ The committee must maintain records of each contribution and expenditure in the same manner as that required for regular campaign contributions and expenditures. It must maintain documentation substantiating the basis for each expenditure made with professional expense funds.
- ❖ The professional expense committee must maintain all required records for at least four years following the filing date of the campaign statement to which they relate.

- ❖ If the candidate is seeking office in the next City election, his or her professional expense committee must disclose its activities on campaign statements filed with the City Clerk on the same filing schedule as his or her campaign committee.
- ❖ If the candidate is an officeholder who is not participating in the next City election, his or her professional expense committee must disclose its activities on campaign statements filed with the City Clerk on the following schedule:
  - (1) No later than April 30 for the period of January 1 through March 31.
  - (2) No later than July 31 for the period of April 1 through June 30.
  - (3) No later than October 31 for the period of July 1 through September 30.
  - (4) No later than January 31 for the period of October 1 through December 31.
- ❖ Except for the Form 410, all campaign statements must be filed using the City Clerk's electronic filing system.
- ❖ As indicated above, the committee must file an original Form 410 with the Secretary of State and a copy of that form with the City Clerk. The City Clerk copy may be in paper format. If the committee is using third party vendor software to access the City Clerk's electronic filing system it may instead choose to file the Form 410 electronically.
- ❖ There is no requirement to also file a paper copy of any campaign statement filed with the City Clerk's electronic filing system.

### **Conclusion of Audit or Proceeding**

- ❖ When an audit or legal proceeding has concluded, and there are no other audits or legal proceedings pending, the professional expense committee must follow the termination provisions discussed in the following section.
- ❖ When an audit or legal proceeding has concluded and the professional expense committee has other audits or legal proceedings pending, the committee may use any remaining funds collected for the concluded matter for other committee expenses so long as the following conditions are met:
  - ✓ All professional fees and costs incurred in connection with the concluded audit or proceeding have been paid;
  - ✓ The expenses are for professional fees and costs incurred in connection with another audit or proceeding that has been identified in the professional expense committee's statement of organization; and,
  - ✓ the use of the funds, when aggregated with all other contributions from the same contributor for the same audit or proceeding, will not exceed the \$750 per year contribution limit for that audit or proceeding. Candidates should maintain detailed records that reflect the attribution of leftover funds to specific contributors to demonstrate that they have not exceeded contribution limits.

## **Termination of a Professional Expense Committee**

- ❖ Within six months after the conclusion of all audits and proceedings for which the professional expense committee was established, the candidate must:
  - ✓ refund any remaining funds to contributors on a “last in, first out” or “first in, first out” accounting basis;
  - ✓ close the professional expense checking account; and,
  - ✓ terminate the professional expense committee in accordance with state law (filing an original Form 410 termination statement with the Secretary of State and a copy with the City Clerk, and filing a Form 460 termination statement with the City Clerk).
- ❖ The ethics commission’s executive director may for good cause extend the termination date. An application to extend the termination date must be in writing and include copies of supporting documents, including copies of any relevant billing statements.
- ❖ Leftover professional expense funds may not be transferred to another committee.

## **Additional Considerations**

- ❖ A professional expense committee may solicit and accept contributions to pay for professional fees and expenses that were incurred prior to the creation of the committee so long as no more than six months have elapsed since the conclusion of the audit or proceeding.
- ❖ A candidate may make a personal loan to his or her professional expense committee (subject to personal loan limits), and the loan may be reimbursed with contributions to the committee.
- ❖ All funds raised by the professional expense committee must be deposited into, and expended from, the professional expense committee’s checking account.
- ❖ Although ECCO allows campaign contributions to be accepted only during the period that begins 12 months before a primary election and ends 180 days after withdrawal, defeat, or election to office, these time limitations do not apply to the acceptance of contributions lawfully made to a professional expense committee.
- ❖ An individual making a contribution to a professional expense committee must accompany that contribution with a written disclosure stating whether or not the individual has a matter pending before the board, commission, department, or agency of which the candidate is a member or employee. The professional expense committee must attach to its filings a copy of all disclosures that identify a pending matter. For additional information regarding the disclosure of pending matters, please refer to the ethics commission’s fact sheet on professional expense committees – disclosure of pending matters.
- ❖ A candidate may establish a professional expense committee only if the candidate is a defendant or a real party in interest defending his or her rights or interests in a legal proceeding or audit. Candidates may not use a professional expense committee to raise funds to initiate a legal proceeding (although campaign contributions for an election may, in some instances, be used for this purpose).

- ❖ Candidates are not required to establish a professional expense committee in order to accept contributions to defray the costs associated with an audit or the defense of a civil, criminal, or administrative proceeding. In other words, a candidate may also use lawfully accepted campaign contributions for legal defense purposes.

For additional information, please contact the ethics commission at (619) 533-3476.

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