

CLEAN

**Rule 8.2 Judicial Officials
(Proposed Amended 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.
- (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,” those facts are false, and the statement is made with knowledge or reckless disregard of the truth or falsity of those facts. (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 of the Current Rule to the Proposed 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.
- (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,” those facts are false, and the statement is made with knowledge or reckless disregard of the truth or falsity of those facts. (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).)