



KEEP OUR REPUBLIC

Article III Coalition Statement on Misconduct Complaint Against Minnesota Judges

The judicial misconduct complaint filed by the United States Department of Justice (DOJ) against United States District Judges in Minnesota has no merit, according to [Keep Our Republic's Article III Coalition](#), a group of sixty-one retired federal judges representing virtually every demographic and region of the country and appointed nearly equally by Presidents of both major parties. The Coalition, which expresses its unqualified support for the Minnesota judges, has issued the following statement to explain its conclusion:

The DOJ's complaint is based on statements made by the Minnesota judges to *The New York Times* concerning events that occurred in connection with immigration enforcement efforts in Minneapolis in January of this year. The Court's chief judge at the time of the events, Judge Patrick Schiltz, detailed nearly a hundred instances in which DOJ had failed to comply either at all or in a timely manner with court orders, causing a major disruption in the Court's ability to function and exacerbating an already tense atmosphere of community unrest. While taking great care to avoid commenting on the merits of any specific case, Judge Schiltz characterized these events as "a grave threat to the rule of law." Other members of the Court quoted in the *Times* article concurred with this assessment.

Although the Code of Conduct for United States Judges prohibits judges from commenting on pending cases, Canon 4 of the Code not only permits but also expressly encourages judges to speak out in circumstances such as those that Judge Schiltz and his colleagues detailed.

According to Advisory Opinion No. 118, issued earlier this year by the Committee on Codes of Conduct of the Judicial Conference of the United States, “[a] judge may choose to engage in a wide range of civic engagement activities, including speaking and writing on core judiciary matters such as advocacy for the rule of law and judicial independence.” In this instance, the judges made clear that their purpose in speaking out was to call attention to what they saw as unusual circumstances that went beyond any particular case. They described a pattern of non-compliance or delayed compliance with court orders and other breaches of professional obligations by government lawyers. While these actions took place in the context of the administration’s immigration enforcement efforts, their comments were directed to matters within their purview as judges with respect to the orderly administration of justice, rather than to broader policy questions.

DOJ’s judicial misconduct complaint nonetheless alleges that the judges’ statements to the media violated the restrictions of the Code of Conduct and exhibited impermissible bias against the government and its policies. While first denying that DOJ violated any court orders, the complaint goes on to allege that the orders in question were improper, a claim that is legally irrelevant given that the appropriate means for disputing a court order is not to disobey it but to appeal it to a higher court.

Although we perceive no misconduct in the actions of Judge Schiltz and his

colleagues, we would be remiss if we failed to express our serious concern about the broader effects of DOJ's actions here. Even an unfounded complaint can have a significant impact on a judge. In making decisions about whether and how to speak out about threats to the rule of law and the constitutional order, even judges who think about making statements that are squarely within the bounds permitted by the Code of Conduct may be reluctant to do so if they fear that they will be threatened in a similar way.

(A copy of Advisory Opinion No. 118 is provided for reference. *This Statement is issued by the Coalition without objection from its membership except for one judge.*)

Committee on Codes of Conduct Advisory Opinion No. 118: Ethics Considerations Related to Public Speech and Civic Engagement by Judges

As the role of the federal judiciary within the American system of government is often a topic of public discussion and debate, judges are rightly concerned about the appropriate ethical boundaries to be observed when they are called upon, or desire to, speak or otherwise engage publicly about a broad range of issues. This advisory opinion summarizes the Code of Conduct principles that provide guidance related to civic engagement by judges. Necessarily, each situation depends on the context, and the question of whether to participate in public discussion or other civic engagement must be decided by the conscientious judge exercising sound judgment. But the Code of Conduct, its Commentary, and several other advisory opinions provide judges with helpful guiding principles.

Canon 4 provides, broadly, that “[a] judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects.” Regarding law-related activities in particular, the Commentary to Canon 4 explains that “as a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice.” The Commentary encourages both law-related and non-law-related extrajudicial activities “to the extent that the judge’s time permits and impartiality is not compromised,” noting that “complete separation of a judge from extrajudicial activities is neither possible nor wise.”

It does not follow, however, that every activity that involves the law or the legal system is considered permissible activity. Interpreting these provisions of the Code, [Advisory Opinions No. 50](#) (“Appearance Before a Legislative or Executive Body or Official”) and [No. 93](#) (“Extrajudicial Activities Related to the Law”) provide important guidance regarding ethically acceptable civic engagement and judicial speech. In [Advisory Opinion No. 93](#), the Committee explained that “to qualify as an acceptable law-related activity, the activity must be directed toward the objective of improving the law, *qua* law, or improving the legal system or administration of justice, and not merely utilizing the law or legal system as a means to achieve an underlying social, political, or civic objective.” It follows, the Committee concluded, that “permissible law-related activities are limited to the kinds of matters a judge, by virtue of the judge’s judicial experience, is uniquely qualified to address,” and that either “serve[] the interests generally of those who use the legal system, rather than the interests of any specific constituency,” or “enhance[] the prestige, efficiency or function of the legal system itself.” In addition to activities addressing the legal process, permissible law-related activities may include those that are “directed toward substantive legal issues, where the purpose is to benefit the law and legal system itself rather than any particular cause or group.” [Advisory Opinion No. 93](#) notes that, “[w]hether an activity benefits a specific constituency or the legal system as a whole will sometimes be a close question” related

to “how closely related the substance of the activity is to the core mission of the court of delivering unbiased, effective justice to all.”

In [Advisory Opinion No. 50](#), the Committee interpreted Canon 4A(2), which provides that “a judge may consult with. . . an executive or legislative body or official. . . to the extent that it would generally be perceived that a judge’s judicial experience provides expertise in the area.” The Committee explained that “a judge properly may appear before a legislative or executive body or official. . . with respect to matters concerning the administration of justice. Examples would be matters relating to court personnel, budget, equipment, housing, and procedures. These matters are all vital to the judiciary’s housekeeping functions and the smooth operation of the dispensation of justice generally.” The Committee cautioned, however, that “a judge may appear at a public hearing before or consult with an executive body or official relative to matters *not* concerning judicial administration only to the extent that it would generally be perceived that a judge’s judicial experience provides special expertise in that area.” [Advisory Opinion No. 50](#) counsels that when a subject matter “falls close to the line between the permissible and impermissible categories for consultation with public bodies,” a judge should consider “the basic purpose and intent of the canon, and the likelihood that litigation relating to the subject matter will come before the judge.”

The Code and related advisory opinions confirm that judges may speak about the history and role of the federal courts in our society, their operation and governance, the importance of jury service, suggestions to improve the legal system, and related topics. This includes, for example, public statements about the need for judicial security and funding sufficient for the courts to carry out their responsibilities. Such communications are by their nature “consistent with the obligations of judicial office” under Canon 4. These ethics principles also permit judges to speak or write about the independence of the judiciary, or advocate for the rule of law in general, including why both values are crucial to our system of government.

In addition, the Commentary to Canon 4 provides that “[w]ithin the boundaries of applicable law. . . a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.” Although this Commentary addresses persecution specifically, the Committee believes the Code and its previous advisory opinions leave room, in at least some circumstances, for the measured defense of judicial colleagues from illegitimate forms of criticism and attacks that risk undermining judicial independence or the rule of law, whether or not they rise to the level of persecution. See, e.g., [Chief Justice’s 2024 Year End Report on the Federal Judiciary](#), at p.5 (noting “four areas of illegitimate activity that. . . threaten the independence of judges on which the rule of law depends: (1) violence, (2) intimidation, (3) disinformation, and (4) threats to defy lawfully entered judgments”).

The Code and related Committee guidance also suggest a range of prudent limits judges should consider with respect to their civic engagement and extrajudicial activities. Canon 4, for example, cautions judges to avoid activities that “detract from the dignity of the judge’s office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, [or] lead to frequent disqualification.” Canon 2A counsels that “a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary.” Canon 3A(6) provides that judges should avoid “public comment on the merits of a matter pending or impending in any court.” Canon 5 prohibits a range of specifically political activity, including making speeches for political organizations or candidates, publicly endorsing or opposing candidates for political office, or making political contributions.

These general cautions in the Code do not lend themselves well to precise definitions, and even seemingly clear limits permit a variety of exceptions. For example, restrictions on “public comment” do not limit judges from explaining the legal process in general, promoting improvements to the law, discussing court procedures, or making “scholarly presentations made for purposes of legal education.” See Canon 3A(6). Likewise, the extrajudicial activities permitted under Canon 4 are not considered to be “political activity” as defined in Canon 5, see Canon 5C, though in Advisory Opinion 93 the Committee cautioned that “because of the ethical risks associated with any politically oriented activity, we construe permissible Canon 4 activities in this context narrowly, restricted to those activities most directly related to the law and legal process.”

The Committee’s past advice on related topics also suggests that considerations of tone, context, and form should inform a judge’s assessment concerning the propriety of civic engagement and judicial speech in general—including speech not intended for public attribution to the judge. And, as noted above, the Code suggests the need for greater caution and discretion when judges choose to speak or write publicly about topics further removed from the development of the law or the core functions of the judiciary.

Regarding the tone of extrajudicial writing, for example, the Committee has advised that judges “should avoid sensationalism and comments that may result in confusion or misunderstanding of the judicial function or detract from the dignity of the office.” See [Advisory Opinion No. 55](#) (Extrajudicial Writings and Publications). It follows that, when addressing matters of public controversy or expressing critical commentary on a legal issue, a judge should favor reasoned discourse and respectful language over demeaning rhetoric or acerbic criticism that could “detract from the dignity of judicial office.” Further, advocacy by a judge that is directed towards people who are not judges may risk lending the prestige of office to a judge’s particular cause and may lead to questions about impartiality.

Regarding the context of civic engagement, [Advisory Opinion No. 93](#) counsels that the need to protect impartiality “may preclude a judge’s participation in law-related activities or organizations concerning highly controversial subjects.” The Committee has advised, for example, that a judge may write a letter to the editor of a newspaper

but should avoid subjects that could raise doubts about impartiality in cases that may come before the judge. Similarly, choosing to speak at an event sponsored by a group that is clearly associated with one side of a controversial issue risks creating questions about impartiality. These concerns may be amplified when a judge's public statements also seek to influence the conduct of private parties. Because of the power and stature of federal judges, communications requesting that others adopt a judge's views or act in ways a judge approves may implicate Canon 2B, which provides that a judge must not "lend the prestige of the judicial office to advance the private interests of the judge."

Judges should also consider whether the chosen form, or method, of their civic engagement may lead to the public perception that the judicial position is being exploited to advance the private interests of the judge or others. In the context of judicial writing, for example, the Committee has advised that judges should "retain a measure of control" over the promotion of their writing to avoid exploitation of the judicial position for private gain. In general, civic engagement activity over which a judge retains a measure of control will create less ethical risk, for example, than writings or public statements that have been solicited by others for their own use or purposes. With respect to some particularly controversial topics, judges should be mindful that simply addressing certain topics might be viewed as taking a partisan position or reflecting a lack of impartiality.

In summary, the Code of Conduct and relevant Committee advisory opinions affirm that judges may choose to engage in a wide range of civic engagement activities, including speaking and writing on core judiciary matters such as advocacy for the rule of law and judicial independence. At the same time, judges should always exercise caution when expressing their personal views to preserve the integrity of the judiciary and to promote public confidence in the courts. The core principle unifying this guidance is, as provided in Canon 1, that judges should "uphold the integrity and independence of the judiciary" in all their activities, both on and off the bench.

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