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Judicial participation in marches and other issue-related community events

Compiled by Cynthia Gray, Director
NCSC Center for Judicial Ethics

www.ncsc.org/cie

This paper summarizes judicial ethics advisory opinions that have been issued in response to judges' inquiries about participating in marches, demonstrations, vigils, protests, rallies, and other issue-related community events.

In 2020, several advisory committees have issued opinions about events related to the Black Lives Matters movement.

- In determining whether to participate in a public demonstration or rally, judges should examine the official title of the event; its sponsors and organizers and their objectives; and the agenda. Judges should “take reasonable efforts to determine the messages that will be delivered by other participants and the risks that the demonstration or rally might depart from its original mission.” Judges should not attend an event that seems likely to result in a confrontation between participants and others, including law enforcement, and that might lead to unlawful acts. Even if judges may attend an event, “they should consider whether engaging in a symbolic act, carrying a sign, wearing clothing or buttons that might identify them as siding with a particular viewpoint, or making a public statement on even permissible topics would undermine the public’s confidence in the judiciary.” Judges must be prepared to leave an event if remaining “might result in a violation of their ethical duties or interfere with judicial obligations.” Judges should “assume that their identity will likely be known and that their participation will be scrutinized, publicized, and depicted in reports of a demonstration or rally, including in press coverage or on social media.” Judges may write a public statement about matters relating to racial justice and equality. [California Supreme Court Committee on Judicial Ethics Opinions 2020-14.](#)

- In the context of current events, judges “should not participate in political marches or rallies supporting the Black Lives Matter or Blue Lives Matter movements,” “should not make political or divisive statements,” and “must be very cautious in their use of social media, including posts, endorsements, and validations.” [Colorado Advisory Opinion 2020-2](#).
- A judicial officer may not participate in “A Silent March of Black Female Attorneys of Connecticut” by meeting marchers on the steps of the Supreme Court and reading aloud part of the state constitution even if he is not introduced, does not identify himself by name or title, does not wear a robe, does not permit his name or title to be used in advertising, does not elaborate on the constitutional provision, and does not speak with the media. [Connecticut Informal Opinion 2020-3](#).
- When deciding whether to participate in a particular march, demonstration, vigil, protest, or other public event about social issues, a judge should consider the title of the event; the purpose of the event; the organizers and sponsors of the event; whether the event is being held in a time, place, or manner where participants likely will violate the law (for example, by violating curfews or by becoming violent); and the potential role of the judge at the event. If the judge goes to the event, the judge should be careful to act temperately and judiciously and be prepared to leave immediately if circumstances cause the judge to believe the judge’s integrity or the impartiality of the judiciary might later be questioned (for example, if the majority of protesters are carrying signs supporting/opposing a political candidate). [Indiana Advisory Opinion 2020-1](#).
- A judge may not participate in a protest, march, or rally associated with the Black Lives Matter movement. [Maryland Advisory Opinion Request 2020-13](#).
- Judges may not participate in a “walk for justice” organized by a bar association in which participants would “walk silently on the sidewalk past governmental buildings and ‘take a knee’ in front of a depiction of the U.S. Constitution, ‘as a way to both remember George Floyd’ and to recognize judges and court personnel at every level ‘who strive every day to accomplish Dr. King’s goal of justice for everyone.’” *New York Advisory Opinions 2020-92/93* (https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/20-92_20-93.htm).

There were opinions issued about participation in the Women’s March, the March for Science, a local immigration march, and other demonstrations after the 2016 election.

- Before attending a march, rally, or protest, judges must assume their participation will be scrutinized, publicized, and depicted in reports of the event, including in press coverage or on social media and consider whether participation “would appear to a reasonable person” to undermine the judge’s “independence, integrity, or impartiality or demean the judicial office,” which is an objective standard. Judges should examine the official title of an event, its stated mission, its sponsors, and its organizers. If a judge participates in an event focused on social, legal, or political issues that may become the subject of litigation or that is sponsored or organized by individuals or entities who regularly appear in state court proceedings, a reasonable person may have cause to question the judge’s independence and impartiality when making decisions about those issues, individuals, or entities in subsequent cases. Judges must also scrupulously avoid any extra-judicial activity tied to an organization that practices invidious discrimination. Judges should not participate in a march, rally, or protest if participation could reasonably be viewed as supporting or opposing a candidate for public office or as speaking publicly on behalf of a political organization. Even if a march, rally, or protest relates to the law, the legal system, or the administration of justice, there are potential ethical pitfalls. Even assuming attendance at a march, rally, or protest is appropriate in the first instance, a judge must remain vigilant and be prepared to leave if the event proves problematic. Unless an event is directly related to the law, the legal system, or the administration of justice, judges should refrain from publicizing their affiliation with the judicial branch when participating. [Arizona Advisory Opinion 2018-6.](#)
- A judge may participate in a “March for Science” if it is centered on matters that are unlikely to come before the court. To determine whether to participate in an issue-related gathering, a judge should examine whether the issues might be likely to come before the court or adversely impact judicial independence or create an appearance of impropriety or bias. [Illinois Advisory Opinion 2019-1.](#)
- A judge may not participate in the Women's March on Washington the day after the presidential Inauguration. [Massachusetts Letter Opinion 2016-10.](#)
- A judge must not participate in a high-profile, apparently non-partisan march to recognize the importance of scientific endeavors and rational thought in society unless she determines that the march is not co-sponsored by or affiliated with any political organization and does not support or oppose any political party or candidate for election and her participation will not involve her in impermissible political activity or insert her unnecessarily into public controversy. In the period leading up to the event, the judge must monitor the march’s agenda and publicly reported affiliations and sponsorships. A judge may not participate in a local political rally, march, or demonstration sponsored by grassroots organizations, even if she would not speak at the event. [New York Advisory Opinion 2017-38.](#)

Prior opinions have involved vigils and similar events.

- A judge may attend ceremonies held by law enforcement agencies to honor officers killed in the line of duty. [*Florida Advisory Opinion 1992-34*](#).
- A judge may attend a Mothers Against Drunk Driving candlelight vigil if it is not a fund-raising event and the judge's attendance would not be announced. [*Florida Advisory Opinion 1995-41*](#).
- Judges may not participate in a candlelight vigil celebrating the one millionth child served by CASA programs across the country even if the vigil is non-partisan and not connected with fund-raising. [*New Jersey Advisory Opinion 2008-1*](#).
- A judge may not appear at a candlelight vigil for those affected by domestic violence. [*New York Advisory Opinion 2010-59*](#).
- A family court judge should not attend a tree planting and candlelight vigil on behalf of crime victims in the judge's county. [*New York Advisory Opinion 2004-91*](#).
- A judge may attend "A Day of Remembrance" ceremony to honor victims of domestic violence but should take care that his mannerisms, actions, or speech do not cast doubt on his impartiality and should not act as an advocate or in any way indicate a predisposition as to how he might rule in a domestic violence case. [*Washington Advisory Opinion 1996-16*](#).

Several committees have discussed participation by court staff in issued-related community events.

- Judges' personal staff, courtroom clerks, and court managers have the same restrictions on their political activities as judges. Judicial employees other than judges' personal staff, courtroom clerks, and court managers may participate in political marches, rallies, and protests as long as they do not suggest that the judiciary supports their activity and should not identify as a court employee while engaging in political activities or, if asked, should explain that they are simply participating as a concerned citizen. If a march, rally, or protest is unrelated to issues likely to come before the employee's court and cannot reasonably be perceived as publicly supporting or opposing a political candidate or organization, judicial employees generally may participate in the event although the best practice is not to publicize the employee's affiliation with the judicial branch unless the event is directly related to the law, the legal system, or the administration of justice. If a judicial employee has engaged in an extra-judicial activity that may give rise to an appearance of impropriety in a proceeding, the employee should discuss the issue with his or her judge or

supervisor; depending on the circumstances, it may be necessary to screen the employee from participation in the matter. [Arizona Advisory Opinion 2018-6](#).

- Judges should inform staff under their direction and control to conform to the same constraints that apply to the judge, that is, they “should not make political or divisive statements,” “should not participate in political marches or rallies supporting the Black Lives Matter or Blue Lives Matter movements,” and “must be very cautious in their use of social media, including posts, endorsements, and validations.” [Colorado Advisory Opinion 2020-2](#).
- Even if they do not identify their association with the court, judicial law clerks and interns should not publicly express opinions or positions on current controversies about the Black Lives Matter movement, police conduct in specific cases, systemic or institutional racism in current police practices, or the response of federal, state, or local governments to these issues, including on social media; should not attend rallies or protests concerning issues that have become the subject of intense public debate; and should not join or donate to Black Lives Matter organizations or other organizations that are actively involved in politics, public advocacy, and litigation or organizations that defend the police in current public controversies. These restrictions do not apply to their spouses and other family members. Law clerks and interns may publicly affirm their commitment to core principles of equality and non-discrimination but may not express their commitment to these principles in ways that reasonably may call into question their ability to address factual and legal issues in specific cases fairly and impartially. Law clerks and interns may express their position on current political and other hot-button issues to close family members and friends with the understanding that their opinions will not be shared publicly. After their employment by the court, former law clerks and interns are free to express their opinions publicly, subject to the continuing obligation to maintain the confidentiality of information obtained during their employment. [D.C. Memorandum to judicial law clerks and interns](#) (2020).