

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-13

Date of Issue: July 22, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Participation in Protests, Marches or Rallies

Issue: May a judge participate in protests, marches, and rallies associated with the Black Lives Matter movement, where the focus is on racial and economic inequality, police brutality, justice system reform, and voting rights?

Answer: This question does not address a specific event; it is a request about protests, marches, and rallies in general that are associated with the Black Lives Matter movement. As such, we cannot give a definitive answer covering all circumstances. Given the description of the activities, however, which includes a focus on law enforcement and perceived shortcomings in the system of justice, we conclude that participation in such a protest, march, or rally could cause a reasonable person to question a judge's independence or impartiality. Accordingly, a judge should not participate in such an event.

Facts: The Requestor asks if a judge may participate in protests, marches, and rallies associated with the Black Lives Matter movement. The Requestor states that "it is anticipated that such events will focus on overall racial inequality (locally and globally), as well as police brutality, justice system reform, voting rights, and economic inequality."

Discussion: The question whether a judge can, without violating judicial ethics rules, participate in a protest, march, or rally has been addressed by other judicial ethics commissions. Before we discuss the specific request here, we will briefly discuss some of those opinions.

In 2018, the Arizona Supreme Court Judicial Ethics Advisory Committee considered the propriety of judges participating in marches, rallies, and protests. Opinion 2018-06, 2018 WL 7288537. Although the request was a general one, it gave as examples "Women's Marches" and a recent March for Science. The Arizona Committee concluded that the decision whether to participate in a march, rally, or protest was "a fact-intensive inquiry that ultimately must be decided on a case-by-case basis," subject to "some overarching ethical principles" that judges should consider in their decision. *Id.* at 1. The Committee also noted that judges "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed" by their codes of conduct. *Id.* (quoting the Arizona Code).

The Committee stated that, before engaging in a march, protest, or rally, a judge must consider whether his or her participation "would appear to a reasonable person" to undermine the judge's "independence, integrity, or impartiality." In that regard, the Arizona Committee noted that an objective standard applies, and it is not sufficient that the judge personally is convinced of his or her independence and impartiality. *Id.* at 2. It further

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-13

Date of Issue: July 22, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 2 of 5

noted that, in making the assessment whether to participate in marches, protests, or rallies, “judges should assume their participation will be scrutinized and publicized, and they must consider the public perception should they be depicted in reports of the event, including in press coverage or on social media.” *Id.* The Committee also noted, *id.*, the concern that participation in marches, rallies, or protests could create disqualification issues, stating:

If a judge participates in a march, rally, or protest focused on social, legal, or political issues that may become the subject of litigation, a reasonable person may well have cause to question the judge's independence and impartiality when making decisions about those issues in subsequent cases. The same is true of events sponsored or organized by individuals or entities who regularly appear in state court proceedings.

The Connecticut Committee on Judicial Ethics recently issued an opinion addressing whether a judge could participate in “A Silent March of Black Female Attorneys of Connecticut.” The specific event envisioned that the judge would meet female attorneys on the steps of the courthouse and read a portion of the Connecticut Constitution. Connecticut Committee on Judicial Ethics, Opinion 2020-03 (June 5, 2020). The Ethics Committee determined that the judge should not engage in this activity under the facts presented, which included that the judge would be speaking on the steps of the courthouse, his identity could easily be ascertained, the supporters of the event would be wearing “We Can’t Breathe” buttons, in reference to the George Floyd case and other police abuse cases, and signs likely would be present, with unknown language that could reference police brutality or other pending cases. *Id.* at 6. Based on these facts, the Committee opined that participation could undermine the public’s confidence in the independence and impartiality of the judiciary, and because that judge could be assigned to rule on cases of police brutality, his participation in the event could appear to a reasonable person to undermine his independence and impartiality.

In 2016, the Massachusetts Judicial Ethics Committee advised judges that the Massachusetts Code of Judicial Conduct prohibited participation in the 2017 “Women’s March on Washington.” *See* Massachusetts Supreme Judicial Court CJE Opinion 2016-10, 2016 WL 7342827. The Committee stated that “public confidence in the judiciary is eroded if judges are perceived to be subject to political influence or give the impression of favoring the interests of a political organization or candidate,” and it opined that, although the organizers of the March stated that the event was inclusive and welcoming to everyone who supported women’s rights, the political overtones of the event were “unmistakable.” *Id.* The Committee noted that the March was scheduled for the day after the Presidential Inauguration and one stated purpose of the event was to “send a bold message to [the] new administration on their first day in office.” *Id.* Accordingly, the Committee concluded that

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-13

Date of Issue: July 22, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 3 of 5

a “reasonable person could perceive the Women’s March as a political protest,” and therefore, judges were prohibited by the Code from participating.

The New York Advisory Committee on Judicial Ethics also noted concern regarding the perception that a march may be deemed political. In 2017, it issued an opinion addressing whether judges could attend a “March for Science.” Opinion 2017-38 The Committee concluded that a judge could not participate unless the judge determined “(a) the march is not co-sponsored or affiliated with any political organization; (b) the march does not support or oppose any political party or candidate for election; (c) the judge’s participation will not involve the judge in impermissible political activity; and (d) the judge’s participation will not insert him/her unnecessarily into public controversy.” *Id.* at 3. The Committee also advised that the judges be careful not to be “associated with matters that are the subject of litigation.” *Id.* at 2.

The Illinois Judges Association, Opinion 2019-1, reached a different conclusion, based on its Code, which permitted judges to attend political gatherings. Although that portion of the Code did not prohibit a judge from participating in a political event such as the March for Science, the Committee advised that, before attending such event, the judge should investigate the agenda for the event and evaluate the risk that “supporters will engage in unlawful activity or will express views that might reasonably be perceived to associate the judge with impropriety or to compromise the judge’s perceived independence and impartiality.” *Id.* at 3. The Committee also cautioned judges “to thoughtfully examine whether the issues that are the subject of those events might be likely to come before the court or adversely impact judicial independence or the appearance of impropriety or bias.” *Id.* at 6.

As the opinions from these other jurisdictions show, there are multiple factors that must be considered before a judge decides to participate in a march, rally, or protest. With respect to the request before us, we focus on several provisions of the Maryland Code of Judicial Conduct (the “Code”).

Rule 18-101.2 provides: “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Rule 18-100.4(b) provides: “Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.”

The Code permits judges to engage in appropriate extrajudicial activities, such as participation “in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice,” *see* Rule 18-103.7, subject to restrictions. Rule 18-103.1 states:

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-13

Date of Issue: July 22, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page 4 of 5

Except as prohibited by law or this Code, a judge may engage in extrajudicial activities. When engaging in extrajudicial activities, a judge shall not:

(a) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(b) participate in activities that will lead to frequent disqualification of the judge;

(c) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(d) engage in conduct that would appear to a reasonable person to be coercive; or

(e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

Participation in a march, rally, or protest associated with the Black Lives Matter movement presents a significant risk of a violation of Rule 18-103.1(c), i.e. that the judge will end up in a situation that could undermine the judge's impartiality. Based on the Committee's knowledge of these events, from the news and personally viewing them, they often involve participants carrying signs, including messages such as "Defund the Police," or, as in the Connecticut case, "We Can't Breathe." A depiction of a judge, on social media or otherwise, at an event with signs such as these, could lead a reasonable person to question the judge's impartiality in cases involving the police. And the judge, particularly in a large gathering, generally would not have knowledge of, or the ability to control, the signs that are displayed by others.

Conclusion: Based on the general facts of this request, including a description of a march, protest, or rally associated with the Black Lives Matter movement as focusing on law enforcement and perceived problems with the justice system, as well as the Committee's general knowledge that these events may include signs containing messages that could cause a reasonable person to question the judge's impartiality, we conclude that a judge should not participate in this type of event.

Application: The Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor's compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion. Additionally, this Opinion should not be considered to be binding indefinitely.

Maryland Judicial Ethics Committee

Opinion Request Number: 2020-13

Date of Issue: July 22, 2020

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Page **5** of **5**

The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.