2017 Opinion of the Massachusetts Supreme Judicial Court

Ethical Opinions for Clerks of the Courts

**Attendance at Women's March**

This letter is in response to your request dated November 23, 2016, seeking an advisory opinion as to whether it is permissible pursuant to the Code of Professional Responsibility for Clerks of Court to attend the Women's March on Washington, D.C. on January 21, 2017. In your request, you indicate that you understand the march to be non-partisan, and that there would be no fund-raising components.

In considering your request, the Committee reviewed the provisions of Canon 6 that address **Political Activity and Elected Office**. Canon 6  states in part as follows: "A Clerk-Magistrate, other than an elected Clerk-Magistrate, shall refrain from political activity."

The Committee also reviewed the provisions of Canon 4 and in particular Section (B). Canon 4 states, "A Clerk-Magistrate shall perform the duties of Clerk-Magistrate impartially and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial branch of government." Canon 4(B) **Personal Affairs** states as follows: A Clerk-Magistrate shall conduct personal affairs in such a way as not to cause public disrespect for the court and the judicial system. A Clerk-Magistrate shall not engage in activities nor incur obligations which would detract from the dignity of the Clerk-Magistrate's office or interfere or appear to interfere with official duty. A Clerk-Magistrate shall not engage in outside activities which would cast doubt on his or her capacity to decide impartially any issue that may come before the Clerk-Magistrate."

The Committee also reviewed the provisions of Canon 5(A) which states, "A Clerk-Magistrate shall regulate outside and personal activities to minimize the risk of conflict with official duties: **(A)  Personal Conduct**. A Clerk-Magistrate should not engage in activities which might detract from the dignity of the office of Clerk-Magistrate or interfere with the performance of the duties of the office."

Finally, the Committee reviewed Letter Opinion 2016-10 from the Committee on Judicial Ethics which involved the same issue of whether the same march on Washington, D.C. was considered political activity and thus prohibited under the Code of Judicial Conduct. The Committee on Judicial Ethics concluded that the Women's March on Washington, D.C. was political activity and thus advised a judge that she was prohibited under the Code of Judicial Conduct from participating in the march.

For the reasons enumerated below, a majority of the Committee in this case agrees with the Committee on Judicial Ethics and concludes that the Women's March on Washington, D.C. for all intents and purposes appears to be a protest and thus is political in nature which is prohibited under the Code.

The timing of the Women’s March is such that it is scheduled to take place the day after the Presidential Inauguration. It has been reported by some media outlets that the Women's March is a protest directed at the Trump Administration. While the Committee understands that organizers have emphasized that this Women's March is not a protest, nor is it intended as being anti-Trump, the statement of the national organizers of the march indicates that there are political overtones to the march. The national organizers refer to 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 a LGBTQ, Native people, Black and Brown people, people with disabilities, [and] survivors of sexual assault."***(1)*** A primary purpose of the Women’s March is to "send a bold message to [the] new administration on their first day in office." A majority of the Committee is of the opinion that one could reasonably conclude that this march is a protest and thus is political activity prohibited by Canon 6.

As the Committee noted in Opinion 2011-1 and reiterated in Opinion 2012-2, the restrictions in Canon 6 are intended to preserve the independence and impartiality that underlie all the canons. In the view of the majority of the Committee, because the march has the appearance of being political in nature, your attendance at the march could have the appearance of affecting your impartiality and detract from the dignity of the office of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ in violation of Canons 4 and 5.

Therefore, it is the opinion of a majority of the Committee that your participation in the Women's March on January 21, 2017, is prohibited under  the Code for the reasons set forth above.

Sincerely,
Christine P. Burak, Esq.
Secretary, Advisory Committee on Ethical Opinions