



## Connecticut Committee on Judicial Ethics

### Informal Opinion Summaries

**2020-03 (June 5, 2020)**

**Extrajudicial activities; Participating in a March; Promoting Public Confidence; Public Statements; Rules 1.2, 2.10, 3.1, 3.7 & 4.1**

**Issue:** May a Judicial Official participate in “A Silent March of Black Female Attorneys of Connecticut” by meeting the marchers at the steps of the Connecticut Supreme Court and reading Article First, Sec. 2 of the Connecticut Constitution 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 any advertising, does not interpret the constitutional provision he is reading and does not speak with the media?

**Facts:** A group of Black female attorneys have invited “Sisters of the Connecticut Bar” and others to participate in “A Silent March of Black Female Attorneys of Connecticut” on June 6. The female attorney marchers will be gathering at Bushnell Park in Hartford and quietly marching to the steps of the Supreme Court.

There will be no comments to the media other than to say: “No comment, the evidence speaks for itself.” Once at the steps of the Court, each female attorney will approach the podium, one at a time, to say “Attorney ----, and I am the “Mother of a black man, or the Wife of a black man, or Sister...., or Aunt, or.....”

The invitation flyer indicates that protest signs in support of the cause are welcome and that supporters will be distributing “We Can’t Breathe” buttons. Voter registration cards will also be distributed. Black men (and other supporters) are welcome to attend at the steps of the Connecticut Supreme Court, but the marching is for the female attorneys. To lend power to their message, marchers are strongly urged to wear all black with black sunglasses.

The organizers have invited the Judicial Official to meet the marchers at the steps of the Court and to speak at the event. The Judicial Official would like to participate by reading Article First, Sec. 2 of the Connecticut Constitution, which states:

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at

all times an undeniable and infeasible right to alter their form of government in such manner as they may think expedient.

**Relevant Code Provisions:** Code of Judicial Conduct Rules 1.2 (Promoting Confidence in the Judiciary), 2.10 (Judicial Statements on Pending and Impending Cases), 3.1 (Extrajudicial Activities in General), 3.7 (Participating in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities) and 4.1 (Political Activities of Judges in General).

**Discussion:** Rule 1.2 of the Code of Judicial Conduct states that a judge “should act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 2.10 of the Code states that: (a) a judge shall not make any public statement that might reasonably be expected to affect the outcome or to impair the fairness of a matter pending or impending in any court or make any non-public statement that might substantially interfere with a fair trial or hearing. (b) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Rule 3.1 of the Code states that a judge may engage in extrajudicial activities except as prohibited by law and subject to various restrictions including that the judge not participate in activities that (1) interfere with the performance of judicial duties, (2) lead to frequent disqualification, (3) appear to a reasonable person to undermine the judge’s independence, integrity or impartiality, or (4) appear to a reasonable person to be coercive.

Rule 3.7(a) provides that a judge “may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice... including,...(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: (A) will be engaged in proceedings that would ordinarily come before the judge; or (B) will frequently be engaged in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.” The rule’s commentary states that “[e]ven for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s

obligation to refrain from activities that reflect adversely on a judge's independence, integrity, and impartiality." Rule 3.7, cmt. (2).

Rule 4.1 states that (a) Except as permitted by law, or by Rules 4.2 and 4.3, a judge shall not:... (2) make speeches on behalf of a political organization;...(8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or (9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

### **Participating in Marches**

Several judicial ethics advisory committees have answered inquiries from judges about whether they could participate in marches or participate in vigils. The following are a few examples:

#### [New York Advisory Opinion 2017-38](#)

The New York Committee advised that a judge may not participate in the March for Science if the march is co-sponsored by or affiliated with a political organization, if the march is in support of or in opposition to a political party or candidate, or if marching will insert the judge unnecessarily into public controversy or involve impermissible political activity. The committee also cautioned that, although the march "purports to be a non-partisan gathering advocating for a recognition of the importance of scientific endeavors and rational thought in society," it could become "more of a platform for political protest against the perceived preference" of some individuals and groups for "junk' science, disconnected from critical thinking and fact-based solutions" and could "be seen as related primarily to highly controversial environmental issues such as global warming and resource depletion, matters that do not clearly and directly implicate the law, the legal system, or the administration of justice...." The committee warned that the judge should carefully monitor the agenda and the positions taken by the organizers and not to join if marching means associating with "matters that are the subject of litigation or public controversy" or involvement with "any group whose principal purpose is to further the election or appointment of candidates to political office...." The committee also stated that, if the judge decides to participate but "finds that political signs unexpectedly dominate the occasion," the judge should leave.

In the same NY opinion, the committee also advised that a judge may not participate, even without speaking, in a local rally, march or demonstration sponsored by a grassroots organization in opposition to the "Trump Muslim Ban," noting that the event clearly "involves great public controversy, which is also the subject of litigation."

### [Massachusetts CJE Opinion 2016-10](#)

The Massachusetts committee advised that a judge could not participate in the Women's March on Washington scheduled for the day after the presidential inauguration. Although the march was intended to be inclusive and welcoming to everyone who supports women's rights, the committee emphasized that the public and media are "likely to focus on the timing of the event and the organizers' announced desire to 'send a message' to the new President on his first day of office." The committee concluded that a "reasonable person would perceive the Women's March as a political protest" and, therefore, participation by judges was prohibited by the code.

### [Florida Advisory Opinion 1995-41](#)

A judge may attend a "Mothers Against Drunk Driving" candlelight vigil where the vigil is not a fundraising event and the judge's attendance would not be announced. The committee noted that the "vigil recognizes the victims of impaired drivers. It is not an event calling for changes in the law, such as harsher penalties for impaired drivers."

### [New York Advisory Opinion 2017-108](#)

A judge may not participate in a "Call to Service and Compassion Workshop" to honor child abuse victims and survivors hosted by a local child advocacy center. The committee believed that "the judge's presence and participation 'create an appearance of particular sympathy toward one side in court' and necessarily cast doubt on the judge's ability to be impartial."

### [Washington Ethics Advisory Opinion 96-16](#)

A judge may attend a "Day of Remembrance" ceremony to honor victims of domestic violence, but should take care that his or her mannerisms, actions, or speech do not cast doubt upon the judge's impartiality and should not act as an advocate or in any manner indicate a predisposition as to how he or she might rule in a domestic violence case.

### [New Jersey Advisory Opinion 2008-01.](#)

Superior Court Family Part judges may not participate in "Give the Light of Hope to a Child" Candlelight Vigil in conjunction with celebrating the one millionth child served by CASA programs across the nation even though the vigil is nonpartisan and not connected with fundraising.

### **Political Activity/Public Controversy/Advocacy**

The following advisory opinions discuss participation in political activities, public controversies, and advocacy:

### [Connecticut JE 2019-03](#)

A Judicial Official should not play a scripted role of a fictional judge in the movie that raises several controversial political and societal issues, such as reparations, police brutality, and the killing of innocent Blacks. The Committee noted that the Judicial Official may be called upon to rule in cases that involve claims of a police shooting or police brutality and concluded that the Judicial Official's proposed participation in the movie would violate Rules 1.2 and 3.1(3) of the Code because the extrajudicial activity would appear to a reasonable person to undermine the Judicial Official's independence and impartiality.

### [Connecticut JE 2013-16](#)

Although the Connecticut Bar Association (CBA) is an organization concerned with the law, the legal system, or the administration of justice, a Judicial Official should not serve as an officer, director or section leader for the CBA because of the CBA's advocacy and related activities. Citing comment 2 to Rule 3.7.

### [Connecticut JE 2016-16](#)

A Judicial Official could join the ACLU and the Southern Poverty Law Center as a member, but should not "associate him or herself with organizational positions on matters of public controversy" and "should carefully consider whether specific programs or activities of the organization may undermine confidence in the Judicial Official's independence, integrity and impartiality."

### [Connecticut JE 2012-32](#)

A Judicial Official should not submit op-ed article for publication because it would, among other things, "suggest the Judicial Official's political priorities and views" and "draw attention to certain political issues/controversies important to the Judicial Official."

### [New York Opinion 16-135](#)

A judge may publicly advocate for a change in the Penal Law by writing to executive and legislative bodies and/or officials, as well as other potentially interested parties, subject to generally applicable limitations on judicial speech and conduct. The committee noted that the judge must take care that his/her advocacy does not compromise public confidence in his/her impartiality. "To that end, a judge must not insert him/herself 'unnecessarily into the center of controversy, for example, by taking a position that is 'so controversial that it is incompatible with judicial office.'"

## [Massachusetts CJE Opinion 2016-06](#)

A judge may serve as a guest speaker at a Community Family Day event sponsored by a neighborhood civic association dedicated to creating a better future for the city by helping to “return [neighborhoods] to the vibrant and thriving areas they once were.” The event was free, non-political, non-partisan, and open to the general public. The committee noted that because a large number of law enforcement agencies are among the sponsors, it set forth several cautions “designed to prevent [the judge] from unintentionally conveying to the public any erosion or blurring of the line of demarcation between law enforcement and the judiciary.”

### **Recommendation:**

Based on the facts presented, including that the Judicial Official will be speaking on the steps of the Supreme Court, that the Judicial Official’s identity may be easily ascertained, that supporters will be wearing “We Can’t Breathe” buttons in direct reference to the George Floyd case and other similar police abuse cases, and that supporters are encouraged to bring protest signs “supporting our cause,” but it is unknown what language will be included on those signs and whether they will reference police brutality and/or other pending cases, the Committee unanimously determined that the Judicial Official should not engage in the proposed activity for the following reasons:

- (1) The Judicial Official’s participation will insert him unnecessarily into public controversy in violation of Rule 1.2;
- (2) Although the Judicial Official’s name and judicial title will not be used, his identity is likely to be ascertained given that he is the only male supporter speaking on the steps of the Supreme Court. To speak in support of the event, against this physical backdrop, could undermine the public’s confidence in the independence and impartiality of the judiciary in violation of Rules 1.2; and
- (3) The Committee noted that because the Judicial Official may be called upon to rule in cases that involve claims of police brutality or police abuse, his participation in this extrajudicial activity may appear to a reasonable person to undermine the judge’s independence and impartiality in violation of Rule 3.1 (3)