

Rule 8.2 Judicial and Legal Officials [Sorted by Commenter]						TOTAL = <u>0</u> Agree = <u>3</u> Disagree = <u> </u> Modify = <u> </u> NI = <u> </u>
No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
3	COPRAC	A	Yes		Support as drafted.	No response required.
2	Office of Chief Trial Counsel ("OCTC")	A	Yes	Comment [1]	OCTC supports this rule. Comment [1] is more appropriate for treatises, law review articles, and ethics opinions.	No response required. As the Commission has noted with respect to other Rules, the comments, including Comment [1], are an important part of the Rules modeled on the ABA Model Rules, providing clarification of the black letter and guidance to lawyers on how to be in compliance with their professional obligations.
				Comment [2]	Comment [2] states that nothing in this rule shall be deemed to limit the applicability of any other rule or law. It should not be a comment, but part of the rule.	The Commission disagrees. Provisions such as Comment [2] have regularly been placed in the Discussion to current Rules of Professional Conduct. This provision, in fact, carries forward Discussion ¶.1 to current rule 1-700. The Commission does not understand why the Comment must be part of the Rule to have the desired effect of putting lawyers on notice that other rules or laws might be applicable.
				Comment [3]	OCTC thanks the Commission for its change of Comment [3].	No response required.
1	San Diego County Bar Association Legal Ethics Committee	A	Yes		Support as drafted.	No response required.

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

Rule 8.2: Judicial and Legal Officials

(Commission's Proposed Rule – Clean Version)

- (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, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal 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.
- (c) A lawyer who seeks appointment to judicial office shall not make statements to the appointing authority that commit the lawyer with respect to cases, controversies, or issues that could come before the courts, or knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the lawyer. A lawyer commences to become 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.
- (d) 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.

COMMENT

- [1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. 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.
- [2] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.
- [3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to 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 section 6068(b).