

Rule 8.2 [1-700] Judicial Officials

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

[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.

PROPOSED RULE OF PROFESSIONAL CONDUCT 8.2
(Current Rule 1-700)
Judicial Officials

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 1-700 (Member as Candidate for Judicial Office) in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. In addition, the Commission considered the national standard of the American Bar Association (“ABA”) counterpart, Model Rule 8.2 (Judicial And Legal Officials). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission’s evaluation is proposed rule 8.2 (Judicial Officials). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

Current rule 1-700 requires that a member who is a candidate for judicial office comply with Canon 5 of the Code of Judicial Ethics. The current rule, includes a provision defining “candidate for judicial office” describing when such candidacy starts and ends (the Model rule does not). Both Model Rule 8.2 and current rule 1-700 require compliance with the applicable provision of the Code of Judicial Ethics. Model Rule 8.2 also prohibits lawyers from making false statements of fact concerning the qualifications or integrity of a judge, legal officer or candidate for election or appointment to judicial or legal office. Proposed rule 8.2 tracks this aspect of Model Rule 8.2 by including a revision to paragraph (a) prohibiting lawyers from making false or reckless statements concerning the qualifications or integrity of a judge or judicial officer, or of a candidate for election or appointment to judicial office.

Paragraph (a) of proposed rule 8.2 prohibits a lawyer from making a false or reckless statement 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. The rationale for adding this provision is to enhance public confidence in the legal profession. This concept has precedent generally in a lawyer’s duty of respect to the courts and judicial officers (Bus. & Prof. Code § 6068 (b)) and specifically in disciplinary case law (*In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370 [during a lawyer’s campaign for judicial election, the lawyer made false statements regarding his opponent’s involvement in fraudulent activities]).

Paragraph (b) of proposed rule 8.2 makes clear that a lawyer who is a candidate for judicial office shall comply with Canon 5 of the California Code of Judicial Ethics. Like current rule 1-700(B), proposed rule 8.2 defines “candidate for judicial office” and addresses the determination of when a member is a candidate for judicial office as well as sets forth the criteria for determination of when the lawyer’s judicial candidacy ends.

Paragraph (c) is a new paragraph that governs the conduct of a lawyer who seeks appointment to judicial office and requires the candidate’s compliance with Canon 5B(1) of the California Code of Judicial Ethics. Similar to the policy and intended function of the current rule, new paragraph (c) could result in State Bar disciplinary charges for violations of the applicable provisions of the Code of Judicial Ethics.

There are two new comments to proposed rule 8.2. Both new comments promote lawyer compliance with obligations imposed by the rule and are revisions to the corresponding ABA Model Rule 8.2. Comment [1] recognizes the duties of lawyers to maintain respect due to the courts and judges (Bus. & Prof. Code § 6068(b)) and encourages lawyers to defend judges and courts unjustly criticized. Comment [2] in part explains that false statements by lawyers about candidates for judicial office harm confidence in the legal profession.

Rule 8.2 [1-700] ~~Member as Candidate for~~ Judicial Office ~~Officials~~
(Redline Comparison of the Proposed Rule to Current California Rule)

- (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.
- (Ab) A ~~member~~lawyer who is a candidate for judicial office in California shall comply with Canon 5 of the California Code of Judicial Ethics.
- (B) For purposes of this Rule, “candidate for judicial office” means a ~~member~~lawyer seeking judicial office by election. The determination of when a ~~member~~lawyer is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A ~~member's~~lawyer's duty to comply with ~~paragraph (A)~~this Rule shall end when the ~~member~~lawyer announces withdrawal of the ~~member's~~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.

Discussion ~~Comment~~

~~Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law.~~

[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.