

JUDICIAL COUNCIL OFFICIAL POLICY AND PROCEDURE FOR THE 2017 AS ELECTIONS

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BACKGROUND AND PURPOSE

The purpose of this document is to establish and discuss the policy, parameters and procedures adhered to by the Judicial Council for the 2017 Associated Student (AS) election cycle. Prior to the formation of the Council on or about March 8th, 2017 few, if any, documents existed at San Francisco State University pertaining to the governance of this body. Justices and AS Board of Directors (BOD) have voiced concerns with how the council will adjudicate the grievance process.

POLICY STATEMENT

This document provides some necessary framework for Justices to properly litigate grievances; provide recommendations to the BOD for action; and creates an avenue for the BOD to have insight about, and subsequently faith in, the judicial process.

APPLICABILITY TO THE POLICY

All members of the Board of Directors and Justices should be familiar with this policy and procedure.

DEFINITIONS

As with any process, a general understanding of terms relevant to the context in which they are used is of paramount importance. While not necessarily unique to the Judicial Council, the following definitions are of the utmost importance and will be utilized by Justices in determining all aspects¹ of grievance.

Note: This list is not all inclusive but should serve to provide a general reference for specific terms as discussed within this document

Term	Definition / Role
Positional Terms	
Chief Justice	A student-at-large appointed by the AS President and approved by the BOD within the first thirty (30) days of the new term is to chair and oversee the council. Is not seeking office in AS Elections, an acting agent for a candidate or slate, nor endorses any candidate or slate in the AS Election.
Justice	A student-at-large who was recommended by the Chief Justice to the Board of Directors (BOD) and then approved by the BOD. Justices are not seeking office, acting agents for candidates or slate, nor endorses any candidate or slate in the AS Election.
Grievance / Procedural Terms	
Case Log	The judicial council shall maintain a log of all activities relevant to a particular grievance. A sample Case Log has been included with this document for reference. Minimum entries for the log shall include the date, subject, identification of the Justice entering the data, and any relevant notes. The following activities shall be logged. <ul style="list-style-type: none"> ● Receipt of Grievance by the Council ● Date(s) of Discovery ● Official Correspondence ● Upon Scheduling a Hearing ● When a Decision by the Council has been made ● Final disposition by Council or BOD
Claimant(s)	The entity who has brought to grievance to bear. This role is typically that person(s) identified in the “Witnesses” section of the grievance form. When

¹ “All aspects,” as it pertains in this context, begins with the receipt of a grievance by the Judiciary. It is important to note that this is separate from, and not intended to conflict, with any policies and procedures adhered to by the Elections Commissioner. The Elections Commissioner, in his or her role and for the purposes of this document,



	referring to the party that has initiated these processes, the Judicial Council shall refer to them as the Claimant(s). ²
Code of Conduct	Because there are a variety of codes that encompass how students, employees, and faculty should behave while on (and sometimes off) campus, the Judicial Council will adjudicate based on that code of conduct that is referenced in the Elections Packet. For clarity, when referring to a specific code of conduct, whether during oral argument, commentary, and or written communication, Justices will identify which code is being referenced and will provide line item reference to that specific regulation. ³
Decision	The Judiciary may issue decisions on a number of topics to include: <ul style="list-style-type: none"> ● Validity of a Grievance: <ul style="list-style-type: none"> ○ Ripe, Moot, and/or Judiciability of a Grievance ● The Outcome of a Hearing as a submission to the BOD for final action. ● Any other instance where/when the official statement of the Council pertaining to a specific question is concerned.
Defendant(s)	Generally, those accused of violating a section of the Elections Packet and whose identity is brought to bear upon the council as allegedly violating some aspect pertinent/relevant to the Council’s authority and/or purview. ⁴
Discovery	A process where information is gathered or requested by the Judiciary Council or individual Justices. This will occur prior to the hearing scheduled by the Chief Justice. Information acquired by Discovery will be provided to all justices and may be presented at the hearing. ⁵

² Note: the term “Witness” as it applies to the grievance form may be synonymous with Claimant and does NOT necessarily include all those who have witnessed an event or were present for it.

³ Other Codes of Conduct include but are not limited to: SFSU Student Code of Conduct, Associated Students Code of Conduct, Others as may be identified by investigation/discovery.

⁴ In most instances, the Defendant will be clearly identified on the form and amplifying information submitted by the Claimant. There are rare instances, whether through the process of discovery or via investigation, that additional perpetrators may be identified. If this is the case, the Council will note the names, situation, and forward to the BOD with a recommended action.

⁵ Note: not all items received via Discovery are necessarily relevant to the facts of a grievance and may be to provide justices with a base level of understanding. The Judicial Council need not, nor shall be required, to provide a list of all items of discovery except as required by law or requested by the BOD. A log shall be kept of all Discovery Items and utilized by the Council for housekeeping and organization of information.



Evidentiary Rule	The Judicial Council shall decide cases based on the Preponderance of Evidence which is to say, “the degree to which a reasonable person would believe that alleged events did or could have occurred given the evidence at hand. Proving one’s case beyond a reasonable doubt is not necessary.
Hearing	A public forum where a grievance is read by the Judicial Council, parties are offered opportunity to support their position as stated/asserted in/by the grievance, and the Council renders a decision.
Investigation	An act of discovery conducted in-person by a member of the Judicial Council. All Investigations shall be recorded in the log and a summary sent to the Council for review. In some instances, it may become necessary to redact certain pieces of information from an investigation. If redacted, only that identifying deemed to be personally identifying/protected shall be omitted. Justices shall take the utmost care to not alter the text/facts of a document if/when the identity of the source is required.
Justiciable	Suitable for council to hear and decide on the merits. If a case is not justiciable, the council must dismiss it. (source: WEX Legal Dictionary, Cornell Law)
Life Cycle - Grievance	A general term that identifies the procedural requirements of each grievance from submission to final disposition.
Moot	The Council has only the authority to resolve actual disputes. Grievances cannot be brought or continued after the matter at issue has been resolved, leaving no live dispute for the Council to resolve.
Opinion	A mechanism whereby a Justice may offer their opinion on a grievance to the Council for consideration.
Party (Parties)	A general term referring to a group or people that are named in a grievance.
Petitioner(s)	See “Claimant” above.
Principled Parties	Those entities who either: 1) are the originator of the grievance; or 2) are the Defendant which the action, if approved by the BOD, for the allegation would be focused. ⁶
Ripe	A claim is "ripe" when the facts of the case have matured into an existing substantial controversy warranting judicial intervention (source: WEX Legal Dictionary, Cornell Law).

⁶ In situations where the Principled Parties are not abundantly clear, such as where a slate or group has is the claimant or defendant, Council will ask parties to identify the Principal within that particular group. Once, or Champion, has been chosen by parties, they may not be substituted except in extreme circumstances as agreed to by the Judicial Council and confirmed by a 2/3 majority vote.



Standing	Standing, or locus standi, is capacity of a party to bring a grievance to bear before the Judicial Council. At the heart of this matter is a requirement that claimants have sustained or will sustain direct injury or harm and that this harm is redressable. Harm includes violation of the Elections Packet which is designed to create a fair and equitable election opportunity. ⁷
Summary of Grievance	In a Hearing, Decision, and/or Opinion, a summation will be iterated either in writing or verbally (in the case of a hearing) so that all parties to that document/proceeding are aware of the nature and cause of the grievance. Summary of Grievances should include only that which is necessary to identify the various parties, the cause of action (what caused the grievance to be filed), the alleged violations, and the current status of the grievance.
Witness	Witness in the sense of this document differs from those that may have been present when an event allegedly occurred as identified on the Grievance form. Here, Witness refers to any person, group, or entity that may be called to provide an account of events, provide an amicus brief, or is asked to supply the Council with information not contained in the original and subsequent submission of statements/evidence by parties.

COMPOSITION & QUALIFICATIONS OF THE JUDICIAL COUNCIL

- A. General: The role of the Judicial Council, as it pertains to the 2017 AS Election process, is to adjudicate all grievances properly filed with the Elections Commissioner. Upon receiving a proper grievance (as outlined in the Elections Packet), the Commissioner shall forward to the Council, via the Chief Justice for disposition. Upon proper review and adjudication of said grievance, the Council will send their recommendation to the AS Board of Directors for Final approval/action.

The Judicial Council operates under the powers granted by the BOD to review grievances, investigate when necessary, entertain argument during hearings, and provide a written decision to the BOD for final disposition. The Council is NOT a political entity and should, where and whenever possible, refer matters of political question to the BOD for action. That being so, the Council should be prepared to offer suggestions, in the form of writing, to the BOD for consideration and potentially inclusion of the next iteration of applicable rules, regulation, and/or procedure.

- B. The Chief Justice: The Chief Justice shall serve as chair of the Judicial Council who is a student-at-large appointed by the AS President and approved by the BOD within the first thirty (30) days of the new term.

⁷ Discussion: actions cannot be brought simply on the ground that an individual or group is displeased with an action, rule, and/or policy. Only those with enough direct stake in an action (as indicated in the grievance) have "standing." A decision that a party does not have sufficient stake to grieve will commonly be put in terms of the party's lacking "standing," shall be noted in the Council's decision, and forwarded to the BOD for further action.



- C. Justices: BOD appointed students-at-large who are not running for AS Office or are acting Agents of any AS candidate or slate to serve as Justices on the council.
- D. Judicial Council: In addition to the Chief Justice and six (6) Justices, the Council shall include the VP of Student Affairs and Enrollment Management or Designee and the Executive Director or Designee.
- E. Voting Members: The voting members of the council are the six (6) Justices and the VP of Student Affairs and Enrollment Management designee.
- F. Nonvoting Members: The Chief Justice (Chair) and the Executive Director or designee (advisory) shall not vote on matters brought before the Council.

PROCEDURE OF JUDICIAL COUNCIL – THE LIFECYCLE OF A GRIEVANCE

A. Receiving a Grievance (Responsibility: Elections Commissioner and Chief Justice)

1. The Chief Justice receives a filed grievance forwarded from the Elections Commissioner
2. The Chief Justice then forwards the grievance to all members of the Judicial Council⁸.
3. The Chief Justice will inform⁹ all named parties in the grievance, at least 72 hours prior to the hearing of that hearing, and shall include the location and order of events (if available). The email will include the official grievance (stamped by the Elections Commissioner) which was filed so that all parties are aware of the situation.¹⁰ The date of this email shall be entered into the Case Log for that Case.

B. Creation of Agenda (Responsibility: Chief Justice)

1. Upon receiving a grievance, the Chief Justice will add the grievance case to the agenda for the coming meeting and enter a notation on the Judicial Case Log for that case.
2. Unless an emergency situation as authorized by law, as authorized by law, all Judicial Council Agenda meetings will be finalized and posted publicly 72 hours prior to the meeting taking place
3. As stated within the Election Policies, Grievances must be filed within twenty-four (24) hours of when the alleged violation occurred, except if the violation occurs on a Friday, in which case hard copy grievances may be filed by the following Monday by 5pm.

⁸ As indicated above in the section “Key Terms.”

⁹ Via email

¹⁰ Attendance at the Hearing is NOT compulsory. However, parties are encouraged to attend and participated in the Discovery process to ensure the Council is able to make as informed a decision as is possible given the circumstances.



C. Conducting Judicial Council Meetings (Responsibility: Judicial Council)

1. The council meetings may be scheduled at such times and places as the Judicial Council determines. With the understanding of scheduled dates, times, and location of the Council, meetings may be conducted either in person or telephonically.
2. A majority of the Judicial Council present in person or by teleconference shall constitute a quorum. Meetings of the Judicial Council shall be conducted in accordance with the appropriate open meeting laws that preside over the Organization as a whole. The most current approved edition of Robert's Rules of Order Newly Revised shall govern the conduct of the meetings.
3. The council shall, through its chairperson the Chief Justice, report as soon as is practical to the BoD following a Hearing. The report will consist of the official adjudicated Decision made by the Judicial Council.
4. Handling Grievances - Hearings

Each case handled will be conducted in the following fashion:

- a) *Opening:* The Chief Justice shall call the hearing to order at the prescribed date and time.
 - (1) The Agenda shall be read by the Chief Justice or their designee (a Justice).
 - (2) Following the reading of the complete agenda, the first case on the docket (aka agenda) shall be called by Grievance Title.
 - (a) Parties shall be afforded a few moments to situate themselves in such a matter as to be relatively comfortable for proceedings to commence.
 - (3) The Summary of Grievance and Identification of Parties shall be read and role called.
 - (4) Upon ascertaining the presence of Parties and the reading of the Grievance Summary, the Chief Justice shall provide parties an opportunity to state their case and/or provide a defense/explanation per section IV.C.4.b below.
- b) *Commence Oral Argument:* Parties shall be given opportunities to provide statements to the council as follows.
 - (1) *Complainant(s)* has three minutes¹¹ (each if multiple parties) to speak on the case
 - (a) Judicial Council will be able to ask clarifying questions of each party

¹¹ The three minute time frame is provided in an effort to promote concise, well-thought out, and relevant discussion. It is not intended, nor shall it be used, to preclude any official attendee the ability to adequately state their case/defense. Claimants and Defendants shall be encouraged to provide a written response for Judicial consideration prior to the Hearing. The comment period afforded in this section is designed to afford parties an opportunity to draw attention/focus to certain parts of a written response and/or to provide clarity as they deem appropriate.



- (2) *Defendant(s)* have three minutes¹² (each if multiple parties) to speak on the case
 - (a) Judicial Council will be able to ask clarifying questions of each party
- c) Following the final question and answer period, Principled Parties will be afforded a two minute session to rebut or provide a single closing argument.
- d) Principled Parties will be receiving an email from the Chief Justice notifying them of the outcome recommended by the council, and the next BoD meeting the BOD will officially vote on their case recommendation

DECISIONS

A. Reasoning

1. To ensure unbiased procedures, the defendant(s) shall be considered faultless of proposed violations until proven responsible thereof. In order to find the defendant responsible, the Council shall decide whether the following conditions have been met:
 - a) The factual allegation(s) are reinforced by coherent and convincing evidence.¹³
 - b) The conduct in question does in fact violate a stated provision in the 2017 Student Government Election Code Packet.
2. A decision is formulated once the Council comes to a formal recommendation on the matter before the Council. If a decision is not reached, the Council may request advice from the Advisory member.
3. A copy of the Council's decision will be given to complainant(s) and defendant(s) within twenty-four (24) hours after the hearing. The judgment of the Council, however, is not final until a formal written decision can be approved by the BOD.
4. Copies of the Council's decision shall be then forwarded to all members of the BOD via the Chief Justice.

COMMUNICATION WITH THE BOARD

¹² See footnote pertaining to the above section, under "Claimant."

¹³ In addition and prior to the Hearing, Justices may conduct Investigations or engage in Discovery as stated in the Key Terms section above as approval by the Chief Justice. The Chief Justice's approval, in this instance, is a matter of continuity to ensure that efforts aren't duplicated and that sources aren't unduly disturbed/harassed.

- A. Once the Judicial Council has finalized its Decision, the Chief Justice will report these findings to the BoD. These shall be in the form of a Judicial Pursuant and consistent with the template provided.
- B. The BoD will then vote on whether or not to enforce the decision recommended by the Judicial Council

FORMS

Attachment A: Sample Correspondence – Agenda

Attachment B: Sample Correspondence - Decision

Attachment A:

Sample Correspondence - Agenda

The Chief Justice has responsibility for the creation, approval via the Executive Director, and dissemination of the agenda. A simple Agenda is provided below the solid line for reference.

Posted Date:
 Posted Time:
 Signature: _____

**Associated Students
 San Francisco State University
 Judicial Council
 Agenda
 April 10th, 2017**

Chair, and Chief Justice, **Alison Sexson**, has called a special meeting of the **Judicial Council** on **Monday, April 10th, 2017 at 1:30 pm** in Rosa Parks E from 1:30-3pm of the **Cesar Chavez Student Center**.

- I. **Call to order**
- II. **Roll Call**
- III. **Approval of Agenda**
- IV. **Approval of Minutes**
- V. **Announcements (2 minutes each)**. Please submit literature to Chair when meeting begins. The meeting format, as discussed above in the Grievance Lifecycle - Hearings shall be explained to parties.
- VI. **Public Comment (2 minutes each)**. Must pertain to jurisdiction of Board. Please observe proper decorum. The council is not required to respond.
- VII. **Old Business**
 - A. **Grievance of CLAIMANT(s) v. DEFENDANTS(s)** (The Judicial Council will hear, discuss, and adjudicate the grievance filed by CLAIMANT(s) against DEFENDANT.)
 - 1. CLAIMANT(s) has three minutes to speak on the case. Followed by questions from the Council.
 - 2. DEFENDANT(s) have three minutes each to speak on the case. This period shall be followed by questions from the Council
 - 3. Discussion and Adjudication of Grievance.
 - a) Principled Parties, those involved directly with the grievance will receive an email from the Chief Justice notifying them of the outcome decided by the Council. Council will forward, via the Chief Justice, a recommendation/Decision to the Board of Directors for final disposition.
 - B. Note: if additional grievances are to be heard, the above sections shall be repeated here.
- VIII. **New Business** - if any, shall follow the outline noted above or, if not a grievance, shall be stated.
- IX. **Adjournment** - once adjourned, the Chief Council shall make any assignments as necessary to Council with respects to drafting a Decision on cases heard.

Attachment B:

Sample Correspondence - Decision

The Chief Justice has the overall responsibility for the creation and handling of the Decision. Duties for drafting and presenting to the BOD may be delegated. A simple Decision is provided below the solid line for reference.

Case Title: SMITH vs JONES - Case 01-2017

Summary of Grievance: Here, a single paragraph summarizing the case shall be provided. It will contain the parties, their role(s), date of alleged incident, date of submission, date of hearing and a brief description of the event.

Sample: Re Student at Large SMITH vs Candidate for AS President JONES - Case 01-2017. Claimant SMITH filed a grievance against Defendant JONES on 01APR2017, alleging that on 31MAR2017, JONES violated Section 1.A(1)-Agent of a Purple People Eater, of the 2017 Elections Packet. Claimant purported that Defendant did act as an agent of a Purple People Eater and in so doing did violate the elections code. Case 01-2017 was scheduled for, and received a hearing on Monday, 03APR2017.

Claimant's Accusation: Here, a paraphrased quote of the actual allegation shall be prepared and submitted.

Sample: On 31MAR2017, SMITH observed JONES campaigning on behalf of a Purple People eater; this is a clear violation of the 2017 Elections packet as Purple People Eaters are not authorized to run for office.

Issues Before the Court: Here, issues of a general nature will be addressed. Minimally, the five items noted below shall be addressed specifically.

General / Procedural:

- 1) **Standing:** Does Claimant have the proper authority to file a grievance? Yes
- 2) **Ripe:** A claim is "ripe" when the facts of the case have matured into an existing substantial controversy warranting judicial intervention. The grievance is RIPE
- 3) **Moot:** A case may only be heard if it has not yet been resolved. In this instance, the matter is yet to be resolved and is NOT MOOT.
- 4) **Justiciability:** Can the Court adjudicate this matter according to current policies and procedures? Yes - the Court has original jurisdiction in this matter.
- 5) **Extraordinary Circumstances:** Are there any present? If yes, they will be identified in the appropriate section below

Did Defendants violate Section 1.A(1)-Agent of a Purple People Eater?

- 1) Section 1.A(1)-Agent of a Purple People Eater provides clear guidance on Purple People Eaters and their agents. Those noted in the grievance are as follows:
- 2) Additional sections or code/policy in questions as noted in the grievance will be addressed here. Note: Extraordinary circumstances will be noted below

Extraordinary Issues: Here, the council will address extraordinary circumstances that are deemed relevant to the grievance and necessary for the BOD to be made aware of in making their final decision. It is in this section that any violations of the SFSU Student or ASI Codes of Conduct will be addressed. A few items have been included as potential, Extraordinary Issues

1. **TIMELINESS:** Departure from timelines/procedures outlined in the Elections Packet.
2. **GRAVITY of ISSUES:** The totality of circumstances warrants investigation and action.
3. **VIOLATIONS OF THE ANY CODE OF CONDUCT:**

Sample: This grievance, required a significant amount of research to become familiar with the various rules, policies, and bylaws that govern a candidate's behavior. During the discovery portion, while attempting to determine what, if any, of the codes the Defendants had violated, it became quite clear that there were a departures from the Code of Conduct that governs all Associated Students. These include:

1. **Section 1.** *Here, specific line items of a Code of Conduct will be addressed and a description of how the code was violated will follow. This may have multiple line items.*
2. **Section 2.** *Line Item - Description of Violation*
3. **Section 3.** *Line Item - Description of Violation*

Ruling - The Defendants: Here, the council will make a ruling on individual defendants or site other parties as necessary

4. **Re JONES:** A paragraph pertaining to the perception of the defendant by the Council will be provided here. This section is to be used to address Violations of the Elections Code or any other code/policy as may become evident through the course of adjudication. A statement may also be made that no fault was found.
5. **Re PURPLE PEOPLE EATER:** No fault found. PURPLE PEOPLE EATER is the name of a DJ and NOT a physical creature. The Elections Code does not prevent DJ's from running for office.

Summary and DECISION: Here, the Council will summarize the case and provide its opinion. This section should not exceed a length necessary to adequately describe the event(s), action taken (Investigation, Discovery, Notification of External Sources, etc); and a final paragraph clearly stating the Decision the Council arrived at.

Recommended Disposition: Here, the Council will prepare a recommended course of action for the grievance specifically and may argue for additional action against individual parties. It is in this section that the gravity of each offence will be noted (major/minor). Note: In most cases where there are multiple instances of a violation of the ASI Code Conduct, the Council will likely recommend removal. This is pursuant to the ASI Code of Conduct as stated in the Elections Packet.

1. **Re JONES: REMOVAL - Agent - PURPLE PEOPLE EATER.** PURPLE PEOPLE EATER is NOT an actual candidate and therefore may not have an agent.
2. **Re PURPLE PEOPLE EATER: Dismissal - Vice President, SFSU Party Palace.** PURPLE PEOPLE EATER is a Vice President, sitting on the ASI Board of Directors and did misrepresent themselves to the student body as a candidate for President. Their level of dishonesty is inconsistent with the level of integrity and transparency that is outlined in the ASI Code of Conduct. This should be considered a MAJOR violation and the Council recommends removal pending BOD vote.

**JUDICIAL COUNCIL OFFICIAL POLICY AND PROCEDURE FOR THE 2017 AS ELECTIONS
APPROVAL AND REVISION HISTORY**

Judicial Council Official Policy and Procedure for the 2017 AS Elections was Approved by the BOD on 04/05/2017