



## Public Comment Policy

### A. Overview

The California Lawyers Association (“CLA”) is a strong supporter of the First Amendment that protects the free and open exchange of ideas, opinions, public discourse and even criticism of our constitution, our legal system and those who serve it. At the same time, bar associations such as CLA hold a unique position to help educate the public in circumstances when asked to provide public comment on the following:

- The role of the judiciary as a co-equal branch of government;
- Issues affecting the administration of justice and access to justice;
- Equal justice under the law/civil liberties;
- Constitutional rights that impact the justice system;
- Unjust criticism of the judiciary under limited circumstances<sup>1</sup>; and
- Diversity in the legal profession;

In order to strike a proper balance between these interests, the Association has established a process to:

- Address errors in reporting and inaccurate or unjust criticism of judges, courts, the bar and/or the administration of justice, as further provided in this policy statement;
- Be reasonably available to the news media as a resource for obtaining information concerning judicial activities, court process, or other technical or legal information about the administration of justice;
- Encourage broad dissemination of information to the public about noteworthy achievements and improvements within the legal system; and
- Generally, promote a better understanding within the community of the legal system and the role of lawyers and judges.

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<sup>1</sup> CLA recognizes the important purpose of California’s recall process. Requests for comment in circumstances where a recall is underway will be subject to heightened scrutiny and any resulting comments will likely be educational and informational rather than comments on the merits.

## **B. How the Policy Operates<sup>2</sup>**

A request for public comment is governed by this policy when the request comes from a member of the Association, a bar or other legal association, or the media, and the request falls within the following subject matters:

- The role of the judiciary as a co-equal branch of government;
- The importance of a fair and impartial judiciary;<sup>3</sup>
- What is meant by “the rule of law”;
- Issues affecting the administration of justice;
- Equal justice under the law/civil liberties;
- Constitutional rights that impact the justice system;
- Access to justice;
- Unjust criticism of the judiciary under limited circumstances; and
- Diversity in the profession;

If a request is received, it shall be sent to the Executive Director who will review to ensure it is within the scope of this policy and appropriate for consideration by a Public Comment Committee.

## **C. Committee Creation, Composition and Scope**

The Association Board shall convene a Public Comment Committee (“Committee”) at the beginning of each Association year and consist of nine members including the President<sup>4</sup>, the Board Chair or Vice Chair, Chair of the Governmental Affairs Committee, the Chair of the Civics Engagement and Outreach Committee, two members appointed from Section Executive Committee leadership, CLA’s Executive Director, CLA’s Director of Governmental Affairs and CLA’s Director of Strategic Partnerships and Initiatives. Four members of this group, including the President and Executive Director, and two other members selected from the Committee by the Association Board, will also serve as the Immediate Response Team (“IRT”) pursuant to the timelines set forth below. The Public Comment Committee will be charged with vetting requests for public comment and assisting with the public comment.

## **D. Committee Process**

### **1. Review**

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<sup>2</sup> This policy applies to comments made in the areas detailed above. It is not intended to be the association’s media comment policy or replace the association’s Governmental Affairs policy.

<sup>3</sup> As noted by the ABA in their 2008 Guide on Rapid Response to Unfair and Unjust Criticism of Others, “the [organized] Bar has a special responsibility to ensure that judges remain highly respected leaders of our legal system and communities and... particularly when the judiciary or a judge is unjustly criticized while exercising their professional, ethical and constitutional duties, and/or when such unjust criticism serves to erode the public’s trust and confidence in the judicial system.”

<sup>4</sup> CLA policy provides that only the President and the Executive Director may speak on behalf of the association.

The Committee or IRT, as applicable, will consider the following guidelines as it evaluates each request:

Do the following factors support making a public comment?

- Is the issue addressed in CLA's mission and/or in its current strategic plan?
- Whether a comment serves a valuable public information purpose and provides an opportunity to educate the public about an important aspect of the administration of justice (e.g., bail, evidentiary rules, due process, fundamental rights, judicial discretion etc.);
- When the public commentary or discourse shows a lack of understanding of the legal system, and/or the roles of the judges or the judicial branch and/or is based at least partially on such misunderstanding;
- Whether the position can be stated in a politically neutral way that educates on the issue;
- Whether CLA can add significant value to the discussion of the issue.

Do the following factors weigh against making a public comment?

- When the matter is a fair comment or opinion;
- Whether continuing discussion of the controversy would serve to lower public perceptions as to the dignity of the court, the judiciary, or the judicial system;
- Whether another entity is in a better position to address the issue and/or the issue has already been adequately addressed by another entity;
- When the issues relate to a pending case and/or when there is a likelihood that a complaint against a judge will be presented to an appropriate disciplinary body;
- When the feud is between a critic and a judge on a personal level;
- When a comment would demonstrate, or could reasonably be perceived to demonstrate an inappropriate partisan bias that would be attributed to the CLA;
- If commenting would negatively reflect on the professional and ethical standards of the CLA;
- Whether addressing the issue will have a potential negative impact on CLA or be divisive to CLA membership;
- Whether addressing the issue will have a potential negative impact on CLA's relationship or standing with other organizations.

Other

- Any other factors the Committee may deem relevant to the specific circumstances surrounding the issue<sup>5</sup>.

After reviewing the guidelines, the Committee or IRT will determine whether it is appropriate for CLA to issue a public comment, what the wording of the comment should be, and may authorize CLA to support a particular comment. If a majority of the

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<sup>5</sup> It should be noted that the above factors are not intended to be an exhaustive list but provide a consistent framework for consideration.

Committee or IRT determine that these Guidelines support issuing the public comment, CLA is authorized to issue the comment. Should the Committee or IRT determine that a public comment should not be issued, the President or their designee may notify the requestor.

## 2. Timeline

Depending on the circumstances, the requested public comment may be immediate or may not be time sensitive. The following will be used to guide the timeline and evaluation process:

	<b>Time Sensitive Response Needed (Not Media):</b>	<b>Immediate Media Response Needed:</b>	<b>Not Time Sensitive:</b>
<b>Request</b>	Request to take a public position that is time sensitive and requires immediate response	Request to make a public comment in response to a media inquiry	Request to take a public position that is not time sensitive
<b>How many on committee are required to participate?</b>	5 of 9	The Immediate Response Team will take the lead and 3 of 4 of the IRT are required to participate.	8 of 9
<b>Timing Goals</b>	All done within 72 hours, or as soon as practicable	All done within 2 hours, or as soon as practicable	10 days to meet initially; send item to Board for approval. Process to be completed within 30 days, or as soon as practicable.
<b>Who approves whether a comment shall be made?</b>	Committee and the Officers with a report to the Board.	The President and Executive Director approve, as authorized by the Committee or IRT with a report to the Board.	The Board of Representatives.

### **3. Preparing Comment**

Any member of the Committee will prepare the draft comment that incorporates the relevant points raised during deliberation. Final approval of the comment resides with the President and Executive Director.

Approved June 2019