

FORMAL OPINION NO 2005-64

Statements of Opinion Concerning Judge's Competence

Facts:

Lawyer is interviewed by a newspaper concerning the competence of a judge who is running for reelection. Lawyer has never appeared before the judge.

Question:

May Lawyer express an opinion concerning the judge's competence?

Conclusion:

Yes, qualified.

Discussion:

Oregon RPC 8.2(a) provides:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge or adjudicatory officer, or of a candidate for election or appointment to a judicial or other adjudicatory office.

As long as Lawyer does not knowingly make false statements of fact concerning the judge, Lawyer's conduct is permissible.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 15.2-3 (Oregon Rules of Professional Conduct applicable to judges) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 114 (2000) (supplemented periodically); Geoffrey C. Hazard, Jr., W. William Hodes, & Peter R. Jarvis, 2 *The Law of Lawyering* ch 67 (4th ed 2015) (supplemented periodically); Charles W. Wolfram, *Modern Legal Ethics* § 11.3.2 (1986); and ABA Model RPC 8.2. See also *In re Snyder*, 472 US 634, 105 S Ct 2874, 86 L Ed 2d 504 (1985) (permissible limits in federal courts for discipline of lawyer for statements critical of judges and judge-ordered procedures).