

California Judges Association
OPINION NO. 24

(Originally issued: March 27, 1976)

RESPONSE TO JUDICIAL EVALUATION POLLS AND PUBLIC CRITICISM

AUTHORITY: Canon 3B(9)

I. Background

The Committee has been asked as to the propriety of judicial responses to judicial evaluation polls and to public criticism.

II. Question

May a judge respond to judicial evaluation polls and to public criticism?

III. Answer

Yes, with certain qualifications.

IV. Discussion

The opinion of the Committee is that, with certain qualifications, hereafter discussed, it is ethical for judges to respond publicly to public criticism. It has been brought to the Committee's attention that public criticism of judges and their functions may arise through one or more of the following vehicles:

- (1) judicial evaluation polls conducted by bar associations or court observers' organizations rating judicial performance or ranking judges;
- (2) public statements by public officials;
- (3) letters from members of the public to the editors of newspapers;
- (4) editorials in the news media; and
- (5) books or reports prepared by authors or researchers.

Judges may contemplate response to such criticism by:

- (1) live press conference;
- (2) issuing a written press release;
- (3) writing to the editor;
- (4) remarks in speeches;
- (5) requesting and obtaining response through another judge or judges of the court or through judicial or bar associations.

The opinion requested of the Committee involves all of the alternatives mentioned in the preceding paragraph and particularly the first four. However, this opinion does not concern remarks of a judge made in court and related to (and part of the record of) the judicial proceeding then before the judge.

Canon 3B(9) reads as follows:

A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially

interfere with a fair trial or hearing. The judge shall require¹ similar abstention on the part of court personnel² subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

Accordingly, we conclude that it is proper for judges to respond publicly to judicial evaluation polls and to public criticism, except where the response would involve the merits of a specific pending or impending judicial proceeding.

This opinion is advisory only. The Committee acts on specific questions submitted, and its opinion is based on facts as set forth in the questions submitted.

COMMITTEE ON JUDICIAL ETHICS

March 27, 1976

¹ Any Canon prescribing that a judge "require" certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (Commentary), 3B(9), and 3C(2).

² Court personnel does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).