

# GRIEVANCE POLICY

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## BACKGROUND AND PURPOSE

The Judicial Council is a standing committee of the Associated Students of San Francisco State University (the “Associated Students” or “AS”) Board of Directors (“the Board”), composed of at least three students-at-large, the Chief Justice, the Interim/Executive Director or designee, and the VP of Student Affairs and Enrollment Management (“SAEM”) or designee. The purpose of the Judicial Council is to adjudicate and settle grievances received during the Associated Students elections. The Judicial Council shall ensure accountability and effectiveness of the Board, comply with the Bylaws of the Associated Students of San Francisco State University, and follow all regulations set forth by the California Student University.

## CODE STATEMENT

The following code shall serve to establish the procedures for all operations of the Judicial Council. To ensure transparency and consistency of application, this policy cannot be altered during an election cycle; all amendments must be made prior to the start of the Filing Period or following the adjudication of the final grievance for that election cycle.

**APPLICABILITY TO THE POLICY**

This policy applies to all members of the Judicial Council, all members of Associated Students and all Candidates of the Associated Students elections.

**DEFINITIONS**

Term	Definition
<b>Business Day</b>	Any day that is not a Saturday, a Sunday or any day on which University or State of California offices are authorized or obligated by law or executive order to be closed.
<b>Candidate</b>	A student who has met all qualifications as determined by the California State University Regulations for student office holders; San Francisco State University; and the Bylaws, confirmed by the Student Affairs & Enrollment Management to participate in the annual Associated Students Board elections and whose name appears on the official ballot. Candidates are currently enrolled at the University and have paid all University fees or have received waivers of University fees, including the Associated Students fees.
<b>Case</b>	Once a grievance is determined to have merit, a case is considered open. In all communications between and from the Judicial Council, the case shall be titled Claimant v. Defendant.
<b>Chief Justice</b>	A student-at-large appointed by the AS President and approved by the Board within the first sixty (60) days of the new term. Charis and oversees the Judicial Council.
<b>Claimant</b>	A person who submits a grievance pertaining to the election cycle. The Claimant may be a Witness to the incident.
<b>Defendant</b>	A person accused of violating the Associated Students Election Code, San Francisco State University Code of Conduct, and/or the Bylaws, often identified by the Claimant in the Grievance. During Judicial Council hearings, additional violators of the Election Code and pertinent governing policies may be discovered, and shall also be referred to as Defendants.
<b>Election Code</b>	The most recent Associated Students of San Francisco State University Student Government Election Code, approved by the Board.

<b>Elections Commissioner</b>	A student employee of Associated Students of San Francisco State University. Implements and enforces all provisions of the Election Code.
<b>Endorser</b>	Student Organizations who give public approval and support of a Candidate or Slate. Endorsements are a specific, limited form of campaigning conducted by persons.
<b>Grievance</b>	A formal complaint that is raised and filed due to a breach in the policies, regulations or conduct expectations set forth in this Election Code for the purposes of conflict resolution, submitted through the Grievance Form, available in the Election Code.
<b>Hearing</b>	An official meeting of the Judicial Council in which an open case is adjudicated.
<b>Investigation</b>	A process where information is gathered or requested by the Judicial Council or individual Justices.
<b>Judicable</b>	Capable of being adjudicated by the Judicial Council. Grievances filed that are beyond the jurisdiction of the Judicial Council, i.e. violations of California Rules of Regulations, shall be referred to the appropriate entities by the Judicial Council or Board.
<b>Justice</b>	A student-at-large recommended by the Chief Justice and approved by the Board.
<b>Life Cycle</b>	The procedural requirements of a Grievance from submission to final disposition.
<b>Party</b>	A person or a group of people that is named in a grievance and called to attend a hearing.
<b>Slate</b>	A group of Candidates running for elected office on a common platform, who have submitted a Slate Form to the Election Commissioner.
<b>Witness</b>	A person, group, or entity that is called on to provide an account of events, provide an amicus brief, or is asked to supply the Council with information not originally contained in a grievance.

## CHIEF JUSTICE AND JUDICIAL COUNCIL

### CHIEF JUSTICE

1. The Chief Justice is a student-at-large appointed by the President of Associated Students and approved by the Board within the first sixty (60) days of a new term.

2. The Chief Justice shall serve as the chair of the Judicial Council.
3. The Chief Justice shall not seek elected office, hold elected office, or endorse a Candidate or Slate during the election cycle.
4. As chair of the Judicial Council, the Chief Justice shall:
  - a. Set agendas for the Judicial Council;
  - b. Preside over all meetings and Hearings of the Judicial Council.
5. The Chief Justice is expected to preside over all hearings of the Judicial Council. If the Chief Justice is unable to preside over a hearing, they may designate a Justice to preside over the hearing in their place.

#### **JUDICIAL COUNCIL**

1. The voting members of the Judicial Council are:
  - a. The Chief Justice (only as a tie-break);
  - b. A minimum of three (3) students-at-large, called Justices;
  - c. VP of SAEM or designee;
  - d. Interim/Executive Director or designee.
2. All Justices shall be appointed following an application process and certification that they do not have a conflict of interest. Applications will be reviewed by the Chief Justice and Elections Commissioner. The application process may include an interview. The Chief Justice will then nominate the chosen applicant(s) to the Board for approval, subject to simple majority vote. Ideally, all Justices will be appointed prior to the end of the Qualification Period.
3. All members of the Judicial Council shall not seek elected office, hold elected office, or endorse a Candidate or Slate during the election cycle. Members found not in compliance with any of these regulations will be removed from the Judicial Council immediately. If the removal of a Justice makes it so the Judicial Council does not meet their minimum membership requirements, the vacancy must be filled before meetings of the Council can proceed. Although it is encouraged that all vacancies be filled, it is not necessary as long as the Council retains sufficient membership.
  - a. In emergency situations in which a grievance is time sensitive, a member of the Elections Panel may serve on the Judicial Council in an interim capacity to ensure that minimum student representation is met. Such instances shall only apply to the time sensitive grievance and all other, not time sensitive cases will be placed on hold until proper membership is filled.



4. All Justices are expected to attend all hearings of the Judicial Council. If a Justice is unable to attend, they must notify the Chief Justice with reason of absence in advance. Excused absences are the discretion of the Chief Justice. The Chief Justice reserves the right to dismiss a Justice with three (3) or more unexcused absences during hearings.
5. Meetings of the Judicial Council shall be scheduled weekly during the Campaign Period and until all grievances are adjudicated. The date and time of Judicial Council meetings shall be set by the Council members once membership is established to ensure that all members are available. The Council is authorized to hold additional hearing dates beyond the regular schedule as long as notifications for such meetings are sent in compliance with open meetings law.
6. Quorum of a hearing will constitute a simple majority of Judicial Council members present (not including the Chair). All Parties implicated in the grievance will receive notice of the meeting in accordance with open meetings law, and are encouraged, but not required, to attend the meeting.
  - a. For clarity, the Judicial Council is authorized to adjudicate a grievance even if no representative Parties are present for comment. In such instances, the Judicial Council will rely on evidence presented in the Grievance Form, and any other statements submitted by the Claimant(s) or Defendant(s).
7. All meetings of the Judicial Council shall be conducted in accordance with the open meeting laws of Associated Students.

## **GRIEVANCES**

### **OVERVIEW OF GRIEVANCES**

1. Any students may file a Grievance against a Candidate/ Slate by completing the Grievance Form, available in the Election Code and on the AS website. Grievances shall specify:
  - i. Date, time and location of the incident;
  - ii. Section(s) of the Election Code alleged to have been violated;
  - iii. The person identified as the Claimant, including name, affiliation (if any), and contact email;
  - iv. Status of Defendants (ex: Candidate; Residential Assistant; unknown);
  - v. Claimant and Witnesses' involvement with the incident (ex: campus event; student organization meeting; plain sight of incident; social media; etc);
  - vi. Any and all photos; audio; videos; and other documentation that may be used as evidence to support your claim; and
  - vii. Primary email of the Claimant and all Witnesses.

2. Any student may file a Grievance if the alleged violation pertains to the Elections Code. If it is determined that the grievance is outside of the purview of Associated Students, the case will be forwarded to the appropriate campus or external entity. The Elections Commissioner shall inform the Claimant of next steps.
3. Grievances submitted by an anonymous Claimant will not be considered.
4. If it is determined by the Judicial Council that a Candidate/Slate/ Endorser has submitted grievances in bad faith based on verifiable evidence presented in a meeting, the Claimant in such cases may be subject to disciplinary action as outlined in this policy. In most instances, such offenses would be considered an improper campaign infraction.

## **SUBMISSIONS**

1. All Grievances shall be filed utilizing the Grievance Form. Grievances must be filed within seventy-two (72) hours of the alleged violation. Grievances submitted beyond this timeframe shall be rendered null and void.
2. After ensuring that the Grievance Form is filled out properly, with all pertinent sections specified, the Elections Commissioner shall forward the Grievance to the Chief Justice within one business day and provide a timestamp.
  - i. If the Elections Commissioner determines that the filed Grievance is incomplete or lacking information, they will contact the Claimant to further clarify/ instruct on what is necessary for the Grievance to be considered.
  - ii. If it is determined that the matter falls outside of AS's scope of authority, such cases will be forwarded to the appropriate campus or external entity, and the Claimant will be informed of such actions and instructed on next steps if relevant.
3. The deadline to file a Grievance related to Candidate(s)/ Slates is the 24 hours following the end of the Voting Period as specified in the Elections Timeline, 11:59pm. Grievances specifically pertaining to the unofficial elections results or vote tabulation must be filled within 24 hours of the publication of the unofficial election results. Grievances filed after these time frames shall not be considered.

## **DETERMINATIONS**

1. Upon receiving a Grievance from the Elections Commissioner, the Chief Justice shall forward the grievance in its entirety to all Justices.
2. The Judicial Council shall determine through majority vote within two Business Days of receiving a Grievance if the Grievance has merit to move forward with a hearing. This determination can take place via email, but such correspondences shall be considered public record and be included with the case file.
  - i. If a Grievance is determined to not have merit, the Chief Justice must notify the Claimant of the decision and specify why the Judicial Council determined that it should not take up the case.
  - ii. If the Claimant disagrees with the determination by the Judicial Council, the Claimant may appeal and request a hearing. In such instances, the Judicial Council will hold a

hearing in an open meeting to adjudicate the Grievance. If it is still determined that the Grievance does not have merit, the Judicial Council is authorized to make that determination by simple majority vote during the meeting.

3. The Judicial Council reserves the right to dismiss a Grievance that lacks merit. Reasons include, but are not limited to, the following:
  - i. No evidence;
  - ii. Not judicable by Judicial Council;
  - iii. No violations made of the Election Code.
4. Grievances that are not judicable by the Judicial Council shall be referred to the appropriate entities by the Judicial Council.

#### **PENALTIES FOR VIOLATIONS OF THE ELECTION CODE**

1. Certain violations of the Election Code may be considered minor, and Candidates, Endorsers, and Slates may be penalized for such violations within the following recommended guidelines:
  - a. First offense: Warning
  - b. Second offense: Three day ban from posting campaign materials on campus and online.
    - i. This includes postings by Endorsers.
    - ii. If the violation is committed by a single or select group of Candidate(s) that belongs to a Slate, the Slate cannot post materials promoting the implicated Candidate(s) during this timeframe.
  - c. Third offense: Disqualification.
2. For clarity, Candidate(s)/ Slates are implicated in violations committed by their Endorsers, and it is the responsibility of the Candidate(s)/ Slate to ensure that their affiliates are in compliance with the Elections Code.
  - a. If, for whatever reason, a Candidate becomes aware that a faculty member, staff member, Endorser, or other affiliated party accidentally does something on behalf of or for the intended benefit of the Candidate(s) or Slate that is in violation of the Elections Code, the Candidate(s)/ Slate should take appropriate action to remedy the situation through actions that may include, but are not limited to: ask that positions or statements be rescinded or clarified, that posts get taken down, etc. The Candidate(s)/ Slate must also notify the Elections Commissioner via email of the offense, who committed it, and what was done to remedy the situation in a timely fashion (i.e. within one business day of the Candidate(s)/ Slate learning of the offense). It is expected that Candidate(s)/ Slates are immediately responsive to such offenses and that they do everything to remedy the situation as soon as it is brought to their attention. This acknowledgement on behalf of



the Candidate(s)/ Slate does not necessarily absolve the Candidate(s)/ Slate should a grievance be filed against them for these actions, but it demonstrates no ill will or intention on behalf of the Candidate(s)/ Slate, and will be considered by the Judicial Council as acting in good faith. Depending on the scale and severity of the offense, Candidate(s)/ Slates may face potential disciplinary action as decided by the Judicial Council and in accordance with the Grievance Policy.

3. Violations of the Elections Code fall into the following categories, and are not necessarily cumulative across categories. This means that, for example, a Candidate can be in violation of two categories but receive a warning in both if it is a first offense.
  - a. Improper use of Associated Students resources:
  - b. Improper campaigning infraction:
  - c. Campaign material infraction in the CCSC, MWC and University facilities:
  - d. All other campaign material infractions
4. If a Candidate(s)/ Slate continuously violates the Elections Code across different categories repeatedly, the Judicial Council reserves the right to escalate the penalty and consider infractions across categories cumulatively, subject to a  $\frac{2}{3}$  majority vote of the Council. For example, if a Candidate has received warnings across multiple categories and commits a second offense within one of the categories they were already found in violation of, the Judicial Council may determine that the Candidate is not acting in good faith and may consider adjudicating the Grievance in consideration of the Candidate's collective history. Such determinations shall require careful consideration and take into account the severity of the offense, not simply the number of offenses, prior to escalating.
5. Although most instances of violating the Elections Code can be considered minor, the Judicial Council reserves the right to determine whether an offense is severe enough that it requires more definitive action or escalation. Such instances should be extremely rare, and must demonstrate clear negligence or ill intention by the Defendant as well as a negative implication for the election as a whole. The Judicial Council must be able to articulate why they determined the offense was considered severe, what implication it has on the election as a whole, and which sections of the Elections Code were being violated. This determination requires a  $\frac{2}{3}$  majority vote of the Council and may be voted on separate from the normal adjudication vote.
  - a. For example: a Justice may recommend the escalation during the hearing vote. The Council would then vote on whether or not they agree on the escalated penalty. If it receives a  $\frac{2}{3}$  vote, the motion to escalate shall pass. If it receives less than a  $\frac{2}{3}$  vote, the matter will not be escalated but the hearing determination shall continue and the Judicial Council may still determine by simple majority vote that a Defendant is in violation with the Elections Code, with the penalty determined by the number of offenses within the offense category in accordance with this policy.



## HEARINGS

### OVERVIEW OF HEARINGS

1. If the Judicial Council determines that a Grievance has merit, it shall schedule a hearing for the open Case. The Chief Justice shall inform all Parties involved in the hearings through email with seventy-two (72) hours notice at minimum, and include in the email:
  - a. The names of all Parties;
  - b. The date, time, and location of the hearing;
  - c. The official submitted Grievance from the Election Commissioner.
2. Hearings shall be included in the Judicial Council meeting agenda and publicly posted no later than seventy-two (72) hours prior to the Hearing.
3. All Claimants and Defendants are encouraged to attend hearings, but attendance is not mandatory. If a Claimant or Defendant is unable to attend, they may request that the Judicial Council reschedule the hearing. Parties who do not plan on attending shall inform the Chief Justice of their decision through email.
4. Claimants and Defendants may submit a written statement to be considered by the Judicial Council during the hearing, regardless of whether or not they choose to be present for the meeting. Written statements must be submitted through email no later than twenty-four (24) hours before the scheduled hearing.
5. All hearings shall occur in an open meeting, in compliance with open meetings law..

### HEARING PROCEDURES

1. Call to Order: The Chief Justice or designee shall call the hearing the order.
2. Roll Call: Roll call of Judicial Council members shall be taken to ensure quorum is met.
3. Introduction of Case(s): The Chief Justice shall provide a summary of the Case(s), submitted evidence and take a roll call of all Parties.
4. Public Comment: The Judicial Council shall allow the public to speak on the Case introduced by the Chief Justice. During this time, no Parties, Claimants, or Defendants may speak.



5. Commencement of Oral Argument: The Chief Justice shall go through the Case(s) in order of the agenda, with determinations being made prior to moving on to the next Case (unless the item is tabled). Parties shall be given opportunities to provide statements to the Judicial Council, as follows:
  - a. Claimant Statement: The Claimant(s) shall be given three minutes (each if multiple peoples) to speak on the Case and answer any questions asked by the Judicial Council. The Judicial Council may ask questions based on the oral argument or written statement submitted prior to the hearing.
  - b. Defendant Statement: The Defendant shall be given three minutes (each if multiple peoples) to speak on the case and answer any questions asked by the Judicial Council. The Judicial Council may ask questions based on the oral argument or written statement submitted prior to the hearing.
- F. Concluding Statement: The Claimant and Defendant shall be given two minutes each to rebut or provide a single closing argument in support of their case.
- G. Deliberation: The Judicial Council shall discuss the Case prior to making a motion on how they wish to adjudicate the Grievance.. Through majority vote, the Judicial Council shall reach a verdict in the Case unless the motion is to escalate the penalty for severe offenses, which requires a  $\frac{2}{3}$  majority vote. The Chief Justice shall notify the Claimants and Defendant of the verdict within one (1) business day.
  1. The Defendant(s) shall be considered faultless of the proposed violations until proven otherwise through deliberation. In order to find the Defendant responsible, the Judicial Council shall consider the following conditions, and may consider others:
    - i. The factual allegation(s) which are reinforced by coherent and convincing evidence;
    - ii. Whether or not the conduct in question violates a stated provision in the Election Code.

## APPEALS PROCESS

- A. Parties may request to appeal a verdict reached by the Judicial Council within three (3) days from when the Parties were notified of the verdict, following this process:
  1. Submit a formal letter as to why the verdict should be reconsidered through email to the Chief Justice;
  2. Submit evidence not used during the hearing for further consideration by the Judicial Council, if necessary.
- B. Upon approval by a simple majority of the Judicial Council, the Judicial Council shall hold a special hearing for the appeal following the same hearing procedure outlined in this policy.
- C. Parties shall submit no more than one (1) appeal per verdict.

## JUDICIAL COUNCIL CODE APPROVAL HISTORY

Approved by Associated Students Board of Directors on	04/05/2017
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