

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 93-9**

Issued October 15, 1993

**[Withdraw by the Board on December 8, 2017 and Replaced by Adv. Op. 2017-08]**

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

*[Not Current- subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997.]*

**SYLLABUS:** While the Ohio Code of Judicial Conduct does not prohibit a judge from participating in a parade, the Board does not encourage such activity during a non-election year. Before becoming involved in a parade, a judge must use discretion in determining whether participation is appropriate, by making a case by-case consideration of Canons 2A, 2B, 5B, 5G, 7A (3), 7A (5), and 7B (1) (a) and (c). Where the appropriateness of participation is questionable, it is best to err on the side of prudence and refuse involvement in a parade.

**OPINION:** We have before us a request for an advisory opinion on whether judges may participate in parades during non-election years. For purposes of this opinion a non-election year refers to a year in which a judge is not a judicial candidate. As this issue has not previously been considered by any state bar ethics committee, the question presented requires an original interpretation of the Code of Judicial Conduct.

A parade is commonly defined as a "public procession on a ceremonial or festive occasion." Webster's II New Riverside University Dictionary 851 (1984). As parades are sponsored by many different organizations and for many different reasons, it is necessary to consider the appropriateness of a judge's participation in parades by referring to Canons 2A, 2B, 5B, 5G 7A (3), 7A (5), and 7B (1) (a) and (c) of the Code of Judicial Conduct, which are set forth below.

**Canon 2A** provides that "[a] judge should respect and comply with the law and should conduct himself [herself] at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." While Canon 2B states, in part, that a judge "should not lend the prestige of his [her] office to advance the private interests of others."

**Canon 5B** provides as follows:

A judge may participate in civic and charitable activities that do not reflect adversely upon his [her] impartiality or interfere with the performance of his [her] judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an

educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him [her] or will be regularly engaged in adversary proceedings in any court.

(2)-(4) (omitted).

**Canon 5G** states that “[a] judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.” Yet, **Canon 5G** also provides that a judge “may represent his [her] country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.”

**Canon 7A(3)** provides that “[a]n incumbent judge, or a candidate for judicial office, may attend political gatherings and may identify himself or herself as a member of a political party.” **Canon 7A (5)** states that “[a] judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.” **Canon 7B (l) (a)** on campaign conduct states that “[a]n incumbent judge, or a candidate for judicial office: should maintain the dignity appropriate to judicial office;” while **Canon 7B (l) (c)** states that a judge “should not . . . announce his or her views on disputed legal or political issues.”

In applying these ethical standards to the issue raised, the Board begins by noting that the express language of the Code does not prohibit judicial participation in parades. Moreover, the language of Canon 5G, permitting a judge to represent his or her country, state, or locality on ceremonial occasions, implies that a judge may participate in some parades. However, the right to participate is not absolute. A judge must consider several factors prior to any participation:

- 1) The type of organization that may sponsor a parade,
- 2) the reason the parade is being held, and
- 3) the extent to which a judge may participate in a parade.

First, before becoming involved in an organization's parade, a judge must consider the appropriateness of his or her affiliation with the organization that is sponsoring the parade. The Board, within the scope of this opinion, will not attempt to enumerate an inclusive list of appropriate organizations. A judge, aided by the Canons, must use his or her own discretion to decide whether affiliation with an organization is appropriate. Canon 5B provides assistance by allowing a judge, to participate in certain activities that do, not reflect adversely upon a judge's impartiality or interfere with his or her judicial duties, but by limiting in 5B(1) a judge's association with an organization that is likely to come before, him or her, or that is regularly engaged in proceedings in any court.

Once a judge determines that it is permissible to be associated with the organization sponsoring the parade, he or she must then determine whether the reason for the parade is appropriate for participation by a judicial officer. As stated above, Canon 5G permits a judge to participate in ceremonial activities or historical, educational, and cultural activities, which are public events. As to other types of parades, a judge must consider whether, under Canon 2(B), he or she would be lending the prestige of the judicial office to advance the private interests or causes of the sponsoring organization. Also, under Canons 2A and 2B and Canon 7B (1) (c) a judge must consider whether participation in the parade would have the primary purpose of promoting any disputed legal or political issues of the sponsoring organization. A judge must always conduct himself or herself in a manner that would uphold the integrity and more importantly the impartiality of the judiciary.

The next factor to be considered is the extent to which a judge may participate in any parade. A judge who merely marches anonymously with the general public in a parade, will not have the same extensive ethical considerations as one who is the focal point in a parade. A judge who is in the heart of a parade must always be careful to uphold the integrity of the judiciary and act in a dignified manner, as required by Canon 2A and Canon 7B (1) (a).

Lastly, the Board notes that since judges are elected in Ohio, a judicial candidate or incumbent judge must be permitted to campaign. As participation in a parade may be an extension of campaigning, there is no doubt that appearing in certain parades during an election year is acceptable behavior, so long as the judge is conscious of the ethical considerations above. Further, during an election year, Canon 7A(3), which permits a judicial candidate or incumbent judge to attend political gatherings, would by application allow the candidate to participate in political parades. Outside an election year, Canon 7A(5) would prohibit a judge from participating in any political activities that are not meant to improve the law, legal system, or administration of justice, and would therefore strictly prohibit participation in political parades.

In conclusion, while the Ohio Code of Judicial Conduct does not prohibit a judge from participating in a parade, the Board does not encourage such activity during a non-election year. Before becoming involved in a parade, a judge must use discretion in determining whether participation is appropriate, by making a case-by-case consideration of Canons 2A, 2B, 5B, 5G, 7A(3), 7A(5), and 7B (l) (a) and (c). Where the appropriateness of participation is questionable, it is best to err on the side of prudence and refuse involvement in a parade.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**