



NJSBA Procedure for Responding to the Unjust Criticism of Judges

INTRODUCTION

The independence of the judiciary is the cornerstone of our legal system. That system, however, may be shaken by unfair attacks on judges, or the judiciary in general, which seek to influence judges' decisions and undermine public confidence in the administration of justice.

Our founding fathers recognized that the judicial branch of government occupied a central place in American democracy. More than two hundred years ago, Alexander Hamilton, in *The Federalist No. 17*, referred to courts as the "great cement of society" and the "immediate and visible guardian of life and property..." George Washington argued that "the true administration of justice is the firmest pillar of good government."

It is important that the organized bar stand ready to defend the judiciary against unjustified public attacks. Because ethical rules constrain judges from speaking out, it is up to the bar to respond. Failure to do so would be tantamount to announcing "open season" on the judiciary. The bar must protect and promote the courts' ability to dispense justice fairly and expeditiously. These goals cannot be met if judicial independence is threatened.

PROCESS

The New Jersey State Bar Association (NJSBA) has developed the following procedure for responding to unjustified public criticism of judges, decisions in particular cases, and the judiciary in general:

1. The NJSBA will respond following a determination by the NJSBA Executive Committee that the public criticism is unfair, unwarranted, and reflects negatively on the judiciary;
2. Where a particular trial judge or a particular judicial decision is publicly criticized, the county representative on the NJSBA Board of Trustees shall consult with the Assignment Judge of the Vicinage to which the judge is assigned for the purpose of gathering information that will assist in determining whether a response to the criticism will be made. The NJSBA county representative shall report his or her findings to the NJSBA Executive Committee;

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3. Where the public criticism is of a judge, or a particular judicial decision, of the United States District Court, the President of the NJSBA shall designate a member of the Board of Trustees to consult with the judge and the Chief Judge, for the purpose of gathering information and reporting findings to the Executive Committee;
4. If, after consulting with the Assignment Judge (or the Chief Judge), the county trustee determines that additional information is needed for presentation to the Executive Committee, the Trustee shall so advise the NJSBA Executive Director who may seek additional information from other sources;
5. After receiving all relevant information the Executive Committee of the NJSBA, in consultation with the NJSBA county trustee and the Assignment Judge (or the Chief Judge), shall determine whether a response will be made;
6. Once a response is deemed appropriate, the content of the response will be determined by the Executive Committee of the NJSBA in consultation with the NJSBA county trustee, and any other persons it may wish to consult;
7. In the event of a deadlock among the Executive Committee concerning the need for, or content of, a response, the final determination shall be made by the President of the NJSBA;
8. The medium through which the response will be communicated shall be determined by the Executive Committee of the NJSBA, in consultation with the NJSBA Executive Director, on a case-by-case basis, and may include, though is not limited to any of the following: letters to the editor, "op-ed" pieces, press releases, appearance or comments on a radio or television program.

In determining when a response shall be made the NJSBA, where applicable, will utilize guidelines proposed by the American Bar Association in its report, "Unjust Criticism of Judges."