

A Proposed Motion for the Handling of a Suspected Frivolous Ethics Complaint

(A) By a super majority vote of an entire ethics panel (at least 5 of 7 members), the Panel may order a complainant to show cause why the Panel should not determine that the complaint filed by the complainant is a frivolous complaint. The panel shall convene a separate hearing, held publicly, to consider this determination. A complaint may be found to be frivolous if it is found by the panel to have no basis in fact or law. A simple majority vote of the entire ethics Panel (at least 4 of 7) shall be sufficient to determine that a complaint is frivolous.

(B) In deciding if a complaint is frivolous, the Panel will be guided by the California Code of Civil Procedure, Section 128.7(b), and may also consider:

(1) The timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any.

(2) The nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the commission.

(3) The existence and nature of any relationship between the respondent and the complainant before the complaint was filed.

(4) If the respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent.

(5) Any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless.

(6) Any evidence of the complainant's motives in filing the complaint.

(C) Notice of a show cause hearing must be [according to standard legal practice in California for such notices]

(D) Notice of an order to show cause shall include:

(1) An explanation of why the complaint appears to be frivolous; and

(2) The date, time, and place that the show cause hearing is to be held.

(E) Sanctions: The Ethics Panel shall have the option of imposing sanctions upon the complainant if the complaint is found to be frivolous. These sanctions may include public censure and imposition of a fine not to exceed the City's cost to administer the complaint.

(F) If an Ethics Panel finds a complaint to be frivolous, the complainant may appeal that decision to the City Council.

California CCP Section 128.7(b)

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

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