

Colorado Supreme Court  
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2022-01  
(Finalized and effective March 25, 2022)

**BACKGROUND:**

In C.J.E.A.B. Advisory Opinion 2020-02, the CJEAB interpreted Rule 2.12(A) of the Code of Judicial Conduct (“Code”) and addressed what limits a judge should impose on law clerks and externs who desire to participate in marches and rallies or to use social media to make public posts to protest police misconduct, condemn racism, or express general support for justice reform. Because the former version of Rule 2.12(A) required judges to ensure their staff acted in a manner “consistent with the judge’s [own] obligations under the Code,” the CJEAB first had to consider whether a judge could participate or engage in such activities before determining whether staff under their control could participate. Though beyond the scope of the question posed, the CJEAB determined that judges should refrain from participating in activities that could be considered political or could call into question a judge’s impartiality. The opinion concluded that even though law clerks and externs were not subject to the Code, as supervisors, judges remained responsible for ensuring that their staff and others subject to their direction acted in a manner consistent with the Code.

After Rule 2.12(A) was amended, the CJEAB withdrew Advisory Opinion 2020-02 and replaced it with Advisory Opinion 2021-03. Under the revised rule, judges had to ensure that those under the judge’s direction and control acted in a manner consistent with the judge’s obligations under the Code only while performing “their official duties or in the presence of the judge.” Advisory Opinion 2021-03 discussed a judge’s narrowed supervisory obligation over staff based on the changes to Rule 2.12(A); it did not discuss judicial participation at public events because the issue was not within the purview of the rule change, nor was the question before the CJEAB.

The requesting judge has asked the CJEAB to revisit the portion in Advisory Opinion 2020-02 discussing judicial participation in rallies and marches. Specifically, the judge asks whether judges may participate in or attend PrideFest or other LGBTQ+ pride festivals without violating the Code. Before becoming a judicial officer, the judge (and the judge’s family) regularly attended and participated in LGBTQ+ pride festivals and parades, including marching in the Denver PrideFest parade as a member of the Colorado LGBT Bar Association.

Although Advisory Opinion 2020-02 has been withdrawn, the requesting judge points out that it cautioned judges not to participate in politically driven protests, marches, or rallies or to post political comments on social media, in part, because such actions were divisive. Observing that although PrideFest and other similar events like Cinco de Mayo, the Marade, and Juneteenth festivities are non-partisan and apolitical in nature, because LGBTQ+ issues may be considered divisive in the same way that immigrant rights or racial equality issues may be considered divisive, the requesting judge asks if judicial officers are prohibited from participating in a

community activity like PrideFest if the judge does not reveal that they<sup>1</sup> are a judicial officer while participating in the activity.

**ISSUES PRESENTED:**

1. Whether a judge may attend the Denver PrideFest festival or other similar LGBTQ+-related festivals without violating the Code.
2. Whether a judge may attend and watch the Denver PrideFest parade or other similar LGBTQ+-related parades without violating the Code.
3. Whether a judge may march in the Denver PrideFest parade in a non-political manner with a bar association, such as the Colorado LGBT Bar Association.

**SUMMARY:**

1. A judge may attend the Denver PrideFest festival and other similar festivals without violating the Code, subject to the qualifications mentioned below.
2. A judge may attend and watch the Denver PrideFest parade and other similar parades without violating the Code.
3. A judge may march in the Denver PrideFest parade and other similar parades with a bar association, such as the Colorado LGBT Bar Association, subject to the qualifications mentioned below.

**APPLICABLE PROVISIONS OF THE CODE:**

Rule 1.2 provides that “[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.”

Rule 1.3 prohibits a judge from abusing “the prestige of judicial office to advance the personal or economic interests of the judge or others or allow[ing] others to do so.”

Canon 3 requires a judge to conduct personal and extrajudicial activities in a way that minimizes the risk of conflict with the obligations of judicial office. Rule 3.1 governs extrajudicial activities in general and clarifies that “[a] judge may engage in extrajudicial activities, except as prohibited by law or this Code,” but when engaging in such extrajudicial activities, a judge shall not

---

<sup>1</sup> “They” is used as a singular pronoun to avoid making assumptions about gender and out of respect for those who do not identify with a gender-specific pronoun. *See Chicago Manual of Style* (17th ed.) para. 5.48 (*they* may be used to refer to someone who does not identify with a gender-specific pronoun).

- (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;
- (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.

The commentary to Rule 3.1 further explains that “[t]o the extent that . . . judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.” *Id.* cmt. [1]. The rationale is that “[p]articipation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.” C.J.C. Rule 3.1, cmt. [2].

**ANALYSIS:**

**A. When Judicial Participation Will Per Se Violate or Is Likely to Violate the Code**

Based on the applicable Code provisions, a judge should not participate in a public event if

- (1) participation will cause or likely cause a violation of the law, for example, by violating a curfew;
- (2) participation will undermine the confidence of the judiciary or give the appearance of impartiality or impropriety;
- (3) participation would create the appearance the judge is abusing the prestige of judicial office or allowing others to;
- (4) participation will interfere with the performance of judicial duties;
- (5) the event relates to a case pending or impending before the judge, or the event relates to an issue likely to come before the courts;
- (6) participation will result in or is likely to result in judicial disqualification;
- (7) the event is sponsored or endorsed by an organization that discriminates on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation; or
- (8) participation creates the appearance the judge is endorsing a political candidate or political organization.

*See* C.J.C. Rules 1.1; 1.2; 1.3; 3.1; 3.6; 4.1. Other jurisdictions have imposed similar restrictions on judges participating in public events based on their judicial codes of conduct. *See, e.g.*, Cal. Jud. Ethics Comm. Formal Op. 2020-14 (July 20, 2020) (judges may not participate in public demonstrations or rallies that would give appearance of impropriety, violate laws, create appearance of political endorsement, or create the appearance that the judge was abusing prestige of judicial office); Ohio Bd. Prof. Cond. Adv. Op. 2017-08 (Dec. 8, 2017) (judges may not participate in a parade if participation will adversely reflect on the judge’s independence,

integrity, or impartiality, any fundraising will occur, any signage will display the judge’s name and office, or the judge will appear with elected officials); CT. Comm. on Jud. Ethics, Inf. Op. 2020-03 (June 5, 2020) (judge should not participate in a “Black Lives Matter” rally because participation would give the appearance of impropriety and bias against police, could undermine public confidence in the judiciary, and judge might be called to preside over a police brutality case in the future); NY Comm. on Jud. Ethics, Ad. Op. 17-38 (Mar. 16, 2017) (judge could not participate in a local rally opposing the “Trump Muslim Ban” because the issue involved “great public controversy, which [wa]s also the subject of litigation”); AZ Sup. Ct. Jud. Eth. Ad. Op. 18-06 (Dec. 14, 2018) (judge should not participate in “Immigration March” because the court frequently decided issues concerning immigration and one of the organizers frequently appeared in court litigation).

## **B. When Judges May Participate in a Public Event**

As the comments to the Code recognize, “[c]omplete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives,” and “[p]articipation in both law-related and extrajudicial activities helps integrate judges into their communities.” C.J.C. Rules 3.1, cmt. [2]; 3.4, cmt. [3]. Thus, if participation is not per se prohibited, then judges may participate in certain public events like festivals, parades, and other celebrations. In determining whether participation in a public event is appropriate, judges should consider the following:

- 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.

*See, e.g.*, Cal. Jud. Ethics Comm. Formal Op. 2020-14; *see also* Ind. Jud. Ethics. Ad. Op. #1-20 (Jan. 1, 2020) (setting forth criteria that judges should consider before participating in a parade or rally).

In addition to the factors above, there are other issues that judges must always consider. First, judges “should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and accept the restrictions imposed by the Code.” C.J.C. Rule 1.2; cmt. [2]. To that end, when engaging in such an 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.” CJEO Formal Op. 2020-14 at 2-3. Second, judges must remain vigilant. They must monitor news and announcements concerning a public event before attending to determine if attendance is still appropriate, and, if they do attend the event, they must be prepared to leave if it turns political, violent, or might result in a violation of the Code. *See, e.g.*, 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). Third, judges be wary of any possibility that the participants might abuse the prestige of judicial office to further their own cause or agenda. 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.

### **C. Participating in PrideFest and Similar LGBTQ+-Related Festivals**

Denver PrideFest is promoted as a “celebration of community and culture that is welcoming, inclusive and fun to all attendees, regardless of sexual orientation or gender identity.”<sup>2</sup> The two-day festival celebrates “the heritage and culture of the LGBTQ+ community in Colorado” and draws more than 450,000 participants.<sup>3</sup> Although PrideFest is intended to be non-partisan, political candidates tend to participate to show their support for the LGBTQ+ community.

Because PrideFest is a community festival intended to promote inclusivity, equal rights, and equal application of the law, there is no concern that a judge’s participation in the event would undermine the public’s confidence in the judiciary or give the appearance of impropriety or bias. Thus, the CJEAB concludes that the requesting judge may attend PrideFest and other similar festivals and observe the PrideFest parade as long as the judge monitors any developments and continues to evaluate whether participation is appropriate leading up to and during the event. The requesting judge must also take care not to appear with any political candidates or give the impression that the judge is endorsing a candidate or political organization.

Other jurisdictions have allowed judges to participate in events celebrating community similar to Denver PrideFest. For example, in Connecticut Judicial Ethics Opinion 2015-18, the Ethics Committee concluded that a judge may serve as a grand marshal of a city’s ethnic day parade because the event was a community event, the judge would not identify as a judge, the judge would not be involved in fundraising, and there was no concern of impropriety. *See also* Ohio Bd. Prof. Cond. Adv. Op. 2017-08 (judges may generally participate in community parades); NY Ad. Op. 04-144 (judge may serve as grand marshal of St. Patrick’s Day parade as long as the judge’s name was not used in connection with fund-raising activities or materials);

---

<sup>2</sup> <https://www.denver.org/things-to-do/spring-summer/festivals-events/pridefest/>.

<sup>3</sup> *Id.*

MA Sup. Jud. Ct. Comm. Jud. Eth. Op. No. 95-8 (July 24, 1995) (judge could participate in and attend events sponsored by Gay and Lesbian Activist Defenders (GLAD)).

Having concluded that the requesting judge may attend Denver PrideFest and other similar festivals and watch the parade, we now address whether the judge may march in the PrideFest parade with a bar association, such as the LGBT Bar Association.<sup>4</sup> Based on Denver PrideFest’s website, only approved and registered groups who have applied and paid a fee, like the LGBT Bar Association, may march in the parade.<sup>5</sup> Thus, the only way the requesting judge could march in the parade is by marching with an approved, registered group like the LGBT Bar Association. The LGBT Bar Association is a voluntary professional association of “gay, lesbian, bisexual and transgender attorneys, judges, paralegals and law students and allies who provide an LGBTQ presence within Colorado’s legal community.”<sup>6</sup> The LGBT Bar Association is one of Colorado’s smaller bar associations and registers annually to march in Denver’s PrideFest parade. The LGBT Bar Association’s purpose is to promote civil and human rights, raise awareness of issues faced by the LGBTQ+ community, provide networking opportunities for members and allies to interact in a professional setting, form alliances with other diverse bar associations and legal organizations, and enhance the practice and professional expertise of lawyers who serve or are members of the LGBTQ+ community.<sup>7</sup>

The CJEBAB concludes that the requesting judge may march in the parade with the LGBT Bar Association as long as the judge’s participation is not construed as an endorsement of a particular political organization but rather as a general celebration of PrideFest’s promotion of diversity, inclusion, and community. Finally, even though the judge will not identify as a judge, given its small membership, it is likely that the LGBT Bar Association will know the requesting judge is a judicial official. Thus, the judge should be cautious of not abusing or allowing the LGBT Bar Association to abuse the prestige of judicial office.

## **CONCLUSION:**

Judges should not participate in public events that will violate or are likely to violate the Code. Judges may participate in public community events like Denver PrideFest after considering factors like the event’s mission, its sponsors, and the judge’s intended level of participation. The requesting judge may participate in PrideFest and march in the parade with a bar association, such as the LGBT Bar Association as long as the judge does not identify as a judge, continues to monitor the event, and leaves if there exists a possibility that continued participation will violate the Code.

---

<sup>4</sup> The CJEBAB makes no determination whether the judge may be a member of the LGBT Bar Association—only whether the judge may march in the PrideFest parade alongside the Bar Association as a registered group.

<sup>5</sup> See <http://denverpride.org/parade/>.

<sup>6</sup> Colorado LGBT Bar Association Website, [https://coloradolgbtbar.org/content.aspx?page\\_id=0&club\\_id=988705](https://coloradolgbtbar.org/content.aspx?page_id=0&club_id=988705).

<sup>7</sup> See *id.*

FINALIZED AND EFFECTIVE this 25th day of March, 2022.