



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 35
Date: April 28, 2025
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has researched and reviewed the matter you presented to it. The following is the opinion of the Committee and a response to your inquiry pursuant to Administrative Order No. 35.

Questions Presented

May a probate judge attend a public march, the Vermont Attorneys Rally for the Rule of Law?

Short Answer

Any judge, even a probate judge, must carefully consider the details of an event and its effects on public confidence in the impartiality of the judiciary. Based on the statements of the organizers and the charged climate of the current political situation, the Committee finds it likely that attendance at the Vermont Attorneys Rally for the Rule of Law would be prohibited by the Code.

Relevant Provisions of Code of Judicial Conduct

The relevant provisions of the Vermont Code of Judicial Conduct 2019 (“the Code” or “V.C.J.C.”) include the following rules and guidance:

- Terminology: “‘Continuing part-time judge’ means a judge who serves repeatedly on a part-time basis by election or under a continuing appointment. The term includes probate and assistant judges. See Application, section B.”
- Application (B): “CONTINUING PART-TIME JUDGE. A continuing part-time judge: (1) is not required to comply . . . (c) except while serving as a judge or seeking appointment, confirmation, retention, election, or re-election as a judge, with Rule 4.1.”

- Canon 1, Rule 1.2: “A judge shall 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.”
- Canon 4, Rule 4.1(7): “A judge shall not (7) engage in any other political activity except as authorized under any other provision of this Code, or on behalf of measures to improve the law, the legal system, or the administration of justice.”.

Background

The event at issue is called “Rally for the Rule of Law.” It is generally described in a notice put out by the organizers as follows: “Vermont Attorneys are rallying for the rule of law. It is more important than ever that we speak out about the illegal actions of the federal government, and we show that regardless of party, we will defend the laws of this nation, we will speak out in defense of the most vulnerable, and we will fight for this country we love.” The notice states, “We will be marching in Burlington. Signs are encouraged.” Those attending are asked to fill out an online form and are offered the opportunity to sign on to a public statement prepared by the ad hoc group of individual lawyers organizing the rally.

The statement includes specific issues with which the organizers are concerned and reads as follows:

We, the undersigned Vermont lawyers, write to express our commitment to upholding the rule of law, and to protest and decry the current administration’s disdain for the rule of law as revealed in its actions:

- It pardoned the January 6th rioters who violently attempted to prevent Congress from carrying out its constitutional duty to certify the election; and exacted revenge on prosecutors who obeyed their oath to enforce the law.
- It has defied the orders of federal judges, in violation of the separation of powers, which is a central pillar of our democracy.
- It has illegally attempted to destroy and eviscerate government agencies created by Congress and illegally fired thousands of federal employees.
- It has impounded congressionally-appropriated funds at federal agencies in violation of federal law.
- It has sought to undermine the freedom of the press by filing frivolous lawsuits as retribution for negative coverage.
- It has arrested, detained and deported individuals without due process of law.
- It has sought to punish law firms which represent parties who have taken positions that are adverse to the current administration and president.
- It has misused the Department of Justice to retaliate against lawyers who have represented persons and organizations that oppose the actions of the administration.

- It closed the U.S. Agency for International Development in violation of federal law.
- It has proclaimed that judges with whom the administration disagrees should be impeached.
- It has outlawed expressions of support for racial and gender equality.
- It has illegally purged historical facts and documents from government archives in an attempt to obliterate our nation's history.
- It has used the IRS to gain access to millions of Americans' personal financial information.
- It is threatening Americans' Social Security benefits in violation of federal law.
- It has conducted private, for-profit business inside the White House and invited corruption and bribery into the inner sanctum of the United States government.

These abuses can be stopped if legions of Vermonters and Americans reaffirm that we are a nation of laws, and that the most powerful and wealthy Americans must also abide by these laws. We invite all to rally and demand that our elected representatives act now to stop the administration's unlawful actions. We call on all Vermonters to join us as we protest the administration's unprecedented assault on the rule of law.

Analysis

Rule 4.1

Generally, full-time judges are prohibited from engaging in political activities under Rule 4.1(7), except as authorized under a specific provision of the Code or "on behalf of measures to improve the law, the legal system, or the administration of justice." Probate judges (and assistant judges), considered continuing part-time judges under Vermont's Code, are not required to comply with Rule 4.1 "except while serving as a judge or seeking appointment, confirmation, retention, election, or re-election as a judge." Code, Application § B.1.c.

Neither this Committee nor the Supreme Court has explicitly addressed the meaning of the phrase "except while serving as a judge" in the context of continuing part-time judges and political activity. But see Op. No: 2728-11, 2004 WL 6033453, at *2 (VT Jud. Eth. Comm. Nov. 8, 2004) (opining while interpreting a rule related to pro tempore part-time judges that "[e]xcept while serving as a judge" is the equivalent of "only when sitting"). Under this analysis, it would seem that a probate judge, during the judge's personal time, would be allowed to engage in political activities.

However, regardless of whether a probate judge is "serving as a judge" during a weekend when they are not presiding in a courtroom, the more general principle of judicial integrity found in Rule 1.2 continues to apply. "Conduct that compromises or appears to

compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Rule 1.2 cmt. [3]. Thus, the analysis must go on to consider whether or not attendance at this particular rally would violate Rule 1.2. See, e.g., Conn. Jud. Adv. Op. 2020-03, 2020 WL 4271795, *5 (noting that judge attending a public event that would thrust him “unnecessarily into public controversy” would violate Rule 1.2).

Participation in Public Rallies Under Rule 1.2

Numerous ethics committees have addressed the subject matter of judges’ attendance at marches, rallies, or protests, particularly “on behalf of measures to improve the law, the legal system, or the administration of justice.” The overriding concern is that attendance must not compromise or appear to compromise the independence, integrity, and impartiality of the judge or undermine public confidence in the judiciary. Rule 1.2. Participation in events focused on hot-button social issues or public controversies, even if not directly related to a political candidate or campaign, may run afoul of these principles despite a judge’s best intentions to participate only in a nonpartisan or nonpolitical matter.

As the Arizona Supreme Court Judicial Ethics Advisory Committee has explained, “Judges generally have more leeway when it comes to extrajudicial activities that are related to the law, the legal system, or the administration of justice. But merely identifying an event or activity as one related to the law, the legal system, or the administration of justice does not end the inquiry. Even if a march, rally, or protest relates to the law, the legal system, or the administration of justice, there are potential ethical pitfalls.” Ariz. Jud. Adv. Op. 2018-06, 2018 WL 7288537, *3; see also N.Y. Jud. Adv. Op. 2020-92/93, 2020 WL 4933534, *3 (“The prohibition on political activity is a heavy burden. However, it is one individuals must accept if they wish to take on the sensitive and critically important role of judges . . . , because it is absolutely necessary to maintain an impartial judiciary both in practice and perception.”); ABA, Annotated Model Code of Judicial Conduct at 478 (3d ed. 2016) (“[P]robably no area is more fraught with potential for ethical misconduct than judicial political conduct.”).

The various reported opinions reflect that the inquiry into whether or not a specific activity is permissible is fact-intensive; context matters and outcomes vary from case to case depending on the circumstances. Generally, when considering whether to attend such a public event, “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.” Ariz. Jud. Adv. Op. 2018-06, 2018 WL 7288537, *2; see also Colo. Jud. Adv. Op. 2022-1, 2022 WL 1601367, *4 (“[W]hen engaging in such an event, judges should not identify as judicial officers but should still 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.’” (citation omitted)).

Considerations for Determining the Permissibility of Participation

“[T]he starting point for an inquiry about political activity is one of prohibition,

with . . . exceptions drawn only after a careful analysis of all of the factors informing the decision.” N.Y. Jud. Adv. Op. 2017-38 at 2. The Indiana Commission on Judicial Qualifications has summarized some of the principal factors to consider as follows:

- The title of the event - The more provocative or advocacy-oriented the title of the event is in promotional materials, the more likely the judge should abstain.
- The purpose of the event - If the event primarily serves an advocacy or political purpose or is a fundraiser (and the judge is a featured speaker), the judge should not participate due to concerns regarding frequent subsequent disqualification requests of the judge and concerns about the appearance of partiality. Also, if the event touches upon a pending matter currently before the judge, then the judge should not attend (i.e., the protest/march is aimed at raising awareness about police practices, and the judge currently has a civil lawsuit on his/her docket regarding the city’s response to excessive force incidents).
- The organizers and sponsors of the event - If the event primarily is sponsored or affiliated with a political party or candidate or seeks to influence the actions of a particular political official, the judge should not participate due to impartiality and independence concerns. If the event is held by an advocacy group or a frequent litigant in the judge’s court, the judge should carefully weigh the purpose of the event. . . .
- The details about the event - If the event is being held in a time, place, or manner where participants likely will violate the law (i.e., by not following imposed curfews or by becoming violent), then a judge should not participate.

Ind. Jud. Adv. Op. 2020-01, 2020 WL 4281127. *5 (citations omitted); see generally National Center for State Courts, Center for Judicial Ethics, Judicial participation in marches and other issue-related community events (dated Oct. 29, 2020) (summarizing numerous ethics committee opinions on the subject matter). The list assembled by the Colorado Ethics Advisory Board is as follows:

- the official title of the event;
- the stated mission of the event;
- the sponsors and organizers of the event;
- the size of the event;
- the history of the event and how the event has evolved or has been perceived in previous years;
- who is likely to participate at the event;
- any signs or banners likely to be associated with the event;
- whether the event has a fundraising aspect;
- the marketing and promotional materials associated with the event;

- at what level the judge intends to participate at the event, for example, as an observer watching a parade or as a person marching in the parade; and
- the risk that the event might depart from its original mission and turn political or violent.

Colo. Jud. Adv. Op. 2022-1, 2022 WL 1601367, *4; see also *id.* at *4 (“Simply put, judges cannot control how attendees and other third parties will act at an event, but they must control their own behavior, constantly be aware of the situation, know that they will likely be associated with other participants and their actions, and be prepared to leave the event if necessary.”); Maryland Jud. Adv. Op. 2020-13, 2020 WL 4335556, *3 (“[T]he judge, particularly in a large gathering, generally would not have knowledge of, or the ability to control, the signs that are displayed by others.”).

Considerations such as these, for example, led the Massachusetts Supreme Judicial Court Committee on Judicial Ethics to conclude that judges could not participate in the Women’s March on Washington in 2017, even though it was “intended to be inclusive and welcoming to everyone who supports women’s rights.” The Committee explained:

The Women’s March is scheduled to take place the day after the Presidential Inauguration. Though the organizers emphasize that the Women’s March is intended to be inclusive and welcoming to everyone who supports women’s rights, the political overtones are unmistakable. The organizers reference the “rhetoric of the past election cycle” that has “insulted, demonized, and threatened . . . immigrants of all statuses, Muslims and those of diverse religious faiths, people who identify as LGBTQIA, Native people, Black and Brown people, people with disabilities, [and] survivors of sexual assault.” A primary purpose of the Women’s March is to “send a bold message to [[the] new administration on their first day in office.”

We understand that you wish to participate in the Women’s March to stand up against misogyny, racism, and other biases and bigotries that threaten the rule of law. The public and the media are, however, 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 in office. We believe that a reasonable person would perceive the Women’s March as a political protest, and the Code therefore prohibits your participation

Mass. Sup. Jud. Ct. Comm. Jud Eth. Op. 2016-10, 2016 WL 7342827, *1. In other words, notwithstanding the judges’ salutary intentions, attendance would likely be seen as protesting against a particular political party rather than as non-partisan support for the legal system, thus potentially affecting the perception of the judge’s independence and integrity.

The Maryland Judicial Ethics Committee came to a similar conclusion when considering whether, as a general matter (no specific event was contemplated), judges may

participate in “protests, marches, and rallies associated with the Black Lives Matter movement”:

Participation in a march, rally, or protest associated with the Black Lives Matter movement presents a significant risk of a violation of [the rules], 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.

Maryland Jud. Adv. Op. 2020-13, 2020 WL 4335556, *3.

The New York Committee determined that judges should not participate in a silent “walk for justice” that was “organized by a bar association in response to the death of [George Floyd]” and intended in part to include members of the legal community. The Committee explained: “We strongly believe that racial justice should not be controversial. But, in this instance, the controversy surrounds not just the broad principle of racial justice but many fact-specific controversies concerning the impact of race on the criminal justice system, police tactics in interactions with African-Americans and minority communities, the legal doctrine of qualified immunity, and the need for law enforcement accountability.” N.Y. Jud. Adv. Op. 2020-92/93, 2020 WL 4933534, *3.

After discussing the pitfalls of participation in “public demonstrations and rallies about racial justice and equality,” the California Committee provided an alternative:

Rather than participating in a public demonstration or rally, judges who wish to make their views known might consider writing a letter or providing a written statement or opinion to the press. By doing so judges may make their views on a subject known while avoiding many of the risks inherent in participating in a public demonstration or rally, and can maintain control over the tone and substance of the message they wish to convey. The [California] Supreme Court’s recent Statement on Equality and Inclusion provides an example of the kind of statement that is ethically permissible:

We state clearly and without equivocation that we condemn racism in all its forms: conscious, unconscious, institutional, structural, historic, and continuing. We say this as persons who believe all members of humanity deserve equal respect and dignity; as citizens committed to building a more perfect Union; and as leaders of an institution whose fundamental mission is to ensure equal justice under the law for every single person.

A written statement of this kind advances the cause of racial justice and equality while promoting public confidence in the judiciary, without violating the canons by creating an appearance of partiality, referencing any pending or impending case, or committing the courts to taking a position on an issue likely to come before them.

Cal. Jud. Adv. Op. 2020-014 at 12 (citations omitted).

The Vermont Rally for the Rule of Law

From its title, this rally for the rule of law purports to be nonpartisan and nonpolitical and to address improving the law, the legal system, or the administration of justice. See Rule 3.1 cmt. [1] (“To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.”). However, as other advisory committees have cautioned, it is important to analyze the full context of the rally and its stated intent to ensure that a judge’s participation would not compromise public confidence in the integrity of the judiciary.

While support for the rule of law, the bedrock of our democracy, is neither partisan nor inappropriately political—and arguably an underlying purpose of the Code is precisely to uphold that rule by ensuring judicial integrity—the question here is not whether a judge can express support for the rule of law, but the specific activity of participating in this rally/march as a way to do so. Support for the rule of law obviously relates to improving the law, the legal system, and the administration of justice, and thus is a reasonable subject for judges to address. But the written statement accompanying the announcement of this rally confirms the intensely emotional and political nature of this event, aimed at specific actions by the Trump administration. It seems likely that the signs that the organizers have encouraged attendees to bring will reflect the emotional and political nature of the march, and it seems likely that they or other communications at the march will touch on a variety of related political issues, not just the specific issue of adherence to the rule of law. A judge attending the event presumably would have no ability to control the highly charged messages on signs held by fellow participants around them; the judge could potentially appear in the context of those messages in photographs, news coverage, and social media posts about the event. Given the current national divide, it is likely that media outlets will portray the march as a partisan political event and that individuals identifying with President Trump, his party, and his positions will view participants in the march as opposing those positions, not merely supporting the rule of law.¹ The impression would

¹ Local news coverage in anticipation of the event has already indicated the likelihood of its interpretation as a political protest against the Trump administration: “Through statements and a planned demonstration, Vermont’s legal community is taking a stand against the Trump administration’s efforts to undermine the judicial branch and democratic principles.” G. Solsaa, “Vermont Supreme Court’s chief justice, attorneys speak out against threats to rule of law,” VT Digger (April 3, 2025), available at

call into question the perceived “independence, integrity, and impartiality” of a judge who attended and could “undermine public confidence in the judiciary.”

As the California committee suggested, a judge or group of judges may make a well-written statement or speech that expresses the judges’ support for the rule of law, but a focused statement is different from participation in an uncontrolled public event. For example, the organizers have issued a public statement with 14 bullet points, some of which are clearly addressed to the rule of law--the executive’s intention to defy the orders of federal judges—but some of which relate to the application of specific laws or constitutional provisions--the firing of certain federal employees. Having a judge take a public stance on such an issue while the matter is pending is the type of behavior that may negatively affect the confidence of the public in the judiciary and is prohibited by the Code. Even a probate judge who is unlikely to preside over any of the matters involved in this controversy must be concerned not to act in a way that raises questions of impartiality.

Conclusion

For the reasons discussed herein, the specific circumstances surrounding the Vermont Attorneys Rally for the Rule of Law make it likely that a judge’s participation will appear to be a partisan action that may undermine public confidence in the impartiality and integrity of the judiciary. That being the case, the Committee concludes that a judge should not participate in this event.

Members of the Judicial Ethics Committee

Eileen M. Blackwood

Signed by:
Eileen M. Blackwood, Esq., Chair

Thomas Zonay, Chief Superior Judge

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Honorable Thomas A. Zonay

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<https://vtdigger.org/2025/04/03/vermont-supreme-courts-chief-justice-attorneys-speak-out-against-threats-to-rule-of-law/> (last accessed April 17, 2025).