



Guidance for Lawyers Commenting on Judicial Decisions

PURPOSE: The independence of the courts is central to our system of government and important in a free and open society. Courts enforce contracts, interpret statutes, and adjudicate civil disputes. Some of our most sensitive debates are settled in courts of law. Public trust and confidence in the judicial system supports the judiciary’s independence and allows it to function. Unlike politicians and civic leaders, judges often do not—because they cannot—comment on the work they do.

Yet public trust in our judicial system is eroding, in part because of the way in which lawyers talk about our courts, judges, and the decisions they issue. These guidelines for public commentary on judicial decisions are designed to encourage lawyers to engage in robust debate about *the law* and to refrain from unfair criticism about *the judges* who serve in our court system. Although in no way binding, adherence to these guidelines helps attorneys to be part of the restoration of public confidence in the judicial system. This approach is also just good advocacy—it favors substantive discussion over name-calling.

GUIDELINES: As you consider how to respond to civil justice decisions, in addition to any ethical obligations, keep the following in mind, which allow for robust commentary on the law without undermining public trust in the judicial system:

- **Don’t namecheck the judge.** It’s the decision—not the author—that matters.
- **Avoid mentioning who appointed the judge or the judge’s party affiliation.** The process of electing or appointing judges is political. The practice of judging is not. When commenting on *a decision*, politics do not matter.
- **Don’t personalize the decision.** Rather than, “the Judge said X,” consider “the decision held X.” Again, it’s the law (not the author) that counts.
- **Take the opportunity to educate; state the holding.** Before you criticize a decision, consider summarizing it, in plain English, so the commentary is accessible to the lay public. When something is wrong, explain why.
- **Debate the substance and be civil.** Commenting on legal reasoning, legal precedent, methods of interpretation, language used, and the ramifications of a decision are all fair

game. Allegations of judicial bias are not. Lawyerly commentary should reflect the actual substance of the opinion. It should also avoid emotional and inflammatory language.

- **Criticize the result, not the decision-maker.** Judges can get it wrong (why we have appellate courts) and challenging the basis of a decision is always fair game.