

# *GUIDE TO RECALL*

## *For Local Offices*

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**This booklet is for general information only and does not have the force and effect of law, regulation, or rule. In case of conflict, the law, regulation, or rule will apply. Before beginning any recall effort, the proponents should get the most current information available because of possible changes in law or procedure since the publication of this information.**

**In addition, because of the complexity of the recall process, all parties involved are advised to seek private legal counsel.**

## PREFACE

Recall is the power of the voters to remove an elected official before his or her term expires. It has been a fundamental part of our governmental system since 1911 and has been used by voters to express dissatisfaction with elected representatives.

This publication examines the law of recall only as it applies to local officials.

Please note that the procedures described herein do not apply to federal officers. The removal of U.S. Representatives or U.S. Senators is governed by the United States Constitution, Article 1, Section 5 (2), which states "[e]ach House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." The President, Vice President, and all civil officers of the United States shall be removed through the process of "impeachment" which is also governed by the United States Constitution.

Unless otherwise indicated, all references in parentheses are to the California Elections Code.

# **A Guide to Recall For County, School Districts, Special Districts and Local Judicial Offices**

## Table of Contents

### **I. INTRODUCTION**

|  |   |
|--|---|
| 1. Use of This Guide .....                                 | 6 |
| 2. What is Recall and What Circumstances Justify It? ..... | 7 |
| 3. Who Can Be Recalled? .....                              | 7 |
| 4. Circumstances Under Which a Recall is Prohibited .....  | 7 |
| 5. Who Conducts the Recall Election?.....                  | 7 |
| 6. Who Can Initiate a Recall? .....                        | 8 |
| 7. Separate Nature of Each Recall .....                    | 8 |
| 8. Cost of a Recall .....                                  | 8 |

### **II. STARTING THE RECALL**

|  |    |
|--|----|
| 1. Preparing the Notice of Intention.....      | 9  |
| 2. Serving the Notice on the Incumbent.....    | 9  |
| 3. Filing the Notice and Proof of Service..... | 9  |
| 4. Publishing the Notice .....                 | 10 |
| 5. Incumbent's Answer.....                     | 10 |
| 6. Campaign Finance Reporting .....            | 11 |

### **III. BUILDING THE PETITION**

|   |    |
|---|----|
| 1. Overview.....  | 11 |
| 2. Format of the Recall Petition .....  | 11 |
| 3. Filing of Blank Copies of Proposed Petition and Proof of Publication ..... | 13 |
| 4. Review and Approval of Petition Format .....                               | 14 |

### **IV. SIGNATURE REQUIREMENTS AND CIRCULATION DEADLINES**

|  |    |
|--|----|
| 1. When Circulation of the Recall Petition May Begin ..... | 14 |
| 2. Number of Days to Circulate Petition.....               | 14 |
| 3. Number of Signatures Required.....                      | 15 |
| 4. Withdrawal of Signatures from Petitions.....            | 16 |

**V. COLLECTING SIGNATURES**

1. Who Can Circulate a Recall Petition? ..... 16  
2. Who Can Sign a Recall Petition? ..... 16  
3. Registering or Re-Registering Potential Signers ..... 16  
4. Circulator Must Complete and Sign Declaration of Circulator ..... 17  
5. Including a "Cushion" to Allow for Invalid Signatures ..... 17  
6. Causes of Invalid Signatures ..... 17  
7. Legibility of Signatures ..... 18  
8. Circulation of Recall Petitions on Private Property ..... 18  
9. Penal Provisions ..... 18

**VI. FILING THE RECALL PETITION**

Filing the Recall Petition ..... 20

**VII. VERIFICATION OF PETITION SIGNATURES**

Verification of Petition Signatures ..... 20

**VIII. CERTIFYING RESULTS OF SIGNATURE VERIFICATION**

1. Insufficient Number of Valid Signatures ..... 21  
2. Sufficient Number of Valid Signatures ..... 21  
3. Restrictions on Access to Recall Petitions ..... 22

**IX. RESIGNATION OF OFFICEHOLDER**

Resignation of Officeholder ..... 22

**X. THE RECALL ELECTION**

1. Calling the Election ..... 23  
2. Filing Requirements for Candidates ..... 23  
3. Design of the Ballot ..... 25  
4. County Voter Information Guide ..... 25  
5. Majority Vote Required to Recall the Incumbent ..... 25  
6. Plurality Vote to Elect a Successor ..... 25  
7. Campaign Finance Reporting Requirements and Limitations ..... 25

**XI. THE AFTERMATH**

1. Repeating a Recall if the Incumbent is Not Recalled .....26  
2. Right of the Recalled Incumbent to Run in Future Elections ..... 26

**XII. APPENDICES**

A. Flow Chart: *Qualifying a Recall for the Ballot*.....27  
B. Rules for Counting the Number of Words .....28  
C. Sample *Notice of Intention* Form .....29  
D. Sample Affidavit of *Proof of Personal Service* (Proponent) .....30  
E. Sample Affidavit of *Proof of Service by Certified Mail* (Proponent) .....31  
F. Sample Affidavit of *Proof of Personal Service* (Incumbent) .....32  
G. Sample Affidavit of *Proof of Service by Certified Mail* (Incumbent) .....33  
H. (1 of 2) Sample of *Petition for Recall* .....34  
I. (2 of 2) Explanation of Recall Petition Format .....35

# I. INTRODUCTION

## 1. Use of This Guide

This guide is intended to provide basic, useful facts about the recall process for elected officers of the county, a school district, a community college district and a special district as well as elected judges of the Superior Court. (§§11001, 11004)

For recall of city officeholders, contact the City Clerk of that city's office.

For recall of state officeholders, see the "*Procedure for Recall of State and Local Officials*" published by the Office of the Secretary of State.

For the purposes of recall of local officers, the term "clerk" refers to:

1. The county elections official in the case of the recall of elective officers of a county, school district, county board of education, community college district, resident voting district, and judges of the Superior Court;
2. The city elections official, including, but not necessarily limited to, a city clerk in the case of the recall of elective officers of a city;
3. The secretary of the governing board in the case of the recall of elective officers of a landowner voting district or any district in which, at a regular election, candidate's nomination papers are filed with the secretary of the governing board. (§§307, 11002)

"Governing board" includes a city council, the board of supervisors of a county, the board of trustees of a school district or community college district, or the legislative body of a special district. In the case of the recall of a trial court judge, "governing board" means the board of supervisors. (§11003)

"Proponents" of a recall are those individuals who initiate the recall action. Proponents of a recall must be registered voters in the electoral jurisdiction of the officer they seek to recall. (§11005)

"Electoral jurisdiction" means the area within which the voters reside who are qualified to vote for the officer sought to be recalled. (§322)

This guide should be used in conjunction with:

- The attached flow chart (**Appendix A**) entitled, "Qualifying a Recall for the Ballot," which shows the process of preparing, circulating, and filing a recall petition, and continues through qualifying and calling an election.

- The most current version of the "*Procedure for Recall of State and Local Officials*," published by the Office of the Secretary of State.
- The applicable sections of the California Elections Code, Government Code, United States Constitution, California Constitution, County of Santa Clara Charter and other relevant references.

Except as otherwise specified, references to the number of days means *calendar* days, as in "...the incumbent's answer to the notice of intention to recall, is due within seven (calendar) days after the filing of the notice of intention by the proponents."

## **2. What is Recall and What Circumstances Justify It?**

The California Constitution defines recall as "the power of the electors to remove an elective officer." (Article II, Section 13) Neither the California Constitution nor the Elections Code states under what circumstances recall is justified. Instead, the California Constitution states, in connection with recalls of state officers, "[s]ufficiency of reason is not reviewable." (Article II, Section 14) The only language in the Elections Code that has any bearing is §11024; referring to the proponents' statement of reasons for the recall and the incumbent's answer, it states that, "the statement and answer are intended solely for the information of the voters. No insufficiency in form or substance thereof shall affect the validity of the election proceedings."

Article II, Section 19 of the California Constitution states, "[t]he Legislature shall provide for recall of local officers." This section does not affect counties and cities whose charters provide for recall.

## **3. Who Can be Recalled?**

Any elective officer including any officer appointed in lieu of an election or to fill a vacancy. (§11006)

## **4. Circumstances Under Which a Recall is Prohibited**

A recall against an officer of a city, county, special district, school district, community college district, or county board of education may not be started if any of these apply:

- The incumbent has not held office during his or her current term for more than 90 days.
- A recall election has been decided in the incumbent's favor within the last six months.
- The incumbent's term of office ends within six months or less. (§11007)

## **5. Who Conducts the Recall Election?**

The County Elections Official (Registrar of Voters) conducts the recall election. In the event, however, that the County Elections Official is the incumbent whose recall is being sought, then the duties imposed upon him or her shall be performed by some other person designated by the Board of Supervisors. (§§11002, 11201)

## **6. Who Can Initiate a Recall?**

Any qualified elector may initiate a recall. A qualified elector is defined as being a registered voter of the jurisdiction and eligible to vote on the office of the incumbent whose recall is sought. (§§321, 322, 11005)

## **7. Separate Nature of Each Recall**

Each recall is a separate process and requires successful completion of the steps shown on the flow chart (**Appendix A**). If, for example, there are three separate incumbents to be recalled, there must be three each of the following:

- Notice of Intention
- Affidavit of Time and Manner of Service
- Affidavit of Proof of Publication of the Notice of Intention
- Set of Two Blank Copies of the Proposed Petition Format
- Recall Petition (§§11021, 11044)

Any error following any of the steps in connection with a particular recall may require that some or all steps taken up to that point be done over. Again, recall proponents may wish to consult an attorney to help them avoid such errors.

When multiple recalls (more than 1 member of a governing board) are underway, petition circulators typically will be circulating multiple petitions, and requesting voters to sign all of the petitions involved. Since not all voters will choose to sign each petition, when the petitions are filed with the Office of the County Elections Official, the total number of signatures submitted for each recall petition can vary.

## **8. Cost of a Recall**

The cost of a recall election is charged to the government agency whose officeholders are sought to be recalled. An authorized representative of the government agency should contact the County Elections Official for an estimate of the cost. If the recall election can be consolidated with a regularly scheduled election or another special election, the cost may be considerably reduced.

## II. STARTING THE RECALL

### 1. Preparing the Notice of Intention

The initial step for proponents interested in the recall of an elected officeholder is to prepare a Notice of Intention. The Notice of Intention consists of all of the following:

- The name and title of the officeholder sought to be recalled.
- A statement, of no more than 200 words, expressing the reasons for the proposed recall. (See **Appendix B** for rules on counting the number of words.)
- The printed name, signature, and residence address, including street and number, city, and ZIP Code, of each of the proponents of the recall. If a proponent cannot receive mail at the residence address, he or she must provide an alternative mailing address.
- The language contained in §11023 informing the incumbent of his or her right to file an answer. (§11020)

A sample Notice of Intention form is included as **Appendix C**.

The minimum number of proponents required to sign the Notice of Intention is ten (10) or equal to the number of signatures required to be filed on the nomination petition for the office of the incumbent whose recall is being sought, *whichever is higher*. (§11020) For example, in the case of a county elected office, the minimum number of signatures required on a nomination petition is 20, hence the minimum number of proponents required to sign the Notice of Intention is 20. (§8062(a)(3))

All proponents of a recall must be registered voters of the electoral jurisdiction of the officeholder they seek to recall. (§11005)

### 2. Serving the Notice on the Incumbent

A *copy* of the Notice of Intention must be served on the incumbent sought to be recalled by personal delivery or by certified mail (§11021). If serving by certified mail, recall proponents are advised to obtain from the Office of the County Elections Official the incumbent's most current and correct mailing address, as listed on the incumbent's voter registration record.

### 3. Filing the Notice and Proof of Service

The *original* Notice of Intention must be filed with the Office of the County Elections Official within seven (7) calendar days of the incumbent having been served, along with an affidavit of time and manner of service. (See **Appendices D and E** for examples of affidavits used for personal delivery and certified mail, respectively.)

A separate Notice of Intention shall be filed for each incumbent sought to be recalled.

The Proof of Service by Certified Mail (**Appendix E**) *attests* to the date the Notice of Intention was *mailed*, the name of the incumbent sought to be recalled and his or her mailing address.

- ✓ *Note to elections official: It is recommended that on the day a Notice of Intention and proof of service are filed, that you immediately (1) notify the incumbent(s) sought to be recalled of the filings, (2) communicate to the incumbent the seven (7) calendar day deadline for filing an answer and (3) offer to provide the incumbent a copy of the filing.*

#### **4. Publishing the Notice**

Proponents are also required to publish, at their expense, the Notice of Intention at least once in a newspaper of general circulation serving the jurisdiction of the incumbent whose recall is being sought. (§11022; Government Code §6000, et seq.) The publication need not include the answer to the Notice of Intention which incumbents who are the subjects of recall are permitted to file. There is no timeframe specified for publication. However, proof of publication is required to be filed at the time two (2) blank copies of the petition are filed. Proponents must request and obtain from the newspaper a signed affidavit proving publication. (§11042)

#### **5. Incumbent's Answer**

The incumbent has the right to provide a response to the Statement of Reasons contained in the proponents' Notice of Intention. Should he or she choose to do so, the response is limited to 200 words and must be filed with the Office of the County Elections Official within seven (7) calendar days after the filing of the Notice of Intention by the proponents. It must be signed, and shall be accompanied by the incumbent's printed name and business or residence address.

- ✓ *Note to elections official: The statement and answer are intended solely for the information of the voters. No insufficiency in form or substance of the statement or the answer shall affect the validity of the election proceedings. (§11024)*

Within that same seven (7) calendar day period, the incumbent shall also serve a copy of his or her response on one of the proponents named in the Notice of Intention. Service is to be by personal delivery or certified mail. (§11023) (See **Appendices F and G** for examples of affidavits used for personal delivery and certified mail, respectively.)

- ✓ *Note to proponents: In the event the incumbent's answer is apparently not received by any proponent, contact the County Elections Official, since the incumbent's answer must also be filed at the County Elections Office by the same deadline. It is the proponents' responsibility to verify with the County Elections Official whether or not an answer has been filed, prior to proceeding to the next step in the recall process.*

## 6. Campaign Finance Reporting

Recall proponents who organize to qualify a recall for the ballot and those who organize to oppose such a recall effort will have campaign disclosure and filing obligations under state law. See **Section X, Part 8** for additional information.

### III. BUILDING THE PETITION

#### 1. Overview

The language and design of the recall petition are strictly controlled by the Elections Code. (§§100, 100.5, 11040, 11041, 11043, 11043.5, 11046)

See **Appendix H** for a sample recall petition form. A similar version is also provided in "*Procedure for Recall of State and Local Officials*" published by the Secretary of State.

Important: Before proceeding with circulation of any recall petition, proponents are required to create and file two (2) blank copies of the petition's design and format with the Office of the County Elections Official for review **and approval** as to whether the petition conforms to the requirements of the Elections Code. (§11042)

#### 2. Format of the Recall Petition

The recall petition format provided by the Secretary of State or the County Elections Official is mandatory and must be used. (§§11041, 11043.5)

The recall petition may consist of any number of separate sections, which must be duplicates except as to signatures and matters required to be affixed by signers and circulators. The number of signatures attached to each section is left up to the discretion of the person soliciting the signatures. Each section may consist of any number of separate pages. A page shall consist of each side of a sheet of paper on which any signatures appear. (§11040)

✓ Note to proponents: It is recommended that everything be placed on one side of the paper.

##### a. Heading:

A margin at least one inch wide shall be left blank across the top of each page and a margin at least one-half inch wide shall be left blank along the bottom of each page. (§§100, 11043)

All petition sections must be printed in uniform size and darkness with uniform spacing. (§11041)  
On each page, in no less than 8 point type, there must appear:

- Language requesting that an election be called to elect a successor.
- Copy of the Notice of Intention, including the statement of grounds for the recall.
- ✓ *Note to proponents: The Notice of Intention to appear on the petition must be identical to that which was published, with the exception of the language related to the incumbent's right to file an answer. (§11022)*
- The names of at least ten (10) of the proponents listed on the Notice of Intention (signatures and addresses do not need to be included).
- The incumbent's answer, if any. If no answer was filed, the petition shall so state.

b. Signature Space:

Immediately above the signature spaces(s) shall be the following statement:

"Each of the undersigned states for himself/herself that he or she is a registered and qualified elector of the [insert name of electoral jurisdiction, i.e. Mountain Water Agency, Division 1] of [insert name of geographical location, i.e. County of San Bernardino], California."

- ✓ *Note to proponents: When a petition is circulated in more than one county, each section of the petition shall bear the name of the county in which it is circulated, and only registered voters of that county may sign that section. (§11047)*

The petition shall be designed so that each signer shall personally affix all of the following:

- printed name;
- signature;
- residence address, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily determined; and
- name of incorporated city or unincorporated community (§11043)

Pursuant to the California Supreme Court's decision in Assembly v. Deukmejian (1982) 30 Cal.3d 638, 180 Cal.Rptr. 297, the petition form must direct signers to include their "residence address" rather than "address as registered" or other address. Petition forms that do not comply with this decision will be rejected as invalid.

Signature spaces must be consecutively numbered commencing with the number one (1) for each petition section.

A space at least one inch wide shall be left blank to the right of each name and address for the use of the County Elections Official in verifying the petition.

c. Declaration of Circulator:

Each section of the petition shall have attached to it a declaration signed by the circulator (person soliciting signatures) of that section of the petition, setting forth in the circulator's own hand, all of the following:

- printed name of the circulator;
- residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily determined; and
- dates between which all signatures to the petition were obtained.

The declaration must also include:

- that the circulator circulated that section and witnessed the appended signatures being written;
- that according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be;
- that the circulator is 18 years of age or older
- the circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name. The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature. (§§104, 11046)

**3. Filing of Blank Copies of Proposed Petition and Proof of Publication**

Two blank copies of the recall petition shall be filed with the Office of the County Elections Official within ten (10) calendar days after the filing of the incumbent's answer, to the Notice of Intention, if any. If no answer is filed, the copies are due within ten (10) calendar days after the deadline for the incumbent to file an answer. (§11042)

The affidavit attesting to the proof of publication of the Notice of Intention is due at the same time as filing the two blank copies of the recall petition. (§11042)

**4. Review and Approval of Petition Format**

The County Elections Official shall review the two blank copies of the petition format within ten (10) calendar days and notify the proponents in writing that the petition is either approved for circulation or requires modification. The submitted blank copies of the petition will be carefully reviewed for correctness and will be compared to the Notice of Intention, publication and answer of incumbent, if any, to assure accuracy in text, punctuation, capitalization, spelling, etc. If the comparison discloses discrepancies, the petition will be returned. The County Elections Official shall notify the proponents in writing as to what alterations in the petition are necessary. (§11042)

If changes are necessary, the proponents have ten (10) calendar days to file two blank copies of the *corrected petition* with the Office of the County Elections Official. This process shall be repeated until no further alterations are necessary. (§11042)

✓ *Note to elections official: As a courtesy, the incumbent(s) should also be notified when approval on format is given.*

**IV. SIGNATURE REQUIREMENTS AND CIRCULATION DEADLINES**

**1. When Circulation of the Recall Petition May Begin**

No signatures may be obtained on the recall petition until the form and wording of the recall petition has been approved by the County Elections Official as meeting the requirements of the Elections Code. (§11042(d)) The time period available for circulating the petition is measured from when the Elections Official notifies the proponents in writing that the petition meets the form and wording requirements. (§11220(a))

**2. Number of Days to Circulate Petition**

The circulation period of a recall petition is based on a sliding scale using the number of registered voters in the electoral jurisdiction eligible to vote on the office of the incumbent subject to recall, as follows: (§11220)

| <u>Registration</u> | <u>Number of Calendar Days to Circulate</u> |
|---------------------|---|
| Under 1,000         | 40  |
| 1,000-4,999         | 60  |
| 5,000-9,999         | 90  |
| 10,000-49,999       | 120   |
| 50,000 and above    | 160   |

If the electoral jurisdiction extends into another county or counties, the registration figures of those counties will be included in the computation.

The number of registered voters shall be determined using the last official report of registration by the County Elections Official to the Secretary of State prior to the approval of the petition for circulation. (§11221(b))

### **3. Number of Signatures Required**

In the case of an officer of a county, city, school district, community college district, county board of education, or resident voting district, the number of signatures shall be equal in number to not less than the following percent of the registered voters in the electoral jurisdiction: (§11221(a))

| <u>Registration</u> | <u>Signatures Required (as % of Total Registered Voters)</u> |
|---------------------|--|
| Under 1,000         | 30%  |
| 1,000-9,999         | 25%  |
| 10,000-49,999       | 20%  |
| 50,000-99,999       | 15%  |
| 100,000 and above   | 10%  |

If the electoral jurisdiction extends into another county or counties, the registration figures of those counties will be included in the computation.

The number of registered voters shall be determined using the last official report of registration by the County Elections Official to the Secretary of State prior to the approval of the petition for circulation. (§11221(b))

**An exception** to the above occurs in the case of judges, where the signature requirement is 20% of the total number of *votes cast* for all candidates for Superior Court in the last election for that office. (California Constitution Article II, Section 14(b))

If a Judge of a Superior Court is sought to be recalled, the number of valid signatures must be equal in number to at least twenty percent (20%) of the last vote for the office. If the office has not appeared on the ballot since its creation or did not appear at its last regularly scheduled date, the number of signatures must be equal in number to at least twenty percent (20%) of the votes cast within the jurisdiction for the "countywide office" which had the least number of votes in the most recent general election in the county in which the judge holds his or her office. (§11221). "Countywide office" is defined as "an elective office wholly within the county which is voted on throughout the county."

**Another exception** to the above is if an officer of a landowner voting district is sought to be recalled, signatures of voters owning at least ten percent (10%) of the assessed value of land within the electoral jurisdiction of the officer sought to be recalled is required. (§11221(d))

#### **4. Withdrawal of Signatures from Petitions**

Any voter who has signed a recall petition who wishes to have his or her signature withdrawn from the petition may file a written request with the Office of the County Elections Official before the day the petition is filed. (§§103, 11303)

The written request must identify the subject of the recall petition, clearly indicate the requester indeed signed such petition, and contain the person's name, residence address and signature.

- ✓ *Note: The County Elections Official will have no way of knowing when the proponents will choose to file the recall petitions. Consequently, the Elections Official will not be able to advise persons who wish to withdraw their signatures as to any "deadline" for filing their requests; other than the fact that the request must be received no later than the day before the petition is filed.*

## V. COLLECTING SIGNATURES

### **1. Who Can Circulate a Recall Petition?**

A person 18 years of age or older may circulate a recall petition. (§11045, 102)

### **2. Who Can Sign a Recall Petition?**

Only registered voters in the electoral jurisdiction who are qualified to vote on the office held by the incumbent whose recall is sought can sign a recall petition. Each signer must personally print and sign his or her name and *residence address*, giving street and number and, if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained. (§§100, 322, 11045)

A voter *physically unable* to sign a petition may request someone else to print the voter's name and residence address on the petition. The voter then must affix his or her mark in the appropriate space on the petition, and have one person witness the mark by signing his or her name thereon. (§100.5, Government Code §16) According to the Secretary of State's legal counsel, witnesses do not have to be registered, and the circulator may serve as a witness.

If an electoral jurisdiction includes portions of more than one county, each section of the petition must include the name of the county in which it is circulated, and only registered voters of that county may sign that section of the petition. (§11047 and **Section III, Part 2.b.** of this guide)

### **3. Registering or Re-Registering Potential Signers**

For potential signers who are not currently registered to vote, or those who are registered but have since moved, a newly completed voter registration card will ensure his or her signature on a recall petition will be counted as valid. The new registration card must be signed on the same date or a date before the date of

signing the petition. The registration card must be received by the Office of the County Elections Official on or before the date the petition is filed. (§2102(b))

✓ *Note to proponents: It will assist the County Elections Official in verifying signatures on the petition if the circulator notes in the left hand margin of the petition, adjacent the signature, these newly completed registration cards' affidavit numbers and notifies the Elections Official at the time of delivery that these registration cards are related to the specific petition. **Proponents should also be aware that completed registration cards must be delivered to the Office of the County Elections Official within three (3) calendar days of receipt from the voter.** (§2138)*

#### **4. Circulator Must Complete and Sign Declaration of Circulator**

Each section of the petition must have attached to it a declaration signed by the circulator (person soliciting signatures) of that section of the petition, setting forth in the circulator's own handwriting, all of the following:

- (a) the printed name of the circulator;
- (b) the residence address of the circulator, giving street and number, or if no street exists, adequate designation of residence so that the location may be readily determined;
- (c) the dates between which all signatures to the petition were obtained. (§§104, 11046)

#### **5. Including a "Cushion" to Allow for Invalid Signatures**

Proponents need to allow for invalid signatures by including extra signatures above and beyond the minimum needed to qualify the petition.

#### **6. Causes of Invalid Signatures**

Signatures that appear on the petition may be determined to be invalid for a number of reasons. Some of the most common are listed below:

- The signer is not eligible to vote on the office held by the incumbent whose recall is being sought.
- The signer has moved since last registering to vote and failed to re-register.
- The signer writes in a mailing or business address as his or her address of residence.
- The signer signs the petition more than once. Only the first signature encountered during verification will count; moreover, any duplicate signatures found in the "random sample" are penalized under the sufficiency formula. (See **Section VII**)
- The residence address appearing on the petition was "pre-printed" and not written in personally by the signer.
- The signer's signature does not appear to match that on the voter registration card on file with the Office of the County Elections Official. (§§100, 105, 321, 359)

Certain defects in the declaration of the circulator, such as failure of the circulator to sign the declaration, may invalidate all signatures appearing on that section. Recall proponents should advise their circulators of the importance of fully and accurately completing the declaration. (§§104, 11046)

Circulators should be advised that under no circumstances should they make any changes or "corrections" in the signatures or addresses that the voters have written on the petition.

In verifying petitions, The County Elections Official may use the most current version of the Secretary of State's "*Official Petition Verification Guidelines*."

## **7. Legibility of Signatures**

To ensure that signatures are readable, use a firm writing surface beneath the petition page being signed, and ballpoint pens. Do not use felt tip markers. If circulating recall petitions against multiple officeholders, it is suggested printing the recall petitions on lightly tinted colored paper with a different color for each officeholder.

## **8. Circulation of Recall Petitions on Private Property**

Petition circulators often seek to circulate petitions at shopping centers and other private property. With shopping centers being private property, the courts have had to balance the private property rights of the shopping center owners against the free speech and petition rights of petition circulators. Both supporters and opponents of a recall are advised to contact the property manager or owner to make arrangements in advance of circulating petitions, and to seek legal counsel when issues arise as to their free speech and petitioning rights at shopping centers or private property.

## **9. Penal Provisions**

The following are **selected** penal provisions relating to circulation of recall petitions. (See §§18600 et seq. for all the relevant code sections.)

### **a. Provisions Relating to Circulators**

It is a misdemeanor for anyone circulating a recall petition to intentionally misrepresent or intentionally make a false statement concerning the contents, purport, or effect of any petition to any person who signs, desires to sign, is requested to sign, or who makes inquiries with reference to it, or to whom it is presented for his or her signature. It is also a misdemeanor to willfully and knowingly circulate, publish, or exhibit any false statement or misrepresentation concerning the contents, purport, or effect of any recall petition for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that petition. (§18600)

Any person working for the proponents of a recall petition who refuses to allow a prospective signer to read the petition is guilty of a misdemeanor. (§18601)

Every person who offers or gives money or other valuable consideration to another in exchange for his or her signature on a recall petition is guilty of a misdemeanor. (§18603)

No one shall knowingly or willfully permit the list of signatures on a recall petition to be used for any purpose other than qualification of the recall question for the ballot. Violation is a misdemeanor. (§18650)

b. Provisions Relating to Fraudulent Signatures

Every person who solicits any circulator to affix to a recall petition any false or forged signature, or to cause or permit a false or forged signature to be affixed, is guilty of a misdemeanor. (§18610)

Anyone who circulates or causes to be circulated a recall petition knowing it to contain false, forged, or fictitious names, is punishable by a fine not exceeding \$5,000 or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both fine and imprisonment who circulates or causes to be circulated any initiative, referendum, or recall petition, knowing it to contain false, forged, or fictitious names. (§18611)

Every person who knowingly signs his or her name more than once to a recall petition or signs his or her name to that petition knowing himself or herself at the time of signing not to be qualified to sign it is guilty of a misdemeanor. (§18612)

Every person who subscribes to any recall petition a fictitious name, or who subscribes thereto the name of another, or who causes another to subscribe such a name to that petition, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years. (§18613)

Every person who files in the Office of the Elections Official any recall petition to which is attached any signature which the person filing the petition knows to be false or fraudulent or not the genuine signature of the person whose name it purports to be, is punishable by a fine not exceeding \$5,000 or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. (§18614)

c. Threats to Prevent Petition Circulation or Filing

Every person who threatens to commit an assault or battery on a person circulating a recall petition or on a relative of such a person or to inflict damage on the property of the circulator or relative, with the intent to dissuade the circulator from circulating the petition or in retribution for the circulation, is guilty of a misdemeanor. (§18630)

## VI. FILING THE RECALL PETITION

All sections of the recall petition shall be filed at the same time. No additional signatures may be filed or accepted after the initial filing. The petition sections shall be filed by the proponents or by any person or persons authorized in writing by a proponent. A copy of the written authorization must be included with the filing. Each section of the petition must be filed with the Elections Official in the jurisdiction for which it was circulated. If circulated in more than one county, it must be filed in the county for which it was circulated. (§11222(a))

If the Elections Official determines that the number of signatures, on its face, is equal to or greater than the minimum required, the petition will be accepted for filing. Any sections of the petition not so filed shall be void for all purposes. If the number, on its face, is less than the minimum required, the petition will not be accepted for filing and will be returned to the proponents. (§11222(b))

If the petition was circulated in more than one county, the Elections Official of each county shall affix, with the certificate showing the results of his or her examination, the number of registered voters of the county residing within the electoral jurisdiction of the officer sought to be recalled. (§11223)

## VII. VERIFICATION OF PETITION SIGNATURES

When proponents bring in the petition for filing, the Elections Official must count the number of signatures on it. If, from this examination, the Elections Official determines that the number of signatures, on its face, equals or is in excess of the minimum number of signatures required, the Elections Official shall accept the petition for filing. The petition shall be deemed as filed on that date. Any petition not so filed must be returned to the proponents and is void for all purposes. (§11222)

The Elections Official must verify every signature submitted or, where more than 500 signatures are submitted, may use a random sampling signature verification technique.

1. If the random sampling technique is not used, the Elections Official has 30 days from the date of filing of the petition (excluding Saturdays, Sundays, and holidays) to determine whether the petition is signed by the required number of voters, certify the results of the examination, and notify the proponents. If the petition is found to have sufficient signatures, the Elections Official must certify the results to the governing board at its next regular meeting. If the petition is found to have insufficient signatures, the Elections Official must certify this result. (§11224)
2. If the random sampling technique is used, the Elections Official must complete the examination of the sample of signatures within 30 days of the filing of the petition, excluding Saturdays, Sundays, and holidays. If, for example, 87% of the sample signatures are found to be valid, then 87% of the entire number of signatures are deemed to be valid.

If the statistical sampling determines that the number of valid signatures is greater than 110% of the required number, the petition is considered qualified without further verification, and the Elections Official must certify the results of the examination to the governing board at its next regular meeting.

If the total number of valid signatures is less than 90% of the number of signatures required to qualify the petition, the Elections Official shall certify the petition to be insufficient. If the petition is found insufficient, no action shall be taken on the petition. However, the failure to secure sufficient signatures shall not preclude the later filing of an entirely new petition to the same effect. (§11225)

If the statistical sampling shows that the number of valid signatures is within 90 to 110% of the number of signatures needed, the Elections Official must examine and verify each signature filed. If the result of this complete examination shows that the petition has the required number of signatures, the Elections Official must certify the results of the examination to the governing body at its next regular meeting. If the number of valid signatures is less than the required number, the Elections Official shall certify the petition to be insufficient. If the petition is found insufficient, no action shall be taken on the petition. However, the failure to secure sufficient signatures shall not preclude the later filing of an entirely new petition to the same effect. (§11225)

Upon completing the examination of the petition, the Elections Official shall attach to the petition a certificate showing the result of this examination and shall notify the proponents of either the sufficiency or insufficiency of the petition. (§§11224, 11225)

## VIII. CERTIFYING RESULTS OF SIGNATURE VERIFICATION

### 1. Insufficient Number of Valid Signatures

If the certificate shows that the petition contains an insufficient number of valid signatures to qualify the recall for the ballot, no further action is taken and the petition remains on file. (§11226)

No insufficiency in a petition against any officer shall bar the later filing of a new petition against that officer. (§11300)

### 2. Sufficient Number of Valid Signatures

If the petition is found to have sufficient valid signatures to qualify the recall for the ballot, the Elections Official will immediately certify the results of the signature examination to the governing body for consideration at its next regular meeting. (§§11224, 11225, 11227)

The certificate shall contain:

- name of officer whose recall is sought;
- title of his or her office;

- number of signatures required by law;
- total number of signatures on the petition;
- number of valid signatures on the petition;
- number of signatures that were disqualified.

### 3. **Restrictions on Access to Recall Petitions**

Some voters may have concerns about possible harassment if they sign initiative, referendum, or recall petitions. Government Code Section 6253.5 provides that such petitions (and any memoranda prepared by the Election Officials in examining the petitions) are not deemed to be public records and are not open to inspection. There are two exceptions:

- Employees of the County Election Office responsible for verifying the signatures; and
- Recall proponents if the petition is deemed insufficient and fails to qualify for the ballot. In that event, proponents have the right to examine those signatures found to be invalid and the reasons therefor. "Proponents" are those individuals listed on the Notice of Intention (or a person authorized in writing by the proponent). Any such examination shall begin within 21 days following certification of insufficiency. (§11301, Government Code Section 6253.5)

## IX. RESIGNATION OF OFFICEHOLDER

If the incumbent whose recall is being sought resigns (or a vacancy occurs for any other reason) at any time following the filing of the recall petition, the recall process shall proceed if sufficient number of signatures were filed as of the day of the vacancy.

If insufficient number of signatures, or no signatures, were filed as of the date of the vacancy, the recall election shall not proceed and a vacancy in the office that is the subject of the recall petition shall be filled as otherwise provided by law.

A person who was subject to a recall petition may not be appointed to fill the vacancy in the office that he or she vacated and that person may not be appointed to fill any other vacancy in office on the same governing board for the duration of the term of office of the seat that he or she vacated. (§11302)

## X. THE RECALL ELECTION

### 1. Calling the Election

Within 14 calendar days after the meeting at which the governing body received the certificate of sufficiency from the County Elections Official, the governing body is to issue an order calling the election. (§11240)

If the governing body fails to act within those 14 calendar days, the County Elections Official shall call for the election within five calendar days.

If the recall is to be voted on by voters in more than one county, the Elections Official of the county with the largest number of registered voters who will be voting in the election shall set the date in consultation with Elections Officials of the other counties. (§11241)

A recall election shall be conducted, canvassed, and the results declared in substantially the manner provided by law for a regular election for the office. One election is sufficient for the recall of several officers. (§§11328, 11329)

The election shall be held not less than 88, nor more than 125, days from the date of the order. (§11242)

✓ *Note: If a regular or special election is to be held throughout the electoral jurisdiction of the incumbent sought to be recalled within this time period, the recall election shall be held on the same day, and consolidated with, the regular or special election. (§11242)*

No election shall be held on any day other than a Tuesday, nor shall any election be held on the day before, the day of, or the day after a state holiday. (§1100)

### 2. Filing Requirements for Candidates

Once the recall election is called, there will be a nomination period for candidates to file for election to the office.

**Exception:** Although it is clear that Superior Court judges are subject to recall, Article VI, Section 16 of the California Constitution creates some legal uncertainty as to whether the successor to a recalled judge is elected by the voters or appointed by the Governor. If it is the latter, obviously the need for a contest involving successor candidates is eliminated. It is, therefore, suggested that Elections Officials seek their own legal counsel to clarify this issue should it arise.

The nomination period must not open before the day the order of election is issued and must close not later than the 75th day before the election. If the County Elections Official is required to certify to the governing board the names of candidates to be placed on the ballot, it shall be done by the 71st day before the election. (§11381(b))

The incumbent may not be a candidate to succeed himself or any other member of the same governing board who is also the subject of recall, but he or she may submit a statement for publication in the County Voter Information Guide. (§§11327, 11381(c), 13307)

✓ *Note: The nomination period for recall elections may very likely be shortened. For example, the election could be called to be held in the minimum of 88 days. Since the nomination period under any circumstances must close on the 75th day, the nomination period would consist of just 14 calendar days. (§11381(b))*

Nomination petitions may or may not be required of candidates, depending on the office held by the incumbent. The number of nominating signatures, if any, will be the same as required of candidates seeking that particular office in a regular election. (§11381) Check with the County Elections Official regarding what is required to be filed for the office.

There are no filing fees for school or special district offices. Filing fees for County Supervisor and countywide office are 1% of the official's annual salary. (§8104(b))

**a. Petitions In-Lieu of Filing Fee**

If there is a filing fee, petitions in-lieu of payment of that fee must be made available to candidates, who may circulate these petitions and gather signatures in lieu of paying all or a portion of the filing fee. (§8106)

**b. Candidate Qualifications**

In addition to filing nomination documents (declaration of candidacy and nomination petition, if required), some candidates have to provide documentation of their qualifications. (§13.5) In Santa Clara County, these candidates would be: Assessor, District Attorney, Sheriff and Superior Court Judges.

**c. Candidate Statements**

Candidates' statements for publication in the County Voter Information Guide are optional. Statements are filed in accordance with the provisions of Elections Code §13307. The cost of statements in a recall election will be determined by the County Elections Official once the election has been called.

For candidates, the statement is due at the time his or her nomination documents (declaration of candidacy and nomination petition, if required) are filed. (§13307(a)(2))

The incumbent whose recall is being sought may also submit a statement for inclusion in the official County Voter Information Guide. (§11327)

Statements must be filed no later than 5 p.m. on the last day of candidate filing. (§13307)

✓ *Note to Elections Official: Notify incumbent of his or her right to submit a statement and deadline for filing.*

All candidate and incumbent statements shall remain confidential until the close of the filing period at 5 p.m. on the last day of candidate filing.

### **3. Design of the Ballot**

Except in the case of a landowner voting district, the question on the ballot will be: "Shall [name of incumbent sought to be recalled] be recalled (removed) from the office of [title of office]?" with the voter marking either "Yes" or "No." Below that will appear the names of the candidates who have filed to seek election to the office in the event the recall is successful. Appropriately identified write-in space must also be provided. (§§11320, 11322)

If there are multiple recalls that have qualified for the ballot, following the list of candidates to succeed to one office would be the recall question for the next office, and so on. Candidates will be listed in randomized alphabetical order based upon a drawing of letters by the Secretary of State. In the case of candidates for countywide office, they will be listed in randomized alphabetical order and then rotated in conformance with Election Code Sections 13111(g) and 13112.

### **4. County Voter Information Guide**

The County Voter Information Guide shall include both the statement of reasons for the recall (from the Notice of Intention) and the incumbent's answer, if one was filed. The statement and answer shall be printed on the same page or on facing pages and shall be of equal prominence. If the recall of more than one incumbent is sought, the statement and answer for each shall be printed together and shall be clearly distinguished from those of any other officer. (§11325)

### **5. Majority Vote Required to Recall the Incumbent**

If a majority of the votes on a recall proposal are "Yes," the officer sought to be recalled shall be removed from office upon the qualification of his successor. (§11384)

### **6. Plurality Vote to Elect a Successor**

If the incumbent is recalled, the candidate receiving the highest number of votes shall be declared elected for the unexpired term of the recalled officer. (§11385)

If the candidate who received the highest number of votes fails to qualify within 10 days after receiving his or her certificate of election, the office to which he or she was elected shall be vacant, and shall be filled according to law. (§11386)

### **7. Campaign Finance Reporting Requirements and Limitations**

Proponents of recalls, officers subject to recall, and candidates may have disclosure requirements required by the state Political Reform Act, as well as any additional limitations or requirements established by local

ordinance, if any. It is imperative for all parties involved with a recall to check with the County Elections Official on any and all applicable state and local laws about reporting requirements.

Additional information about specific disclosure requirements is available by contacting the Fair Political Practices Commission, which enforces the Political Reform Act, at 1-866-ASK-FPPC (275-3772) or (916) 322-5660 and/or FAX (916) 322-3711. The address is 428 "J" Street, Suite 450, Sacramento 95814.

## XI. THE AFTERMATH

### 1. Repeating a Recall if the Incumbent is Not Recalled

If the recall election is conducted and the incumbent is not recalled, a new recall may not be commenced against the officer within six months of that election nor during the last six months of the officer's term of office. (§11007)

### 2. Right of the Recalled Incumbent to Run in Future Elections

A successful recall election applies only to the current office. There is nothing in the law to prevent a public official recalled in one election from running for the same or any other office in an election for a subsequent term of office.



## **RULES FOR COUNTING THE NUMBER OF WORDS**

Section 9 of the Elections Code establishes the rules for counting the number of words in the proponents' "Notice of Intention," the incumbent's answer, candidate statements, etc. See below:

- Punctuation is not counted.
- Each word shall be counted as one word except as specified in this section.
- All geographical names shall be considered as one word; for example, "City and County of San Francisco" shall be counted as one word.
- Each abbreviation for a word, phrase, or expression shall be counted as one word.
- Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.
- Dates consisting of a combination of words and digits shall be counted as two words. Dates consisting only of a combination of digits shall be counted as one word.
- Any number consisting of a digit or digits shall be considered as one word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one word whereas "one hundred" shall be counted as two words. "100" shall be counted as one word.
- Telephone numbers shall be counted as one word.
- Internet web site addresses shall be counted as one word.

**NOTICE OF INTENTION TO CIRCULATE RECALL PETITION**

TO THE HONORABLE \_\_\_\_\_:  
(name of officer sought to be recalled)

Pursuant to Section 11020 of the California Elections Code, the undersigned, registered qualified voters of the \_\_\_\_\_, in the State of California, hereby give notice  
(name of district)  
that we are the proponents of a recall petition and that we intend to seek your recall and removal from the office of \_\_\_\_\_, in \_\_\_\_\_,  
(title of office) (name of district)  
California, and to demand election of a successor in that office.

The ground for the proposal recall are as follows:

(STATE GROUNDS, 200 WORDS OR LESS)

The printed names, signatures, and residence addresses of the proponents are as follows:

|    | Name  | Address | Signature |
|----|-------|---------|-----------|
| 1. | _____ |         |           |
| 2. | _____ |         |           |
| 3. | _____ |         |           |

(See page 4 of this Guide for the total required number of proponents' names, addresses and Signatures required in this spaces above.)

Telephone number to contact proponents (optional) ( ) - \_\_\_\_\_

A copy of this and the proof of service will be filed with the \_\_\_\_\_ Elections Official.  
(name of county)

You may file an answer to the statement of the proponents with the \_\_\_\_\_ Elections  
(name of county)

Official within 7 days after the notice is filed. It may not be more than 200 words. If an answer is filed, a copy of it must also be served personally or by certified mail within that same 7 day period on one of the above proponents. The answer shall include the printed name, signature, and business or residence address of the officer sought to be recalled.

### PROOF OF PERSONAL SERVICE

I, \_\_\_\_\_ declare that:  
(print full name)

At the time of service I was at least 18 years of age. My name, address and telephone number are as follows:

\_\_\_\_\_  
(print full name)  
\_\_\_\_\_  
(complete address)  
( ) \_\_\_\_\_  
(telephone number)

I personally served to \_\_\_\_\_  
(print full name of officer sought to be recalled)

a copy of the Notice of Intention to Recall him/her by delivering the copy of the Notice of

Intention to him/her at: \_\_\_\_\_  
(complete address)

on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. .  
(date) (time) (circle one)

I have attached the original of the Notice of Intention to Recall to this Proof of Personal Service.

I, \_\_\_\_\_, declare under penalty of perjury  
(print full name)  
under the laws of the State of California that the foregoing is true and correct, and that

I \_\_\_\_\_ executed this proof of personal service on  
(print full name)  
\_\_\_\_\_ at \_\_\_\_\_  
(date) (place of signing, e.g., city or county)

\_\_\_\_\_  
(complete signature)

**PROOF OF SERVICE BY CERTIFIED MAIL**

I, \_\_\_\_\_ declare that:  
(print full name)

At the time of service, I was at least 18 years of age and I, \_\_\_\_\_  
(print full name)  
reside/am employed in \_\_\_\_\_ at  
(circle one) (name of county)

\_\_\_\_\_  
(complete address)

On \_\_\_\_\_ I deposited in the mail at  
(date)

\_\_\_\_\_ a copy of the  
(place, e.g., name of city or county)

**Notice of Intention to Recall**

\_\_\_\_\_ (print full name of officer sought to be recalled)

in a sealed envelope, with fully prepaid postage thereon for certified mail, addressed to:

\_\_\_\_\_ at:  
(print full name of officer sought to be recalled)

\_\_\_\_\_ (mail address)

I have attached the original of the **Notice of Intention to Recall** to this Proof of Service.

I, \_\_\_\_\_ declare under penalty of  
(print full name)

perjury under the laws of the State of California that the foregoing is true and correct,

and that I executed this Proof of Service on \_\_\_\_\_ at  
(date)

\_\_\_\_\_ (place of signing, e.g., city or county)

\_\_\_\_\_ (complete signature)



**PROOF OF SERVICE BY CERTIFIED MAIL**

I, \_\_\_\_\_ declare that:  
(print full name)

At the time of service, I was at least 18 years of age and I, \_\_\_\_\_  
(print full name)  
reside/am employed in \_\_\_\_\_ at  
(circle one) (name of county)  
\_\_\_\_\_  
(complete address)

On \_\_\_\_\_ I deposited in the mail at  
(date)  
\_\_\_\_\_ a copy of the  
(place, e.g., name of city or county)  
**answer to Notice of Intention to Recall** to \_\_\_\_\_  
(print full name of proponent of recall)

in a sealed envelope, with fully prepaid postage thereon for certified mail, addressed to:  
\_\_\_\_\_ at:  
(print full name of proponent of recall)  
\_\_\_\_\_  
(mailing address)

I have attached the original of the **answer to Notice of Intention to Recall** to this Proof of Service.

I, \_\_\_\_\_ declare under penalty of  
(print full name)  
perjury under the laws of the State of California that the foregoing is true and correct,  
and that I executed this Proof of Service on \_\_\_\_\_ at  
(date)  
\_\_\_\_\_  
(place of signing, e.g., city or county)

\_\_\_\_\_  
(complete signature)

## SAMPLE OF PETITION FOR RECALL

TO THE HONORABLE \_\_\_\_\_ (1),

Pursuant to the California Constitution and California election laws, we the undersigned registered and qualified electors of the \_\_\_\_\_ (2) of \_\_\_\_\_ (3), California, respectfully state that we seek the recall and removal of \_\_\_\_\_ (4), holding the office of \_\_\_\_\_ (5), in \_\_\_\_\_ (6), California.

We demand an election of a successor to that office.

The following Notice of Intention to Circulate Recall Petition was served on \_\_\_\_\_ (7) to \_\_\_\_\_ (8):

- Included in this space are: \_\_\_\_\_ (9)
- The complete text of Notice of Intention as published. It must appear exactly as written on original Notice, including punctuation, capitalization, spelling, format, etc., with the exception of the language relating to the incumbent's right to file an answer.
  - There shall be *at least* 10 names of recall proponents from the original Notice of Intention that are selected by the proponents. Signatures and addresses do not need to be included.

The answer of the officer sought to be recalled is as follows:

If no answer, insert "No answer was filed." (10)

Each of the undersigned states for himself/herself that he or she is a registered and qualified elector of the \_\_\_\_\_ (11) of \_\_\_\_\_ (12), California.

*Column must be at least 1" wide*

|  | PRINT YOUR NAME                                  | RESIDENCE ADDRESS ONLY |  |
|--|--|------------------------|--|
|  | 1. _____<br>YOUR SIGNATURE AS REGISTERED TO VOTE | _____<br>CITY ZIP      |  |
|  | 2. _____<br>YOUR SIGNATURE AS REGISTERED TO VOTE | _____<br>CITY ZIP      |  |
|  | 3. _____<br>YOUR SIGNATURE AS REGISTERED TO VOTE | _____<br>CITY ZIP      |  |

### DECLARATION OF PERSON CIRCULATING SECTION OF RECALL PETITION (MUST BE IN CIRCULATOR'S OWN HANDWRITING)

I, \_\_\_\_\_ (15), solemnly swear (or affirm) all of the following:

1. That I am 18 years of age or older.
2. That my residence address, including street and number, is \_\_\_\_\_.  
(If no street or number exists, a designation of my residence adequate to readily ascertain its location is \_\_\_\_\_.)
3. That the signatures on this section of the petition form were obtained between \_\_\_\_\_ (Month and Day) \_\_\_\_\_, 20\_\_\_\_\_, and \_\_\_\_\_ (Month and Day) \_\_\_\_\_, 20\_\_\_\_\_; that I circulated the petition and I witnessed the signatures on this section of the petition form being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Executed on \_\_\_\_\_ (Date) at \_\_\_\_\_ (City or Community Where Signed), California. (16)

\_\_\_\_\_  
Circulator's Signature

\_\_\_\_\_  
Date

## EXPLANATION OF RECALL PETITION FORMAT

The sample on the previous page will help you design your petition in accordance with applicable laws and guidelines. When using this format, fill in the blanks and required information, and remove the numbers in parentheses that have been included as a reference tool only.

### **General Requirements:**

- Petition must be in at least 8 point type.
- If signature spaces are printed on both sides of a sheet of paper, everything except the declaration of circulator must appear on each side of the paper. The circulator's declaration must follow the last signature box. It is suggested that petitions be printed on 8 ½" x 14" paper in order to maximize the number of signature spaces printed on a sheet of paper.
- All petition sections must be printed in uniform size and darkness with uniform spacing.
- Each page of the petition must have at least a 1 inch margin across the top and a ½ inch margin across the bottom.

### **SPECIFIC EXPLANATIONS OF NUMBERS ON THE SAMPLE:**

1. Insert name of appropriate governing body. The local authority, which orders or "calls" elections for that office, or the governing authority for that jurisdiction should be named.
2. Insert electoral jurisdiction here; county, city, or district, as appropriate.
3. Insert geographical location here; city, county, etc. as appropriate.
4. Insert here the name of person whose recall is being sought.
5. Insert name of office.
6. Same as #3 above.
7. Insert date served.
8. Same as #4 above.
9. Remove box and insert appropriate information.
10. Insert 200 word of less answer of recallee or wording that no answer was filed.
11. Same as #2 above.
12. Same as #3 above.
13. Example illustrates space for three signatures. You can include as many spaces as will fit.
14. A space at least one inch wide shall be left blank after each name for use of the elections official.
15. Circulator inserts his/her full name as the person who gathered the signatures.
16. The petition must be set in at least 8 point type. If signatures spaces are printed on both sides of a sheet of paper, the above information, except for the declaration of circulator must appear on each side of the paper. The circulator's declaration must follow the last signature box. It is suggested that petition be printed on 8 ½" x 14" paper in order to maximize the number of signature spaces printed on a sheet of paper.