

Policy Regarding Whistleblowing Activities

It is the policy of CAJPA (the Association) that its staff should be free to report violations of law, abuse of authority, fraud, economic waste, or gross misconduct, incompetence or inefficiency without fear of retaliation or retribution. This policy is based on a finding that the Association best serves itself and its membership when it can be candid and honest without reservation in conducting the business of the Association.

The Association prohibits retaliation by staff, Board members or volunteers against any staff member, Board member or volunteer for making good faith complaints, reports or inquiries regarding illegal or improper activities under this policy to the Association or any law enforcement agency, or for participating in a review or investigation of any such complaints under this policy. This protection extends to those whose allegations are made in good faith, but prove to be mistaken. The Association reserves the right to discipline persons who make bad faith, knowingly false, or vexatious complaints or reports regarding alleged illegal or improper activities, or who otherwise abuse this policy.

Therefore, the purpose of this policy is to: (1) encourage staff, Board members and volunteers to report to the Association any credible information in their possession regarding illegal or improper activities and/or retaliation as defined herein, including violations of the Association's policies, promptly to those members of the Association specified in this policy; and (2) prohibit the Association's Board of Directors, Executive Director and supervising staff members from retaliating against any staff member or other person who reports illegal or improper activities to the Association or law enforcement agencies as provided herein; and (3) specify a procedure by which information regarding illegal or improper activities or retaliation by members of the Board of Directors or staff can be reported to the Association and investigated; and (4) provide a hearing process to any staff member or Board member who has filed a written complaint with the Association alleging actual or attempted acts of retaliation in response to having made a protected disclosure to the Association or law enforcement protected by this policy.

1. Definitions.

- (a) "Illegal Order" means a directive to violate or assist in violating a federal, state or local law, rule or regulation, or an order to a staff person to work or cause others to work in conditions outside of their scope of duty that could unreasonably threaten the health and safety of other members of staff or the public.
- (b) "Illegal or Improper Activity" means an activity by a member of the Board of Directors, a staff person, or a volunteer of the Association that is undertaken in the performance of that person's duties that is either: (1) a violation of any state or federal law or regulation including, but not limited to, corruption, malfeasance, bribery, theft of property, fraud, coercion, conversion, abuse of property or willful omission to perform a duty; or (2) violates Association policies, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. Illegal or Improper Activity includes alleged financial, accounting or audit improprieties and alleged ethical violations by staff or Board members.

- (c) "Protected Disclosure" means a good faith communication from a staff member or Board member of the Association to the Association or law enforcement agencies that discloses information that may be evidence of Illegal or Improper Activity.
- (d) "Retaliation" means a staff person or Board member using or attempting to use his or her official authority or influence over another staff person or Board member to intimidate, threaten, or coerce any staff person or Board member in order to interfere with the rights of members of staff or the Board of Directors to freely report Illegal or Improper Activity to the Association or a law enforcement agency. Retaliation includes, but is not limited to, promising to confer, or conferring any benefit; affecting or threatening to affect any form of reprisal; or taking or directing others to take, recommend, or approve any action against a staff person or Board member making a Protected Disclosure including, but not limited to, demotion, transfer, performance evaluation, contract termination or suspension, or censure or removal from office of a Board member.

2. Encouragement of Reporting of Illegal or Improper Activity. The Association encourages staff and members of the Board to file complaints or reports about Illegal Orders or Illegal or Improper Activity or alleged Retaliation with the Association Manager. All such complaints shall include specific facts supporting any allegation of Illegal or Improper Activity, or Retaliation, as defined by this policy. Complaints of Illegal or Improper Activity or Retaliation may be made anonymously, but such anonymity may impede the ability of the Association to conduct a thorough investigation. If the Association Manager is alleged to be involved in the complaint or report, then such complaint shall be filed with the President of the Board of Directors. If the President of the Board is also alleged to be involved in the complaint, then the complaint or report shall be filed with the Association's General Counsel.

Other allegations with respect to which the Association has existing complaint, grievance or appeal procedures as specified in the Association's policies should be addressed pursuant to those procedures, such as issues of alleged discrimination or harassment which are processed by the Association Manager.

This policy is not intended to provide a procedure for the filing of employee or Board member complaints regarding any employment issues other than whistleblowing activities and protection of employees from Retaliation for making Protected Disclosures.

3. Investigations of Allegations of Illegal or Improper Activity. The Association Manager may request that a person submitting a complaint alleging Illegal or Improper Activity provide his or her name and contact information and provide the names and contact information for any persons who could help substantiate the claim. However, this information is not required in order to submit a complaint.

Upon receiving a complaint from any staff person or member of the Board that a staff person or Board member has engaged in an Illegal or Improper Activity, the Association Manager will conduct an investigation of the allegations in the complaint. The identity of the person filing the complaint, or of any person providing information in confidence regarding the facts in the complaint shall not be disclosed without the express permission of the person providing the information. However, the Association Manager may disclose the facts in the complaint to a law enforcement agency in the event that an allegation of criminal conduct is contained in the

complaint filed with the Association.

The Association Manager may request the assistance of Association General Counsel and/or any outside consultant for assistance in evaluating an allegation of Illegal or Improper Activity or conducting an investigation of Illegal or Improper Activity as authorized by this policy. The Association Manager shall investigate the allegations in the complaint and prepare a report of the results of the investigation within sixty (60) days of the date of the complaint.

If, upon completion of the investigation, the Association Manager finds that a staff person or Board member may have engaged or participated in an Illegal or Improper Activity, the Association Manager shall make such findings in the investigative report and include recommended actions to prevent the continuation or recurrence of the Illegal or Improper Activity. Such recommendations may include taking disciplinary action against those staff persons found to have violated this policy, which action may be taken by the Association Manager. The investigative report may also recommend imposing sanctions, including loss of office, on those Board members found to have violated this policy. In that event the report shall be filed with the President of the Board of Directors who shall call such meetings necessary to comply with the policies of the Association in initiating discipline against a member of the Board of Directors. If the President of the Board of Directors is implicated in the investigative report, the investigative report shall be filed with the Vice President. The Association shall keep confidential all investigation work product including the investigative report.

4. Complaints of Retaliation and Investigation. A staff member or volunteer who believes he or she has been subjected to Retaliation as defined and prohibited by this policy shall file a written complaint with the Association Manager which specifies the alleged retaliatory conduct and identifies the individuals allegedly engaged in such conduct.

Upon receipt of the complaint the Association Manager shall commence an investigation of the allegations contained in the complaint of Retaliation, which shall include interviews of the complainant and any potential witnesses. The Association Manager may utilize the services of Association General Counsel and/or other consultants in conducting such investigation and preparing an investigation report. A written investigation report regarding the alleged Retaliation shall be completed within thirty (30) days of receipt of a complaint of Retaliation.

Based on the investigation, the Association Manager shall make a determination as to whether Retaliation occurred in violation of this policy and, if so, what steps should be taken to remedy the situation. The Association Manager's decision shall be communicated to the complaining employee. In making his or her determination, if it is alleged that improper disciplinary action was taken against the complaining staff person in Retaliation for having made a Protected Disclosure, the Association Manager shall consider whether the taking or failing to take any personnel action with respect to a staff person who has complained of Retaliation is justified on the basis of evidence separate and apart from the fact that the person has made a Protected Disclosure, such as inadequate job performance. If the evidence in the investigation reveals that a Protected Disclosure was a contributing factor in the alleged Retaliation against a former or current staff person, the burden of proof shall be on the supervisor imposing the discipline to demonstrate by clear and convincing evidence that the alleged personnel action would have occurred for legitimate, independent reasons even if the complaining staff person had not engaged in Protected Disclosures of Illegal or Improper Activity.

The investigation report of the alleged Retaliation prepared by the Association Manager shall include a written decision as to whether this policy has been violated. If the investigation report concludes that this policy has not been violated and the complaining staff person disagrees with the determination of the Association Manager, the complaining staff person may appeal in writing the decision to the Board of Directors or an ad hoc committee established by the Board of Directors. That appeal must be filed within ten (10) business days of receipt of the investigation report and decision of the Association Manager.

If an appeal is filed, the Board of Directors, or a committee of the Board if established, shall conduct a hearing of the complaining staff person's appeal and hear and receive all evidence submitted by the complaining staff person. In hearing the appeal, the Board of Directors, or the committee of the Board, as the case may be, may take evidence, and hear testimony from the complaining staff person and other witnesses. The Board of Directors, or committee of the Board, shall consider whether an activity protected by this policy was a contributing factor in the alleged Retaliation against the complaining employee and if the alleged retaliatory action could have occurred for legitimate, independent business reasons even if the complaining staff person had not made Protected Disclosures.

The Board of Directors, or committee of the Board, as the case may be, shall render a final decision in writing to the complaining staff person with in (30) days after completing the hearing which concludes whether Retaliation prohibited by this policy has occurred or not. If the Board of Directors, or committee of the Board, finds that the provisions of this policy have been violated, it shall order that any action taken against the complaining staff person be reversed and that a memorandum be placed in the staff person's personnel file indicating the results of the decision of the Board of Directors, or committee of the Board, on appeal.

The complaining staff person shall be required to exhaust his or her administrative remedies by filing an appeal with the Board of Directors or a committee of the Board regarding any alleged violation of this policy before being entitled to commence a civil action in the Superior Court.