



Public Comment Policy – August 2020 Revisions

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 as CLA on the following:

- The role of the judiciary as a co-equal branch of government;
- Issues affecting the administration of justice. access to justice, and the rule of law both in the United States and in other countries;
- Equal justice under the law/civil liberties;
- Constitutional rights that impact the justice system;
- Unjust criticism of the judiciary under limited circumstances¹; and
- Diversity in the legal profession.

The purpose of this Policy is for CLA to speak as CLA on issues that go to the core of our mission and our representation of our members and the profession as well as to take advantage of public or media attention on an issue to educate the public about our core values as an Association.

In order to strike a proper balance between these interests, CLA 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;
- 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

¹ 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.

- Generally, promote a better understanding within the community of the legal system and the role of lawyers and judges.

B. How the Policy Operates²

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;³
- 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 President, Chair and Executive Director ⁴who will review to ensure it is within the scope of this Policy and appropriate for consideration by the Public Comment Committee.⁵ All requests must address the following:

- The issue prompting the request;
- If the issue relates to a pending case (If so, what case);
- If CLA is being asked to make a specific public comment on the issue and if so, the requested comment;
- Why the requestor believes the CLA should issue a public comment on this issue;
- Relevant background information/materials on the issue and public comment being requested, including whether any other persons/organizations have commented and
- Whether an immediate response is necessary and warranted below.

² 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.

³ 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.”

⁴ In the event the Executive Director is unavailable, the Executive Director will designate the Associate Executive Director or the Director of Governmental Affairs to act on their behalf to review incoming requests.

⁵ The Executive Director will also assess if the request is appropriate for the CLA’s Public Comment process or would fall under CLA’s Governmental Affairs or Amicus Policy.

- Whether enough time has passed that the issue should be addressed via other mechanisms.

In the event the request is not found to be within the scope of this Policy, the requestor shall be informed of the decision and may use the mechanism set out in CLA's Bylaws to raise this issue with the Board.

C. Committee Creation, Composition and Scope

The Association Board shall convene a Public Comment Committee ("Committee") at the beginning of each Association year which shall consist of no less than nine members including the President⁶, the Board Chair or Vice Chair,⁷ the Chair or Chairs of the Governmental Affairs Committee, the Chair of the Civics Engagement and Outreach Committee, four additional members of the Board of Representatives, and CLA's Executive Director. CLA's Associate Executive Director for Initiatives and External Relations and its Director of Governmental Affairs will act as non-voting advisory members of the committee. The President and members of the Board of Representatives shall make up the majority of the committee; at least two Board members must support a decision to comment for that decision to be effective. The Committee may also invite subject matter experts to advise the Committee if needed in connection with a specific request. The Committee may meet with five members and, so long as a combination of the President and Board Representatives constitute a majority of the five, the Committee's decisions shall be effective.

The Board will ratify the composition of the Committee each year.

D. Committee Process

1. Review

The Committee 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.);

⁶ CLA's [NAME] Policy, as supported by the bylaws, provides that only the President and the Executive Director may speak on behalf of the association.

⁷ The Vice-Chair shall participate when the Chair is unavailable or as needed to ensure that a majority of the committee remain members of the Board of Representatives.

- 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 public comment 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 issue⁸.

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

⁸ It should be noted that the above factors are not intended to be an exhaustive list but provide a consistent framework for consideration.

2. Timeline and Finalization

Depending on the circumstances, the requested public comment may require a time sensitive response. The following will be used to guide the timeline and review process:

- For a time-sensitive response: The Committee should be convened and the response finalized within 72 hours or as soon as practicable to have intended impact. Final comments will be finalized by the President and CEO/Executive Director.

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
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