

Why Do Judges Wear Robes?

By Judge David Rosenberg, President, California Judges Association

Why do judges wear a robe when they are on the Bench? What is the purpose of the robe? Why is it black in color? Some things we just take for granted, I suppose. But these questions go to the very heart of the lives of judicial officers and are worth a moment or two of reflection.

The first question is an easy one to answer. We wear robes on the Bench because the law requires that we do so. And, of course, judges follow the law. California Government Code Section 68110 states: “Every judge of a court of this state shall, in open court during the presentation of causes before him or her, wear a judicial robe, which the judge shall furnish at his or her own expense. The Judicial Council shall, by rule, prescribe the style of such robes.” And, in fact, the Judicial Council has done so in California Rule of Court 10.505, which mandates that the robe must be black and “must extend in front and back from the collar and shoulders to below the knees and must have sleeves to the wrists.” The Rule of Court further defines the style of the robe to “conform to the style customarily worn in the courts in the United States.” Interestingly, there is no mandate as to the material comprising the robe – so I suppose a black robe could be silk, linen, cotton, wool, corduroy, polyester, velvet, denim, or even leather for that matter. (I don’t recommend most of these in hot weather.)

But beyond the requirements of the statutes and rules of court, the question still persists why judges wear robes in the United States. When the United States formed and wrested independence from the English King, we derived our judicial system and common law from Great Britain. And in the early days of the USA, there was considerable discussion about what judges should wear when they are on the Bench. Of course, British judges wore robes and wigs in those days. Apparently, in those early days there was intense debate about what American judges should wear after independence. Thomas Jefferson and several other leaders wanted American judges to wear suits in order to move beyond the era of British rule. John Adams along with other leaders wanted to keep the tradition alive by having judges wear both robes and wigs. Ultimately, a compromise was achieved: judges would wear robes, but not the powdered wigs.

And what, ultimately, is the purpose of the robe? There have been many theories propounded on that issue. Some say the robes provide a symbol of the authority and power of the state conferred on the judge. Others suggest that robes foster uniformity among judges. Still others offer the theory that the black robe enforces the important concept that justice is blind. I think, to a great extent, that all these theories are apt. After hundreds of years, the robe, like the gavel, and the scales of justice, have come to represent the third branch of government. In the early years of our country, many judges did not wear robes – they wore suits like any professional might wear. When the Justices of the U.S. Supreme Court started wearing robes, the tradition eventually spread throughout the Federal and state system.

Now, why are robes black? The tradition of black robes was initiated by Chief Justice John Marshall during his swearing in ceremony in 1801. Previously, in England, robes varied in color. Primarily, they were red, but sometimes they were green, violet and black. It is said that the black robe tradition started in England with the multi-year mourning of the death of Queen Mary II in 1694. In the federal system and in 49 states, the robe is black. The one outlier is the highest court of Maryland – the Maryland Court of Appeals – where the Justices wear red robes. Sometimes, Supreme Court Justices tweak the basic black robe. Chief Justice Jay wore a robe trimmed with red and white on the front and on the sleeves, and everyone remembers Chief Justice Rehnquist who put four gold stripes on each sleeve of his robe.

The simple black robe has quite a tradition as the “uniform” of justice in the United States and California. That black robe links judges together as we interpret and apply the law in hundreds of courtrooms throughout the state.

FIND MORE RESOURCES AT WWW.CALJUDGES.ORG/JUDICIALFAIRNESS.

