

To: Esteemed Members of COPRAC, California State Bar Association

From: Judge Erica Yew, President of the California Judges Association

CC: CJA Executive Board and Retired Judge Paul Bacigalupo, Judge Brett Bianco, Retired Judge James Bertoli, Judge Todd Bottke, Justice Lee Edmon, Retired Judge Jeremy Fogel, Retired Judge James Mize, Judge Terri Mockler, Retired Judge Dabid Rosenberg, Ms. Heather Rosing, Judge Larry Yellin, Ms. Nicole Virga Bautista, Mr. Michael Belote, Mr. Cliff Costa

Date: April 26, 2024

Thank you so much for being willing to receive the California Judges Association's suggested modification to Rules 3.6 and 4.1.

In the span of one week, I was asked as the President of CJA to comment upon two cases in opposite ends of the state where bench officers were being criticized by attorneys for their rulings. The criticism played out in the media and in one case, the bench officer was receiving death threats and was forced to hear a subsequent proceeding remotely due to public protest.

We think the time is ripe for these modifications to the Rules given all that is playing out in the media and in our country regarding unfettered and fomenting criticism of the judiciary and judicial branch. While we very much support freedom of expression, we want to ensure the safety and independence of our judicial officers. We also want to ensure that all persons associated with a proceeding, from court personnel to litigants, attorneys, and witnesses, as well as their families, remain safe.

Below you will find proposed amendments to rules of conduct for attorneys. In formulating our proposed language, I consulted with several experts in the area of ethics as well as the chairs of CJA's Committees on the Response to Unfair Criticism and Judicial Fairness and the chairs of CJA's Judicial Fairness Coalition.

CJA'S PROPOSAL

INTRODUCTION:

Bench officers are increasingly the subjects of personalized attacks and baseless accusations of improper conduct. Such attacks jeopardize public trust and confidence in our legal system and the judiciary. They have also led to threats and even violence against judges and court staff and their families. These attacks are often made to exert undue influence on judges and threaten judicial independence, which is the foundation of our system of justice. The California Code of Judicial Ethics hampers a bench officer's ability to respond to these accusations and attacks, further diminishing the public's understanding of and trust in our courts.

The California Judges Association asks COPRAC and the California State Bar to lead the way in addressing a dangerous trend that not only threatens the safety of court personnel, but also threatens our entire legal system. Thank you for your consideration.

PROPOSED LANGUAGE:

Rule 3.6

- a. A lawyer who is participating ... will (i) be disseminated by means of public communication and (ii) have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter **or (iii) have a substantial likelihood of placing the safety of any judicial officer or other person associated with the proceeding, or the judicial officer's or other person's immediate family, in jeopardy.**

Rule 4.1

In the course of representing a client a lawyer shall not knowingly: ...

or (c) make a false or misleading statement of a material fact to the media or social media.