

Rule 8.2 [1-700] Judicial Officials

- (a) A lawyer shall not make a statement of fact that the lawyer knows* to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.
- (b) A lawyer who is a candidate for judicial office in California shall comply with Canon 5 of the California Code of Judicial Ethics. For purposes of this Rule, “candidate for judicial office” means a lawyer seeking judicial office by election. The determination of when a lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A lawyer’s duty to comply with this Rule shall end when the lawyer announces withdrawal of the lawyer’s candidacy or when the results of the election are final, whichever occurs first.
- (c) A lawyer who seeks appointment to judicial office shall comply with Canon 5B(1) of the California Code of Judicial Ethics. A lawyer becomes an applicant seeking judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A lawyer’s duty to comply with this Rule shall end when the lawyer advises the appointing authority of the withdrawal of the lawyer’s application.

Comment

To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. See Business and Professions Code § 6068(b).

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Comment

~~[1]~~—To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. See Business and Professions Code § 6068(b).

~~[2]—Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons* being considered for election or appointment to judicial office. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.~~

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(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)

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Comment

[1] To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized. Lawyers also are obligated to maintain the respect due to the courts of justice and judicial officers. See Business and Professions Code § 6068(b).

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Synopsis of Public Comments**

TOTAL = 3 **A = 1**
D = 0
M = 2
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
						A = 12 NI = 0
X-2016-43ao	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (8/12/16)	Yes	A	8.2	COPRAC supports the adoption of proposed Rule 8.2	No response required.
X-2016-76w	Los Angeles County Bar Association (LACBA) (Schmid) (9/21/16)	Yes	M	8.2	<p>1. Paragraph (a) of Proposed Rule 8.2 [Judicial Officials (current Rule 1-700)] precludes a lawyer from making a statement of fact the lawyer knows to be false or with reckless disregard as to its truth concerning the qualifications or integrity of a judge. This restriction (which is not contained in current Rule 1-700) is overbroad, too subjective, and raises serious First Amendment issues. In addition, the conduct proscribed here is already subject to B&P Code Section 6106, and therefore not necessary.</p> <p>2. Also, the first sentence of Comment [1] is aspirational, unnecessary and should be deleted. Similarly, Comment [2] adds nothing and should be deleted.</p>	<p>1. The Commission declines to make the suggested change. The prohibition is limited to false and misleading statements of fact to avoid Constitutional infirmities. Compare <i>Standing Committee on Discipline of the United States District Court for the Central District of California v. Yagman</i> (9th Cir. 1995) 55 F.3d 1430, 1438 (lawyer may freely criticize the judiciary if the criticisms are supported by a reasonable factual basis).</p> <p>2. The Commission declines to delete the first sentence of Comment [1]. The sentence states the public policy underpinning the rule. By doing, the sentence clarifies both the scope of the rule and how it should be applied, and thus enhances compliance and facilitates enforcement.</p>

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

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						The Commission agrees that the second comment can be deleted and has done so.
X-2016-104bm	Office of Chief Trial Counsel (OCTC) (Dresser) (9/27/16)	Yes	M	8.2	<p>1. OCTC is concerned that this proposed rule would only prohibit a false statement of fact, not other misleading statements. California has long held that an attorney is required to refrain from misleading and deceptive acts without qualification. No distinction is made among concealment, half-truths, and false statements of fact. Further, express and implied representations, as well as material omissions, support finding a statement misleading.</p> <p>2. Comments 1 and 2 are unnecessary and merely a philosophical discussion of the reasons for the rule, which are evident.</p>	<p>1. Please see response to LACBA, X-2016-76w, above.</p> <p>2. Please see response to LACBA, X-2016-76w, above.</p>