

CLEAN

Rule 8.2 Judicial Officials
(Proposed Amended Rule as Circulated for Public Comment)

- (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] A statement that is asserted as opinion may be the basis for discipline if the “statement implies actual facts that are capable of objective verification.” (See *In re Yagman* (9th Cir. 1995) 55 F.3d 1430, 1441.)

[2] 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).)

REDLINE

Rule 8.2 Judicial Officials (Redline Comparison of the Proposed Amended Rule as Circulated for Public Comment to the Current Rule)

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CLEAN

Rule 8.4 Misconduct (Proposed Amended Rule as Circulated for Public Comment)

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.

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.

CLEAN

[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.

[7] Unprotected activities, including speech, that may be the basis for discipline under paragraph (c) or (d) include: (1) a statement made with the specific intent of producing imminent lawless action against a judge or judicial officer and likely to do so (*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] (*per curiam*)); (2) a true threat of violence, that is, a statement that a reasonable observer would understand to be a “serious expression” conveying that the speaker means to “commit an act of unlawful violence” against a judge or judicial officer made with intent, knowledge, or reckless disregard that others could regard the statement as threatening violence (*Counterman v. Colorado, supra*, 600 U.S. at p. 74); and (3) a false statement of fact, or a statement asserted as opinion that “implies actual facts that are capable of objective verification” that are false, regarding a judge or judicial officer made with knowledge or reckless disregard of the truth or falsity of the facts (*In re Yagman* (9th Cir. 1995) 55 F.3d 1430, 1441; see also rule 8.2(a); Bus. & Prof. Code, § 6068, subd. (b).) Courts use an objective standard to determine “what a reasonable attorney, considered in light of all [their] professional functions, would do in the same or similar circumstances.” (*United States Dist. Ct. v. Sandlin* (9th Cir. 1993) 12 F.3d 861, 867.)

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

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

TOTAL = 8 Comments

Rule 8.2
S = 3
SM = 1
O = 4

Rule 8.4
S = 5
SM = 1
O = 2

Proposed Rule 8.2 & 8.4 Synopsis of Public Comments

No.	Commenter/Signatory	Comment on Behalf of Group?	Position ¹	Comment
(19788614)	Anonymous	N	8.2-O 8.4-S	I don't think Lawyers should be restricted if they are making it clear that it is their opinion. This is going to have a chilling impact on those who are licensed.
(19783561)	Cotton, Cassandra	N	8.2-O 8.4-O	The Orange County prosecuting attorney made improper public statements about a pending civil matter in Orange County. Tamara Jacobs (acting OC Deputy DA) sought a search warrant to obtain a false arrest without notifying the court that a hearing on the matter was pending in San Diego Superior (Family) court. Jacobs authored a confession that was later discovered in the file of the purported confessor by another prosecutor as miscellaneous registered actions in State court. Jacobs told me that (9) charges against me would be dismissed if I pleaded guilty to a misdemeanor and (3) years of probation for having my children in 2021. Jacobs hid evidence and suborned perjury to convict me on false felony charges for having my children in 2021. I was first convicted of a misdemeanor willfully depriving me my individual rights and paid more than \$17,000 in bail fees throughout this procedural process. Additionally, Jacobs had ex parte communications with the judge regarding my case without notifying my attorney, and Jacobs acted to conceal the communications with me by failing to countermand police officers' suggestion to me as defendant that she not tell my attorney. Jacobs threatened to renew a long-dormant investigation against me regarding an illegal lockout which took place in Irvine, CA in 2019 after I filed a grievance with the disciplinary commission and the California State Bar against the DA's office. Jacobs represented my abuser when simultaneously, as a prosecutor, she was... ... participating in an investigation with me without consulting the courts or the state about the dual representation in 2019. Jacobs committed a series of gross improprieties after developing a personal relationship with my abuser(s) during 300 court proceedings. She affirmatively misled opposing counsel regarding those meetings as off the record. Jacobs failed to fully disclose exculpatory evidence in a child molestation case involving my ex husband and child custody case which gave me sole and physical custody of my minor children , conduct for which she held me in contempt of court and raised my bail to \$100K despite my undue hardship and my legal custody right to my minor

¹ S = Support SM = Support If Modified O = Oppose NP = No Position

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No.	Commenter/Signatory	Comment on Behalf of Group?	Position ¹	Comment
				children. The OCDA's improperly threatened my son (Dominic Cotton) in the handling a pending juvenile. The proceeding was later sealed. During her prosecution of my criminal arraignment trial in 2021, she made a false statement of fact to the trial court regarding the destruction of evidence (the initial apprehensions on 6-8-2021) and (the extradition on 12-27-2021) involving SDPD officers. The prosecutor informed the court during Family law proceedings that I (as a domestic violence victim) failed to appear and lied about the other party (my ex husband) appearing, even though she appeared as a witness at the family courthouse for the full duration of the proceedings and fictitiously purged an After Court Order. Jacobs knowingly has failed to timely disclose exculpatory evidence to defense counsel during my civil proceedings. Jacobs failed to withdraw from prosecuting my case when the exercise of her professional judgment was affected by her own personal interest in preventing an investigation into the conduct of her office in my case. As a domestic violence survivor, Jacobs failed to disclose to the court and defense counsel that there were filed exhibits from me as the defendant that were filed in a previous case but later gagged (sealed). Jacobs lied about the alterations to the court and other registered action filings; in a separate incident, she improperly attempted to use her influence to alter the course of my civil proceedings. Jacobs filed immediately before the start of my civil proceedings, criminal charges against me as a defendant that were not supported by probable cause. The prosecutor disregarded the sexual molestation case reported in 2011, Jacobs never interviewed the accused, the witnesses, in the absence of my child's appointed attorney; never prosecuted the case with probable cause to believe the accused was guilty; never requested a psychiatric examination of my child who fell victim to these violations to assess their testimonial capacity; and improperly crossexamined a defense witnesses and my ex husband. Jacobs failed to comply with several discovery orders in the San Diego family law cases; after the restraining order was dismissed because of my ex husband's inaction and failure to appear in court, she resurrected the case after my TRO (in San Diego) expired. Jacobs failed to... .. disclose exculpatory evidence and violated the court order (in San Diego) for sequestering a child witness. Jacobs failed to timely inform my attorney of a letter from me as witness recanting an allegation that the plaintiff my ex husband assaulted me on more than one occasion. She failed to timely inform the courts and my attorney of exculpatory information. The OCDA

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				<p>staff knowingly and intentionally led me as the defendant into believing that they were State law enforcement during negotiations designed to surrender to the local authorities when she instructed the SDPD to enter my place of residence at gunpoint; she failed to inform me that they were NOT representing the state. Jacobs suborned perjured testimony at my family law proceedings. The OCDA altered evidence in my civil proceeding and then attempted to cover up their actions in another case. During family law proceedings, Jacobs made false statements regarding the authenticity of evidence (off record); Jacobs also failed to disclose exculpatory evidence in the same matter which resulted in a custody warrant and was recalled following the abrupt removal of my children from San Diego county. Jacobs failed to give my attorney my ex husband's confession regarding not wanting to proceed with the civil matter concerning my daughter (who was moved out of the State of California over a year ago without my consent) and also failed to disclose her agreement with my ex husband. While prosecuting my case, Jacobs introduced irrelevant,... improper and deliberately misleading evidence. Joseph Faria (investigator) placed the signature on Proof of Service forms in OC Family Court without permission. He also misrepresented facts regarding my case to the San Diego DA , the San Diego Sheriff's Dept and SDPD potentially further compromising my safety. While prosecuting my case, the OCDA and court staff made a racially insensitive remark regarding my involvement with an ethnic organization in the presence of my lawyer and the public. I continue to profess my innocence and weary of further retaliatory actions from local law enforcement involved with the actions of Orange County staff. To date, there are no DV Police Reports, no Extradition Reports or SDPD Police Reports regarding my child being taken from the stated and with the initial apprehension. I would like to address my parental rights with regards to the actions of our local SDPD and Orange County staff. Litigation in Orange County is ongoing. My fear is that the actions of the SDPD involving this matter either is not on record or gagged in Orange County court proceedings. Please reference my previous to lsfrc@calbar.ca.gov emails regarding my concerns." This was dismissed by the State Bar where the rules were never applied.</p>
(19816847)	Lea, Susan	N	8.2-O 8.4-O	<p>Free Speech is all we have in America that separates us from the world. We have watched as California and the State Bar, now fully controlled by the State, have become 100% DEI Marxist in all respects. There's been nothing that licensed</p>

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				attorneys could do since we no longer even have the right to vote. The State Bar is an appendage of the State government only. The persons appointed to be state judges are crap DEI candidates who have little scholarship or ability. They are owned, and their "opinions" and "decisions" are 100% political. There is no longer any respect for Rule of Law in California. Now, you want to punish those attorneys who speak the Truth. This proposed rule change is 100% shameful. The State Bar is a joke. There is no respect for truth or justice or fairness in California's courts. Who are the appointed judges to have the status of royalty? If their opinions or decisions are fair and just, then let the decisions "speak for themselves". No, you don't get to harm innocent people who are speaking their own beliefs, truth and scholarship. ENTER COMMENTS HERE. To upload files proceed to the ATTACHMENTS section below. Outrageous over-reach and abuse of power is this proposed rule. First, you lock up the courthouses all over the state. Now, you want to lock up people exercising their free speech. Wrong!
(19845023)	Legal Ethics Committee of the Bar Association of San Francisco (Misheler, Joanna)	Y	8.2-SM 8.4-S	See attached letter.
(19861498)	Orange County Bar Association	Y	8.2- S 8.4-SM	See attached letter.
(19784315)	Palabod, Ladan	N	8.2-S 8.4-S	NA
(19783888)	Simonson, Heidi	N	8.2-S 8.4-S	I support this modification. I think that, in the application of it, such alleged statements are most harmful to the judicial officer, and the case itself, if the underlying case involves something confidential, like minor children or dependent adults, where the "actual facts capable of objective verification" is much more difficult to apply because the case is confidential. However, that also makes the attorney statements much more potentially harmful.

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(19817018)	Trickey, Austin	N	8.2-O 8.4- S	NA