

# MINNESOTA BOARD ON JUDICIAL STANDARDS

## Written Advisory Opinion

### Participation in Twin Cities Pride Events

#### INTRODUCTION

On behalf of the Board on Judicial Standards (“Board”), this written advisory opinion is published to address the circulation of an incomplete email chain of an informal advisory opinion initially sent January 30, 2025. The Board appreciates the opportunity to respond to the concerns raised about the informal advisory opinion. To the extent that this written advisory opinion conflicts with the informal advisory opinion, this opinion controls.

#### MAIN CODE PROVISIONS

The primary provisions in the Code of Judicial Conduct implicated in this advisory opinion are:

|           |                                                                                                      |
|-----------|------------------------------------------------------------------------------------------------------|
| Rule 1.2  | Promoting Confidence in the Judiciary                                                                |
| Rule 1.3  | Avoiding Abuse of the Prestige of Judicial Office                                                    |
| Rule 2.2  | Impartiality and Fairness                                                                            |
| Rule 2.4  | External Influences on Judicial Conduct                                                              |
| Rule 2.11 | Disqualification                                                                                     |
| Rule 3.1  | Extrajudicial Activities                                                                             |
| Rule 3.7  | Participation in Educational, Religious, Charitable, Fraternal, or Civil Organizations or Activities |
| Rule 4.1  | Political and Campaign Activities of Judges and Judicial Candidates                                  |

#### OTHER AUTHORITIES

Ariz. Sup. Ct. Jud. Ethics Advisory Comm. Op. 18-06.  
Ind. Comm. on Jud. Ethics, Ad. Op. #1-20 at 7.  
Cal. Comm. on Jud. Ethics Formal Op. 2020-14 at 2-3.  
Colo. Jud. Ethics Advisory Bd. Advisory Op. 2022-01, eff. March 5, 2022.  
N.Y. Advisory Op. 2017-38.  
Arthur Garwin et al., *Annotated Model Code of Jud. Conduct* 407 (3rd ed. 2016).  
Cynthia Gray, *Ethical Judicial Culture*, 56 Ct. Review: The J. of the Am. Judges Ass’n, 144, 144 (2020).

#### OPINION

##### Background and Context

Minnesota judges must aspire to not only be impartial, but to also appear to be impartial in order to preserve the public’s trust and confidence in the judiciary. “Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Rule 1.2, Comment 3, Minnesota Code of Judicial Conduct (“Code”).

Conduct related to fundraising or political activities increases the risk that a judge may not appear impartial. Rule 2.11(A) requires a judge to disqualify where “impartiality might reasonably be questioned.”

The self-stated Mission of Twin Cities Pride is “Empower every LGBTQ+ person to live as their true self.” The self-stated Vision is “A future where all LGBTQ+ people are valued and celebrated for who they are.” While the Mission and Vision of Twin Cities Pride would not, on their own, prevent a judge from attending the Twin Cities Pride events, the events have historically attracted protesters and counter protesters along with controversy regarding police presence, corporate presence, and sponsorship. There is also fundraising and campaign or political activity occurring at the events. Further, a judge’s participation may be publicly perceived differently from the way the judge intended. These realities unfortunately require judges to be thoughtful in how they participate in Twin Cities Pride events and other community events.

### **Permitted and Prohibited Activities**

#### *Attending Twin Cities Pride Events and March*

A judge may attend and participate in Twin Cities Pride events, including the march, in their individual capacity. While Rule 3.1 and its comments generally encourage judges to engage in extrajudicial activities that do not violate the law or the Code, the rule also lists specific prohibitions:

[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 use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law or Judicial Branch policy.

Before attending or participating in an event, the judge should consider the prohibitions in Rule 3.1 and the list of General Cautions, below.

#### *Identifying as a Judge*

A judge attending Twin Cities Pride events should consider whether it is prudent to participate in a way that publicly identifies the judge as a judicial officer.

The Preamble to the Code states, “[J]udges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.” Comment 2 to Rule 1.2 states, “A judge 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

of this Code.” In analyzing this comment, the Colorado Judicial Ethics Advisory Board stated, “[W]hen engaging in [a public event] judges should not identify as judicial officers but should still assume that their identity will likely be known and, as California’s Committee on Judicial Ethics recognized, that their ‘participation will be scrutinized, publicized, and depicted in reports of a demonstration or rally, including in press coverage or on social media.’” Colo. Jud. Ethics Advisory Bd. Advisory Op. 2022-01, citing Cal. Comm. on Jud. Ethics Formal Op. 2020-14 at 2-3.

Identifying as a judge during Twin Cities Pride events increases the risk that others present at the events may abuse the prestige of judicial office by using the judge’s presence in support of fundraising or political activities. *See* Rule 1.3, 2.4(C), 4.1; Ariz. Sup. Ct. Jud. Ethics Advisory Comm. Op. 18-06 (“[U]nless 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 in the march, rally, or protest.”); Colo. Jud. Ethics Advisory Bd. Advisory Op. 22-01 at 5 (judges should be wary of the possibility that others at an event “might abuse the prestige of judicial office to further their own cause or agenda”).

It has been asked whether a judge may identify themselves as a judge at Pride events if their appearance is educational, such as handing out informational pieces on jury service and the courts at a table. The judge should determine whether it is possible to work at the event and appear impartial. In contrast to members of the public participating in events such as Pride, “judges cannot risk the neutrality that gives the public confidence in their ability to preside with an open mind over . . . contentious cases.” Cynthia Gray, *Ethical Judicial Culture*, 56 Ct. Review: The J. of the Am. Judges Ass’n, 144, 144 (2020). (<https://digitalcommons.unl.edu/ajacourtreview/740/>).

If a judge is speaking to a group, the judge has a platform to say that they are there to provide education. It may be harder to convey that message while working at a table. Where there is fundraising, campaign or political activity, or protests, even if contrary to the stated-mission of the organization, it is less likely that a judge would be able to maintain their appearance of impartiality.

### *Campaign or Political Activities*

A judge attending the Twin Cities Pride events should take caution to avoid any activity that would lead the public to believe they publicly endorse or publicly oppose a candidate for public office. Rule 4.1(A)(3). For example, judges should not wear any clothing, hats, or buttons supporting or opposing a candidate for public office. They should not carry any signs supporting or opposing a candidate for public office. They should not march with candidates for public office or their supporters in order to avoid the impression that they support the candidate.

### *Fundraising Activities*

While attending the Twin Cities Pride events, a judge should avoid any activities in which it appears they are improperly soliciting funds or services for an organization. Rule 3.7(A)(2). According to the *Annotated Model Code of Judicial Conduct*, “Most state courts and judicial ethics advisory committees have strictly applied restrictions on fund-raising, counseling against any ‘personal participation’ in fund-raising even when participation is indirect, or bears no relationship to the judicial office, or cannot reasonably raise concerns about coercion or exploitation of the office or the appearance of impropriety.” Arthur Garwin et al., *Annotated Model Code of Jud. Conduct* 407 (3rd ed. 2016).

The Board’s Formal Advisory Opinion 2016-1, *Participation in Charitable, Educational, or Civic Organizations and Activities*, available at [mnbjcs-advisory-opinion-2016-1.pdf](#), provides a detailed analysis regarding fundraising activities.

### *General Cautions*

The Colorado Judicial Ethics Advisory Board Advisory Opinion 2022-01 has set out a helpful list of considerations for judges to use to determine whether it is appropriate for them to participate in public events:

- 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 in the event;
- Any signs or banners likely 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 in the event, for example, as an observer watching the 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.

Even if a judge initially determines that their attendance or participation in Twin Cities Pride events or similar events is appropriate, the judge should consider in advance how they will respond if the events unexpectedly change character or the actions of others create ethical issues such that the judge’s continued presence or participation is problematic. “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.” Colo. Jud. Ethics Advisory Bd. Advisory Op. 2022-01 at 5; *see also* Ariz. Sup. Ct. Jud. Ethics Advisory Comm. Op. 18-06 (“[E]ven assuming attendance at a march . . . is appropriate in the first instance, a judge must remain vigilant and should be prepared to leave if the event proves problematic under the Judicial Code”); Ind. Comm. on Jud. Ethics, Ad. Op. #1-20 at 7 (judge should be prepared to

immediately leave the event if circumstances change and cause the judge to believe their integrity or impartiality may be questioned); N.Y. Op. 2017-38 (“The Committee . . . trusts that a judge will exercise discretion and leave the area . . . if the judge finds that political signs unexpectedly dominate the occasion.”).

While this opinion does not address all questions related to a judge’s participation in the Twin Cities Pride events, the Board hopes that it provides sufficient guidance so that judges may make an informed decision regarding their participation. In addition, this opinion provides general guidelines for judges to consider when participating in the Twin Cities Pride events or other similar events. This written opinion is not meant to provide a basis for the imposition of discipline.