

S294391

ADMINISTRATIVE ORDER 2026-04-22-02

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

REQUEST THAT THE SUPREME COURT OF CALIFORNIA REVIEW AND APPROVE THE PROPOSED AMENDMENTS TO CALIFORNIA RULES OF PROFESSIONAL CONDUCT, RULES 8.2 AND 8.4

The State Bar of California’s “Request that the Supreme Court of California Review and Approve the Proposed Amendments to California Rules of Professional Conduct, Rules 8.2 and 8.4” is denied. On its own motion, the court proposes amendments to the comments for Rules of Professional Conduct, Rules 8.2 and 8.4, as set forth in the Attachment to this order. The court directs the State Bar to solicit public comment on the court’s proposed comments for a 45-day period and thereafter consider whether to recommend to the court any changes to the court’s proposed comments.

It is so ordered.

GUERRERO

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

EVANS

Associate Justice

ATTACHMENT: REDLINE VERSIONS

Rule 8.2 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

[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 Bus. & Prof. Code, § 6068, subd. (b).) ~~Lawyers who make false and reckless statements against judges and judicial officers, within the meaning of paragraph (a), undermine public confidence in the integrity and impartiality of the judiciary. A lawyer who makes such statements may be disciplined even if the lawyer genuinely and reasonably disagrees with a ruling by a judge or judicial officer.~~

[2] ~~Unlike other government officials, judges and judicial officers are generally restricted by law and ethical rules from publicly defending their rulings. (Cal. Code of Jud. Ethics, canon 3B(9).) To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized.~~

[3] ~~This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by article I, section 2 of the California Constitution. (Gentile v. State Bar of Nevada (1991) 501 U.S. 1030 [111 S. Ct. 2720]; Ramirez v. The State Bar (1980) 28 Cal.3d 402 [169 Cal. Rptr. 206].)~~

[4] For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. ~~For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).~~

Comment

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance

with these rules and the State Bar Act.

[6] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution. (*Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030 [111 S. Ct. 2720]; *Ramirez v. The State Bar* (1980) 28 Cal.3d 402 [169 Cal. Rptr. 206].) Unprotected activities, such as true threats of violence or incitements of unlawful imminent action directed against a party, judge, or judicial officer, may constitute conduct prejudicial to the administration of justice under paragraph (d). (*Counterman v. Colorado* (2023) 600 U.S. 66 [143 S.Ct. 2106]; *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 [89 S.Ct. 1827].)

[7] For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).

ATTACHMENT: CLEAN VERSIONS

Rule 8.2 Judicial Officials

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(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.

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Comment

[1] Lawyers are obligated to maintain the respect due to the courts of justice and judicial officers. (See Bus. & Prof. Code, § 6068, subd. (b).) Lawyers who make false and reckless statements against judges and judicial officers, within the meaning of paragraph (a), undermine public confidence in the integrity and impartiality of the judiciary. A lawyer who makes such statements may be disciplined even if the lawyer genuinely and reasonably disagrees with a ruling by a judge or judicial officer.

[2] Unlike other government officials, judges and judicial officers are generally restricted by law and ethical rules from publicly defending their rulings. (Cal. Code of Jud. Ethics, canon 3B(9).) To maintain the fair and independent administration of justice, lawyers should defend judges and courts unjustly criticized.

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Comment

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