



FACT SHEET ON LEGAL DEFENSE FUNDS

Amendments to the City's Election Campaign Control Ordinance [ECCO], effective on January 11, 2006, include several changes to the laws pertaining to legal defense funds. This updated fact sheet is designed to help candidates and committees 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.

- ❖ Every elected City Official and every candidate for elective City office may establish and maintain a legal defense fund.
- ❖ A legal defense fund may only be used to defray professional fees and costs associated with an audit conducted by the Ethics Commission or the Fair Political Practices Commission, 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.
- ❖ A legal defense fund must be maintained through the controlled committee organized to seek the office held or sought that is the subject of the audit or legal proceeding. For example, a City Councilmember seeking re-election may use his or her re-election committee to maintain a legal defense fund for an audit of prior campaign activities related to seeking the Council office. This also means that elected officials serving a second term should keep their controlled committees open following an election.
- ❖ 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 legal defense fund is created.
- ❖ A legal defense fund may not be used to pay any portion of a fine, sanction, or penalty.
- ❖ A legal defense fund may be established only if a City Official or candidate is a defendant or a real party in interest defending his or her rights or interests in a legal proceeding or audit. City Officials and candidates may not use a legal defense fund to pay costs associated with initiating a legal proceeding (although campaign contributions for an election may, in some instances, be used for this purpose).
- ❖ City Officials and candidates must establish a legal defense fund in order to accept contributions to defray the costs associated with audits or the defense of a civil, criminal, or administrative proceeding. A candidate may not solicit or accept regular campaign contributions for legal defense purposes.
- ❖ Before soliciting or accepting contributions for a legal defense fund, a City Official or candidate must file a "Statement of Purpose" with the City Clerk identifying the specific audit or legal proceeding. A separate Statement of Purpose must be filed for each action.
- ❖ Individuals may make contributions to a legal defense fund in amounts of up to \$250 per calendar year for each audit or legal proceeding. In other words, an individual may contribute up to \$500 per calendar year to a City Official who is a defendant in two separate and distinct legal actions. This limit is not aggregated with election campaign contribution limits.

- ❖ Although ECCO allows 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, this time limitation does not apply to the acceptance of contributions specifically designated for a legal defense fund.
- ❖ A City Official or candidate may not accept a contribution for a legal defense fund unless it is accompanied by a written designation from the contributor indicating that the contribution is for the legal defense fund. Programs that facilitate on-line credit card contributions must include a mechanism for the contributor to indicate that the contribution is for a legal defense fund.
- ❖ Contributors who have matters pending before a City Official or candidate must accompany each contribution to the City Official's or candidate's legal defense fund with a written disclosure detailing the particulars of the pending matter. When reporting legal defense fund activity, the City Official or candidate must attach a copy of each disclosure form. For additional information regarding the disclosure of pending matters, please refer to the Fact Sheet on Legal Defense Funds – Disclosure of Pending Matters, which is available on the Ethics Commission's website.
- ❖ State law does not permit City Officials or candidates to open a separate committee or separate bank account for legal defense funds. Therefore, all contributions to a legal defense fund must be deposited in the controlled committee's bank account, and all expenditures from a legal defense fund must be made from the controlled committee's bank account.
- ❖ Controlled committees that have established a legal defense fund must maintain a separate ledger for each audit or legal action, detailing the contributions and expenditures for each proceeding.
- ❖ Candidates and committees may solicit and accept legal defense fund contributions to pay for expenses that were incurred prior to the creation of the legal defense fund.
- ❖ A City Official or candidate may make a personal loan to a legal defense fund (subject to personal loan limits), and the loan may be reimbursed with contributions to the legal defense fund. The loan and reimbursements should be reflected on the separate ledger maintained for the legal defense fund.
- ❖ The controlled committee of any City Official or candidate who is a candidate in an upcoming City election must disclose any legal defense fund activity on campaign statements filed in accordance with the deadlines set forth in state and local law.
- ❖ The controlled committee of any City Official or candidate who is not a candidate in an upcoming City election must disclose any legal defense fund activity on campaign statements filed with the City Clerk no later than thirty days after the end of each calendar quarter.
- ❖ When controlled committees with legal defense funds file their campaign statements, they must use separate forms (including a cover page identifying the legal defense fund, summary pages, and disclosure schedules) for each audit or legal proceeding.
- ❖ Within six months after the conclusion of all proceedings for which a legal defense fund was established, the City Official or candidate must file a Legal Defense Fund Termination statement, and must dispose of any remaining funds by paying any outstanding costs, repaying contributors on a "last in, first out" or "first in, first out" accounting basis, or submitting the funds to the City Clerk's office in the form of a check made payable to the City Treasurer.
- ❖ Legal defense funds may not be transferred to any other committee.

For additional information, please contact the Ethics Commission at (619) 533-3476.