



Guidelines for SDCBA Public Positions and Comment – December 2017 version

1. General

As part of the SDCBA's strategic framework and communications plan, the SDCBA serves its constituency and the public by educating and providing information on law-related issues pertaining to the Association's mission.

The SDCBA has developed a process and guidelines to evaluate when it will take public positions or issue public comments. The SDCBA will consider taking a public position or providing comment when the issue educates/informs the public, is in line with its mission/strategic framework and when such issues may impact:

- Administration of justice (including respect for the rule of law and the judicial branch);
- Diversity and inclusion in the profession;
- Professionalism/ethics;
- Civility;
- Equal justice under the law/civil liberties;
- Independence of the judiciary, including criticism of judges;
- Constitutional rights that impact the justice system; and
- Access to justice

The SDCBA may consider taking a public position if a request is made by any of the following individuals or groups:

- Any member of the SDCBA (including Board members and Section and Committee chairs);
- Any San Diego county, statewide or national law-related organizations
- Any media reporter;
- A member of the judiciary.

2. Process to Submit a Request for Public Position or Public Comment

Requests for public position or comment, except from members of the news media, must be made in writing and sent directly to the President, any member of the SDCBA Board of Directors, or the Executive Director/CEO. Members of the news media may direct oral or written requests for comment to the President, the Executive Director/CEO, or the Director of Outreach Strategy/CCO. Those requesting public position or comment will be asked to

provide information sufficient for the Public Position Advisory Group (“PPAG”) to evaluate the issue being addressed and the nature and scope of the comment sought. Specifically, those requesting public position or comment must provide the following information:

- Briefly describe the issue upon which position or comment is sought.
- Who specifically (an individual or organization) is making the request for public position or comment?
- Are you asking the SDCBA to take a specific position on the issue?
 - If so, what position are you asking the SDCBA to take?
- Why do you believe the SDCBA should issue a public comment or take a public position on this issue?
 - Provide relevant background information/materials on the issue and position being requested.
 - Provide the timeline on which the issue is being considered and a position or comment must be issued to be relevant in weighing in on the issue.

Once the complete information accompanying a request is received, the request will be forwarded to the President and the Executive Director/CEO for initial review. The President and/or the Executive Director/CEO will determine (1) whether the matter should be sent to PPAG for review, and (2) whether the matter must be addressed as either a “Time Sensitive Position” (section 5.b) or an “Immediate Response” (section 6). The initial review shall be performed as soon as possible.

If a decision is made not to refer a matter to PPAG, the President or Executive Director/CEO will report to the Board of Directors at the next board meeting the content of the request and the determination and also report back to the requestor. The following types of requests are not subject to this policy and will go directly to the SDCBA Board of Directors or other group for consideration:

- SDCBA Legal Ethics Committee comments on proposed or revised State Bar Rules of Professional Conduct, proposed State Bar Ethics Opinions, or proposed SDCBA Ethics Opinions will go directly to the Board of Directors;
- Appellate Practice Section comments on proposed or revised Judicial Council or Appellate Division rules of court will go directly to the proposing body (see Policy Manual Section III footnote);
- Other issues identified from time to time by the Executive Committee (“ExComm”).

All other requests, including, but not limited to, requests to prepare an amicus brief, requests to add the SDCBA name to an amicus brief, requests to add the SDCBA name to a prepared letter or statement drafted by a member, organization, elected or appointed official, or other similar group or individual, or requests of a section or committee to comment/issue a public position, will be subject to this policy.

3. Public Position Advisory Group

A PPAG will be convened at the beginning of each year to review requests covered by this policy, appointed by the President and confirmed by the Board. The PPAG will be comprised of at least 6 but not more than 7 individuals, including a chairperson. In addition to the chairperson, the members will include, the SDCBA president, a SDCBA past president, two SDCBA board members, and preferably, a past member of the SDCBA Board of Directors. A judicial officer will also serve as a non-voting advisory member. The PPAG may also consult with other individuals or law-related organizations as appropriate on an as-needed basis.

Rapid Response Team

At least five (5) members of the PPAG (including the President and a judicial officer (who will act in an advisory capacity)) will be selected to act as a rapid response team and will be convened if there is a media request for comment that requires an “Immediate Response” within 2 hours (section 6) or a request for comment that requires a response within 72 hours “Time Sensitive Position” (section 5.b).¹

4. Determining whether the SDCBA will Issue a Public Position or Comment

The PPAG will consider the following factors in determining whether the SDCBA will issue a public position or comment on a particular issue. These factors apply in all circumstances, including media requests requiring an immediate response.

a. Does the issue relate to the SDCBA’s mission and goals?

The mission of the San Diego County Bar Association is to represent San Diego County’s legal profession and to serve the public and the profession by enhancing the legal system and promoting justice, professional excellence, and respect for the law. In fulfilling its mission, the SDCBA strives to:

- Serve the needs of our members.
- Support and improve the justice system.
- Provide leadership on major issues affecting the profession and the community.
- Raise and maintain the professional and ethical standards of conduct of the bar.
- Promote a better understanding and improved perception of the justice system and the legal profession by the public.
- Preserve the independence of the legal profession and the judiciary.

¹ Under the terms of this Policy, ExComm is a reviewing body. Accordingly, a majority of PPAG’s voting members should be comprised of persons who are not members of ExComm.

- Promote meaningful access to justice for all persons regardless of their economic or social conditions.
- Promote diversity within the legal profession.
- Promote responsibility for public service by the profession.
- Build and maintain a strong financial and organizational infrastructure to carry out the goals of the Association.

b. Does the issue fall within the SDCBA’s current strategic priorities?

SDCBA’s current strategic priorities are outlined in the 2014-2017 strategic framework where the SDCBA was asked to:

- Promote an organizational culture that values relationships over transactions.
- Be indispensable to the success of our members in their professional and career development.
- Create community and engagement among our members.
- Give new lawyers gratifying and indispensable experiences and opportunities for growth.
- Be a significant leader in the civic life of our community in service to our members, the legal profession and the public.
- Strengthen our brand identity with external and internal audiences.
- Have the governance and operational infrastructure to support our vision.

c. Is the issue a local, state, or national issue?

If the issue is a local issue, and it falls within the SDCBA’s mission, goals, and/or strategic framework, the presumption is that the SDCBA may take a position or make a comment on the issue unless the analysis below demonstrates that making such a statement would have a substantial negative impact. Whether making a comment or statement would have a “substantial negative impact” is evaluated by PPAG when deciding whether the SDCBA should take a position or make a comment on a particular issue.

d. Do the following factors support making a statement on the issue?

If the issue falls within the SDCBA’s mission, goals, and/or strategic framework, the PPAG should consider the following factors in determining whether the SDCBA should issue a public position or comment on an issue:

- Whether the issue addresses one of the specific areas identified in these guidelines – administration of justice, diversity and inclusion in the profession, professionalism/ethics, civility, equal justice under the law/civil liberties, judicial independence, constitutional rights that impact the justice system, and access to justice
- Whether the SDCBA can add value to the discussion of the issue

- Whether another entity is in a better position to address the issue and/or the issue has already been adequately addressed by another entity
- Whether taking a position would demonstrate leadership by the SDCBA in one of the specific areas identified in these guidelines
- If the absence of a position by the SDCBA would demonstrate lack of leadership in one of the specific areas identified in these guidelines
- Whether taking a position will serve or enhance SDCBA's goals and mission
- Whether the position can be stated in a politically neutral way that educates on the issue
- Whether the message will reach our local audience
- Whether addressing the issue will have a substantial negative impact
- Any other factors the Committee may deem relevant to the specific circumstances surrounding the issue

e. Do these additional factors weigh against issuing a public position on an issue?

- Does the issue relate to a local individual attorney, judge or other legal professional?
- Does the issue relate to a pending case?
- Would the position demonstrate an inappropriate partisan bias that would be attributed to the SDCBA?
- Would the position negatively reflect on the professional and ethical standards of the SDCBA?

A majority of the PPAG must determine that these Guidelines support issuing a public position or comment before a recommendation may be made for final approval by ExComm.

Should PPAG determine that a public position or comment should not be issued, the President or their designee will notify the requestor.

5. Preparing the Draft Position for Final Review

Should PPAG determine that a public position or comment should be issued, the following process will apply:

a. Non-Urgent/Not Time Sensitive Position:

For non-time-sensitive requests for public position or comment, PPAG will convene within 10 business days of receiving a request, require at least 5 members to participate, and will follow the process outlined in section 4.a-e. PPAG may need to conduct additional research and discussion before finalizing a recommendation and sending the matter to ExComm. The approval process by both PPAG and ExComm generally should take no more than 30 days from the time a complete request is received.

Any member of the PPAG, the SDCBA's Executive Director/CEO, Director of Outreach Strategy/CCO or a designee (which may include section or committee leadership) may draft the position or comment for ExComm's consideration and ultimate approval.

The PPAG and ExComm have the authority to modify any proposal in order to ensure the position or comment meets the Association's goals to inform and educate the public and falls within the SDCBA's mission and strategic plan.

The PPAG and/or ExComm will report to the Board of Directors regarding any positions or comments approved by the PPAG and ExComm.

b. Time-Sensitive Position (Not Media):

For matters that are time sensitive and subject to a news cycle in order to be relevant, PPAG will convene within 24 hours of receiving a request, require at least 5 members to participate and will follow the process outlined in section 4.a-e. In no instance should the process take more than 72 hours² from the time a complete request is received.

Any member of the PPAG, the SDCBA's Executive Director/CEO, Director of Outreach Strategy/CCO or a designee (which may include section or committee leadership) may draft the position or comment for ExComm's consideration and ultimate approval.

The PPAG and ExComm have the authority to modify any proposal in order to ensure the position or comment meets the Association's goals to inform and educate the public and falls within the SDCBA's mission and strategic plan³.

The PPAG and/or ExComm will report to the Board of Directors regarding any positions or comments approved by the PPAG and ExComm.

6. Process for Responding to Media Inquiries Requiring Immediate Response

When a media request for public comment is received requiring an immediate response, the Executive Director/CEO will first make a preliminary determination whether the issue relates to the SDCBA's mission, goals, and/or strategic framework, or appears to fall within one of the specific areas identified above – administration of justice, diversity and inclusion in the profession, professionalism/ethics, civility, equal justice under the law/civil liberties, judicial independence, constitutional rights that impact the justice system, and access to justice.

² Although the policy provides a maximum of 72 hours to complete, the goal for any time sensitive matter would be to handle the issue as quickly as possible.

After the Executive Director/CEO makes that preliminary determination, s/he or their designee will contact each member of the PPAG’s rapid response team by text, email, telephone or similar immediate method for a response within two hours. The Executive Director/CEO and Director of Outreach Strategy/CCO will provide their recommendations to the PPAG’s rapid response team regarding messaging and method for delivering the message (i.e. live interview, statement, letter to the editor, etc.)

At least two members of the PPAG’s rapid response team must respond and agree on the message points if an SDCBA spokesperson will speak to media, or agree on any written statements or official SDCBA commentary before any public comment is distributed to the media.

In all cases, the SDCBA President or his/her designee has final approval before any written comment is disseminated.

The SDCBA President or his/her designee is the person who will respond either in writing or by interview to media inquiries, as the SDCBA’s official spokesperson. The President will advise the Board of Directors of all requests made by media under this policy and all responses recommended by the rapid response team.

In all matters referred to PPAG, the requestor will be notified of the outcome. The response will be made by the Director of Outreach Strategy/CCO or other designee of the Chair of PPAG.

SDCBA Pathways for Public Positions or Comments:

	Immediate Response Needed (Not Media):	Immediate Media Response Needed:	Not Time Sensitive:
Request	Request to take a public position that is time sensitive and requires immediate response i.e. Executive Order	Request to make a public comment in response to a media inquiry	Request to take a public position that is not time sensitive, i.e. Prop. 8, an amicus request
How many on committee are required to participate?	5 of 7	2 of 5	7

Timing	All done within 72 hours	2 hours	10 days to meet initially; send item to ExComm for approval; process to be completed in 30 days
Who approves?	PPAG and ExComm	At least 2 from the Rapid Response Team and President (or designee)	PPAG and ExComm

7. Archives for Public Positions/Comments, APS Statements, Amicus Brief Signatures

The SDCBA will maintain a public comment archive of all Public Positions and Comments taken pursuant to this process as of November 6, 2016. This archive will provide history and context to PPAG and the Board of Directors. In addition, all Appellate Practice Section (“APS”) statements on behalf of the SDCBA, or Amicus Curiae Briefs (“ACB”) filed with an SDCBA signature will be numerically stored by APS or ACB designation, the year, month and date. Examples are as follows:

- 2016-1-15 ACB: *Smith v. Jones*
- 2016-6-3: Public Position Media Response: Independence of the Judiciary (Curiel)
- 2016-6-13: Public Position Independence of the Judiciary (Curiel)
- 2016-9-13: APS: Death Penalty Initiatives

8. Public Education Efforts

Nothing in this policy prevents the SDCBA from proceeding with public education on an issue, as provided by the Public Education policy and/or Communications Plan. See Public Education Policy.