

JUDICIAL ETHICS BENCHGUIDE:

ANSWERS TO FREQUENTLY ASKED QUESTIONS



OCTOBER 2016

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ABOUT THE AUTHOR

Blan L. Teagle is currently a Deputy State Courts Administrator of the Florida Office of the State Courts Administrator. At the time of writing the first edition of this benchguide, he was the Director of the Center for Professionalism at The Florida Bar. From 1989 to 1998, Mr. Teagle served as staff counsel to the Judicial Ethics Advisory Committee as part of his duties as a senior attorney at the Office of the State Courts Administrator. He holds a B.A. from the University of the South (Sewanee), a J.D. from the University of Florida College of Law, where he was editor-in-chief of the University of Florida Law Review, and an M.P.S. (a graduate degree in pastoral theology) from Loyola University, New Orleans.

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Effective October 1, 2016, the Code was amended to extend the same prohibition against a senior judge serving as an arbitrator or voluntary trial resolution judge in a circuit in which the judge is presiding. *In re Amendments to Code of Judicial Conduct—Senior Judges Serving as Voluntary Trial Resolution Judges and Arbitrators*, 194 So. 3d 1015 (Fla. 2016).

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A senior judge may serve as an appellate mediator if the case arises from the appeal of a case within the appellate court's jurisdiction, but from outside of the state judicial circuit where the inquiring judge serves as senior judge, "if restrictions regarding geography and subject matter are not implicated; certification requirements are met; and doing so would not result in an appearance of or the potential for impropriety." **Opinion 15-15**.

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[In re Murphy, 181 So. 3d 1169 \(Fla. 2016\)](#) (court found unfit for office and removed judge who used profanity in open courtroom, threatened public defender with violence and had physical confrontation with him, and then resumed docket with defendants whose attorneys were not present).

[In re Collins, 195 So. 3d 1129 \(Fla. 2016\)](#) (court approved revised consent judgment imposing public reprimand, completion of anger management course,

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In re Holder, 195 So. 3d 1133 (Fla. 2016) (court approved stipulated discipline of public reprimand and completion of six additional CJE hours on ethics for judge who, intending to help defendant who was Army Green Beret over whose case he was presiding, engaged in inappropriate ex parte communication with state attorney and made public offer to convert defendant’s remaining community control to probation before conducting hearing on that matter).

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As amended through October 1, 2016 ([194 So. 3d 1015](#)).

* * *

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F. Service as Arbitrator or Mediator.

* * *

(2) A senior judge may serve as a mediator in a case in a circuit in which the senior judge is not presiding as a judge only if the senior judge is certified pursuant to [rule 10.100, Florida Rules for Certified and Court-Appointed Mediators](#). Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may not advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation, arbitration, or voluntary trial resolution services and shall not permit an entity with which the senior judge associates to do so. A senior judge shall not serve as a mediator, arbitrator, or voluntary trial resolution judge in any case in a circuit in which the judge is currently presiding as a senior judge. A senior judge who provides mediation, arbitration, or voluntary trial resolution services shall not preside over any case in the circuit where such services are provided; however, a senior judge may preside

over cases in circuits in which the judge does not provide such dispute resolution services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator, arbitrator, or voluntary trial resolution judge by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator, arbitrator, or voluntary trial resolution judge within the previous three years. A senior judge shall disclose any negotiations or agreements for the provision of services as a mediator, arbitrator, or voluntary trial resolution judge between the senior judge and any parties or counsel to the case.

* * *

[Amended Jan. 10, 2002 ([816 So. 2d 1084](#)); Feb. 20, 2003 ([840 So. 2d 1023](#)); Nov. 3, 2005, effective Jan. 1, 2006 ([915 So. 2d 145](#)); May 22, 2008 ([983 So. 2d 550](#)); June 19, 2014 ([141 So. 3d 1172](#)); July 7, 2016, effective Oct. 1, 2016 ([194 So. 3d 1015](#)).]

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COMMENTARY

* * *

[Canon 5F\(2\)](#). The purpose of the admonitions in this canon is to ensure that the impartiality of a senior judge is not subject to question. Although a senior judge may act as a mediator, arbitrator, or voluntary trial resolution judge in a circuit in which the judge is not presiding as a senior judge, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. These provisions are intended to prohibit a senior judge from soliciting lawyers to use the senior judge's mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity and to require a senior judge to ensure that entities with which the senior judge associates as a mediator abide by the same prohibitions on advertising or promoting the senior judge's mediation service as are imposed on the senior judge.

* * *

[Commentary amended Feb. 20, 2003 ([840 So. 2d 1023](#)); Nov. 3, 2005, effective Jan. 1, 2006 ([915 So. 2d 145](#)); May 22, 2008 ([983 So. 2d 550](#)); June 19, 2014 ([141 So. 3d 1172](#)); July 7, 2016, effective Oct. 1, 2016 ([194 So. 3d 1015](#)).]

APPLICATION

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* * *

B. Retired/Senior Judge

(1) A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter referred to as “senior judge,” shall comply with all the provisions of this Code except Sections 5C(2), 5E, 5F(1), and 6A. A senior judge shall not practice law or serve as a mediator, arbitrator, or voluntary trial resolution judge in a circuit in which the judge is presiding as a senior judge, and shall refrain from accepting any assignment in any cause in which the judge's present financial business dealings, investments, or other extra-judicial activities might be directly or indirectly affected.

* * *

[Amended Nov. 3, 2005, effective Jan. 1, 2006 ([915 So. 2d 145](#)); Jan. 5, 2006 ([918 So. 2d 949](#)); June 19, 2014 ([141 So. 3d 1172](#)); July 7, 2016, effective Oct. 1, 2016 ([194 So. 3d 1015](#)).]

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PREFACE

Florida's [Code of Judicial Conduct](#) (the "code") establishes standards for ethical behavior of judges and is not intended as an exhaustive guide for all conduct of judges. Judges should also be governed in their judicial and personal conduct by general ethical standards. The preamble of the code, succinctly summarizing the role of the American judiciary, states:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

In 1994, the Florida Supreme Court recounted that the first American canons of judicial ethics were adopted by the American Bar Association in 1924 and were later adopted and made applicable to the federal courts and most state courts. [In re Code of Judicial Conduct, 643 So. 2d 1037 \(Fla. 1994\)](#). The supreme court adopted the canons for use in Florida in 1941. In 1973, the court substantially adopted the American Bar Association's revisions to the [Code of Judicial Conduct](#) and, in 1994, adopted revisions to the code based largely on the Model Code of Judicial Conduct adopted by the American Bar Association in 1990. Florida's code was most recently revised in June 2015.

Introduction

1. Scope and Format of Benchguide

This benchguide is designed to address questions that judges and/or candidates for judicial office may have regarding ethical judicial conduct, the regulation of judges, and judicial discipline. It concentrates on the [Code of Judicial Conduct](#), the advisory opinions of the Judicial Ethics Advisory Committee, and Florida Supreme Court opinions involving judicial discipline. This benchguide is not a comprehensive discussion of judicial conduct in Florida but uses a question and answer format to answer the most frequently asked questions, including providing guidance and resources in the areas that can result in the most serious disciplinary consequences.

2. To Whom Does Code Apply?

The [Code of Judicial Conduct](#) applies to justices of the Florida Supreme Court and judges of the district courts of appeal, circuit courts, and county courts. The [Application section of the Code of Judicial Conduct](#) (which appears at the end of the code) provides:

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with [Canons 1, 2A, and 3](#), and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

If the hiring or appointing authority for persons who perform a judicial function is not a judge, then that authority should adopt the applicable provisions of this Code.

A. Civil Traffic Infraction Hearing Officer

A civil traffic infraction hearing officer:

- (1) is not required to comply with [Section 5C\(2\), 5D\(2\) and \(3\), 5E, 5F, and 5G](#), and [Sections 6B and 6C](#).
- (2) should not practice law in the civil or criminal traffic court in any county in which the civil traffic infraction hearing officer presides.

A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter referred to as “senior judge,” is required to comply with all the provisions of this Code except [Sections 5C\(2\), 5E, 5F, and 6A](#).

A retired justice or judge who chooses not to be assigned to judicial service and who is a member of The Florida Bar may practice law and still receive retirement compensation. The justice or judge has all the rights of an attorney and is no longer subject to the [Code of Judicial Conduct](#).

An attorney who is a candidate for judicial office is subject to [rule 4.8.2\(b\), Rules Regulating The Florida Bar](#), and must also comply with [Canon 7](#) of the Code of Judicial Conduct. An unsuccessful candidate is subject to lawyer discipline for his or her campaign conduct.

A judge is subject to judicial discipline for conduct occurring before becoming a judge. See *In re Watson*, 174 So. 3d 364 (Fla. 2015); *In re Davey*, 645 So. 2d 398 (Fla. 1994); *In re Meyerson*, 581 So. 2d 581 (Fla. 1991); *In re Carnesoltas*, 563 So. 2d 83 (Fla. 1990); *In re Capua*, 561 So. 2d 574 (Fla. 1990); *In re Sturgis*, 529 So. 2d 281 (Fla. 1988); *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988); *In re Byrd*, 511 So. 2d 958 (Fla. 1987); *In re Block*, 496 So. 2d 133 (Fla. 1986). When a judge is removed from office by the Florida Supreme Court on the basis of a Judicial Qualifications Commission proceeding, the removal order may also order the suspension of the judge as an attorney pending further proceedings. [R. Regulating Fla. Bar 3-4.5](#).

The [Code of Judicial Conduct](#) makes only eight references, direct or indirect, to judicial staff or other persons who may be authorized to carry out certain responsibilities for a judge or who are subject to a judge’s direction and control. Please see [Appendix IV](#) for an outline that attempts to capture as succinctly as possible what can be known with certainty about the Code’s application to judicial staff.

3. How Is Code Enforced?

[Article V, section 12, of the Florida Constitution](#) establishes a Judicial

Qualifications Commission (JQC), which has the power to investigate and recommend to the Florida Supreme Court the removal from office of any justice or judge whose conduct “demonstrates a present unfitness to hold office, and to investigate and recommend the discipline of a justice or judge whose conduct. . . warrants such discipline.” [Art. V, § 12\(a\), Fla. Const.](#) Upon recommendation from the JQC’s hearing panel, the “supreme court may order that the justice or judge be subjected to appropriate discipline, or be removed from office with termination of compensation for willful or persistent failure to perform judicial duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes with the performance of judicial duties.” [Art. V, § 12\(c\), Fla. Const.](#)

In 1997, [article V, section 12, of the Florida Constitution](#) was amended to expand the range of disciplinary measures available for recommendation by the JQC and for imposition by the Florida Supreme Court. Before 1997, the only disciplinary consequences of a violation of the code were a public reprimand or removal from office. Now [article V, section 12\(a\)\(1\), of the Florida Constitution](#) defines “discipline” to include “fine, suspension with or without pay or lawyer discipline.” *See, e.g., In re Rodriguez*, 829 So. 2d 857 (Fla. 2002) (judge suspended and fined \$40,000 for [Canon 7](#) violations including accepting contributions made for purpose of influencing judicial decisions and filing misleading campaign reports with Division of Elections).

Only 21 judges have been removed from judicial office for improper conduct. *See In re Murphy*, 181 So. 3d 1169 (Fla. 2016); *In re Watson*, 174 So. 3d 364; *In re Hawkins*, 151 So. 3d 1200 (Fla. 2014); *In re Turner*, 76 So. 3d 898 (Fla. 2011); *In re Sloop*, 946 So. 2d 1046 (Fla. 2006); *In re Renke*, 933 So. 2d 482 (Fla. 2006); *In re Henson*, 913 So. 2d 579 (Fla. 2005); *In re McMillan*, 797 So. 2d 560 (Fla. 2001); *In re Shea*, 759 So. 2d 631 (Fla. 2000); *In re Ford-Kaus*, 730 So. 2d 269 (Fla. 1999); *In re Hapner*, 718 So. 2d 785 (Fla. 1998); *In re Graziano*, 696 So. 2d 744 (Fla. 1997); *In re Johnson*, 692 So. 2d 168 (Fla. 1997); *In re McAllister*, 646 So. 2d 173 (Fla. 1994); *In re Graham*, 620 So. 2d 1273 (Fla. 1993), *cert. denied*, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed.2d 537 (1994); *In re Garrett*, 613 So. 2d 463 (Fla. 1993); *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988); *In re Damron*, 487 So. 2d 1 (Fla. 1986); *In re Leon*, 440 So. 2d 1267 (Fla. 1983); *In re Crowell*, 379 So. 2d 107 (Fla. 1979); and *In re LaMotte*, 341 So. 2d 513 (Fla. 1977).

Additionally, justices of the supreme court, judges of district courts of appeal, and judges of circuit and county courts are subject to impeachment for misdemeanor in office. [Art. III, § 17\(a\), Fla. Const.](#)

4. What Are Judicial Ethics Advisory Committee Opinions?

In 1976, the Florida Supreme Court created a Committee on Standards of Conduct Governing Judges, now called the Judicial Ethics Advisory Committee (hereinafter “committee”). *Petition of the Committee on Standards of Conduct for Judges*, 327 So. 2d 5 (Fla. 1976); *Petition of Committee on Standards of Conduct for Judges*, 698 So. 2d 834 (Fla. 1997). The purpose of the committee is to render written advisory opinions to inquiring judges and judicial candidates concerning the propriety of contemplated judicial and nonjudicial conduct. The committee has rendered many advisory opinions interpreting the [Code of Judicial Conduct](#).

Although the JQC is not bound by committee opinions, compliance with committee advice is admissible as evidence of good faith in judicial discipline matters. The opinions are at <http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/jeac.html> or <http://mobile.flcourts.org/jeac/> (this links to a mobile device friendly responsive interface to the Judicial Ethics Advisory Committee opinions located on the Sixth Circuit’s website).

Chapter One

Use and Abuse of Judicial Power

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Chapter One

Use and Abuse of Judicial Power

1. What Is Judicial Power and What Is Its Proper Use?

The canons explicitly and implicitly describe judicial power by stating what judges can and cannot do pursuant to their authority as judges. The preamble states, “[i]ntrinsic to all sections of this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.” [Canon 1](#) provides as follows:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

[Canon 2A](#) provides that “[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” [Canon 2B](#) provides that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.” The [Commentary to Canon 2B](#) states:

Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge’s personal business, although a judge may use judicial letterhead to write character reference letters when such letters are otherwise permitted under this Code.

[Canon 3B\(4\)](#) provides that “[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court

officials, and others subject to the judge's direction and control." [Canon 3C\(4\)](#) provides that "[a] judge shall not make unnecessary appointments" and "shall exercise the power of appointment impartially and on the basis of merit." It prohibits a judge from practicing nepotism and favoritism. It also prohibits a judge from approving compensation of appointees "beyond the fair value of services rendered." [Canon 4D\(2\)\(a\)](#) provides that a judge "shall not personally or directly participate in the solicitation of funds" for an organization. [Canon 3B\(10\)](#) provides that "a judge shall not . . . make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office."

[Canon 3B\(12\)](#) provides that "[a] judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity."

[Canon 5D\(1\)\(a\)](#) provides that "[a] judge shall not engage in financial business dealings that . . . may reasonably be perceived to exploit the judge's judicial position." ALFINI, LUBET, SHAMAN & GEYH, *JUDICIAL CONDUCT AND ETHICS* 2.1–2.2 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.), describes judicial power thus:

Judges have considerable power and discretion. While conducting pretrial proceedings, ruling on motions, directing trials, fashioning remedies in civil cases, and sentencing defendants in criminal cases, the actions of the judge are definitive, often uncontrolled by fixed rules or by a higher authority. . . .

. . . Judicial discretion is perhaps best viewed as a subset of judicial power. That is, judicial discretion is the power to decide those matters that call for the exercise of personal judgment rather than the application of strict rules.

2. What Is Abuse of Judicial Power?

Abuse of judicial power is using the power of judicial office for the private gain of the judge or others. It is disregard for the meaning of the office by engaging in activities fraught with conflicts of interest or merely having the appearance of impropriety. *See* [Opinion 06-14](#) (improper for judge to permit his interview to be used in commercially-marketed film about reading instruction program). It is using the office for self-aggrandizement for the purpose of depriving someone of legal rights or human dignity. Abuse of judicial power is failing, purposefully or carelessly, to uphold the honor of judicial office to the ultimate detriment of the

American legal system.

In *In re Turner*, 421 So. 2d 1077, 1081 (Fla. 1982), the Florida Supreme Court eloquently addressed the proper use of judicial power:

Judges must necessarily have a great deal of independence in executing [their] powers, but such authority should never be autocratic or abusive. We judges must always be mindful that it is our responsibility to serve the public interest by promoting justice and to avoid, in official conduct, any impropriety or appearance of impropriety. We must administer our offices with due regard to the system of law itself, remembering that we are not depositories of arbitrary power, but judges under the sanction of law. Judges are expected to be temperate, attentive, patient and impartial, diligent in ascertaining facts, and prompt in the performance of a judge's duties. Common courtesy and considerate treatment of [others] are traits properly expected of judges. Court proceedings and all other judicial acts must be conducted with fitting dignity and decorum, reflecting the importance and seriousness of the inquiry to ascertain the truth.

3. What Are Some Examples of Abuse of Judicial Power?

A large number of Florida Supreme Court judicial discipline opinions involve the abuse of judicial power. Following are examples from a variety of cases.

- *In re Schwartz*, 174 So. 3d 987 (Fla. 2015) (court approved revised consent judgment imposing 30-day suspension without pay, \$10,000 fine, and requirement to write letter of apology on judge who cursed at and threatened to sue store owner who displayed opponent's campaign sign but refused to display hers; judge also improperly removed official court documents from file).
- *In re Eriksson*, 36 So. 3d 588 (Fla. 2010) (judge publicly reprimanded and fined costs of proceeding for revoking bond for defendant who sought recusal, thereby punishing defendant for exercising legitimate legal right, and for employing unduly rigid and formulaic process in dealing with pro se litigants, so as to impede their ability to obtain relief and protection they sought from court).
- *In re Bell*, 23 So. 3d 81 (Fla. 2009) (judge publicly reprimanded for ordering arrest of woman as putative primary aggressor, without complaint

from former husband or law enforcement officials, when former husband, with whom judge previously had interacted in professional settings, and woman, whom judge and his family knew from social interactions, appeared before judge for determination whether probable cause existed to charge former husband with domestic battery against her).

- ***In re Henderson*, 22 So. 3d 58 (Fla. 2009)** (judge publicly reprimanded for acting as friend and mentor to convicted felon, including acting as proponent in felon’s leasing apartment, when felon was criminal defendant in judge’s court).
- ***In re Barnes*, 2 So. 3d 166 (Fla. 2009)** (judge publicly reprimanded for inappropriately filing petition for writ of mandamus seeking to compel fellow judges “to provide for a meaningful First Appearance Hearing for all citizens accused of a crime who cannot immediately make bond”).
- ***In re Aleman*, 995 So. 2d 395 (Fla. 2008)** (judge publicly reprimanded for unreasonably forcing attorney to prepare handwritten motion for judge’s disqualification within short time period, which was found to be improper in context of first-degree murder case in which death penalty was being sought).
- ***In re Maxwell*, 994 So. 2d 974 (Fla. 2008)** (judge publicly reprimanded for ordering release of sister of former colleague despite facts that arrestee had no first appearance and was serving sentence of five years’ probation for obtaining controlled substances by fraud, thus making her ineligible for pretrial release program).
- ***In re Adams*, 932 So. 2d 1025 (Fla. 2006)** (judge publicly reprimanded for engaging in romantic relationship with attorney who appeared before him and for whom he granted continuance and dismissed charges).
- ***In re Sloop*, 946 So. 2d 1046 (Fla. 2006)** (judge removed from office for failing to halt unjustified arrest and incarceration of traffic defendants waiting properly within adjoining courtroom; repeatedly displaying abusive and insulting behavior toward litigants).
- ***In re Albritton*, 940 So. 2d 1083 (Fla. 2006)** (judge publicly reprimanded, suspended, and fined for pattern of improper conduct, including using judicial position to pressure attorneys to expend personal monies for his entertainment; making rude comments to attorneys and litigants; requiring

church attendance as condition of probation).

- ***In re Downey*, 937 So. 2d 643 (Fla. 2006)** (judge publicly reprimanded and required to retire at end of term for habitual viewing of pornography from courthouse computer; failing to disclose juror-written communication; instigating improper contact and communication with female attorneys).
- ***In re Woodard*, 919 So. 2d 389 (Fla. 2006)** (judge publicly reprimanded and ordered to anger management counseling for leaving arraignment to conduct re-election campaign interview; asserting in campaign literature inaccurate level of experience; arriving late to scheduled hearings; beginning hearings prior to scheduled start time without presence of party's attorney; issuing bench warrant leading to incarceration of expert witness without considering extenuating circumstances caused by hurricanes; acting rudely toward counsel, witnesses, and parties).
- ***In re Maloney*, 916 So. 2d 786 (Fla. 2005)** (judge publicly reprimanded for directing police to release immediately from custody family friend who had been arrested for driving under the influence of alcohol).
- ***In re Diaz*, 908 So. 2d 334 (Fla. 2005)** (judge publicly reprimanded, suspended, and fined for sending anonymous email to judge referring to another judge who reported illegal immigrants to federal authorities when he became aware of their status during hearings and containing comment recipient interpreted as implied threat of retaliation by Hispanic voters).
- ***In re Holloway*, 832 So. 2d 716 (Fla. 2002)** (while serving as witness in friend's child custody hearing, judge had ex parte meeting with presiding judge in case, questioned that judge's impartiality by making crude remarks, contacted police during investigation, and lied under oath; judge also used judicial position to have brother's case heard earlier). (Note: this judge resigned from bench before Florida Supreme Court took final action.)
- ***In re Schwartz*, 755 So. 2d 110 (Fla. 2000)** (judge publicly reprimanded for continually making rude and sarcastic remarks to counsel during oral arguments; in addition to reprimand, judge required to offer written apology, enter counseling for stress management, and video and audiotape future oral argument panels).
- ***In re Shea*, 759 So. 2d 631 (Fla. 2000)** (judge removed from office for threatening to recuse himself from all of attorney's cases unless attorney

agreed to withdraw from representing client with whom judge had legal dispute; repeated instances of hostile behavior toward attorneys, court personnel, and other judges also contributed to removal from the bench).

- ***In re Richardson*, 760 So. 2d 932 (Fla. 2000)** (judge publicly reprimanded for trying to influence police officers who arrested him by announcing he was judge, wanting to speak to chief of police, and stating he was “pro police”). (Note: underlying charge for which judge was arrested was ultimately dismissed, but attempt alone to avoid arrest was serious enough to merit discipline.)
- ***In re Graziano*, 696 So. 2d 744 (Fla. 1997)** (judge removed from office after hiring friend as guardian ad litem despite friend’s lesser qualifications than other applicants; granting her raise despite poor performance evaluations; and using insulting or threatening language toward court employees).
- ***In re Ward*, 654 So. 2d 549 (Fla. 1995)** (judge publicly reprimanded for writing character reference letter for criminal defendant recommending probation; letter was not response to official request by defendant’s probation officer).
- ***In re Fogan*, 646 So. 2d 191 (Fla. 1994)** (judge sanctioned for writing character reference letter on official court stationery for personal friend facing sentencing in federal court; friend’s federal probation officer had not requested letter).
- ***In re McAllister*, 646 So. 2d 173 (Fla. 1994)** (judge removed from office for, among other things, “sexual harassment of a judicial assistant, a willingness to engage in ex parte communications and the intentional abuse directed toward the public defender’s office”).
- ***In re Golden*, 645 So. 2d 970 (Fla. 1994)** (judge publicly reprimanded for making sexist and racial remarks; using crude, profane, and inappropriate language when presiding over legal proceedings; and failing to diligently perform duties of office).
- ***In re Perry*, 641 So. 2d 366 (Fla. 1994)** (judge publicly reprimanded for unnecessarily abusing and berating recruiting officer for wearing army dress uniform to court; and exercising contempt powers in arbitrary and improper manner without regard for due process of law).

- *In re Graham*, 620 So. 2d 1273 (Fla. 1993), *cert. denied*, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed.2d 537 (1994) (judge removed from office for repeatedly using judicial position to make allegations against and improperly criticize fellow judges, elected officials, and others without reasonable factual basis or regard for their reputations; exceeding and abusing judicial power by imposing improper sentences and by improperly using contempt power; acting in undignified and discourteous manner toward individuals appearing in his court; acting in manner that impugned public perception of integrity and impartiality of judiciary; and closing public proceedings).
- *In re Perry*, 586 So. 2d 1054 (Fla. 1991) (judge publicly reprimanded for, among other things, verbally abusing and intimidating attorneys, witnesses, and parties).
- *In re Trettis*, 577 So. 2d 1312 (Fla. 1991) (judge publicly reprimanded for rude and overbearing behavior in court, including engaging in improper tirades and outbursts, engaging in verbal abuse and intimidation of courthouse personnel and other judges, failing to disqualify self in proceedings when impartiality might reasonably have been questioned, allowing personal relationships to influence judicial conduct, and lending prestige of office in attempt to create employment position within judicial system for others; judge also agreed to undergo treatment to deal with stress).
- *In re Carnesoltas*, 563 So. 2d 83 (Fla. 1990) (judge publicly reprimanded for, among other things, using judicial power to demean and ridicule attorney who had opposed judge in different case and, after having that attorney removed from courtroom, continuing to act as judge in matter to defendant's detriment).
- *In re Capua*, 561 So. 2d 574 (Fla. 1990) (judge publicly reprimanded for, among other things, signing order releasing his son on own recognizance when son charged with nonbondable charge and required to go to bond hearing).
- *In re Sturgis*, 529 So. 2d 281 (Fla. 1988) (judge publicly reprimanded for, among other things, twice displaying handgun while presiding at hearings and using position as circuit judge to prevent inspection of official court records relevant to matters involving judge's misdeeds).
- *In re Eastmoore*, 504 So. 2d 756, 757 (Fla. 1987) (judge publicly

reprimanded for compelling newspaper reporter to come to his chambers although reporter's appearance not connected to legal proceeding but rather resulted from reporter's failure to respond to judge's greeting; for not giving child's mother full opportunity to testify while presiding over child custody matter; and for addressing the mother in improperly raised voice and acting in overbearing and dictatorial manner).

- *In re Muszynski*, 471 So. 2d 1284 (Fla. 1985) (judge publicly reprimanded for ordering police officer to turn radio volume down or off while both were at restaurant; when police officer told judge that radio was as low as possible and regulations prohibited him from turning it off, judge, after identifying himself as circuit judge, "arrogantly castigated" officer. Later, judge sent officer letter directing him to appear at courthouse to explain alleged contemptuous conduct; letter stated failure to appear would constitute separate and independent contempt).

The above list of examples of abuse of judicial power resulting in some form of discipline is not comprehensive. Abuse of judicial power is frequently at the heart of the most serious discipline cases that result either in removal or in a resignation to avoid the indignity of a removal proceeding. Judges will sometimes ask whether there are trends that can be identified in the cases that lead to removal from the bench. While the summaries show a diverse array of abusive behaviors, in four of the above-cited cases, *McAllister*, *Graham*, *Graziano*, and *Shea*, there are common threads in the judges' ultimate removal from judicial office. These threads included repeated undignified, discourteous, threatening, and intimidating behavior or remarks. Perhaps the conduct could be most succinctly summarized as arrogant and arbitrary in word and deed. Moreover, these cases typically involve multiple instances of intimidating and abusive conduct across cases and various parties or aimed at a particular party, attorney, or court staff for whom the judge harbors personal animosity.

Other common threads in the most serious discipline cases include abuse of contempt power or judicial process, including threats to hold persons in contempt or compel their presence through threat of contempt proceedings. When these angry outbursts or instances of overreaching of authority go unchecked, they can then intensify. Because attorneys and parties have much at stake and often must face the same judge on repeated occasions, they are often inclined to ignore all but the most outrageous of these misuses of power or process.

Less frequent components, but still prevalent enough to qualify as common threads, are influence peddling or intervention in court cases or police proceedings

on the judge's own behalf or on behalf of a friend or family member; using influence to award someone a job, raise, or promotion; and writing prohibited character references for persons appearing before other disciplinary or adjudicatory authorities. As a caution, it bears repeating that what the actual summaries show is that a trends analysis alone can be misleading. While it seems that arrogance and unbridled anger are often at the core in each of the cases above (with the possible exception of the two cases involving letters of recommendation), the judges allowed arrogance and/or anger to cloud their judgment and typically engaged in multiple and increasingly serious abuses of power, after initial overstepping of the bounds went unchecked.

4. May Judge Write Letters of Recommendation or Serve As Character Witness?

[Canon 2B](#) governs letters of recommendation and states in pertinent part, “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” Generally, Florida Supreme Court opinions allow, and committee opinions advise, that it is ethically acceptable for judges to write letters of recommendation to educational institutions on behalf of persons about whom they have actual knowledge based on personal observation. *See In re Code of Judicial Conduct*, 643 So. 2d 1037 (Fla. 1994) (citing committee opinions [75-18](#), [75-22](#), [77-17](#), [79-3](#), [88-19](#), [92-02](#), [92-30](#), and [93-01](#), all identified as proper interpretations of the canon). Similarly, the opinions cited above indicate that a judge may write a letter of recommendation for a person applying for employment if the judge has actual knowledge and communicates factual information regarding character, knowledge, skills, and ability relevant to the job in question or relevant to professional competence generally. A judge may write a letter of recommendation for a former staff member's application for a fellowship. [Opinion 07-06](#). A judge may provide to the public a list of attorneys who have indicated availability to represent laypersons who serve as guardians in guardianship proceedings. [Opinion 08-24](#). A judge may endorse a proclamation to promote cooperation in the litigation discovery process. [Opinion 09-19](#). A judge may not write a letter of recommendation for a friend's application for a real estate license, “where the friend has a prior misdemeanor arrest and the purpose of the letter is to serve as additional information attesting to the friend's ‘honesty, truthfulness, trustworthiness, good character and good reputation.’” [Opinion 13-08](#).

A judge may, however, present a “challenge coin” to jurors, court personnel, or citizens for contributions to the court or community. This “a much more private

manner of recognition than writing a letter . . . or . . . article is permissible extrajudicial activity as long as the judge avoids inappropriate political activity or raising “issues of impartiality, lending the prestige of the judicial office, or allowing others to convey the impression that they are in a special position to influence the judge.” [Opinion 13-22](#).

5. May Judge, Judicial Assistant, or Judicial Candidate Participate in Social Networking Websites?

In [Chace v. Loisel, 170 So. 3d 802 \(Fla. 5th DCA 2014\)](#), the trial judge sent a Facebook “friend” request to the petitioner while her dissolution case was still before the court. On the advice of her attorney the petitioner ignored the request. After the final judgment of dissolution was entered, the petitioner filed a formal complaint against the judge, alleging that the judge had entered the dissolution order, which she alleged attributed most of the marital debt to her and ordered her to pay a disproportionately high alimony award, in retaliation against her for not accepting the request. The petitioner also “learned of other cases involving similar ex parte social media communications by the judge that resulted in her disqualification.” As a motion for clarification was pending, the petitioner filed a motion to disqualify the judge, which was denied as legally insufficient. She filed a petition for writ of prohibition to quash the order, which the appellate court granted, stating:

It seems clear that a judge’s ex parte communication with a party presents a legally sufficient claim for disqualification, particularly in the case where the party’s failure to respond to a Facebook “friend” request creates a reasonable fear of offending the solicitor. The “friend” request placed the litigant between the proverbial rock and a hard place: either engage in improper ex parte communications with the judge presiding over the case or risk offending the judge by not accepting the “friend” request.

The court discussed [Domville v. State, 103 So. 3d 184 \(Fla. 4th DCA 2012\)](#), and stated that it had reservations about that case, in which the Fourth District held that a judge “friending” the prosecutor in the case was sufficient to cause a well-founded fear in a reasonably prudent person of not receiving a fair and impartial trial. The court in [Chace](#) stated that “[Domville’s](#) logic would require disqualification in cases involving an acquaintance of a judge,” which would not be workable or necessary, but that when it is a party, rather than an attorney, in a pending case, the judge’s conduct raises far more concern.

The following are summaries of relevant committee opinions:

- **Opinion 16-13 (Election)** (judicial candidate may include “Vote for [candidate’s name] on [date]” in personal Facebook profile).
- **Opinion 12-12** (judge may not add lawyers who may appear before judge as connections on professional networking site LinkedIn or permit lawyers to add judge as their connection on that site; selection and communication of persons judge has approved is not distinguishable from social networks such as Facebook and “violates **Canon 2B**, because by doing so the judge conveys or permits others to convey the impression that they are in a special position to influence the judge”).
- **Opinion 12-07** (judge may publish blog that reports cases “where the entries are intended to be neutral, nonjudgmental, brief summaries of the facts and holdings” and judge would not evaluate opinions but merely alert readers to cases and court rule changes).
- **Opinion 10-06** (judge who is member of voluntary bar association may participate in that association’s Facebook account, which includes as “fans” or “friends” lawyers who use Facebook account to communicate among themselves about that organization and other non-legal matters; judge may not allow attorneys who may appear before judge to become judge’s Facebook “friends” even if judge posts disclaimer as to relevant meaning of “friend”; judge may not allow attorneys who may appear before judge to become judge’s Facebook “friends” even if judge accepts as “friends” all attorneys who request to be judge’s “friends” or all persons whose names judge recognizes).
- **Opinion 10-05** (judicial candidate may become “friends” on Facebook or social networking site with lawyers who may appear before the candidate if he or she becomes judge; however, eventual disqualification may be required).
- **Opinion 10-04** (judicial assistant may add lawyers who may appear before judge as “friends” on social networking site).
- **Opinion 09-20** (judge or judge’s campaign committee may add “friends” and post comments on respective social networking pages; judge may not add “friends” who may appear before judge and may not permit such lawyers to add judge as their “friend”).

6. What Contact with Investigative or Adjudicatory Bodies Is Permitted?

The case law and committee opinions advise that a judge may not initiate contact with an investigatory or adjudicatory body determining rights, duties, privileges, or immunities of a person requesting that the judge contact the body on his or her behalf. See *In re Ward*, 654 So. 2d 549 (Fla. 1995) (judge wrote letter of character reference on official court stationery on behalf of friend awaiting sentencing in federal court, a violation of [Canon 2B](#), for which judge received public reprimand); [Opinion 75-06](#) (improper to write character letter for attorney who is principal in disbarment proceeding); [Opinion 75-18](#) (improper to write letter to bar grievance committee or supreme court in disciplinary proceeding or to federal judge in criminal sentencing without official request); [Opinion 82-15](#) (improper to write letter voluntarily to Board of Bar Examiners); [Opinion 88-11](#) (improper to communicate with Florida Bar members on behalf of Florida Bar presidential candidate); [Opinion 89-04](#) (improper to ask Board of Bar Examiners to expedite application for law clerk); [Opinion 89-15](#) (impermissible to appear before judicial nominating commission to introduce candidate or express opinion about who is best qualified to serve as judge); [Opinion 10-29](#) (improper to write letter of commendation to governor on behalf of person previously convicted of felony who is seeking pardon); [Opinion 10-34](#) (improper to write letter to another judge advocating drug program as alternative to incarceration for relative of judge's friend and impermissible to testify to explain program to other judge).

Case law in two notable decisions does suggest that some communications initiated by a judge with an investigatory or adjudicatory body may be permissible. In *In re Frank*, 753 So. 2d 1228 (Fla. 2000), the court was faced with a judge who contacted Florida Bar grievance attorneys to express frustration with their handling of a matter. Notably, the judge did not ask for or demand special treatment based on his position. The court noted at [1240–1241](#):

Knowledge that one is a judicial officer or respectful conduct in response to such knowledge does not automatically translate into a determination that a judicial position has been abused. Judge Frank did not forfeit the right to make proper inquiry concerning the pending matters simply because he held judicial office. A judicial officer should not be sanctioned simply because those with whom he or she has interaction are aware of the official position. The use of a judicial position or power of the position in an unbecoming manner requires more than simply someone being aware of one's position. The gravamen of the charge under the circumstances requires that there be some affirmative expectation or utilization of position to accomplish that

which otherwise would not have occurred. The testimony here demonstrates that those interacting with Judge Frank were aware of his position, but their actions, while respectful of his position, were none other than those normally expected under any other circumstance.

So, simply criticizing or complaining about the performance of the investigative or adjudicatory body, as any citizen might do, appears to be permissible. Likewise, simply making “a proper inquiry concerning the pending matters” is likened to what anyone has a right to do. Also significant, however, appears to have been the testimony from those interacting with the judge that they did not perceive that the judge was leveraging his position to obtain special treatment. This should cause some concern among judges contemplating initiating contact with an adjudicatory or investigatory body since an outcome might hinge on subjective perceptions of those who deal with the judge on the matter.

This idea that a judge may in some circumstances appropriately initiate contact is nonetheless iterated more recently and expressly affirmed in *In re Holloway*, 832 So. 2d 716 (Fla. 2002). In that case, although the judge was suspended on other grounds, the court found it permissible that the judge in question had made a telephone call to a police officer investigating a custody issue for a friend of the judge. In this case, the judge did not attempt to exert influence but apparently only asked to receive the same amount of information that another caller would have been allowed to request and obtain. Again, as a caution, the results in these cases are highly fact specific, and the fact that they are reported cases at all suggests the need for a high degree of circumspection in such situations. As the holdings in *In re Ward*, 654 So. 2d 549 (Fla. 1995), and *In re Fogan*, 646 So. 2d 191 (Fla. 1994), indicate, unsolicited contact with the adjudicatory or investigative entity often involves the judge in impermissible lending of the prestige of office, whether intended or not. It is this appearance of impropriety judges must strive to avoid.

7. When Is Judge’s Use of Judicial Letterhead Improper?

As the Florida Supreme Court noted in *In re Code of Judicial Conduct*, 643 So. 2d 1037, 1039 (Fla. 1994), adopting major revisions to the *Code of Judicial Conduct*,

[t]he Committee [on Standards of Conduct] has questioned whether and under what circumstances a judge may write a character reference letter and under what circumstances a judge may use official court letterhead. The confusion over these issues was caused in part by our approval of the language used in the stipulation of fact and discipline in *In re Judge Abel*, 632 So. 2d 600 (Fla.1994). Although we believe

that the proposed [Canon 2B](#) sufficiently addresses the issues raised by the Committee, we have added the following underscored language to the commentary regarding judicial letterhead: “Similarly, judicial letterhead must not be used for conducting a judge’s personal business, *although a judge may use judicial letterhead to write character reference letters when such letters are otherwise permitted under this Code.*”

The court noted that bar admission authorities and law schools solicit recommendation letters from judges and found that if it is appropriate to write a letter, a judge may use stationery that reflects the judge’s office. *See also In re Fogan, 646 So. 2d 191 (Fla. 1994)* (reprimanding judge publicly for writing character reference on official court stationery for personal friend who was to be sentenced in federal court; probation officer had not solicited letter but rather defendant requested letter). It is very important that judges not send voluntarily submitted written statements with the knowledge and understanding that they will be used directly or indirectly in an adjudicatory proceeding. *Id. at 192* (citing [Opinion 75-06](#)).

In [Opinion 12-35](#), the issue was whether a judge may, as chair of the local Juvenile Justice County Council and the Children’s Services Council, “write a letter on judicial letterhead in support of a district school board’s federal grant application when a portion of the grant funds will be used by the district school board to fund a delinquency prevention program being developed by the joint efforts of the two councils.” The committee answered in the affirmative, as long as the funds would “be used solely for the delinquency prevention program and other programs and projects which concern the law, the legal system and the administration of justice; (2) these programs do not cast doubt on the judge’s impartiality; and (3) the judge discloses the judge’s role in writing the support letter in cases before the judge which involve issues or persons associated with the delinquency prevention program or other programs funded by the grant.” If the judge determines that any of the remaining grant funds will be used for projects or programs that do not concern the law, the legal system, or the administration of justice, then the judge “ethically may not write the letter of support for the federal grant application.”

A judge may not use judicial stationery or personnel in communicating with former clients. [Opinion 13-11](#).

8. May Judge Allow Probationer to Attend Course Designed to Promote Probation Success?

The committee advised in [Opinion 10-10](#) that there is no ethical bar to allowing a probationer to attend a course sponsored by a for-profit organization. The course teaches coping skills to new probationers to promote success on probation. The committee noted that the question as to whether the judge can legally waive all or part of a probationer's community service requirement, if the probationer completes the course, is outside the committee's jurisdiction.

9. May Judge Allow Juveniles to Perform Their Community Service Hours by Participating in Jogging Program with Judge?

The committee advised in [Opinion 10-37](#) that such an action, even if well intentioned, could place the judge in situations undermining the impartiality of his or her judicial office. The committee stated that the proposed program likely would violate [Canons 2A, 2B, 3B\(7\), and 5A\(1\), \(2\), \(5\), and \(6\)](#).

10. Does Judge Have Obligation to Report Possible Criminal Activity Judge Becomes Aware of During Proceeding?

In [Opinion 12-11](#), a judge had learned during a hearing that the parents of the child who was the subject of the hearing were 16 and 21 years old, "revealing a probable sex crime by the 21-year old," who was not represented by counsel. The committee concluded that under the [Code of Judicial Conduct](#) the judge had no obligation to report possible criminal acts the judge became aware of during the hearing. The committee noted that the question of whether a moral, statutory, or other non-Code duty to report exists was beyond the committee's authority and noted that while the judge could voluntarily report the information, "the [judicial privilege] protections of [Canon 3D\(3\)](#) may not apply, and there may be further ethical consequences, such as disqualification, depending on the facts involved."

In [Opinion 15-03](#), citing [Canon 3B\(12\)](#), the committee reiterated that nonpublic information acquired in a judicial capacity may not be disclosed "for any purpose" unless the information relates to the judge's judicial duties (judge may not tell employer of party to domestic violence hearing about conduct allegedly committed by that party).

11. May Judge-Elect Serve As Witness at Hearing That Commenced While Judge-Elect Was Candidate But Was Continued Until After Judge-Elect Was Elected to Bench?

The committee in [Opinion 12-27](#) advised that a judge-elect could complete testimony as an expert on attorney's fees that had been interrupted and continued

to a date that was after the judge-elect was elected to the bench. Relevant factors were that the direct testimony had already been completed, the case would likely be concluded before the judge-elect's term began, and forcing the parties to start over on the issue would cause substantial expense and delay.

Chapter Two

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Chapter Two

Ex Parte Communications

1. What Are Ex Parte Communications and When and Why Are They Prohibited?

Black's Law Dictionary defines "ex parte" as "[o]n or from one party only, usually without notice to or argument from the adverse party." Black's Law Dictionary 576 (8th ed. 2007). [Canon 3B\(7\)](#) provides as follows:

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

(c) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending

before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

In ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS 5.2–5.3 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.), the authors explain the purpose of the rule against ex parte communications:

. . . *Ex parte* communications are those that involve fewer than all the parties who are legally entitled to be present during the discussion of any matter. They are barred in order to ensure that “every person who is legally interested in a proceeding is given the full right to be heard according to law.”

Ex parte communications deprive the absent party of the right to respond and be heard. They suggest bias or partiality on the part of the judge. *Ex parte* conversations or correspondence can be misleading; the information given to the judge “may be incomplete or inaccurate, the problem can be incorrectly stated.” At the very least, participation in *ex parte* communications will expose the judge to one-sided argumentation, which carries the attendant risk of an erroneous ruling on the law or facts. At worst, *ex parte* communications are invitations to improper influence if not outright corruption.

Ex parte communications include not only communications between judges and lawyers but also communications between judges and litigants, witnesses, and law enforcement personnel. Ex parte communications also include communications with another judge for the purpose of trying to influence that judge on behalf of a party appearing before him or her in a case. See [In re Holloway](#), 832 So. 2d 716 (Fla. 2002) (judge suspended for, among other infractions, angrily engaging in ex parte communication with another judge regarding scheduling hearing in friend’s case and making crude comments about other judge).

- **Opinion 09-17** (judge and magistrate may not communicate on point of law in case referred to magistrate without informing parties).

Ex parte communications are barred when they concern pending or impending litigation. The committee in [Opinion 11-16](#) advised that a judge should not speak to a conference of judges, court administrators, and others, about a trial presided over by the judge, the result of which was being appealed. “Thus, general

discussion of the law, outside of the explicit or implicit context of a case, will not usually be considered an *ex parte* communication. Similarly, incidental contact between a judge and a party or attorney, even in the midst of trial, will not violate the rule so long as the case itself is not discussed.” ALFINI, *supra*, 5.4. Some communications by judges are permitted with certain limitations.

SHAMAN, *supra* at 150. Some communications by judges are permitted with certain limitations.

- **Opinion 07-19** (judge may review sworn arrest warrants and other probable cause documents and make preliminary probable cause finding prior to defendant’s first appearance but may not enter preliminary finding on final probable cause determination form).
- **Opinion 06-12** (judge may meet with state attorney or defendant to discuss factual issues regarding murder case judge prosecuted while he was assistant state attorney).

2. Can Ex Parte Communication Be Remedied?

According to ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS 5.22–5.23 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.),

The 2007 Model Code of Judicial Conduct in Rule 2.9(A) instructs judges to “make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.” Courts have held that prompt disclosure of the *ex parte* communication to all affected parties may avoid the need for other corrective action. . . .

Where irremediable prejudice has occurred, of course, disclosure will not be sufficient to avoid disqualification or reversal.

3. What Are Some Examples of Violations of Prohibition Against Ex Parte Communications?

Several judges have been disciplined for engaging in improper *ex parte* communications. See the following examples:

***In re Holder*, 195 So. 3d 1133 (Fla. 2016)** (court approved stipulated discipline of public reprimand and completion of six additional CJE hours on ethics for judge who, intending to help defendant who was Army Green Beret over whose case he

was presiding, engaged in inappropriate ex parte communication with state attorney and made public offer to convert defendant's remaining community control to probation before conducting hearing on that matter).

In re Holloway, 832 So. 2d 716 (Fla. 2002) (judge suspended for, among other violations, engaging in angry ex parte communications with another judge and making crude remarks about that judge while trying to influence scheduling change for friend);

In re Perry, 586 So. 2d 1054 (Fla. 1991) (judge engaged in improper ex parte communication concerning pending or impending proceedings in violation of former Canon 3A(4) of Code of Judicial Conduct, including instance that required new trial);

In re Clayton, 504 So. 2d 394 (Fla. 1987) (on four occasions, judge conducted improper ex parte proceedings with defendants or defense counsel to dispose of criminal cases; in some instances, dispositions took place without defendant's knowledge, including pleas and sentences, and in some cases were not done in open court. Court noted former Canon 3A(4) was written with clear intent of excluding all ex parte communications except when expressly authorized by statute or rule, citing Thode, Reporter's Notes to Code of Judicial Conduct (1973));

In re Damron, 487 So. 2d 1 (Fla. 1986) (improper for judge to consider ex parte communications in making specific judicial decision and to grant ex parte request to set aside DUI conviction without notice to state; judge engaged in ex parte communications with parties, attorneys, and citizens concerning matters before his court);

In re Leon, 440 So. 2d 1267 (Fla. 1983) (judge disciplined for engaging in improper ex parte conversations with another judge and state attorney regarding cases);

In re Turner, 421 So. 2d 1077 (Fla. 1982) (judge had ex parte conference with party's attorney);

In re Boyd, 308 So. 2d 13 (Fla. 1975) (justice publicly reprimanded for improperly receiving ex parte memorandum from attorney representing parties in case before court);

In re Dekle, 308 So. 2d 5 (Fla. 1975) (justice publicly reprimanded for using ex parte memorandum from attorney for one party in case before him in preparing judicial opinion).

Chapter Three

Controlling Attorneys' Manifestations of Bias or Prejudice

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Chapter Three

Controlling Attorneys' Manifestations of Bias or Prejudice

1. Does Code of Judicial Conduct Require Judges to Discipline or Report Attorneys for Manifestations of Bias or Prejudice?

[Canon 3B\(6\)](#) expressly proscribes a lawyer “manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.” It does not preclude legitimate advocacy when these statuses or other similar factors are issues in the proceeding. When made aware of these manifestations of bias, or any violation of the [Rules Regulating The Florida Bar](#), the judge must take “appropriate action” pursuant to [Canon 3D\(2\)](#). The commentary to [Canon 3D](#) states, “Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or reporting the violation to the appropriate authority or other agency. If the conduct is minor, the canon allows a judge to address the problem solely by direct communication with the offender.” If the question raised is “substantial,” the judge “is required under this canon to inform the appropriate authority.”

A judge also must be familiar with [rule 4-8.4\(d\), Rules Regulating The Florida Bar](#), containing three categories not mentioned in the canon prohibiting certain manifestations of bias or prejudice in connection with the practice of law. Specifically, [rule 4-8.4\(d\)](#) prohibits knowingly, or through callous indifference, disparaging, humiliating, or discriminating against litigants, jurors, witnesses, or other lawyers based on marital status, employment, or physical characteristics. These three categories are not enumerated in [Canon 3B\(6\)](#), but because [Canon 3D\(2\)](#) requires a judge to take action when a Bar rule is violated, judges must consider these three classifications when determining whether to take action against an attorney. Also relevant is [rule 4-8.3\(a\)](#), which requires a lawyer to report another lawyer to The Florida Bar any time that lawyer’s conduct raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.

Attorney discipline for sexist and racist speech has been a subject of much controversy. Discussion of First Amendment challenges to similar rules

promulgated by the American Bar Association or adopted in other states is beyond the scope of this chapter. For a detailed discussion of the First Amendment issues surrounding the curtailment of attorney speech, see Rotunda, *Attorney Discipline for Sexist and Racist Speech*, presentation at ABA-APRL-NOBC Conference in Miami, Florida (Feb. 10, 1995).

The Florida Supreme Court Racial and Ethnic Bias Study Commission, the Florida Supreme Court Gender Bias Commission, and, most recently, the Standing Committee on Fairness and Diversity identified significant problems experienced by minorities and women in the legal profession and by minority and female litigants in Florida's justice system. These problems are not unique to Florida, having been identified by similar task forces throughout the country. For thorough consideration of these issues, see generally [Warshawsky, *The Judicial Canons: A First Step in Addressing Gender Bias in the Courtroom*, 7 Geo. J. Legal Ethics 1047–1056 \(1994\)](#); [Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 Am. U. J. Gender & Soc. Pol. L. 149 \(1999\)](#). It also bears noting that [Canon 3B\(5\)](#) requires judges to adhere to the same standards in refraining from manifestations of bias. They must also take the same [Canon 3D\(2\)](#) “appropriate action” when judicial colleagues violate the rule.

2. What Is “Appropriate Action” Against Manifestations of Bias?

In *In re Code of Judicial Conduct*, 656 So. 2d 926 (Fla. 1995), the Florida Supreme Court amended the commentary to [Canon 3D](#), which concerns what action a judge should take for an attorney's or another judge's misconduct.

According to the commentary, “[a]ppropriate action may include direct communication with the judge or lawyer . . . , other direct action if available, or reporting the violation to the appropriate authority.” There was a concern expressed before the amendment that all three steps were required no matter what the ethical infraction and irrespective of its seriousness. As noted in the immediately preceding answer, a judge faced with a manifestation of bias must assess whether the infraction is minor or substantial. Judges now clearly have the power to respond progressively depending on the egregiousness of the infraction. The duty to act encompasses counseling in chambers, admonishing in court on the record, reporting misconduct to a senior partner or managing government lawyer, and ultimately, filing a formal grievance. Courts need this latitude and the public's trust in their discretion to address bias in the manner that best befits the circumstances and least jeopardizes the rights of the parties. Obviously, too,

repeated instances of manifestations of bias must be handled with progressive severity.

Chapter Four

Errors of Law

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Chapter Four

Errors of Law

1. Are Errors of Law Misconduct Under Code of Judicial Conduct?

Generally, errors of law are not ethical violations. When an attorney believes the court has ruled incorrectly, the appropriate vehicle for addressing the concern is the appellate process.

When a judge commits a legal error, it usually is a matter for appeal rather than judicial discipline. In some instances, however, legal error may amount to judicial misconduct calling for sanctions ranging from admonishment to removal from office. Imposing discipline upon a judge for an incorrect legal ruling is an extremely sensitive issue because of the potential impact on judicial independence.

ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS 2.4 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.) (noting the disciplinary process should not be used as a substitute for appeal; some take the position that legal error should never be dealt with in a judicial misconduct proceeding). However, there are rare but recognized instances in which an error of law can constitute misconduct. Both egregious legal error and legal error motivated by bad faith are appropriate subjects for discipline. In Florida, [Canon 3B\(2\)](#) requires that judges maintain professional competence. If a judge makes a legal error so extreme that it suggests a lack of minimal competence, this probably is an ethical problem. Likewise, if a judge purposely misapplies the law in bad faith, this undermines confidence in the integrity and impartiality required by [Canon 2](#).

None of the recorded discipline cases in Florida specifically address legal error as an ethics violation. Nevertheless, a number of cases generally discuss the responsibility to follow the law.

In the interest of protecting and preserving a strong and independent judiciary, we must be careful never to judge a respondent and determine whether to remove him from office on the grounds that he possesses an unpopular philosophy, has offensive idiosyncrasies, has rendered unpopular decisions or is too compassionate. Unless his attitudes, prejudices or beliefs are translated into action or inaction

that constitutes a violation of law or the Code of Judicial Conduct, rendering him presently unfit to hold the office, he should be free to make his decisions and administer his office without fearing an investigation by the [JQC] that could lead to removal from office. [Emphasis added]

In re Taunton, 357 So. 2d 172, 177–178 (Fla. 1978).

In the above case, a judge was reprimanded for placing himself in a position in which his impartiality could reasonably be questioned. The specific acts committed by the judge showed a pattern of misapplication of or failure to abide by the law. Although the court found the conduct to have been well intentioned and compassionate, the judge was nevertheless reprimanded for, among other things, improperly using county facilities and supplies, refusing to issue a writ of replevin and assess costs, conducting an ex parte conference, and refusing to execute a judgment.

Similarly, in *In re Crowell*, 379 So. 2d 107, 110 (Fla. 1980), a judge was removed from office for demonstrating a present unfitness after engaging in a “pattern of conduct over a long period of time, involving persistent abuse of the contempt power, which demonstrates a lack of proper judicial temperament and a tendency to abuse the authority of the office.” The removed judge in this matter clearly violated the law in a number of different proceedings by failing to apply proper standards for holding attorneys in contempt, attempting to have certain state employees suspended or fired, and demanding improper stipulations from counsel in another matter. Ultimately, the JQC concluded that the incidents showed “a propensity to summarily adjudicate and incarcerate.” 379 So. 2d at 108. Therefore, when judicial disregard for law or procedure rises to the level of an abuse of power, it is certainly a basis for discipline and possible removal. For a more thorough discussion of abuse of judicial power, see Chapter One. See the below summarized opinions:

- In *In re Barnes*, 2 So. 3d 166 (Fla. 2009), a judge was reprimanded for inappropriately filing petition for writ of mandamus seeking to compel fellow judges “to provide for a meaningful First Appearance Hearing for all citizens accused of a crime who cannot immediately make bail”;
- In *In re Bell*, 23 So. 3d 81 (Fla. 2009), a judge was reprimanded for ordering arrest of woman for domestic abuse, without complaint from anyone, when former husband appeared for probable cause determination as to charging him with battery against her;

- In *In re Maxwell*, 994 So. 2d 974 (Fla. 2008), a judge was reprimanded for ordering release of sister of former colleague despite the facts that arrestee had no first appearance and was serving sentence of five years' probation for obtaining controlled substances by fraud, and therefore was ineligible for pretrial release program.

Chapter Five

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Chapter Five

Disqualification and Recusal

1. Is There Difference Between “Legal” and “Ethical” Bases for Disqualification and Recusal?

There is a difference between legal and ethical bases for disqualification and recusal. The ethical basis for disqualification found in [Canon 3E](#) are the primary subject of this chapter. [Canon 3E](#) addresses instances involving conflicts of interest or perceived conflicts that require judges to disqualify themselves from hearing certain matters. Sometimes a judge may be compelled to disqualify on legal grounds, under court rule or statute. The legal requirements, which are beyond the scope of this volume, are found in [chapter 38, Florida Statutes](#), and the Florida Rules of Judicial Administration. Although this chapter concerns only the ethical requirements of [Canon 3E](#), the legal and ethical grounds for disqualification overlap, and the connections are noted as they arise in the following discussion.

2. What Are Six Ethical Bases for Disqualification in [Canon 3E](#)?

The ethical bases for disqualification fall generally into one of six categories:

- a. Personal bias or prejudice, [Canon 3E\(1\)\(a\)](#).
- b. Personal knowledge of disputed facts, [Canon 3E\(1\)\(a\)](#).
- c. Service of judge as lawyer, lower court judge, or material witness in the proceeding, [Canon 3E\(1\)\(b\)](#).
- d. Economic interest in the matter (personal, business, or family), [Canon 3E\(1\)\(c\)](#).
- e. Judge or family member as party, attorney, financial interest holder, likely material witness in a proceeding, or lower court judge in decision to be reviewed, [Canon 3E\(1\)\(d\)](#); [Canon 3E\(1\)\(e\)](#).
- f. Judge has made public statement (while on bench or as candidate) that commits or appears to commit the judge as to parties, classes of parties, issues, or controversies in a proceeding, [Canon 3E\(1\)\(f\)](#).

All of the Florida Supreme Court and committee opinions interpreting [Canon 3E](#) fall into one of these six categories, each of which is examined in detail below. However, the plain language of [Canon 3E](#) is not exclusive.

3. Procedurally, What Must Judge Do When Faced with Motion to Disqualify?

In determining the legal sufficiency of motions alleging any of these grounds, the judge to whom the allegations are directed must determine only the legal sufficiency of the motion, not the truth or falsity of the statements. *See Fla. R. Jud. Admin. 2.330(f)*; *see also In re Cohen*, 99 So. 3d 926 (Fla. 2012); *Taylor v. State*, 557 So. 2d 138 (Fla. 1st DCA 1990), *disapproved on other grounds*, 687 So. 2d 823 (Fla. 1996); *Deren v. Williams*, 521 So. 2d 150 (Fla. 5th DCA 1988) (cited in Hurley & Antoon, “Disqualification of a Judge,” Ethics Outside the Courtroom (Florida Judiciary Education 1996)); *Tower Group, Inc. v. Doral Enterprises Joint Ventures*, 760 So. 2d 256 (Fla. 3d DCA 2000); *Kielbania v. Jasberg*, 744 So. 2d 1027 (Fla. 4th DCA 1997); *Leveritt & Associates, P.A. v. Williamson*, 698 So. 2d 1316 (Fla. 2d DCA 1997); *Nathanson v. Nathanson*, 693 So. 2d 1061 (Fla. 4th DCA 1997).

Not only must the judge determine only the legal sufficiency of the motions, but the judge must do so quickly. According to [rule 2.330\(f\)](#), the decision regarding legal sufficiency must be made immediately. In fact, in response to *Tableau Fine Art Group, Inc. v. Jacoboni*, 853 So. 2d 299 (Fla. 2003), the supreme court added subdivision (j) to [rule 2.330](#) (then 2.160), which provides that the judge must rule on the motion to disqualify within 30 days of service of the motion on the judge. *Amendments to Florida Rule of Judicial Administration 2.160*, 885 So. 2d 870 (Fla. 2004).

A judge may preside over an attorney’s cases with automatic recusal not necessary, when the judge had accepted a weekend vacation trip from the attorney about eight years prior; however, the judge must disclose the record of a prior standing recusal order and the judge’s relationship with the attorney. [Opinion 09-01](#).

4. What Is “Personal Bias” or “Prejudice”?

The terms “personal bias” or “prejudice” relate to allegations of a judge’s particularized ill will or animosity toward a specific person in a case. These terms are not synonymous with racial, ethnic, or other status-based bias or prejudice, which is the subject of [Canon 3B\(5\)](#). One commentator has observed that personal bias or prejudice is more difficult to determine than other forms of partiality, such

as established personal relationships, professional associations, or business interests. Abramson, *Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct* 23 (American Judicature Society 1992). These sources of partiality are susceptible of a more objective definition than personal bias, prejudice, or dislike. *See generally* ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS § 4.05 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.). This is an area in which the legal and ethical requirements overlap. Not only does [Canon 3E\(1\)\(a\)](#) mandate judicial disqualification when the judge holds a personal bias or prejudice against a party or counsel, but [section 38.10, Florida Statutes](#), states that a party may move for disqualification of a judge when the party fears an unfair trial because the judge personally dislikes the party or favors the party's opponent. *See, e.g., Robbins v. Robbins*, 742 So. 2d 395 (Fla. 2d DCA 1999) (judge should have recused because of personal friendship with one spouse in divorce proceeding); [Opinion 99-02](#) (committee advised judge to recuse when dating one of attorneys in case assigned to that judge).

5. Does Personal Bias or Prejudice Include All Preconceived Notions or Preformed Ideas About Law or Issues in Case?

The kind of bias or prejudice prohibited by [Canon 3E](#) is personal. A judge can have general opinions about legal or social issues involved in a case without harboring personal animosity against a party, witness, or attorney involved in the matter.

In addition, there is authority to support the notion that personal bias or prejudice does not even include personal opinions about a party, witness, or attorney formed during the case. The “extrajudicial source rule” suggests that bias or prejudice caused by events that occur during the court proceeding is not a basis for disqualification. ALFINI, LUBET, SHAMAN & GEYH, JUDICIAL CONDUCT AND ETHICS 4.17 (LexisNexis/Matthew Bender 4th ed. 2007, 2010 supp.) (discussing extrajudicial source rule extensively and citing *U.S. v. International Business Machines Corp.*, 475 F. Supp. 1372 (S.D. N.Y. 1979), *affirmed*, 618 F.2d 923 (2d Cir. 1980); *U.S. v. Grinnell Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966)). The authors in ALFINI suggest that “[t]o require recusal, bias or prejudice normally must be rooted in an extrajudicial source” and state as follows:

. . . A judge must be able to preside over court proceedings, and it is only natural (and probably unavoidable) that judges will react to the behavior of litigants and attorneys.

As courts have applied the extrajudicial source rule, a judge

will not be disqualified from rehearing a case that has been remanded by an appellate court to correct errors that the judge previously made. Nor is it improper for a judge to hear and decide a case in which he previously heard a plea bargain that was later withdrawn. That a judge presided in a previous criminal trial is generally not grounds for disqualification in a subsequent trial involving the same defendant, because the source of any opinion the judge might hold about the defendant is not extrajudicial. In fact, one case goes so far as to take this position even though in the earlier trial involving the same defendant, the judge expressed strong disapproval of the defendant's behavior. Because the source of the judge's opinion was not extrajudicial, it was ruled that recusal was not necessary

Id. (citing [U.S. v. Hollis](#), 718 F.2d 277 (8th Cir. 1983), *cert. denied*, 465 U.S. 1036 (1984); [State v. Aubert](#), 393 A.2d 567 (N.H. 1978); [Lena v. Com.](#), 340 N.E.2d 884 (Mass. 1976); [Commonwealth v. Dane Entertainment Services, Inc.](#), 467 N.E.2d 222 (Mass. 1984)).

The “extrajudicial source rule,” as defined by Shaman, has rarely been mentioned specifically by a Florida court (*see, e.g., Michaud-Berger v. Hurley*, 607 So. 2d 441 (Fla. 4th DCA 1992), which is not especially helpful because the reference occurs in an excerpt from the trial judge's order denying the plaintiff's motion for disqualification, which the appellate court ultimately reversed). Moreover, the United States Supreme Court rejected the rule in [Liteky v. U.S.](#), 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994). Justice Scalia, writing for the court, held that although a judge must be able to form judgments of the actors, and may develop opinions of parties and witnesses during a proceeding, there cannot be the “complete dichotomy between court-acquired and extrinsically acquired bias” that a blanket extrajudicial source rule implies. 510 U.S. at 550. Nonetheless, despite its abrogation of an absolute rule, the court observed:

First, judicial rulings alone almost never constitute [a] valid basis for a [motion to disqualify]. . . . Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a [motion to disqualify] unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

[510 U.S. 540 at 555.](#)

This language from [Liteky](#) is consistent with Florida case law interpreting [Canon 3](#)

and the need to disqualify. *Mansfield v. State*, 911 So. 2d 1160 (Fla. 2005); *Gilliam v. State*, 582 So. 2d 610 (Fla. 1991) (mere adverse ruling insufficient ground for disqualification); *Thompson v. State*, 759 So. 2d 650, 659 (Fla. 2000) (“the fact that a judge has ruled adverse to a party does not constitute a legally sufficient ground for a motion to disqualify”); *Williams v. State*, 689 So. 2d 393, 396 (Fla. 3d DCA 1997) (“a judge’s adverse ruling may not serve as a sufficient basis for recusal”); *Jones v. State*, 69 So. 3d 329 (Fla. 4th DCA 2011); *but see Olszewska v. Ferro*, 590 So. 2d 11 (Fla. 3d DCA 1991) (finding sufficient grounds for disqualification when judge “leaves the realm of civility and directs base vernacular towards an attorney or litigant in open court”).

While no judge is expected to come to a case as a blank slate, some preformed ideas can disqualify a judge, and there is case law that illustrates when such ideas can be disqualifying. “While it is well-settled that a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudge the case.” *Barnett v. Barnett*, 727 So. 2d 311, 312 (Fla. 2d DCA 1999), referencing *Wargo v. Wargo*, 669 So. 2d 1123 (Fla. 4th DCA 1996), and *LeBruno Aluminum Co. v. Lane*, 436 So. 2d 1039 (Fla. 1st DCA 1983); *see also Zanghi v. State*, 61 So. 3d 1263 (Fla. 4th DCA 2011). The scope of Canon 3E is best defined by examining the cases and committee opinions interpreting Canon 3E and former Canon 3C. The commentary to Canon 3E reads in part:

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

In *In re Code of Judicial Conduct*, 659 So. 2d 692, 693 (Fla. 1995), the Florida Supreme Court added the following language to the above-quoted part of the commentary:

The fact that the judge conveys this information does not automatically require the judge to be disqualified upon a request by either party, but the issue should be resolved on a case-by-case basis. Similarly, if a lawyer or party has previously filed a complaint against the judge with the Judicial Qualifications Commission, that fact does not automatically require disqualification of the judge. Such disqualification should also be on a case-by-case basis.

The fact that the judge is a defendant in a similar type of proceeding does not necessarily require recusal. *Opinion 12-09* (judge who, with spouse, was

defendant in residential condominium foreclosure action, need not recuse self from all residential foreclosure proceedings; however, while judge is defendant in foreclosure litigation “and for a reasonable time thereafter,” judge must disclose fact to all such litigants because although judge’s “impartiality may not be reasonably questioned . . . the judge’s ruling on an issue in foreclosure cases before the judge reasonably could be perceived as providing the judge with persuasive authority in the judge’s favor, or some other advantage, in the judge’s own case”). In [Opinion 15-14](#), the committee stated that a judge who was a defendant in a mortgage foreclosure proceeding five years earlier need not recuse from all pending mortgage foreclosure cases, or from all cases involving lawyers, lenders, or assignees involved in the judge’s residential mortgage foreclosure cases. Nor is disclosure required. But disclosure is prudent “[u]ntil no reasonable person would consider the information relevant to a determination of the judge’s impartiality,” and recusal is prudent if the judge has a personal bias or prejudice.

6. Are There Times When Judge’s Public Expressions of Opinion or Sentiment Are Disqualifying?

In one case, a judge who had publicly expressed sympathy for persons with cerebral palsy was required to recuse in a medical malpractice lawsuit involving a child with cerebral palsy. [Deren v. Williams, 521 So. 2d 150 \(Fla. 5th DCA 1988\)](#). In another case, a judge’s public statements about speedy imposition of death sentences were published in a newspaper, and the Florida Supreme Court deemed those statements a sufficient basis for recusal in a death penalty case. [Suarez v. Dugger, 527 So. 2d 190 \(Fla. 1988\)](#). In [Roy v. Roy, 687 So. 2d 956 \(Fla. 5th DCA 1997\)](#), the trial judge referred to one of the parties as “Mr. Deadbeat Man of the Year” before any evidence was taken. The party moved for disqualification, and the judge denied the motion and ultimately ruled against the party on the merits. The district court of appeal overturned the decision. *But see* [Doorbal v. State, 983 So. 2d 464 \(Fla. 2008\)](#) (judge’s testimony on behalf of defendant’s victims in Medicare fraud trial insufficient for disqualification of judge in defendant’s postconviction proceeding); [Waterhouse v. State, 792 So. 2d 1176, 1192 \(Fla. 2001\)](#) (judge’s comments to Parole and Probation Commission that party was “a dangerous and sick man and that many other women have probably suffered because of him” was not deemed to be prejudicial comment warranting disqualification, as party admitted having “problem with sex and violence” and had been charged with two brutal murders and sexual assaults of women).

Also, in *In re Gridley*, 417 So. 2d 950 (Fla. 1982), although disqualification was not the issue, the judge announced strongly held religious beliefs in opposition to the death penalty and wrote a series of letters to the editor to a local newspaper. In this 4-3 Florida Supreme Court opinion, the judge was not disciplined because in every instance he said he would uphold his constitutional responsibility to follow the law. Three dissenting members of the court did believe, however, that Gridley should have been disciplined because he had thrown his impartiality into question and made it reasonable to believe that he would have difficulty imposing a death sentence. In *Royal Caribbean Cruises, Ltd. v. Doe*, 767 So. 2d 626 (Fla. 3d DCA 2000), the appellate court said that a judge's statements about the cruise line industry and its failure to safeguard its passengers and perform timely discovery should have been disqualifying. The facts were also held sufficient to require disqualification in *Valdes-Fauli v. Valdes-Fauli*, 903 So. 2d 214, 217 (Fla. 3d DCA 2005) (trial judge called wife in dissolution case "a 'woman scorned,' stating that '[Hell] hath no fury like a woman scorned' [and] told her that her feelings were 'very typical' and that it explained her 'motivation,' presumably for requesting permanent alimony, suggesting a pre-existing unfavorable opinion of women seeking permanent alimony out of anger").

There are also instances in which a judge's preformed opinion of a witness's credibility must result in disqualification. See *St. George Island, Ltd. v. Rudd*, 547 So. 2d 958 (Fla. 1st DCA 1989), *approved*, 561 So. 2d 253 (Fla. 1990).

Comments to the press about a pending case warranted judge's disqualification. See *Novartis Pharmaceuticals Corp. v. Carnoto*, 840 So. 2d 410 (Fla. 4th DCA 2003).

7. When Does Manifestation of Personal Bias or Prejudice Against Attorney Disqualify Judge?

A judge is disqualified when personal bias against an attorney adversely affects the client. *Livingston v. State*, 441 So. 2d 1083, 1087 (Fla. 1983) ("Prejudice against a party's attorney can be as detrimental to the interests of that party as prejudice against the party himself. What is important is the party's reasonable belief concerning his or her ability to obtain a fair trial"); *Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). Not until the 1995 revision did Canon 3 expressly include counsel among those against whom a personal bias could warrant disqualification of the judge. Yet there has long been case law applying this portion of the canon to manifestations of bias against attorneys. See, e.g., *Ginsberg v. Holt*, 86 So. 2d 650 (Fla. 1956); *Edwards-Freeman v. State*, 138 So. 3d 507 (Fla. 4th DCA 2014).

When a judge harbors animosity toward a particular attorney or when a disagreement with an attorney interferes with the court's impartiality, this creates a basis for disqualification. *Jimenez v. Ratine*, 954 So. 2d 706 (Fla. 2d DCA 2007); *Robinson v. Tobin*, 547 So. 2d 714 (Fla. 3d DCA 1989); *Cardinal v. Wendy's of South Florida, Inc.*, 529 So. 2d 335 (Fla. 4th DCA 1988). In *Gates v. State*, 784 So. 2d 1235, 1236 (Fla. 2d DCA 2001), the appellate court overturned a conviction for second degree murder because the trial judge denied a proper motion to disqualify. The trial judge became increasingly "frustrated with what she perceived as incompetence" by one of the defense attorneys, reprimanded the attorneys loudly in front of the jury and at side bar, and threatened to castigate counsel in open court. In *Marshall v. Bookstein*, 789 So. 2d 455, 456 (Fla. 4th DCA 2001), the appellate court held that a judge improperly denied a motion for disqualification when the judge, during a calendar hearing, "angrily denounc[ed] [petitioners' attorneys'] 'tactics' and derid[ed] them as substandard 'Miami Lawyers,'" who "may get away with it in Miami, but not up here." Not only does a manifestation of animosity cause a judge to risk disqualification, but it can result in reversal on the merits with serious legal consequences.

Because personal bias against attorneys is now expressly prohibited in [Canon 3](#), the potential for disqualification arguably might become greater than previous cases have indicated. However, former Canon 3A(3) (now [3B\(4\)](#)) has always provided a basis for disqualification when a judge's conduct is undignified or discourteous to anyone appearing before the court. A [Canon 3E](#) disqualification may be triggered by a violation of this more general [Canon 3](#) admonition for judges to "be patient, dignified, and courteous to litigants, . . . lawyers, and others with whom the judge deals in an official capacity." [Canon 3B\(4\)](#); see *Olszewska v. Ferro*, 590 So. 2d 11 (Fla. 3d DCA 1991); *Gates v. State*, 784 So. 2d at 1236. When the trial judge "leaves the realm of civility and directs base vernacular towards an attorney or litigant in open court, there are sufficient grounds to require disqualification." *Olszewska*, 590 So. 2d at 11 (citing *Lamendola v. Grossman*, 439 So. 2d 960 (Fla. 3d DCA 1983); *Brown v. Rowe*, 96 Fla. 289, 118 So. 9 (1928)). Thus, although the 1994 revisions to [Canon 3](#) appeared to extend protection from perceived bias to counsel for the first time, case law has long provided such protection. It is important to remember, nonetheless, that not every verbal altercation with an attorney requires disqualification; the altercation must be serious enough that it is reasonable to believe the judge's animosity will adversely affect the client. See *Ginsberg v. Holt*, 86 So. 2d 650 (Fla. 1956).

8. What If Source of Conflict Between Judge and Attorney Is Unrelated to Case in Which Disqualification Is Sought?

Animosity between a judge and an attorney can require disqualification even if it is unrelated to the case in which disqualification is sought. In *Town Centre of Islamorada, Inc. v. Overby*, 592 So. 2d 774 (Fla. 3d DCA 1992), the court held that a dispute between counsel and the judge approximately eleven months before the clients filed their lawsuit was sufficient to warrant disqualification. In this case, an attorney announced at a local bar association luncheon that he planned to sue the clerk of the court and all of the judges in the circuit challenging a local rule requiring that notice of hearing be filed with each motion. Several days later, at a court hearing, Judge Overby stated that he would make no rulings in cases involving that attorney's law firm because the chief judge had imposed a stay in the firm's cases until an ethics committee issued an opinion about the propriety of the attorney's bar luncheon remarks. An altercation ensued in which the judge stated that he "did not consider a threat of a lawsuit to be friendly and that the remark might warrant disciplinary measures by the Florida Bar." *Id.* at 775. Based on these incidents, the attorney's law firm filed motions for disqualification in three cases before the judge; all of the motions were denied as untimely and legally insufficient. The appellate court reversed the judge in two of the cases, holding that the dispute, although unrelated to those cases, merited disqualification. In the third case, the district court affirmed the judge's denial of the motion to disqualify because the attorney had accepted the case as local co-counsel with knowledge that the case already had been assigned to Judge Overby.

Moreover, a judge currently represented by an attorney must automatically disqualify himself or herself whenever the attorneys or members of his or her firm appear before the judge even if the matter is uncontested, such as a default mortgage foreclosure or an uncontested dissolution of marriage. [Opinion 99-13](#).

9. Must Judge Recuse When Judge Has Reported Party's Attorney to The Florida Bar?

In *Town Centre of Islamorada, Inc. v. Overby*, 592 So. 2d 774 (Fla. 3d DCA 1992), discussed above, Judge Overby had stated that the attorney's conduct might merit discipline; there is no indication that Judge Overby formally filed a grievance. Even if he had filed a grievance, under current case law, that fact alone would not be sufficient to require recusal. However, the judge must disclose to parties in a pending case, through their respective counsel, that the judge has reported an attorney in the case to The Florida Bar as a result of alleged misconduct by the attorney in the same case. [Opinion 05-16](#). In *5-H Corp. v. Padovano*, 708 So. 2d 244, 248 (Fla. 1997), the court held that "a Florida judge's mere reporting of perceived attorney unprofessionalism to The Florida Bar, in and

of itself, is legally insufficient to support judicial disqualification.” The court noted that other states, including Hawaii and Indiana, had reached this same result. In *Padovano*, an attorney filed a motion for a rehearing, arguing that the panel had favored opposing counsel, and he referred to the arguments using profanity and claiming that “a Miami lawyer cannot simply get a fair shake up North.” *Id.* at 245. The panel denied the motion and referred the motion to The Florida Bar as inappropriate. The attorney whose conduct was reported to the Bar then filed a motion to disqualify all sitting judges in the First District Court of Appeal, leading to this decision. *See also Birotte v. State*, 795 So. 2d 112 (Fla. 4th DCA 2001).

When a party makes such allegations in a motion to disqualify, it is important for the judge to remember that in evaluating the legal sufficiency of the motion, the judge may determine only whether the facts alleged, presumed to be true, would make a reasonable person doubt that he or she would receive a fair and impartial trial before the named judge. Fla. R. Jud. Admin. 2.330(f); § 38.10, Fla. Stat.; *see also Fischer v. Knuck*, 497 So. 2d 240 (Fla. 1986); *Taylor v. State*, 557 So. 2d 138 (Fla. 1st DCA 1990), *disapproved on other grounds*, 687 So. 2d 823 (Fla. 1996); *Deren v. Williams*, 521 So. 2d 150 (Fla. 5th DCA 1988). A mere claim that the judge made defamatory remarks, without specifying what the remarks were, does not mandate disqualification. *See Heier v. Fleet*, 642 So. 2d 669 (Fla. 4th DCA 1994) (petitioner’s allegation lacking in specificity and going almost entirely to judicial rulings). In *Heier*, although the petitioner alleged that defamatory remarks were made by the judge, the petitioner failed to state what remarks the judge had made and was not sufficiently explicit about the circumstances in which they were made. Had the allegations been specific, disqualification probably would have been required, irrespective of the veracity of the remarks. *See Fla. R. Jud. Admin. 2.330(d); § 38.10, Fla. Stat.; Barnhill v. State*, 834 So. 2d 836 (Fla. 2002) (as in *Heier*, petitioner’s affidavit did not state specific facts that led petitioner to believe he would not receive fair trial).

10. Must Judge Be Disqualified When Attorney Previously Has Tried to Have Judge Impeached or Has Filed JQC Complaint Against Judge?

The short answer is that the mere reporting alone does not automatically require disqualification. However, the answer is more complicated than that. In *Brewton v. Kelly*, 166 So. 2d 834 (Fla. 2d DCA 1964), the judge was disqualified because the attorney had testified against the judge in an impeachment proceeding and opposing counsel had testified in the judge’s favor. Similarly, in a case in which a judge had issued an order to show cause why an attorney should not be held in contempt in another case, and the attorney’s firm had filed a JQC complaint

against the judge, the Fourth District Court of Appeal held that the judge should have recused himself upon the attorney's motion to disqualify. *Levine v. State*, 650 So. 2d 666 (Fla. 4th DCA 1995). However, depending on what additional facts might be present, *Brewton* and *Levine* might be decided much differently now in light of *5-H Corp. v. Padovano* discussed previously. *5-H Corp. v. Padovano*, 708 So. 2d 244 (Fla. 1997). In *Padovano*, the Florida Supreme Court also held that "mere report of . . . perceived judicial unprofessionalism to the JQC" does not in and of itself support judicial disqualification. *Id.* at 248. The court in *Padovano* excluded from its ruling cases that involved more than just a complaint to the JQC, including *Levine*.

Even before the Florida Supreme Court's express ruling in *Padovano*, the Florida Judicial Ethics Advisory Committee came to the same conclusion when the question was asked of it. *Opinion 95-20* (expressing unanimous opinion that judge should disqualify self "under the facts presented," but disagreeing on whether disqualification should be "automatic" or "case-by-case"). The *Padovano* case clarifies that recusal under these circumstances should not be automatic but must be determined case-by-case.

11. Is Recusal Required When Lawyer Appearing Before Judge Has Voiced Opposition to Judge's Election?

There is a presumption that a judge will not harbor personal bias or prejudice against a lawyer who opposes the judge's election or re-election. However, when a motion to disqualify alleges that the presiding judge delivered a "tirade" to the moving attorney about the lack of support, the presumption is rebutted. *McDermott v. Grossman*, 429 So. 2d 393, 394 (Fla. 3d DCA 1983).

While recusal may be the safest course, an allegation that a party or attorney has made a legal campaign contribution to the political campaign of the trial judge or the trial judge's spouse, without more, is not a legally sufficient ground for disqualification. *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332 (Fla. 1990); *E.I. DuPont de Nemours & Co. v. Aquamar S.A.*, 24 So. 3d 585 (Fla. 4th DCA 2009) (court distinguished case from *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), in which \$3 million donation to judicial campaign required recusal).

Furthermore, allegations that the judge was biased against a party's attorney because the attorney did not contribute to the judge's campaign fund, and instead supported the judge's opponent, have been ruled legally insufficient to disqualify a judge. *Paul v. Nichols*, 627 So. 2d 122 (Fla. 5th DCA 1993). However, when a

sitting judge campaigning for re-election is supported by the state attorney, the sheriff, and defense lawyers, the judge should announce these relationships in open court in addition to issuing a mass mailing containing disclosure. [Opinion 08-02 \(Election\)](#). Disqualification is not automatic when the attorney before a judge is a member of the judge's campaign committee. [Opinion 03-22](#). Judge is disqualified from presiding over a case in which the law partner and campaign treasurer of an attorney who has qualified to run against the judge is an attorney for one of the parties. [Opinion 11-08](#).

12. Personal Knowledge: When Does Judge's Personal Knowledge of Disputed Facts Require Disqualification?

[Canon 3E\(1\)\(a\)](#) requires disqualification when a judge has personal knowledge of disputed facts in a case. There are several Florida cases dealing specifically with the personal knowledge issue. In [Walton v. State, 481 So. 2d 1197 \(Fla. 1986\), cert. denied, 493 U.S. 1036, 110 S.Ct. 759, 107 L.Ed.2d 775 \(1990\)](#), the court held that a judge need not automatically recuse himself in a defendant's trial after hearing the co-defendant's case. The appellant's argument was that the judge's impartiality was impaired by a co-defendant's defense strategy based on the appellant's culpability. The appellant contended that because the trial judge presided at the co-defendant's trial and was exposed to evidence that inculpated the appellant, the trial judge should be disqualified because he might be "psychologically predisposed" to reject the appellant's defense that his co-defendants were responsible for the crime. The court rejected this argument, noting that the same degree of knowledge could have come from pretrial hearings or discovery in this co-defendant's case. The court determined that the appellant's assertion did not set forth a "well-grounded fear," and the motion for disqualification failed "to show the personal bias or prejudice on the part of the trial judge necessary for disqualification." [481 So. 2d at 1199](#).

In [Mackey v. State, 234 So. 2d 418 \(Fla. 3d DCA 1970\), receded from on other grounds, 252 So. 2d 842](#), the appellate court ordered a new trial of two co-defendants tried together after one of the defendants made an unsworn statement to the court in which he implicated the co-defendant in the robbery in question. Although the defendant was entitled to a new trial with a new judge, [Mackey](#) was not a [Canon 3E](#) case. In fact, the court stated: "This is not an instance of bias of the trial judge. It is to be assumed that the judge was not biased, and that he conscientiously attempted to act fairly in the case." [234 So. 2d at 420](#). Therefore, there were no [Canon 3](#) ethical consequences for the judge. The distinction between [Mackey](#) and [Walton, supra](#), may have been that in [Mackey](#), the defendant made a

direct unsworn statement to the court regarding the robbery. The statement was not part of the record, unlike the defendant's statements in *Walton*.

Not only may the same judge preside over separate trials of two co-defendants for the same crime, but a judge may preside over several proceedings involving the same defendant. *K.H. v. State, Dept. of Health & Rehabilitative Services*, 527 So. 2d 230 (Fla. 1st DCA 1988). In that case, the appellant sought to disqualify the judge, who had presided over several hearings involving the removal of the appellant's child from her custody. Because the child had spent 24 months of his 36-month life in the custody of the Department of Health and Rehabilitative Services (HRS) by virtue of the judge's rulings, the appellant feared that the judge would be predisposed in favor of HRS in the hearing for permanent placement. In affirming the trial court's denial of the motion to disqualify, the district court stated: "The rule is well-established that adverse judicial rulings do not constitute sufficient grounds to disqualify a judge." See also *Ardis v. Ardis*, 130 So. 3d 791, 795 (Fla. 1st DCA 2014) ("the fact that a judge may have familiarity with the parties and evidence from earlier proceedings does not warrant disqualification"); *Jenkins v. C.A.J.*, 434 So. 2d 9 (Fla. 1st DCA 1983) (finding it significant that there was nothing in record to indicate trial judge favored permanent commitment before actual commitment hearing).

In *Fabber v. Wessel*, 604 So. 2d 533 (Fla. 4th DCA 1992), the judge saw privileged mediation communications. The plaintiff, feeling she might be prejudiced based on the disclosure of those communications alone, requested disqualification. She cited no particular prejudice apart from the disclosure itself but argued that the mere act of disclosure violated the mediation statute in question, section 44.102(3), Florida Statutes. The judge refused to disqualify himself. The plaintiff then filed a motion for a writ of prohibition in the Fourth District Court of Appeal. The district court granted the writ of prohibition requiring the judge to disqualify himself.

Fabber is no longer good law, at least if cited for the proposition that an allegation that the judge has seen privileged mediation documents is sufficient to warrant recusal. In fact, the decision in *Fabber* has been expressly repudiated in *Enterprise Leasing Co. v. Jones*, 789 So. 2d 964 (Fla. 2001). There the Florida Supreme Court specifically disapproved of *Fabber* and held that the disclosure of confidential mediation information to the trial judge, in and of itself, is not sufficient for disqualification. The facts were similar to *Fabber* in that the judge learned of the settlement offers made during mediation. The court found that the statute used to disqualify the judge in *Fabber*, section 44.102(3), Florida Statutes, does not give

rise to a per se rule requiring confidentiality, only a privilege to refuse to disclose the information.

Even though *Fabber* has been overruled, it is nonetheless relevant to this discussion because it illustrates the importance of ruling on legal sufficiency and not commenting on the truth or falsity of the claims in the motion. A significant component of the court's decision in *Fabber* included a discussion of the fact that the judge took exception to the accuracy of facts stated in the motion to disqualify. The court stated that the response created “an intolerable adversary atmosphere between the trial judge and the litigant.” . . . On that ground alone, we are obliged to grant the writ” of prohibition. Although the district court stated that it was not holding that “any response filed by a judge in a prohibition-disqualification proceeding is per se disqualifying,” it determined that it is “decidedly dangerous for the judge” to so respond. 604 So. 2d at 534. This part of the *Fabber* opinion, cautioning against addressing the truth or falsity of the allegations in the motion, is still valid.

In [Opinion 14-02](#), the committee stated that a judge may not preside in a case in which that judge had provided mediation services while still in a law practice. A judge may, however, preside in a case in which the judge had provided one of the party's attorneys mediation services in the past, if the judge's impartiality would not be reasonably questioned.

In short, it appears that disqualification is required of a judge when he or she has personal knowledge of evidentiary facts learned through some means outside the record or unobtainable from some general knowledge or source. Clearly, a judge may preside over the trial of a co-defendant even though the judge heard all of the evidence at the other defendant's trial that implicated the co-defendant. *Dragovich v. State*, 492 So. 2d 350 (Fla. 1986); see also *Mansfield v. State*, 911 So. 2d 1160 (Fla. 2005) (statements made by trial judge to counsel, outside jury's presence, during penalty phase did not preclude him from presiding over sentencing proceeding). Moreover, it is clear that a judge can make limited comments about the evidence. See *Moser v. Coleman*, 460 So. 2d 385 (Fla. 5th DCA 1984) (proper for judge to hear second probation violation after dismissing first warrant on basis of “sloppy pleading” and after stating “[t]he evidence is clear . . . that the Defendant committed the subsequent offense”). What a judge must never do is comment on the accuracy of the facts stated in a litigant's motion to disqualify. This will require disqualification on legal grounds.

13. Prior Service: Does Judge's Prior Service as Lawyer, Lower Court Judge, or Witness Require Disqualification?

Canon 3E(1)(b) requires disqualification if the judge's impartiality might reasonably be questioned. There are a number of cases in which prior participation in a cause has been ruled a reasonable basis to require disqualification. In *Roberts v. State*, 161 So. 2d 877 (Fla. 2d DCA 1964), a judge who had appeared as counsel of record in a lawsuit before becoming a judge was disqualified from handling the case even though a new attorney had taken over the representation and the judge had no personal knowledge regarding that representation. The judge previously had served as county solicitor and originally filed the information against the defendant. The judge's lack of recollection about the filing was irrelevant.

Prior participation in a cause is disqualifying even if the case before the court involves matters only supplemental to enforcement or avoidance of an earlier decree. See *State ex rel. Ambler v. Hocker*, 34 Fla. 25, 15 So. 581 (1894); *Hewitt v. State*, 839 So. 2d 763 (Fla. 4th DCA 2003) (prior participation also disqualifying when judge was counsel for husband in divorce proceeding seven years prior to tax evasion case currently involving former wife).

Nothing in Canon 3E(1)(b), however, should be construed to preclude a judge from presiding over the rehearing of the judge's own decision. See *Edwards v. U. S.*, 334 F.2d 360 (5th Cir. 1964), cert. denied, 379 U.S. 1000, 85 S.Ct. 721, 13 L.Ed.2d 702 (1965) (stating that judges sit as matter of course on rehearing of their own decisions). Likewise, automatic disqualification is not required even when a judge has witnessed a defendant's act of indirect criminal contempt and may be called as a witness in the contempt proceeding. *Hope v. State*, 449 So. 2d 1315 (Fla. 2d DCA 1984). When a judge is going to give testimony that will affect the merits of the cause and about which no other witness will testify, the judge is a material witness and must disqualify himself or herself. *Wingate v. Mach*, 117 Fla. 104, 157 So. 421 (1934); see also Fla. R. Jud. Admin. 2.330(d)(2).

Moreover, a judge is not automatically disqualified from a case simply because, while an attorney, the judge represented one of the parties in a matter other than the one currently before the court, unless the earlier representation involved giving advice about the legal effect of an instrument now in controversy. *Tampa St. Ry. & Power Co. v. Tampa Suburban R. Co.*, 11 So. 562 (Fla. 1892); *Perona v. Fort Pierce/Port St. Lucie Tribune*, 763 So. 2d 1188 (Fla. 4th DCA 2000). But see *Hewitt v. State*, 839 So. 2d 763 (Fla. 4th DCA 2003); see also Opinion 12-08 (recusal not required unless past representation affected judge's ability to be fair, but judge should disclose past representation to parties and lawyers).

There is, however, an exception regarding government agencies in the commentary to Canon 3E(1)(b), which states:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of [Section 3E\(1\)\(b\)](#); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Therefore, the intent is clear to hold to a higher standard judges who come from prior government service. This would include prosecutors who later become judges. *See, e.g., Fischer v. Knuck*, 497 So. 2d 240 (Fla. 1986), *cited by W.I. v. State*, 696 So. 2d 457, 458 (Fla. 4th DCA 1997) (“While the fact that the presiding judge prosecuted petitioner in a previous case does not present a direct conflict of interest, it does support petitioner’s claim of a well founded fear that he will not receive a fair trial before this judge”); *see also Goines v. State*, 708 So. 2d 656 (Fla. 4th DCA 1998). In *Dendy v. State*, 954 So. 2d 1221 (Fla. 4th DCA 2007), the trial judge was a former federal prosecutor to whom a letter from the assistant state attorney had been addressed in the case, regarding assistance in issuing a warrant for a witness. The appellate court held the judge need not be disqualified as “the letter was addressed to her only because of her supervisory role in the U.S. Attorney’s Office at that time [and] her involvement, if any, would have been limited to the administrative task of assigning the routine request to an assistant U.S. Attorney; she would not have seen the letter nor assisted in obtaining the . . . warrant.” *Id.* at 1223. The court held that “the facts alleged would not create in a reasonably prudent person a well-founded fear of not receiving a fair and impartial trial. In so holding, we distinguish this case from those wherein the judge is alleged to have been actually involved in the prosecution of the defendants moving for disqualification.” *Id.* at 1225.

14. When Is Economic Interest Disqualifying?

An economic interest can be disqualifying under both [Canon 3E\(1\)\(c\)](#) and [section 38.02, Florida Statutes](#). The interest must be direct and immediate and not uncertain or speculative. *See State ex rel. Cannon v. Churchwell*, 195 So. 2d 599 (Fla. 4th DCA 1967). If the judge, individually or as a fiduciary, or the judge’s spouse, parent, child, or any other member of the judge’s family residing in the judge’s household, has an “economic interest” in the subject matter of the case or a party to the case or has more than a de minimis interest that could be “substantially affected,” the judge must disqualify himself or herself. Both “economic interest” and “de minimis” are defined in the [Definitions](#) section following the [Preamble to the Code of Judicial Conduct](#). Economic interest, according to the code, means

“ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party.” According to the definition, there are four specific exceptions.

First, “ownership of an interest in a mutual fund or a common investment fund that holds securities is not an economic interest for purposes of the canon unless the judge participates in the management of the fund,” or, in some matter pending or impending before the judge, he or she might be called on to make a decision that would substantially affect the value of the interest.

The second exception to the economic interest definition involves a judge’s service as “an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, sororal, or civic organization.” For a judge or a member of the judge’s family to serve in such a capacity does not create an economic interest in any securities that the organization might hold.

The third exception involves deposits in a variety of financial institutions and proprietary interests as a policyholder in insurance companies. In other words, having an account in a bank or credit union or a proprietary interest in an insurance policy does not constitute an economic interest in the organization unless, in a proceeding pending or impending before the judge, the judge’s ruling “could substantially affect the value of the interest.”

The fourth exception involves ownership of government securities. These are specifically excluded from the definition of economic interest, and a judge need not worry about disclosure or disqualification unless, in a proceeding pending or impending before the judge, his or her ruling “could substantially affect the value of the securities.”

As noted above, even an “economic interest” in a matter may not require disclosure or disqualification if the interest is de minimis. The definitions section of the code defines “de minimis” as “an insignificant interest that could not raise reasonable questions as to a judge’s impartiality.” How the de minimis standard will be applied in the future is subject to question. Until the adoption of the 1995 canons, the degree or amount of interest was considered immaterial, and the judge was required to disqualify no matter how small the interest. *Skipper v. State*, 153 So. 853 (Fla.), *app. dismiss.*, 293 U.S. 517, 55 S.Ct. 76, 79 L.Ed. 631 (1934). Former Canon 3C(1) also referred to “financial interest” rather than the new Canon 3E(1) term “economic interest.” Financial interest included any legal or equitable interest, however small, or relationship as or to an officer, trustee, director, advisor, or other active participant in the affairs of a party.

Despite the revisions, several committee opinions issued before 1995 still provide useful guidance. [Opinion 85-08](#) states that when a judge and an attorney are in a landlord-tenant or creditor-debtor relationship, the judge should disqualify himself or herself from all cases in which the attorney is counsel of record but still may hear cases involving the attorney's firm. Even before adoption of the 1995 "definitions" section, the committee, in [Opinion 85-14](#), advised an inquiring judge, who owned a minuscule part in a limited partnership, that the judge need not automatically recuse when attorneys who also are involved in the limited partnership come before the court. The committee advised, however, that the judge must be careful to divulge this relationship to parties when necessary. Under [Canon 3E\(1\)](#), the judge would appear to have a de minimis interest in the matter.

[Opinion 10-02](#) states that a judge should disqualify himself or herself from all cases in which the county is a party represented by the county attorney, where the judge is a partner in a building partnership with the county attorney; however, disqualification is not required if the county is represented by independent outside counsel. [Opinion 07-10](#) states that a judge should disqualify himself or herself when lawyers appear who work for a legal aid organization leasing an office building owned by the judge.

Although the code specifically exempts from the definition of "economic interest" a deposit in a financial institution, the decision in [Southeast Bank, N.A. v. Capua](#), 584 So. 2d 101 (Fla. 3d DCA 1991), *cause dism. sub nom. Royal Trust Tower, Ltd. v. Southeast Bank, N.A.*, 592 So. 2d 682 (Fla. 1991), merits attention. In that case, a judge was disqualified from presiding over a matter involving Southeast Bank when he was potentially in the identical position as the defendant in a pending case between the defendant and Southeast Bank. The judge had guaranteed a promissory note to the bank, on which the maker had defaulted. The judge paid only one installment, and no further action was taken by the bank against the judge. The note and the guarantee signed by the defendant in the matter pending before the judge were identical to those the judge had signed. In this instance, the proceeding pending before the judge obviously could substantially affect the judge himself. The judge knew that he had more than a de minimis interest in avoiding liability on a similar guarantee and that a court ruling as to the validity of the guarantee would have an impact on any future actions the bank might pursue against him. Furthermore, the appellate court pointed out that even if the judge believed he could remain entirely impartial, it was not his belief but that of the movant that mattered legally. The court stated that the relationship caused a reasonable fear in the defendant that the defendant could not receive a fair trial before that judge. *See Livingston v. State*, 441 So. 2d 1083 (Fla. 1983). In such a

case, it is not a question of how the judge feels but, rather, “what feeling resides in the affiant’s mind and the basis for such feeling.” *Southeast Bank*, 584 So. 2d at 103.

In [Opinion 14-17](#), the committee advised that a judge must disclose to all parties the judge’s business relationship as landlord to a bank/party. While disqualification would be required, the parties may waive disqualification after proper disclosure.

In [Opinion 89-05](#), the inquiring judge had decided not to preside in any dissolution of marriage or domestic relations cases that required entering an order and enforcing payment of or determining responsibility for payment of a financial obligation of a party to a bank in which the judge owned stock, unless the parties and their attorneys agreed in writing to the judge’s presiding. A majority of the committee found the judge’s practice to be appropriate and “perhaps the safest” course. One member of the committee found the judge’s interest not sufficiently significant to require disclosure in any proceeding in which the bank was not a party and the judge would not be called on to enforce payment of any liability to the bank. Under the revised canon, depending on the size of the ownership interest and the economic consequences to the litigants or the judge, the judge might not have to disclose the interest at all. As the committee noted, however, it is always safer to disclose. ([Opinion 10-25](#) recedes from [Opinion 89-05](#) to the extent that the judge’s decision to disclose required disqualification, noting that “[t]he Code now provides that disclosure does not require disqualification.”)

In [Opinion 12-09](#), the judge was a defendant in a residential condominium foreclosure action. The committee found that the judge need not recuse from all residential foreclosure proceedings. However, while the judge is a defendant in the foreclosure litigation “and for a reasonable time thereafter,” the judge must disclose that fact to all litigants in residential foreclosure proceedings because, although the judge’s “impartiality may not be reasonably questioned . . . the judge’s ruling on an issue in foreclosure cases before the judge reasonably could be perceived as providing the judge with persuasive authority in the judge’s favor, or some other advantage, in the judge’s own case.”

Yet, any time a judge discloses, a possible conflict exists. If either of the litigants then moves for disqualification, the judge must comply. See *Pool Water Products, Inc. v. Pools by L.S. Rule*, 612 So. 2d 705 (Fla. 4th DCA 1993). In *Pool Water*, the judge disclosed a potential conflict, which was relied on by a party in a motion to disqualify. The appellate court found the motion to disqualify legally sufficient, stating that “the legally sufficient reason for recusal is that the judge himself thought it was a matter by which his impartiality might reasonably be questioned.”

612 So. 2d at 707. See also [Opinion 00-34](#) (if firm is making payments to judge under terms of promissory note, disqualification is proper).

15. Must Judge Disqualify Self When Judge or Member of Judge’s Family Is Party, Attorney, Financial Interest Holder, or Likely Material Witness in Proceeding, or Lower Court Judge in Decision to Be Reviewed by Judge?

[Canon 3E\(1\)\(d\)](#) requires a judge to disqualify when the judge or a member of the judge’s family is a party, attorney, financial interest holder, or likely material witness in a proceeding. The first step in determining whether disqualification is necessary when a family member is a party, attorney, or material witness is to ascertain “what constitutes a third degree of relationship.” In the commentary to former Canon 3C(3)(a), the third degree of relationship test was calculated under the civil law system. According to former Florida Supreme Court Justice Ben F. Overton, *Analysis Concerning the Current and Former Codes of Judicial Conduct* at page 3 (1995 Annual Business Meeting, Florida Conference of Circuit Judges), “It . . . appears that the new code has expanded the definition of third degree of relations.” Formerly, third degree of relationship was calculated according to the “civil law system.” See former Canon 3C(3)(a).

In the revised code, the “third degree of relationship” is defined in the definition section to include “great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.” If any person related to the judge or the judge’s spouse within this degree is a party, lawyer, or witness, or has more than a de minimis interest that could be substantially affected by the proceeding, the judge must disqualify himself or herself. See [State ex rel. Caro v. Reese, 195 So. 918 \(Fla. 1940\)](#) (automatically disqualifying judge when judge’s son was attorney for one of defendants); [Villeneuve v. State, 127 Fla. 724, 173 So. 906 \(1937\)](#) (requiring automatic disqualification when judge’s sister and brother-in-law were prosecution witnesses in breaking and entering case). See also [Lytle v. Rosado, 711 So. 2d 213 \(Fla. 3d DCA 1998\)](#) (judge’s stepson was involved in suit with insurance company, and judge had to disqualify himself in separate trial involving same insurance company). Also in [J & J Towing, Inc. v. Stokes, 789 So. 2d 1196 \(Fla. 4th DCA 2001\)](#), disqualification was proper based on an allegation that the judge’s wife was represented by plaintiff’s counsel in a separate pending matter involving her individually and as a school board member. In [Opinion 06-27](#), a judge was advised that disqualification was required when the judge’s son’s law firm represented a party in a family law case and parties in that case had a child appearing before the judge in a delinquency case. In [Opinion 06-26](#), a judge’s

disqualification was required when a member of the law firm where judge's son was employed as an attorney appeared in a case before the judge. In *In re Adams*, 932 So. 2d 1025 (Fla. 2006), a judge was publicly reprimanded for a romantic relationship with an attorney appearing before him in a number of cases. In *Opinion 08-03*, the committee advised that a judge must disqualify himself or herself in cases in which the judge's former fiancé serves as a forensic CPA expert. In *Opinion 07-16*, the committee advised that a judge is not automatically disqualified in all cases involving a law firm employing the judge's son-in-law as law clerk. In *Opinion 07-11*, the committee advised that a judge is not automatically disqualified in all cases involving the sheriff's department when that department employs a family member of the judge. *Opinion 12-02*.

In *Opinion 16-04*, the committee advised that a judge need not recuse from all *Engle* Progeny cases assigned to the judge's trial division merely because a family member brought an *Engle* Progeny suit against a tobacco company defendant in the same judicial circuit before another trial judge. However, disclosure would be required in all *Engle* Progeny cases assigned to the inquiring judge's division "[u]ntil no reasonable person would consider the information relevant to a determination of the judge's impartiality."

16. What Is Judge's Responsibility When Spouse or Child Is Employed by or Works with Firm or Governmental Entity That Appears Before Court in Capacity of Party's Legal Representative?

In *Opinion 81-01*, the inquiring judge wanted to know if, as the only circuit judge in a relatively small county, he would need to disqualify himself each time a local attorney employing the judge's spouse appeared in a case before the judge. The committee advised the judge to recuse under these circumstances. More recently, in *Opinion 97-08*, the committee said that a judge should disqualify himself from cases in which his non-lawyer spouse, as a temporary worker, was employed to help a firm on a case scheduled to be heard before that judge.

In *Opinion 87-11*, the committee advised a judge to take steps to ensure that the assistant public defender did not appear before him because the assistant public defender was engaged in the practice of law with the judge's spouse. Similarly, a judge must disqualify himself from a case in which the judge's spouse is a lawyer or supervises lawyers who will appear before the judge. See *Opinion 01-05* (advising that judge should disqualify himself or herself from hearing cases involving public defender when judge's spouse is elected public defender of circuit); *Opinion 99-28* (calling for judge's recusal when his spouse, practicing in another county, represents insurance companies that, in unrelated matters, appear

before judge).

In [Opinion 91-17](#), the inquiring judge was married to an assistant public defender working in the judge's circuit. The judge asked whether she could preside over criminal cases in which the defendant was represented by an assistant public defender other than her husband. The committee determined that the disqualification was not automatic simply because the judge's spouse worked with a lawyer who represented the defendant in a proceeding before the judge. The committee issued a caveat, however, stating as follows: "If, though, the circumstances of the case somehow place your impartiality in question, e.g., your spouse assisted the trial attorney in the preparation of the case, you should disqualify yourself. Otherwise, you should advise the parties your spouse is an assistant public defender in that office, and offer to step down."

In [Opinion 12-33](#), the committee advised that a judge in the circuit criminal division must disclose that the judge's spouse is employed as sworn legal counsel to the local sheriff's office, but only when that office is the investigating or arresting agency, or the judge is aware of other involvement by that office in the case and the judge believes the parties or their lawyers might consider the situation relevant to disqualification.

Sometimes a judge's spouse is not an attorney but is employed by a governmental agency that frequently appears before the court. The committee addressed this issue in [Opinion 90-23](#). The inquiring judge in that opinion stated that his spouse was the district program administrator for the Department of Health and Rehabilitative Services and, as such, was responsible for all aspects of child support enforcement throughout the district that encompassed the judge's court. The committee unanimously agreed that the judge should not preside in any case over which the judge's spouse had supervisory authority. The committee found relevant the fact that the spouse had direct control regarding compensation of attorneys who appeared in court, including the amount they were paid, especially because the compensation of attorneys was directly related to the amount of support collected by the family division judge.

In [Opinion 85-02](#), the committee recommended that a judge disqualify himself in cases involving his son's law firm unless both parties were notified of the relationship and entered into an agreement that the judge could preside. *See also* [Opinion 12-02](#) (county judge whose child works in state attorney's office in same county is not automatically disqualified from all criminal cases; however, parties should be informed); [Opinion 89-21](#) (judge's father was certified mediator, and committee unanimously agreed it would be improper for judge to refer cases to his

father); [Opinion 77-04](#) (brother's position as chief assistant public defender did not by itself disqualify judge from sitting on cases handled by assistant public defender administratively assigned by brother; *but see* [Opinion 11-21](#)); [Opinion 77-12](#) (brother's service as assistant state attorney not necessarily disqualifying, and use of "waiver form" found advisable as long as judge immediately recuses if defendant or attorney in criminal case fails or refuses to file waiver; *but see* [Opinion 11-21](#)).

The following are summaries of other relevant committee advisory opinions;

In [Opinion 12-32](#), the committee advised that where the judge's stepniece was an attorney with the public defender's office, the judge's disqualification was not required in all criminal cases in which a public defender is involved. And when the stepniece appears before the judge, the judge is not *per se* disqualified (disqualification would depend on the closeness of their relationship), but the relationship should be disclosed to the parties and their lawyers.

In [Opinion 11-21](#), the committee advised that a judge should be disqualified from presiding over felony arraignments in a county where the judge's spouse is the supervisor of the state attorney's office.

In [Opinion 10-09](#), the committee advised that a judge married to the elected public defender may not preside over cases to which the public defender is assigned, even if the private attorneys handle the cases without public defender supervision.

In [Opinion 10-08](#), the committee advised that an ethical violation would occur if a judge served as chief judge in a judicial circuit while in a longstanding relationship with one of the general magistrates serving in that circuit.

In [Opinion 08-18](#), the committee advised that a judge who is the spouse of a retired public defender may preside over cases involving the public defender's office, including cases in which the retired spouse may be called to testify in post-conviction hearings (unless spouse actually is called to testify). However, the judge may not preside over public defender cases in which the retired spouse may have been privy to privileged communications.

In [Opinion 07-14](#), the committee advised that a judge is obligated to disqualify himself or herself when a lawyer from a firm employing the judge's spouse as a paralegal appears before the judge.

In [Opinion 05-17](#), the committee recommended that a judge direct a central staff attorney not to work on cases in which the attorney's spouse is involved, but stated

that the attorney is not required to disqualify himself or herself from working on all cases involving the legal department of a governmental agency employing the attorney's spouse as an attorney.

17. Must Judge Disqualify Self If Former Law Partner Is Appearing Before Judge?

In [Opinion 77-11](#), the committee unanimously advised that there is no per se impropriety in a former law partner of the judge practicing before the court. The committee also unanimously agreed that it would be improper for the judge to sit on any case in which the judge had a monetary interest. In [Opinion 01-06](#), the committee elaborated, "assuming that no financial arrangement exists between the inquiring judge and the lawyer in question and, further, that a sufficient time has passed so that no objective person would question the judge's impartiality, the judge need not observe a per se rule of disclosure or disqualification." In [Opinion 01-06](#), the question was whether a judge could preside over a case in which the judge was previously employed as a law clerk by a non-suspended attorney appearing pro se.

In [Opinion 15-01](#), the committee stated that a judge need not disclose or disqualify when a former law partner of the judge's former spouse, who rents space from and shares a receptionist with the judge's former spouse, appears before the judge. The inquiring judge did not receive alimony or support from the former spouse.

18. Must Judge Recuse Self When Attorney Appearing in Case Before Judge Is Spouse of Attorney Representing Judge in Unrelated Civil Matter?

In [Opinion 11-17](#), the inquiring judge asked whether recusal is required when an attorney appearing in a case before the judge is the spouse of an attorney representing the judge in an unrelated civil matter. The spouses were and had always been in different law firms. The committee advised that recusal was not required because the judge's impartiality could not reasonably be questioned in a situation where

an attorney representing a party appearing before the judge is married to an attorney who is representing the judge in an unrelated civil matter, so long as the attorney spouses are not in the same law firm, the attorney representing the judge has never been affiliated with the attorney's spouse's law firm, and the attorney spouse in the case before the judge has no financial stake in the outcome of the judge's

case with the attorney's spouse.

19. Must Judge Recuse Self When Law Firm Appearing in Case Before Judge Represented Judge and/or Family in Prior Case?

For a reasonable period of time after the conclusion of the representation, a judge must recuse in all cases involving the attorney and the law firm that represented the judge and the judge's family in a previous personal injury case. And for a reasonable period of time (several months to one year), the judge must at least disclose the prior attorney-client relationship. [Opinion 12-37](#).

If the judge consulted with, but did not hire, an attorney to represent the judge a year ago, the judge need not recuse from cases in which the attorney or law firm appears as counsel. Whether disclosure is required must be determined on a case-by-case basis. Factors that should be considered on the issue of disclosure "include, but are not limited to, the nature of the claim, the monetary value of the claim, whether or not the judge paid for the consultation, whether or not the consultation had any effect upon the disposition of the claim, and the current relationship between the judge and the attorney/law firm." [Opinion 13-02](#).

20. Must Judge Recuse Self in Cases Involving Entity Whose Employee Is Close Friend?

A judge need not recuse from all cases involving a bank whose loan collection official is the judge's close personal friend, but must recuse when the friend appears as a party, witness, or representative of the bank "or any case in which the judge's impartiality might reasonably be questioned." In cases involving the bank where the judge is not required to recuse, the judge must nevertheless disclose the relationship to the parties. [Opinion 12-37](#).

21. What Is Responsibility of Judge Facing Re-election Campaign When Member of Judge's Campaign Committee Is Opposing Counsel?

A judge facing a re-election campaign must provide notice to parties when a member of the judge's campaign committee is opposing counsel, even in cases that are likely to be handled or disposed of without formal court appearances. The judge may not use campaign literature or campaign funds in providing the necessary notice. [Opinion 13-19](#). A judge facing a re-election campaign who has appointed a campaign committee that includes attorneys must always disclose those attorneys' status to counsel or parties opposing them in proceedings before the judge, but the mere fact that an attorney contributed to the judge's campaign or

helped with the committee does not automatically require recusal. [Opinion 14-09](#).

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Chapter Six

Civic, Charitable, Quasi-Judicial, and Extrajudicial Governmental Activities

1. What Are General Rules Governing Such Activities?

The judicial conduct discussed in this chapter is regulated primarily by [Canon 4](#), quasi-judicial activities, and [Canon 5](#), extrajudicial activities.

2. May Judge Serve on Board of Directors of Charitable Organization?

Yes, but subject to strict limitations. Providing service to a charitable organization is considered extrajudicial activity regulated by [Canon 5](#). Specifically, [Canon 5C\(3\)](#) provides that “[a] judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit,” subject to certain limitations. The judge is not permitted to serve in that capacity if the organization is likely to be engaged in proceedings that ordinarily would come before the judge or if it will be involved frequently in adversary proceedings in the judge’s court or in any court subject to the appellate jurisdiction of the judge’s court. In addition, a judge could not serve on the board of directors if doing so would violate any of the general provisions of [Canon 5A](#), which state that the service must not cast reasonable doubt on the judge’s capacity to act impartially, undermine the judge’s independence, integrity, or impartiality, demean the judicial office, interfere with judicial duties, lead to frequent disqualification, or appear to a reasonable person to be coercive. [Canon 5C\(3\)\(b\)\(i\)](#) states that a judge “shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.” [Canon 5C\(3\)\(b\)\(ii\)](#) provides that a judge “shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive,” and [Canon 5C\(3\)\(b\)\(iii\)](#) provides that a judge “shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.”

The commentary to [Canon 5C\(3\)\(a\)](#) states that judges must regularly examine the activities of each organization with which they are affiliated to determine whether the affiliation is proper. For example, the commentary mentions that in many

jurisdictions, charitable hospitals frequently are involved in litigation. The committee has advised judges to decline appointment to the boards of directors of charitable hospitals. In [Opinion 94-02](#), the committee noted that “hospitals are frequent litigants in courts involving hundreds of small claims actions as well as major malpractice cases.” *See also* [Opinions 03-07](#), [91-32](#), [91-25](#), and [83-09](#).

Judges who serve on the boards of directors of charitable organizations also must be aware of [Canon 5G](#), which prohibits judges from practicing law except under limited circumstances. A judge is prohibited from providing legal advice to the charitable organization. A civil traffic infraction hearing officer may serve as president of a legal aid organization, as long as the organization does not engage in litigation in traffic court, because, unlike judges, civil traffic hearing officers are exempt from [Canons 4](#) and [5](#). [Opinion 14-13](#).

In [Opinion 14-25](#), the committee advised that a circuit judge assigned to the juvenile division may not serve as chair of an organization that “seeks to eradicate human trafficking through education, outreach, training, advocacy and awareness of human trafficking issues for juveniles and adults.” It would cast doubt on the judge’s ability to be impartial, as the organization is dedicated to an issue that is routinely before the judge.

In [Opinion 14-15](#), the committee advised that a judge may serve on the board of directors of a non-partisan women’s non-profit foundation or the Leukemia and Lymphoma Society, which engage in fund-raising activities, as long as the judge does not personally participate in the solicitation of funds or other fund-raising activities.

In [Opinion 13-06](#), the committee advised that a judge who serves in the juvenile division may serve on the board of directors of a not-for-profit organization to be formed to provide financial assistance to needy children and families. While the children and families will be referred to the organization by a local law enforcement agency, and an officer from that agency will serve on the board, the board will not know the identities of the children and families, and the judge will not be involved in fund-raising activities.

In [Opinion 11-18](#), the committee advised that a judge may not be paid pursuant to a contract with a television network for a teaching segment which would involve explaining the law and sentencing choices and interviewing different players in the court system. The activity in question could cast reasonable doubt on the judge’s

capacity to act impartially as a judge and could lead to the judge's frequent disqualification.

In [Opinion 10-38](#), the committee advised that a judge may not serve on the board of a charitable foundation whose principal funding source is the owner of a for-profit program to which the judge refers misdemeanants.

In [Opinion 10-07](#), the committee advised that a judge, who presides in a criminal division may serve on board of directors for a non-profit organization that provides a pre-trial diversion program and social services for juveniles.

In [Opinion 06-05](#), the committee advised that a judge who sits on a charitable organization's "advisory board of directors" may allow his name and position to be listed on the organization's letterhead along with names and positions of all the other board members.

3. May Judge Be Member or Serve on Board of Directors of Civic Organization?

Yes, a judge may be a member or director of a civic organization, but the same requirements under [Canon 5](#) that pertain to charitable organizations govern a judge's involvement in civic organizations. In addition, [Canon 2C](#), which states that judges "should not hold membership in an organization that practices invidious discrimination," is especially important with respect to such memberships. While some charitable organizations may practice invidious discrimination, it is far more likely that a judge would encounter this kind of discrimination in civic organizations.

Judges have been advised to decline an invitation to serve on the boards of directors of Mothers Against Drunk Drivers (MADD) and Students Against Drunk Drivers (SADD). [Opinions 86-06, 82-18](#). Such involvement could cast doubt on a judge's impartiality. *See Fla. Code Jud. Conduct, Canons 3 and 5A(1)*. It also could be seen to be advancing the private interests of others. [Fla. Code Jud. Conduct, Canon 2B](#).

With regard to a judge's involvement in civic organizations, the commentary to [Canon 2C](#) specifically provides that:

This canon is not intended to prohibit membership in religious and ethnic clubs, such as Knights of Columbus, Masons, B'nai B'rith, and

Sons of Italy; civic organizations, such as Rotary, Kiwanis, and The Junior League; young people's organizations, such as Boy Scouts, Girl Scouts, Boy's Clubs, and Girl's Clubs; and charitable organizations, such as United Way and Red Cross.

The following opinions are also of interest regarding a judge's involvement in civic organizations:

- **Opinion 15-12** (judge may not serve as officer, with view toward becoming president, of organization that benefits families of law enforcement officers and firefighters, who lost their lives in line of duty; such service could create reasonable doubt as to judge's impartiality);
- **Opinion 15-11** (judge may serve on board of church-sponsored non-profit organization that plans to establish and manage program to assist ex-offenders in finding job, and otherwise integrating into society, if judge does not assist in fund-raising, participate in administration of public funds, or contact potential employers);
- **Opinion 13-23** (judge may attend and make religious comments from pulpit at church's "God and Country Day," but should not be in group photograph if judge knows or has reason to believe it will be used to advance church's private interests through solicitation of members or donations);
- **Opinion 13-17** (judge may participate in cultural festival cook-off, as long as event is not fund-raiser and judge's participation will not be advertised or used in manner that would lend prestige of office for advancement of private interests of others);
- **Opinion 13-16** (judge may serve on board development committee and board of directors of scouting organization as long as judge does not personally and directly participate in fund-raising or otherwise engage in conduct that could reasonably be deemed to be coercive);
- **Opinion 13-07** (judge may serve as college football referee as long as it does not conflict with judicial duties);
- **Opinion 12-36** (judge may not attend religious organization's fund-raising dinner when invitations mistakenly listed judge as one of the hosts; judge's attendance would lend prestige of judicial office to further private interests

of organization);

- **Opinion 12-31** (chief judge may permit general magistrate or court staff to attend training session sponsored by Salvation Army and FCADV as it concerns law, legal system, and administration of justice and does not involve membership in sponsoring organizations);
- **Opinion 12-30** (judge may not accept award at non-law-related charity luncheon where silent auction will be taking place as event is fund-raiser);
- **Opinion 12-29** (judge participating in charity walk-a-thon may not wear shirt with name of team named for local attorney; judge's spouse may solicit and donate funds on behalf of self and team but not on behalf of judge);
- **Opinion 11-19** (retired judge who wishes to preside as senior judge in future may not serve on board of Innocence Project of Florida unless judge chooses to enter practice of law);
- **Opinion 11-12** (judge may not receive award at fund-raising event for veterans' organization because event is not law-related and veterans' organization is not devoted to law, legal system, or administration of justice);
- **Opinion 11-04** (judge may appear in television public service announcement on juvenile needs and issues and encourage parents to call parenting help line sponsored by private nonprofit organization);
- **Opinion 10-24** (judge may serve as honorary chairman of bar association tennis tournament that is not fund-raising event and is intended to promote bench-bar collegiality);
- **Opinion 10-15** (judge may participate as walker in walk-a-thon fundraiser to benefit charitable organization and make personal contribution to support cause, as long as judge does not solicit sponsorships);
- **Opinion 10-13** (judge may speak about judiciary's role in foreclosures at student rally that also includes President of United States as speaker);
- **Opinion 09-13** (judge may join local gun club to use shooting range where club requires proof of National Rifle Association (NRA) membership

provided judge does not participate in NRA lobbying or fund-raising);

- **Opinion 09-12** (judge may serve on religious organization’s committee that determines whether members qualify for reduced membership dues);
- **Opinion 09-11** (judge may not be member of committee of non-profit organization that educates lawyers and judges about domestic violence and encourages lawyers to provide pro bono services to battered women and children);
- **Opinion 09-04** (judge may serve as officer of alumni association of public university in Florida);
- **Opinion 07-20** (judge may not address partisan group regarding improvements in law, legal system, and administration of and justice for children from foster care through adoption);
- **Opinion 03-01** (judge may serve in organization dedicated to improving community quality of life through improved race relations);
- **Opinion 02-17** (judge permitted to serve as president of non-profit civic organization that provides cultural events and outreach programs);
- **Opinion 01-13** (committee approved of judge’s membership in American Israel Public Affairs Committee);
- **Opinion 00-25** (judge advised that it was appropriate to serve as officer/director of Kiwanis Club Foundation but that nature of legal aid society would determine whether judge could serve as officer or director);
- **Opinion 97-19** (judge allowed to serve on board of lobbying organization);
- **Opinion 96-04** (judge permitted to serve on board of “Character Counts” organization regarding the manufacture, sale, consumption, or use of cutlery items);
- **Opinion 95-34** (judge permitted to serve as uncompensated member of board or advisory committee of non-profit corporation of which main function is researching, locating, recovering, restoring, and displaying of artifacts of historical interest);

- **Opinions 94-47** and **87-10** (membership in Benevolent and Protective Order of Elks and Rotary not proscribed by code);
- **Opinion 94-15** (serving on law school governing board is permitted);
- **Opinion 94-11** (serving as president of private non-profit organization providing grants and scholarships not prohibited as long as judge avoids personally soliciting funds or allowing prestige of office to be used for that purpose).

4. What Does Invidious Discrimination Mean?

“[A]n organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.” [Fla. Code Jud. Conduct, Commentary to Canon 2C](#). The [Commentary to Canon 2C](#) also states that the question of whether an organization practices invidious discrimination cannot be answered merely by looking at that organization’s membership rolls. There are some legitimate reasons that organizations restrict their membership. For example, some organizations are dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interests to their members. Also, intimate, purely private organizations whose membership limitations could not be constitutionally prohibited may limit membership without being invidiously discriminatory. *See Fla. Code Jud. Conduct, Commentary to Canon 2B* (listing citations).

Judges who belong to an organization that engaged in invidious discrimination as of January 1, 1995, the date the [Code of Judicial Conduct](#) became effective, may either resign from the organization or attempt to have the organization discontinue its invidiously discriminatory practices. A judge who attempts to convince the organization to change its discriminatory practices, however, is prohibited from participating in the organization’s activities until the discrimination ceases, and the judge has only one year from the time the judge learns of the discriminatory practice in which either to persuade the organization to change its practices or to resign.

5. May Judge Be Member of Governmental Committee, Commission, or Task Force?

[Canons 4](#) and [5](#) provide that a judge may be a member of a governmental committee, commission, or task force, but there are numerous restrictions on such

membership. In addition to the restrictions that apply to service on the boards of directors of charitable and civic organizations, the governmental committee must be involved in the improvement of the law, the legal system, or the administration of justice. [Florida Code Jud. Conduct, Canons 4C, 5C\(1\), and \(2\)](#).

The following opinions are of interest with regard to a judge's involvement in governmental committees, commissions, and task forces:

- **Opinion 16-11** (judge may not serve on School Advisory Council assisting with preparation and evaluation of School Improvement Plan because it operates for non-law related public school; but judge may serve on board of nonpartisan or bipartisan public awareness organization);
- **Opinion 14-20** (judge may not serve on statutorily created county development authority that decides grant requests “from industry seeking to start or relocate in the county and from local governments seeking to upgrade their infrastructure” because it would involve funding issues that are not related to the improvement of the law, legal system, judicial branch, or administration of justice);
- **Opinion 13-03** (judge may not participate in county elections task force to address issues encountered in judge's county and throughout state during general election; issues would likely involve activities that could call into question judge's ability to be fair and impartial, constitute comment on pending litigation, and be controversial);
- **Opinion 11-05** (judge may not chair nonprofit organization designed to assist, promote, and support public school board and superintendent in activities that improve quality of instruction in public school system within judge's circuit);
- **Opinion 09-14** (judge may not appoint members to board of ethics created by ordinance for benefit of municipal government);
- **Opinion 09-06** (judge may not serve on local county ethics commission for purpose of establishing code of ethics for county commission);
- **Opinion 07-03** (judge may serve on government reform commission);
- **Opinion 06-29** (judge may not join law enforcement auxiliary);

- **Opinion 06-23** (judge may serve on county's affordable housing advisory board and as board member of county's public policy institute);
- **Opinion 06-09** (judge who was formerly staff attorney with legal services organization may submit congratulatory message for advertisements for event for that organization);
- **Opinion 06-04** (judge may not serve on congressional district selection committee to help select nominees for military academies);
- **Opinion 05-13** (judge may attend legal seminar sponsored by criminal defense lawyers association or equivalent prosecutors group);
- **Opinion 01-16** (judge advised not to serve as appointed member of commission of municipal government charged with fiscal oversight of government funds);
- **Opinion 99-20** (judge may serve on Florida Bar Civil Procedure Rules Committee);
- **Opinion 99-07** (judge may serve on board of directors of county's commission on substance abuse);
- **Opinion 98-26** (judge may serve on mayor's victim assistance advisory council);
- **Opinion 97-20** (judge may serve on county criminal justice commission);
- **Opinion 96-22** (attending education assembly for revision of educational system is permitted);
- **Opinion 95-36** (judge may serve on alcoholism committee);
- **Opinions 95-14, 94-38, and 94-33** (serving on governor's task force on domestic violence is not prohibited if activities are law-related and gender neutral and judge has evaluated reputation of task force to determine whether judge would be perceived as impartial and whether such service would result in frequent motions for disqualification); *but see* **Opinion 01-14** (judge cannot serve on domestic violence task force if it appears to have become advocacy group);

- **Opinions 93-46** and **93-39** (judge may serve on local children’s advisory board that recommends how funds will be spent locally because such service is related to improvement of administration of justice; however, judge should not serve or should limit participation if board is likely to be engaged in proceedings that come before judge or if participation would reflect adversely on judge’s impartiality or interfere with judicial duties);
- **Opinions 88-30** and **88-24** (judge may serve on alcohol, drug abuse, and mental health district planning council);
- **Opinion 87-20** (serving on governmental criminal justice advisory board to help qualify county for assistance from federal government for planning new jail facility is permitted because committee’s work is law-related);
- **Opinion 87-05** (judge should not serve on governmental fine arts council because function of council is not law-related).

6. May Judge Participate in Raising Funds for Civic, Charitable, and Governmental Organizations?

Canons 4 and **5** permit a judge to assist civic, charitable, and governmental organizations in planning fund-raising and in managing and investing funds, but both canons prohibit judges from participating in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge may appear or speak at a fund-raising event only if the event concerns the law, the legal system, or the administration of justice, and the funds raised will be used for a law-related purpose. In addition, a judge may not participate personally in membership solicitation if the solicitation might reasonably be perceived as coercive, and the judge may use court premises, staff, stationery, equipment, or other resources only for activities that concern the law, the legal system, or the administration of justice. [Fla. Code Jud. Conduct, Canons 4D\(2\)](#) and [5C\(3\)](#).

The following are summaries of committee opinions related to judicial participation in fund-raising:

- **Opinion 15-13** (judge facing re-election may attend non-partisan political rally fund-raiser for Chamber of Commerce; there was no indication that Chamber planned to use funds to make contributions to selected political candidates);

- **Opinion 15-05** (judge may not, as member of board of directors of District Court of Appeal Historical Society, encourage others to participate in walk/run fundraiser sponsored by bar association to support pro bono project unless solicitation is limited to judges over whom judge does not exercise supervisory or appellate authority; however, judge may participate as team captain and coordinate logistics such as snacks and T-shirts);
- **Opinion 14-24** (judge may donate funds remaining in campaign account to 501(c)(3) organization on whose board judge serves where there has been no “personal, active, direct or individual solicitation of anyone by the judge”);
- **Opinion 14-26** (judge may donate money to legal aid organization whose attorneys appear before judge if circumstances would not cause reasonable perception that judge’s ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired);
- **Opinion 14-15** (judge may contribute to, but may not personally participate in fund-raising for, a women’s non-profit foundation of which that judge is member);
- **Opinion 14-07** (judge who is member of regional Association for Women Lawyers may model for cocktail party and fashion show where proceeds “primarily benefit . . . a free childcare facility located inside the . . . courthouse” but also help fund association’s “assistance to deserving law students in need of financial support”; committee found activities to be related to improvement of law, legal system, and administration of justice);
- **Opinion 13-18** (judges assigned to specialized domestic violence division may not participate in or attend fund-raising walk-a-thon sponsored by nonprofit organization whose mission is to raise awareness for domestic violence victims and provide them with support);
- **Opinion 13-05** (judge assigned to dependency division may allow individuals or groups to donate items for children to play with while children are in court, as long as neither judge nor judge’s court personnel solicits donations);
- **Opinion 12-26** (judge may ask local bar association to hold lunch meeting so judge may solicit attorneys to volunteer as pro bono attorneys ad litem for children in dependency cases, if request would not appear to reasonable

person to be coercive or cast doubt on judge's ability to be impartial; but judge may not accept association's offer to raise funds to pay for meeting, because it supports guardian ad litem volunteers and children they represent and would thus raise doubt about judge's ability to be impartial);

- **Opinion 12-24** (judge may give keynote speech at Girl Scouts council's annual business meeting and award ceremony, which are not fund-raisers, but "judge is cautioned that her name or likeness may not be used by the Girl Scouts to solicit funds or membership");
- **Opinion 12-04** (judge who is member of supreme court standing committee may not directly solicit donations from voluntary bar associations for printing and distributing brochure committee drafted regarding perception of fairness in Florida courts; judge's committee activities were consistent with **Canon 4D(2)** but solicitation of funds was not);
- **Opinion 11-15** (**Canon 5** permits judge seeking re-election to be hole sponsor at charity golf tournament hosted by Young Lawyers Section of local bar association although proceeds at event will benefit various non-law related projects);
- **Opinion 11-13** (judge may not directly solicit local banks and businesses to assist in providing goods and/or services to "financial literacy" program that educates families on money management issues);
- **Opinion 11-06** (judge may assist in planning fund-raising and may make recommendations for YWCA program that provides supervised childcare to parents and guardians attending court-related matters, but may not be speaker, guest of honor, or otherwise be featured at fund-raising event for YWCA, an organization that is not solely devoted to law, legal system, or administration of justice);
- **Opinion 09-15** (judge may not permit local non-profit legal services corporation, as part of fund-raising, to use video interview of judge filmed while judge was lawyer in private practice);
- **Opinion 09-07** (judge may not attend and receive award at fund-raising event for organization involved in domestic and international education projects);

- **Opinion 08-23** (judge may purchase congratulatory advertisement for program materials for Anti-Defamation League where ad would include judge's name);
- **Opinion 08-17** (judge may be speaker at fund-raiser dinner for drug court but must ensure both event and sponsoring entity are devoted to improvement of law, legal system, judicial branch, or administration of justice).

An organization in which a judge is an officer or director may use its letterhead for fund-raising or membership solicitation “provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.” In addition, a judge may attend an organization's fund-raising event if such attendance is otherwise consistent with the code, but the judge may be a speaker or guest of honor at such an event only if the event concerns the law, the legal system, or the administration of justice and the funds raised will be used for law-related purpose(s). [Fla. Code Jud Conduct, Commentary to Canons 4D\(2\)\(b\) and 5C\(3\)\(b\)](#).

The Florida Supreme Court publicly reprimanded a judge for promoting, advertising, and conducting gambling with respect to a golf tournament. [In re Byrd, 460 So. 2d 377 \(Fla. 1984\)](#).

The following committee opinions are of interest with regard to a judge's involvement with the financial activities of civic, charitable, and governmental organizations:

- **Opinion 16-01** (judge could not sit on board of charter school even if service is limited to “as it pertains to the functions that are solely related to combating illiteracy in the community” and not related to operation of school: “service on a board of directors cannot be divided in the way the inquiring judge describes”);
- **Opinion 15-02** (judge may not attend award luncheon to accept award and be inducted into County Hall of Fame sponsored by county's Women's History Coalition, where program advertisements are sold to raise funds for sponsoring organization (citing [Opinion 99-09](#)), even if judge takes steps to avoid judge's name being used for fundraising in any way).
- **Opinion 12-16** (judge may not serve on board of non-profit organized to bid

for state contracts as entity as entity “would be in essence a governing entity” not devoted to improvement of law, legal system, judicial branch, or administration of justice; rather, entity organizers sought to use prestige of judicial office to advance interest of entity and vendor);

- **Opinion 11-14** (judge may not serve as waiter at charitable organization’s fund-raiser luncheon when wait staff will be composed of elected officials and contributions will be collected by nonjudicial elected officials);
- **Opinion 11-13** (judge may not directly solicit local banks and businesses to assist in providing goods and/or services to “financial literacy” program that educates families on money management issues);
- **Opinion 11-12** (judge may not participate by receiving award at fund-raiser for veterans’ organization);
- **Opinion 11-03** (judge may not accept award civic organization advertised it will bestow on judge at fund-raising event);
- **Opinion 10-33** (judge may not accept award from organization that provides business training and networking for women);
- **Opinion 10-32** (judge may participate in skit for American Inn of Court in contest with award of charity contribution);
- **Opinion 10-31** (chief circuit judge may send letter to “Members of the Bar” soliciting lawyers’ participation in pro bono campaign of The Florida Bar);
- **Opinion 10-23** (non-judge judicial candidate may wear campaign badge or button and distribute campaign literature at fund-raising event for charity; *but see Opinion 11-15*);
- **Opinion 10-17** (judge may contribute money to local legal aid society in lieu of performing pro bono legal service hours);
- **Opinion 09-15** (judge may not permit local non-profit legal services corporation, as part of fund-raising, to use video interview of judge filmed while judge was lawyer in private practice);
- **Opinion 09-07** (judge may not attend and receive award at fund-raising

event for organization involved in domestic and international education projects);

- **Opinion 08-23** (judge may purchase congratulatory advertisement for program materials for Anti-Defamation League where ad would include judge's name);
- **Opinion 08-22** (judge may not appear as guest actor in fund-raising dance production sponsored by ballet company organized as charitable organization; judge may not allow judge's name to be used to advertise event);
- **Opinion 08-20** (judge may serve on executive committee for non-profit charitable organization if judge not directly involved in fund-raising);
- **Opinion 08-17** (judge may be speaker at fund-raiser dinner for drug court but must ensure both event and sponsoring entity are devoted to improvement of law, legal system, judicial branch, or administration of justice);
- **Opinion 07-18** (judge should not solicit business donations but may solicit volunteers to volunteer time to non-profit corporation);
- **Opinion 07-08** (judge may not serve on board of trustees for branch campus of state university);
- **Opinion 07-07** (judge should not allow use of his or her photograph on billboards promoting county library system);
- **Opinion 07-05** (judge should not solicit or receive gifts from lawyers for use as rewards to drug court participants);
- **Opinion 07-04** (judge should not provide fund-raising auction items identifiable as items made by judge);
- **Opinion 06-28** (opinion lists answers to multiple questions regarding proposed fund-raising and charitable organization activities);
- **Opinion 06-17** (judge may participate in Mothers Against Drunk Driving panel discussion regarding underage drinking);

- **Opinion 06-06** (judge may attend holiday party hosted by guardian ad litem program but may not accept gifts);
- **Opinion 05-14** (judge may forward to charity donations sent in response to solicitation letter written by judge prior to seeking appointment to bench but may not run race sponsored by this same charity and intended to raise money for charity);
- **Opinion 05-12** (judge may not produce and narrate video in which judge asks support for court restoration when video is to be used for fund-raising);
- **Opinion 03-21** (receding from **Opinion 80-1**, committee advised inquiring judge not to serve on board of trustees of community college);
- **Opinion 01-09** (opinion lists breakdown of answers to multiple questions regarding proposed fund-raising and charitable organization activities; judge may decorate hall, set prices for sale items, and donate items for charitable sale as long as judge is not identified as donor; judge may not be featured speaker, host social gathering, or be present if judge's spouse hosts charitable fund-raising event in family home);
- **Opinion 00-31** (judge advised not to serve as chairperson for kick-off event preceding fund-raising auction);
- **Opinion 00-15** (judge may not tape public service announcement advising community of non-profit organizations in area to which community can lend its support);
- **Opinion 99-15** (judge may not speak at alumni banquet fund-raiser);
- **Opinion 99-09** (judge advised against receiving award and being inducted into county women's hall of fame at annual luncheon for which program advertisements were sold to raise funds for organization; receiving award would lend prestige of judicial office for fund-raising);
- **Opinion 98-32** (judge advised not to participate in charity fashion show as emcee);
- **Opinion 96-27** (judge may participate in building Habitat for Humanity house; judge may not present or portray Habitat building project as project

of judge of county and must not call attention to himself or herself as judge; judge may also “gently” solicit judicial colleagues over whom judge has no supervisory or appellate authority);

- **Opinion 95-22** (judge should not personally participate as team member in ongoing bingo games at local senior citizens center as fund-raising project for civic organization);
- **Opinion 94-33** (judge should not solicit in-kind donations as chair of domestic violence task force in judge’s circuit);
- **Opinion 94-30** (judge should not solicit businesses to contribute to cost of creating videotapes for court system project to create juvenile justice education videotape to be used in public school instruction);
- **Opinion 93-61** (judge should not serve on honorary advisory board of directors of beach resort association because presence could lend prestige of judicial office to private interests of others);
- **Opinion 92-38** (judge should not personally collect coats and gloves to be distributed through religious charity to needy persons);
- **Opinion 89-19** (judge may participate in fund-raising sports event to extent that judge would hold sideline marker and would not be identified either before or during event as member of judiciary).

Although [Canon 5C\(3\)](#) permits a judge to serve as a trustee of an educational organization not conducted for profit, there are limiting exceptions found in [Canon 5C\(2\)](#). That section prohibits judges from accepting appointments to governmental positions that are concerned with issues other than improvement of the law, the legal system, or the administration of justice. The [Canon 5C Commentary](#) makes this distinction clear where it says, “. . . service on the board of a public educational institution, unless it were a law school, would be prohibited under [Canon 5C\(2\)](#), but service on the board of a public law school or any private educational institution would generally be permitted under [Canon 5C\(3\)](#).”

7. May Judge Create and Privately Maintain Website or Social Media Account?

Nothing in the code suggests that a judge’s maintenance of a private website would

give the appearance of impropriety, as long as the website complies with all provisions of the code. The committee addressed this issue in [Opinion 11-01](#). A judge's website must not be of a commercial nature, and the judge establishing a site should avoid links to commercial sites. The judge should exercise caution in linking to other websites because of the potential for perception of an endorsement of the contents and/or creator of such other website. A judge's website may not be used as a forum for the discussion of pending legal matters or otherwise be maintained so as to cast reasonable doubt on the judge's capacity to act impartially as a judge. [Fla. Code Jud. Conduct, Canons 3B\(9\), 5A\(1\)](#). A judge may publish a blog that reports and links to cases, "where the entries are intended to be neutral, nonjudgmental, brief summaries of the facts and holdings." [Opinion 12-07](#).

A judge's website may be used for campaign purposes, subject to requirements and restrictions of [Canon 7](#). A judge's personal website may not be used to solicit campaign support or contributions, but the judge's campaign committee may create a website for lawful purposes described in [Canon 7C\(1\)](#). [Opinion 14-04](#). If the website seeks solicitation of funds or public support for the campaign, it should make clear that it is maintained by the committee and not the candidate personally. [Opinion 12-15 \(Election\)](#). The website can include a link to facilitate contributions, "[s]o long as the contributions are solicited by the committee, and the contributions are payable to the "Committee to Elect [candidate]." [Opinion 14-04](#).

A judge running for re-election may create a Twitter account under certain circumstances. However, to avoid the possibility of ex parte communications, it would be more prudent for the judge's campaign manager to create and maintain the account. [Opinion 13-14](#).

8. May Judge Speak to County Commission in Support of Funding Request?

In [Opinion 12-22](#), a judge had inquired whether the judge was permitted, with the chief judge's approval, to appear before the county commission and speak in support of a specific software funding request. The committee concluded this was permissible and reiterated that a judge may lobby a governmental body as to "issues concerning the law, the legal system, and the administration of justice." It did caution the judge not to support a particular software provider or product, "to avoid violating [Canon 2B's](#) prohibition against lending the prestige of the judicial office to advance the private interests of another." It also noted that "[t]he Code does not prohibit the judge from speaking privately to individual commissioners

about this funding request, so long as the conduct is not otherwise prohibited by law,” such as Florida’s Sunshine Law.

9. What Activities Are Permissible for Judge in Order to Secure Volunteers for Judicial System-Related Programs?

In [Opinion 13-10](#), a judge assigned to dependency court sought to address the significant lack of foster and adoptive parents for children in the dependency system. The judge’s inquiry was whether the judge could create and allow to be broadcast public service announcements (PSAs) soliciting volunteers to serve as foster parents or adoptive families. The committee advised that the judge could do so as long as the judge’s conduct does not appear to a reasonable person to be coercive or cast reasonable doubt on the judge’s capacity to act impartially as a judge. The committee also advised that the judge could use the circuit’s technology department to produce the PSAs, as long as “the use is merely incidental based on the factors outlined in this decision, and the request is made in a non-coercive manner.” If the department is not able to produce the PSAs, the judge may not solicit media outlets or a public university to produce them unless those entities provide such services to anyone who requests them. The judge or court administrator may not ask media outlets to broadcast the PSAs. However, the judge provide PSAs to the DCF, which may ask media outlets to broadcast them, as long as the judge’s conduct does not appear to a reasonable person to be coercive or cast reasonable doubt on the judge’s capacity to act impartially as a judge.

A judge may make a public appeal for potential foster parents in a circuit or county where the vetting and training of foster parents is performed by a nonprofit agency that is reimbursed for its administrative costs, if the judge does not conduct the appeal “in a manner reasonably perceivable as coercive or casting doubt on the judge’s ability to handle such cases impartially, the judge holds no personal stake in the agency in question, and the judge does not attempt to influence the distribution of training assignments.” [Opinion 14-23](#).

A judge is permitted to educate friends, family, and other members of the community about dependency court and the guardian ad litem program in an effort to secure volunteers for the program, as long as the judge’s conduct “does not appear to a reasonable person to be coercive or cast reasonable doubt on the judge’s capacity to act impartially as a judge.” [Opinion 13-09](#).

10. May Judge Review or Critique Book?

In [Opinion 12-34](#), a judge had been asked by a university editorial board to critique a book written by a defense attorney in a well-publicized criminal case. The committee advised that, although writing the critique was a permissible activity under the [Code of Judicial Conduct](#), the better practice would be to decline the request, given the Code restrictions that would be placed on the judge in this case.

11. What Law-Related Teaching Activities May a Judge Participate In?

A judge may teach at a one-day training session for judges, magistrates, and court staff on how to deal with domestic violence issues, as long as the teaching activities do not cast reasonable doubt on the judge's ability to act impartially.

[Opinion 15-04](#) ("judge has been asked to help educate court personnel, not to join, support or endorse a private organization").

A judge may not give a private educational presentation to the summer law clerks of the judge's former law firm. [Opinion 15-06](#) (it would give appearance of judge maintaining close ties with that firm, and it would be impossible for judge to provide same educational opportunities to any law firm that might make similar request).

12. Quasi-Judicial and Extrajudicial Activities: Questions to Ask Before Joining Organization or Serving on Committee or Board

Quasi-Judicial Activities

A. Is the organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice?

If so, then membership is regulated by [Canon 4](#), and the express authority for serving is [Canon 4D](#).

B. Will the organization be engaged in proceedings that will come before a judge, or will it be engaged in frequent adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member?

If yes, then [Canon 4D\(1\)](#) probably prohibits membership, and if the judge is already a member, he or she should resign.

C. Will membership cast reasonable doubt on impartiality; will it undermine integrity, independence, or impartiality; will it demean the judicial office; will it interfere with the proper performance of judicial duties; will it lead to frequent disqualification; will it appear to a reasonable person to be coercive?

For the most part, a judge is encouraged to serve organizations devoted to improving the law, the legal system, the judicial branch, and the administration of justice. However, there are organizations that may occasionally advocate controversial legal positions about disputed matters, and the test for continued membership is whether membership could raise a reasonable doubt about a judge's impartiality or convey an impression that the organization or its supporters are in a special position to influence the judge.

Another consideration is the dignity of the organization in question. A judge should not engage in any activity that would detract from the integrity, impartiality, or performance of the judge's duties with diligence.

Finally, because of the need to devote full time to judicial duties and perform the judicial role diligently, a judge must ask whether the commitment to membership or to service in some official capacity in an organization will interfere with the proper performance of his or her judicial responsibilities.

D. Is the organization involved in fund-raising of any sort, and will the judge be called upon to participate in soliciting funds for the support of the organization?

The mere fact that an organization solicits financial support does not disqualify a judge from membership or even from service on a board. However, according to [Canon 4D](#), a judge must not directly participate in soliciting money except that he or she may solicit funds from other judges over whom the judges does not exercise supervisory or appellate authority, and he or she may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit his or her title to be used in conjunction with a fund-raising event if the event concerns the law, the legal system, or the administration of justice and the funds raised will be used for a law-related purpose.

Under [Canon 2B](#), a judge cannot lend the prestige of office to advance the judge's own interests or the interests of others, so he or she must be very careful to assess how the organization might use his or her name. A judge can assist the organization in planning fund-raising and in managing the funds once they are

raised. A judge's name may appear on organizational letterhead along with the office held in the organization. Even judicial designation may appear on the letterhead if comparable designations (e.g., "M.D."; "Ph.D."; "Attorney at Law") are listed for other persons. A judge must not, however, write or sign a fund-raising letter. A judge may use court premises, staff, stationery, or other resources only for activities that concern the law, the legal system, or the administration of justice.

E. Are the nature and purpose of the organization changing; is it advocating new positions; are its membership rules changing; has it begun to appear in legal proceedings?

As a caveat, a judge must continually engage in the analysis of these questions. Quasi-judicial organizations devoted to improving the law, the legal system, and the administration of justice can from time to time shift focus and begin to take positions that advocate particular legal outcomes or suggest a proclivity for favoring one class of persons or potential legal parties over others. Some organizations might be viewed as having developed a plaintiff's bias, or as being pro-defense and anti-prosecutorial, or vice versa. A judge who is a member of such an entity has to maintain current knowledge of the organization's official positions and policies and must be prepared to step away if judicial integrity or impartiality could reasonably be questioned based on the judge's membership.

Extrajudicial Activities

A. What is the purpose of the organization?

If the organization is not specifically devoted to improving the law, the legal system, or the administration of justice, then membership is governed primarily by [Canon 5](#). Because [Canon 2A](#) requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, a judge must be very much aware of the mission, purpose, goals, objectives, and activities of any organization in which he or she hold membership or office.

B. Will the organization be involved in proceedings that will come before the judge, or will it be engaged in frequent adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member?

If so, as in its parallel provision in [Canon 4](#), [Canon 5C\(3\)\(a\)](#) likely precludes membership because the need for frequent recusal would interfere with the

performance of judicial duties.

C. Will membership cast reasonable doubt on a judge’s impartiality, demean the office, or interfere with the proper performance of judicial duties?

[Canon 5A](#) requires a judge to conduct all extrajudicial activities so that they do not cast reasonable doubt on the judge’s impartiality. It is clear from reading [Canon 5C\(3\)\(a\)](#) that a judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, sororal, or civic organization not conducted for profit. Yet, a judge must be vigilant in monitoring organizational activities and positions that the organization might take on controversial legal or political issues.

Regarding affiliations that might demean judicial office as well as compromise judicial integrity and perception of impartiality, a judge may not maintain membership in any organization that engages in “invidious discrimination.” According to the [Commentary to Canon 2C](#), that means a judge must not join, or, if currently a member, he or she must disassociate himself or herself from, any organization that “arbitrarily excludes” persons from membership on the basis of race, religion, gender, or national origin. There is only one exception to the immediate disassociation requirement; a judge may attempt to persuade the organization to discontinue the invidiously discriminatory practices, but if he or she does not succeed in convincing the organization to abandon the practices within one year, the judge must resign.

The [Canon 2B Commentary](#) acknowledges that there are legitimate reasons for organizations to restrict membership, and it specifically mentions organizations dedicated to preserving religious, ethnic, or cultural values of legitimate common interest to members. The commentary also acknowledges the existence of “intimate, purely private organizations whose membership limitations could not be constitutionally prohibited.” Although the list is not exclusive, by way of example, the commentary mentions a number of non-prohibited organizations by name, including Knights of Columbus, Masons, B’nai B’rith, Sons of Italy, Rotary, Kiwanis, the Junior League, Boy Scouts, Girl Scouts, Boy’s Clubs, Girl’s Clubs, United Way, and Red Cross.

As with quasi-judicial organizational involvement under [Canon 4](#), a judge must also ensure that commitments to extrajudicial activities under [Canon 5](#) do not compromise the judge’s ability to devote full time to performing judicial properly

duties.

D. Is the organization involved in fund-raising of any sort, and will the judge be called upon to participate in soliciting funds to support the organization?

As with quasi-judicial organizational involvement under [Canon 4](#), a judge may not personally or directly solicit funds from anyone other than another judge over whom he or she does not exercise supervision or appellate jurisdiction. A judge may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. [Fla. Code Jud. Conduct, Canon 5C](#).

E. Are the nature and purpose of the organization changing; is it advocating new positions; are its membership rules changing; has it begun to appear in legal proceedings?

As a caveat, these are questions that a judge must ask himself or herself regularly. Numerous committee opinions advise judges to remain attuned to the changing nature of various organizations and caution judges to reconsider membership periodically based on the preceding criteria.

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Chapter Seven

Personal Finances and Financial Disclosure

1. Must Judge File Public Financial Report?

[Canon 6B\(1\)](#) provides that a judge must file “such public report as may be required by law for all public officials to comply fully with the provisions of [Article II, Section 8, of the Constitution of Florida](#).” The form for reporting must be the form recommended or adopted by the Florida Commission on Ethics for use by all public officials.

2. What Gifts May Judge Receive and Must Gifts Be Reported?

[Canon 6](#) requires that a judge file a public report of all gifts required to be disclosed under [Canon 5D\(5\)](#). [Canon 5D\(5\)](#) provides that a judge must not accept a gift, bequest, favor, or loan except the following:

- (a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge’s spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;
- (b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge’s household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
- (c) ordinary social hospitality;
- (d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;
- (e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under [Canon 3E](#);

- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, favor, or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds \$100, the judge reports it in the same manner as the judge reports gifts in [Canon 6B\(2\)](#).

The following are summaries of relevant committee opinions:

- **Opinion 14-01** (judge may display art from local government’s art-in-public-places program, assuming judge is not part of selection process);
- **Opinion 13-12** (general magistrate (and therefore judge) may accept and use “government rate” discount applicable to all attorneys employed by government for tickets to local legal aid organization’s annual gala, but should be careful not to cause reasonable person to doubt magistrate’s capacity to act impartially);
- **Opinion 10-11** (judge may retain attorney, negotiate fee reduction, and accept from former employer partial reimbursement of attorney’s fee but may be required to report fee reduction as gift);
- **Opinion 09-16** (judge may exchange lesser valued sporting-event tickets with friend who is lawyer, but only if absent ticket exchange judge would disqualify self from cases involving lawyer and his firm; judge may consider aggregate value of tickets in complying with gift reporting rule);
- **Opinion 08-19** (judge may not accept invitation to hunt with former litigant’s husband on land that former litigant’s family controls);
- **Opinion 01-10** (judge may receive retirement or reassignment gifts, but gifts must be reported);
- **Opinion 00-20** (judge may attend law-related functions, including luncheons, to which fees are waived for judiciary);

- **Opinion 00-08** (judge is ethically obligated to instruct applicable court employees to act in manner consistent with judge's ethical duties and obligations regarding acceptance of gifts);
- **Opinion 97-36** (even if non-judge spouse has disclosed gift publicly, judge must do so as well);
- **Opinion 97-27** (judge may not accept honorary membership in Air Force Officer's Club, even if offered to all judges and city officials, reaffirming **Opinion 83-05** advising against gift acceptance when it seems to be attempt to gain favor with courts);
- **Opinion 95-19** (judge may accept complimentary tickets to American Jewish Committee dinner as long as gift is reported);
- **Opinion 94-18** (judge need not report gift from father or bequest from mother's estate; gifts and bequests fall within purview of Canon 5C(4)(b) [now **Canon 5D(5)(e)**], not Canon 5C(4)(c) [now **Canon 5D(5)(h)**]);
- **Opinion 94-12** (judge may accept \$500 in gift certificates from anonymous donors and local bar association in honor of judge's retirement);
- **Opinion 93-67** (judge may accept Christmas gifts from tenant of business property judge owns, assuming tenant was not party or other person whose interests have recently come or may likely come before judge);
- **Opinion 92-16** (judge who escorts newspaper columnist to various social and civic affairs and who has his tickets paid for by newspaper should report them as prescribed by **Canon 6** when cumulative value exceeds \$100);
- **Opinion 92-15** (judge may not accept gift of free golf course membership from golf course developer; inquiring judge was only judge in circuit to whom gift was offered);
- **Opinion 92-07** (judge should not accept free passage on cruise ship in exchange for lecture on law or judicial system; activity would detract from dignity of judicial office and exploit judicial position);
- **Opinion 91-07** (baby shower gifts should be reported as other gifts are reported).

The most important development for judges to understand in these blanket

honorary membership scenarios is that a careful reading of [Opinion 97-27](#) shows that even if all judges are offered the same benefit, that alone is not sufficient to make acceptance of the benefit permissible. This was a possible misperception after [Opinion 92-15a](#), which was expressly receded from in [Opinion 97-27](#). The committee has made it clear that if an entity is attempting to gain favor, whether with an individual judge or all judges in the circuit, acceptance of the benefit is prohibited by the code, even when it is offered across the board to all judges in a geographic area.

3. May Judge Accept Honorarium for Presenting Lecture?

[Canon 6](#) provides that a judge may receive compensation for extrajudicial activities permitted by the code if the source of payment does not give the appearance of influencing the judge in the performance of his or her duties or give the appearance of impropriety. The compensation may not exceed a reasonable amount or what a person who is not a judge would receive for the same activity. *See* [Opinion 92-45](#) (judge may lecture at legal seminar scheduled during normal court hours and sponsored by private corporation if judge can show why that time of lecture would not detract from proper performance of judicial duties and can also show that judge is devoting full time to judicial duties; judge would be paid honorarium, and judge's expenses would be covered); [Opinion 07-09](#) (judge may participate in panel discussion as part of continuing education seminar sponsored by private, for-profit organization and may receive compensation and allow his photo and biographical profile to be used in advertising seminar); [Opinion 07-15](#) (judge who is member of canvassing board may accept reimbursement from elections supervisor for expenses for seminar on elections law).

4. May Judge Serve as Officer or Employee of Business?

A judge may, subject to the requirements of the code, manage and participate in a business closely held by the judge or members of the judge's family or a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family. [Fla. Code Jud. Conduct, Canons 5D\(3\)\(a\) and \(3\)\(b\)](#). *See* [Opinion 90-14](#) (serving as paid consultant who evaluates profit-making enterprise's drug rehabilitation and related activities outside county in which judge sits is not permitted because service would violate [Canon 5C\(2\)](#)).

A notable committee opinion is [Opinion 95-04](#), in which the inquiring judge asked whether it was permissible to sell Amway products. The committee stopped short of a complete prohibition of such activity, but relying on the reasoning of an earlier opinion dealing with a judge who wished to offer his boat for charter fishing, the

committee suggested five critical time, place, and manner restrictions that are pertinent to any “for-profit” venture a sitting judge might wish to consider. The restrictions are:

1. No solicitation allowed from lawyers who practice before the judge;
2. No use of judicial title permitted in connection with the business venture;
3. No use of court time or equipment allowed for the venture, which must also be conducted on personal time after hours, on the weekends, or during vacations;
4. No fees or rates for products or services may be charged that are not competitive or at the prevailing rate that a non-judge would charge for similar work; and
5. No transactions may be omitted from the full public financial disclosure required by [Canon 6B\(1\)](#).

A number of other opinions address extrajudicial employment and demonstrate the need to consider each business or employment opportunity carefully on a case-by-case basis:

- [Opinion 16-17](#) (judge may not own interest in, be employed by, or be compensated for services provided by closely held business with person who is not member of judge’s family, nor may judge be employed by business judge’s spouse owns interest in with person who is not member of judge’s family);
- [Opinion 16-12](#) (judge may not work for for-profit company on commission basis securing potential investors);
- [Opinion 10-27](#) (judge may provide free seminar to provide lawyers with information about how to present cases to judges);
- [Opinion 09-05](#) (judge may sit as senior judge and traffic hearing officer in same judicial circuit);
- [Opinion 08-25](#) (judge may serve as officer or director of closely held family corporation and may receive compensation from corporation based upon

percentage of value of property to be sold);

- **Opinion 07-01** (part-time traffic hearing officer may rent office space from law firm handling traffic matters and may work for firm as independent contractor on non-traffic cases);
- **Opinion 06-32** (judge must direct judicial assistant not to work after hours cleaning offices of attorneys likely to appear before judge);
- **Opinion 06-02** (senior judge may work for newspaper but may not own interest in newspaper for which ownership interest will require judge to manage newspaper);
- **Opinion 03-21** (advising judge against service on board of trustees of community college because it is government service not related to law, legal system, or administration of justice);
- **Opinion 02-17** (advising judge that it is permissible to be president of non-profit civic organization promoting cultural events for county);
- **Opinion 01-16** (disapproving service as appointed member of commission of municipal government charged with fiscal management of government funds);
- **Opinion 01-07** (approving service on board of advisors for publication dedicated to criminal justice system and mentally ill, which position is unpaid and is related to practice of law and improvement of legal system);
- **Opinion 00-09** (judge may serve as board member for non-profit corporation as long as not involved in fund-raising);
- **Opinion 97-35** (advising against service as part-time director in for-profit corporation);
- **Opinion 95-45** (warning against serving on credit union board of directors);
- **Opinion 95-31** (advising inquiring judge not to serve as bank director).

5. May Judge Practice Law?

A judge may not practice law. However, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for members of

the judge's family. [Fla. Code Jud. Conduct, Canon 5G. Article V, section 13, of the Florida Constitution](#) provides that judges must devote full time to their judicial duties and may not engage in the practice of law or hold office in any political party.

- **Opinion 15-07** (judge may serve as corporate officer of professional association of judge's deceased spouse's solo law practice for purpose of filing annual report, which was necessary step toward closing law practice).
- **Opinion 13-13** (judge may not use judge's former law office, in building where judge's family's law firm still practices, during nonbusiness hours to perform personal and court-related work).
- **Opinion 13-11** (judge may send former client letter stating that judge can no longer practice law; although judge may not generate new documents or discuss legal significance of existing documents, judge may furnish client copies of documents already in file).
- **Opinion 12-28** (part-time civil traffic infraction hearing officer may practice law in same circuit where office resides if practice does not include traffic matters, but judge in case where officer represents party should disclose officer's position because reasonable person could consider scope of professional relationship between judge and hearing office relevant to question of disqualification).
- **Opinion 12-10** (retired judge eligible for temporary judicial duty may not mentor a law firm's associates in effective trial practice or help firm develop statewide and multi-state ADR programs; this would violate prohibition against senior judge "associating with an entity that engages in the practice of law" even if judge refused judicial assignments while association with firm is ongoing).
- **Opinion 07-02** (former judge may remain beneficiary of land trust along with former law partners but must dispose of any interest judge owns jointly with lawyers likely to appear before him or her and must disqualify in cases in which former partners and co-beneficiaries of land trust are involved).
- **Opinions 06-31, 09-09** (judge may collect fees for legal representation done before he or she took bench).
- **Opinion 06-05** (judge may retain memberships in federal court bars, albeit

without practicing in federal court while on state bench).

- **Opinion 06-03** (part-time child support enforcement hearing officer may represent indigent prisoners who have filed post-conviction relief motions in the circuit in which hearing officer presides).
- **Opinion 05-19** (advising judge that he or she may not discuss former client's pending cases with judge's former law partner or with client's new lawyers).
- **Opinion 05-18** (advising retired judge, not subject to recall, that he may represent himself and give legal advice to his spouse regarding appeal to district court of appeal or motion hearing in trial court).

6. May Judge Manage His or Her Family's Financial Investments?

A judge may, subject to the requirements of the code, hold and manage investments of the judge and members of his or her family, including real estate, and engage in other remunerative activity subject to the restrictions of the code. [Fla. Code Jud. Conduct, Canon 5D\(2\)](#).

- **Opinion 09-18** (judge may serve as trustee of trust created by judge's grandfather for benefit of judge's uncle).
- **Opinion 08-25** (judge may serve as officer or director of closely held family corporation and may receive compensation from corporation based upon percentage of value of property to be sold).

7. Are There Restrictions on Judge's Financial and Business Dealings in Addition to Those Restrictions on Businesses or Membership Discussed Above?

A judge is prohibited from engaging "in financial and business dealings that (a) may reasonably be perceived to exploit the judge's judicial position, or (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves." [Fla. Code Jud. Conduct, Canon 5D\(1\)](#). See *In re DeFoor*, 494 So. 2d 1121 (Fla. 1986) (judge reprimanded publicly for several incidents, including using office and authority to promote electronic device for personal gain); **Opinion 14-27** (judge may maintain ownership interest in business entity that owns building leased to members of judge's former law firm as long as judge is disqualified from any cases involving that firm and business relationship does not lead to excessive number of

such disqualifications); [Opinion 11-02](#) (judge who owns residential mortgages on properties and receives income from those properties may handle mortgage foreclosure matters); [Opinion 99-07](#) (allowing fiduciary service and reasonable compensation for estate of judge's wife's grandmother); [Opinion 90-11](#) (judge may be paid in capacity as co-personal representative and co-trustee in estate arising from father's death; judge may receive commissions from family-owned real estate business in which judge participated as licensed broker as result of transactions that occurred before judge assumed bench, but judge may not maintain active real estate license); [Opinion 90-01](#) (judge should not enter into lease arrangement with governmental agency, but may sell property to governmental agency).

8. May Judge Serve as Fiduciary?

[Canon 5E\(1\)](#) and committee opinions hold that a judge is prohibited from acting as a fiduciary except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. A judge is prohibited from serving as a fiduciary if it is likely that the judge, as a fiduciary, will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction. [Fla. Code Jud. Conduct, Canon 5E\(2\)](#). The restrictions on financial activities that apply to a judge personally apply to the judge while acting as a fiduciary. [Fla. Code Jud. Conduct, Canon 5E\(3\)](#). A number of opinions address the restrictions on fiduciary service:

- [Opinion 14-22](#) (senior judge may, as personal representative of spouse's estate, in order to close deceased spouse's solo practice, hire staff to bill accounts receivable, become signor on firm's operating and trust accounts, hire attorney if necessary, and purchase tail insurance for Professional Association).
- [Opinion 12-05](#) (judge may appear as guardian of judge's minor children at mediation in contested probate estate but "should make clear to all parties however, that the judge's appearance at mediation is as guardian and not as attorney, advocate or negotiator, for the children");
- [Opinion 00-01](#) (judge may serve as trustee over property left to judge and his wife as life estate);
- [Opinion 97-04](#) (judge may not continue to serve as guardian of property for physically disabled man);

- **Opinion 95-07** (judge may serve as co-trustee of estate of wife's grandmother and be paid reasonable fee);
- **Opinion 93-02** (judge may serve as co-trustee of charitable trust created, funded, and named after judge and her spouse, assuming trust was not conducted for benefit of judge or family member and would not be involved in adversary proceedings; service must not reflect adversely on judge's impartiality or interfere with performance of judicial duties);
- **Opinion 92-18** (judge may not serve with husband as co-trustee of trusts created for benefit of adult daughter of close friends; such service would violate Canon 5D (now **Canon 5E(1)**), which prohibits judge from serving as trustee except for close family members);
- **Opinion 90-11** (judge may be paid in capacity as co-personal representative and co-trustee in estate arising from father's death).

There is dispute over whether an ex-spouse and family constitute enough relationship to be considered as part of the judge's family, but a majority of the committee was of the view that the family of a judge's ex-spouse is not the same as the judge's family. *See* **Opinion 03-12**.

9. May Judge Serve as Arbitrator or Mediator?

A judge is prohibited from acting as an arbitrator or mediator or otherwise performing judicial functions in a private capacity unless expressly authorized by law or court rules. **Fla. Code Jud. Conduct, Canon 5F**. A retired judge who is eligible for recall to judicial service is not required to comply with **Canon 5F**. There are restrictions on a retired judge eligible for recall to judicial service serving as a mediator. **Opinion 10-35** (retiring judge may not permit mediation firm to send out announcement, prior to judge's retirement, that judge is joining firm); **Opinion 07-12** (senior judge may not advertise mediation service to unrepresented persons in publications not directed to lawyers); **Opinion 02-01** (judge advised not to mediate friend's divorce). Previously, sitting judges and retired judges eligible for recall could not co-mediate. **Opinion 97-06** (judge advised not to co-mediate until after judicial retirement). Although **Opinion 96-07** was reaffirmed by the committee in **Opinion 97-05**, the Florida Supreme Court addressed the issue of judges co-mediating in its opinion *In re Code of Judicial Conduct, Canon 5F, 695 So. 2d 352 (Fla. 1997)*. In that opinion, the court found that **Canon 5F** allows judges, subject to certain rules, to conduct actual arbitration or mediation proceedings as part of a certification process. Since the court's ruling

in this opinion, the committee has applied the same rationale to judicial employees. See [Opinion 00-13](#) (restrictions on judge mediating or arbitrating must also apply). A general magistrate may not offer family mediation services in an adjoining county. [Opinion 10-26](#). A judge may not preside over a trial of a civil case when the judge is providing mediation services in the same circuit in the same type of case. [Opinion 09-10](#). A judge may remain a certified circuit court mediator, albeit without practicing as a mediator, while on the bench. [Opinion 06-05](#).

Although formerly a senior judge could mediate cases in a federal court located in a circuit in which the judge presided, because it was a different type of case and different type of court, in [Opinion 14-21](#) the committee advised that its interpretation of the changes made to the [Code of Judicial Conduct](#) in *In re Amendments to Code of Judicial Conduct; Florida Rules for Certified and Court-Appointed Mediators; Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; Florida Rules of Juvenile Procedure; and Florida Family Rules of Procedure – Senior Judges as Mediators*, 141 So. 3d 1172 (Fla. 2014), prohibit a senior judge from serving as a mediator in *any* case — federal or state — in a circuit in which a senior judge is presiding as a judge. Effective October 1, 2016, the Code was amended to extend the same prohibition against a senior judge serving as an arbitrator or voluntary trial resolution judge in a circuit in which the judge is presiding. *In re Amendments to Code of Judicial Conduct—Senior Judges Serving as Voluntary Trial Resolution Judges and Arbitrators*, 194 So. 3d 1015 (Fla. 2016).

A senior judge may not mediate cases arising out of appeals from the circuit where the judge presides, even though the District Court of Appeal hearing the appeals is headquartered outside the circuit. [Opinion 15-08](#). A senior judge may serve as an appellate mediator if the case arises from the appeal of a case within the appellate court’s jurisdiction, but from outside of the state judicial circuit where the inquiring judge serves as senior judge, “if restrictions regarding geography and subject matter are not implicated; certification requirements are met; and doing so would not result in an appearance of or the potential for impropriety.” [Opinion 15-15](#).

10. May Judge Accept Fee Earned Before Assuming Bench?

A judge may accept a fee earned before assuming the bench. [Opinion 13-04](#) (judge may collect contingent fee for matter on which judge worked, and for which judge secured offer of settlement, before becoming judge); [Opinion 13-01](#) (judicial appointee may sell interest in law practice and collect payments while sitting as judge, but payments for goodwill must be based on fixed sum at reasonable rate of

interest and not on formula taking into account fees earned in pending matters); [Opinion 09-09](#) (permissible to receive fee on legal work performed prior to assuming bench, as long as computation of fee is based on traditional standards); [Opinion 95-11](#) (finding it permissible to accept fees in quantum meruit for services rendered before becoming judge, but not while judge); [Opinion 94-07](#) (proper to accept fee earned before assuming bench if division of fees is in compliance with Rules of Professional Conduct (now [Rules Regulating The Florida Bar](#))); [Opinion 93-38](#) (permissible to continue to receive compensation for legal work performed before taking bench if compensation or fees are for work previously performed; judge may collect fair value of interest in fees to be collected in future for work done before departure from firm, but should not be sharing in profits of firm earned after departure; inquiring judge's reference to intangible factor of goodwill associated with new judicial reputation in community was unclear; five members of committee said judge should not profit from judicial standing in community).

11. May Judge Teach Class at Academic Institution?

A judge may teach a class about the law ([Canon 4B](#)) or a non-legal subject ([Canon 5B](#)) and may do so for compensation as long as it does not detract from full time judicial duties and as long as the compensation received does not exceed a reasonable amount and is no greater compensation than a non-judge would receive for the same work. See [Opinion 81-03](#) and [Fla. Code Jud. Conduct, Canon 6A\(1\)](#).

12. May Judge Publish Book?

A judge may publish a work of fiction or non-fiction on any subject, including crime, so long as the publication does not cast reasonable doubt on the judge's capacity to act impartially as a judge; demean the judicial office; or interfere with the proper performance of judicial duties. See [Opinions 10-12, 98-01, 89-06](#). The judge may participate in a book signing, have his or her photograph published on the book's author page, and allow mention in a press release that the author is a judge. See [Opinion 10-12](#), citing [Canons 5A and 5B](#). A judge may publish a blog that reports cases "where the entries are intended to be neutral, nonjudgmental, brief summaries of the facts and holdings." The judge would not evaluate the opinion but merely alert readers to the cases and court rule changes. [Opinion 12-07](#).

13. May Judge Receive Compensation for Performing Wedding Ceremony?

By virtue of judicial office, judges may officiate at marriage ceremonies. In [Opinion 83-15](#), the committee also determined that a judge who performs a

wedding may receive reasonable compensation as long as the judge does not allow presiding at weddings to detract from full time judicial responsibilities. A judge may not accept compensation for performing marriages during normal working hours at the courthouse. As with any permitted extrajudicial compensation, the compensation must be reasonable and no greater than the compensation a person who is not a judge would receive for the same activity. [Fla. Code Jud. Conduct, Canon 6A\(1\)](#).

14. Other Than Practice of Law, Are There Other Activities for Compensation from Which Judge Should Refrain?

The answers to questions 4–8 above cover such matters as a judge’s business ownership, the practice of law, management of the judge’s personal investments, various personal financial transactions, and service as a fiduciary. This answer will suggest a method for evaluating the judicial ethics implications of any remunerative activity in which a judge might wish to engage. Judges must use a rule of reason and read several provisions of [Canons 2 through 6](#) and the [Florida Constitution](#) in para materia:

First, in accordance with [article V, section 13, of the Florida Constitution](#), every Florida jurist must devote full time to judicial duties. Consistently with that section, [Canon 3A](#) holds that judicial duties take precedence over all the judge’s other activities. And, in light of [Canon 3B\(8\)](#), any activity that would prevent a judge from disposing of all judicial matters “promptly, efficiently, and fairly” must be avoided. Judges must also take care that any other activity, whether for compensation or not, does not undermine the judge’s independence, integrity, or impartiality, does not cast reasonable doubt on the judge’s ability to remain impartial, does not demean the judicial office, does not interfere with the performance of judicial duties, does not lead to frequent disqualification of the judge, and does not appear to a reasonable person to be coercive. [Fla. Code Jud. Conduct, Canon 4A](#).

Teaching is a frequent activity for judges, some of whom teach courses about the law, the legal system, and the administration of justice at community colleges, undergraduate universities, or law schools. Such activity is expressly allowed by [Canon 4B](#). Similarly, [Canon 5B](#) recognizes that judges may also have expert knowledge in non-legal academic subject matter and may teach non-law related courses. Still, judges must consider each prospective teaching or lecturing assignment carefully and do nothing to demean or detract from the dignity of office or imply any impartiality that could cause the public to question the judge’s ability to hear and decide cases without favoritism or bias. In [Opinion 08-21](#), the

committee advised that a judge may plan and teach a trial skills course sponsored by a state agency but may not recruit lawyers to teach the course if doing so might be perceived as coercive.

[Canon 6A](#) allows acceptance of reasonable compensation for nonjudicial tasks. In no case may a judge participate in any arrangement or receive compensation for an activity that creates a conflict of interest or that appears to trade on the judicial position for personal advantage. [Canon 6A](#) also warns that the source of payment must not raise questions of undue influence.

In [Opinion 10-01](#), members advised that a judge may not rent a room in judge's home to a non-related person who is on community control.

In [Opinion 96-25](#), members advised an inquiring judge not to serve as a legal commentator for a local television station. Citing [Canons 2B, 3B\(8\), 5A, and 5D\(1\)\(b\)](#), the committee warned that such an arrangement with an electronic media outlet might lend the prestige of office to the station's commercial interest (violating [Canon 2B](#)), create the almost unavoidable hazard of putting the judge in the position of appearing to give legal advice or commentary on pending matters ([Canon 3B\(8\)](#)), or cast doubt on the judge's impartiality or demean the judicial office ([Canon 5A](#)). The committee also discussed its concern that involvement in commercial and entertainment-related aspects of the business could outweigh any educational and public information-related purposes of the commentary.

Additionally, the committee addressed the [Canon 5D\(1\)\(b\)](#) consideration that the electronic media are frequently litigants and are likely to come before the court. This analysis employed in [Opinion 96-25](#) is applicable to other prospective activities and should prove helpful in determining whether to engage in them. *See, e.g.,* [Opinion 06-22](#) (judge may not accept reimbursement for expenses incurred for presiding over depositions in foreign country); [Opinion 92-07](#) (advising judge that acceptance of free passage on cruise in exchange for lecture would detract from dignity of office and exploit judge's position in violation of [Canons 5A and C](#)); [Opinion 90-14](#) (opining that work as consultant for drug company would be prohibited by [Canon 5](#)); [Opinion 78-10](#) (cautioning judge not to appear voluntarily as expert witness and not to accept compensation for testifying).

Essentially, by incorporating the language of the canons and the reasoning of the committee opinions discussed throughout this chapter, a judge can deduce eight relevant factors to weigh in deciding whether to engage in an extrajudicial or quasi-judicial activity with or without compensation. If the answer to any one of the following eight questions is yes, then the judge must decline to engage in the activity. The eight factors are:

1. whether the activity will detract from full time duties;
2. whether the activity will call into question the judge's impartiality, either because of comments reflecting on a pending matter or comments construed as legal advice;
3. whether the activity will appear to trade on judicial office for the judge's personal advantage;
4. whether the activity will appear to place the judge in a position to wield or succumb to undue influence in judicial matters;
5. whether the activity will lend the prestige of judicial office to the gain of another with whom the judge is involved or from whom the judge is receiving compensation;
6. whether the activity will create any other conflict of interest for the judge;
7. whether the activity will cause an entanglement with an entity or enterprise that appears frequently before the court; and
8. whether the activity will lack dignity or demean judicial office in any way.

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Political Activity

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Chapter Eight

Political Activity

1. What Are Sources of Authority and Guidance Regarding Judge's Political Activity?

A separate publication entitled “An Aid to Understanding Canon 7” has been developed by the Office of the State Courts Administrator in conjunction with the Judicial Ethics Advisory Committee. The booklet is available online at <http://www.flcourts.org/core/fileparse.php/304/urlt/canon7update.pdf>. Judges and candidates or applicants for appointment to judicial office should read that booklet.

Some sources of primary authority and guidance regarding permissible political activity of judges and candidates to judicial office also include the following:

- a. [Canon 7, Florida Code of Judicial Conduct](#).
- b. Florida Supreme Court opinions relating to [Canon 7](#).
- c. The Florida Election Code, Florida Statutes - Judicial candidates are subject to the Florida Election Code ([chapter 97, Florida Statutes](#), [chapter 98, Florida Statutes](#), [chapter 99, Florida Statutes](#), [chapter 100, Florida Statutes](#), [chapter 101, Florida Statutes](#), [chapter 102, Florida Statutes](#), [chapter 103, Florida Statutes](#), [chapter 104, Florida Statutes](#), [chapter 105, Florida Statutes](#), and [chapter 106, Florida Statutes](#)). [Chapter 105, Florida Statutes](#), concerns qualifying and election procedures. [Chapter 106, Florida Statutes](#), regulates campaign financing.
- d. Opinions of the Judicial Ethics Advisory Committee - These opinions have been published in the Florida Law Weekly Supplement since December 1993. Opinions rendered before March 1994 are available for reference at the Florida Supreme Court Library and may be in local courthouse libraries. All the opinions of the committee are now available at <http://www.floridasupremecourt.org> by first selecting Court Opinions, then clicking JEAC Opinions under the “Judicial Ethics” heading, and through the Sixth Judicial Circuit’s website at <http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/jeac.html>.

The Office of the State Courts Administrator also has information about obtaining copies of these opinions.

- e. Opinions of the Florida Division of Elections - The Division of Elections is authorized by [rule 1S-2.010, Florida Administrative Code](#), to give advisory opinions regarding the application of Code ([chapter 97, Florida Statutes](#), [chapter 98, Florida Statutes](#), [chapter 99, Florida Statutes](#), [chapter 100, Florida Statutes](#), [chapter 101, Florida Statutes](#), [chapter 102, Florida Statutes](#), [chapter 103, Florida Statutes](#), [chapter 104, Florida Statutes](#), [chapter 105, Florida Statutes](#), and [chapter 106, Florida Statutes](#)). Candidates for judicial office may request and receive such advisory opinions if they inquire in accordance with the instructions contained in [rule 1S-2.010\(4\), Florida Administrative Code](#). Advisory opinions may be found at http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml.

2. Who Must Comply with [Canon 7](#)?

A judge or judicial candidate must comply with [Canon 7](#).

3. May Judge or Judicial Candidate Attend Political Gatherings?

A judge or judicial candidate may not attend political party functions except as authorized in [Canons 7B\(2\), 7C\(2\), and 7C\(3\)](#). [Fla. Code Jud. Conduct, Canon 7A\(1\)\(d\)](#). [Canon 7B\(2\)](#) permits a non-judge candidate for appointment to judicial office to attend political gatherings. [Canon 7C\(2\)](#) provides that upon certifying that his or her candidacy has drawn active opposition, a candidate for merit retention in office may thereafter campaign in any manner authorized by law, subject to the restrictions of [Canon 7A\(3\)](#). [Canon 7C\(3\)](#) provides as follows:

A judicial candidate involved in an election or re-election, or a merit retention candidate who has certified that he or she has active opposition, may attend a political party function to speak in behalf of his or her candidacy or on a matter that relates to the law, the improvement of the legal system, or the administration of justice. The function must not be a fund raiser, and the invitation to speak must also include the other candidates, if any, for that office. The candidate should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue,

or another candidate. Conduct limited to that described above does not constitute participation in a partisan political party activity.

Several committee opinions help to navigate this section. Especially important is the insight into the issue of the invitation to speak at a political party function needing to include the other candidates. See [Opinion 03-13](#). In that opinion, the committee said a blanket invitation in a political party newsletter was sufficient to allow the candidate to appear. If unable to attend, the judicial candidate may send a representative to speak on his or her behalf. [Opinion 12-20 \(Election\)](#). If a judge or judicial candidate attends a political party meeting, the committee has advised that attendance should be to speak on behalf of the judge's candidacy, not to socialize informally. See [Opinions 02-08 \(Elections\)](#) and [90-16](#). A judge may not attend functions of a community-organizing project of a political party, unless such conduct complies with [Canon 7C\(3\)](#). [Opinion 10-20 \(Election\)](#). The candidate should not pay for a table at, or an advertisement in the program of, an event sponsored by a political party, even if the event sponsor states that the event is not a fund-raiser. [Opinion 14-08](#). A judicial candidate may attend a gathering sponsored by a group that claims no party affiliation but describes itself as "conservative," at which an attendance fee is charged solely to defray the event costs and all candidates for the same office are not guaranteed an opportunity to attend and speak, unless the organization is "political" as defined by the Code. If the organization is "political," the candidate may attend "only if (1) all judicial candidates are allowed to attend without purchasing a table, and (2) all judicial candidates are invited to speak and are guaranteed equal time to do so." [Opinion 16-08 \(Election\)](#).

The committee has also given guidance on appropriate arrival and departure timing for attendance at a political gathering. In [Opinion 02-11 \(Elections\)](#), the committee advised a candidate that it was acceptable to attend, hand out campaign literature, and speak with the audience. The candidate may arrive at a reasonably early time but must leave when the portion of the meeting devoted to speaking on behalf of candidacy is concluded.

QUICK REFERENCE GUIDE FOR ATTENDANCE AT POLITICAL GATHERINGS

(Questions 4–8)

4. As General Rule, May Sitting Judge Attend Political Gatherings?

No. *See* [Canon 7A\(1\)\(d\)](#).

5. May Sitting Judge Involved in Contested Election Attend Political Gatherings?

Yes, subject to the following six restrictions:

- If a judge is involved in a contested election, he or she may attend a political party function to speak on behalf of his or her own candidacy or to speak about the law, the improvement of the legal system, or the administration of justice.
- The function must not be a fund-raiser.
- The invitation to speak must include all other candidates, if any, for that office.
- A judge should avoid commenting on his or her own political party affiliation or affiliation with any other candidate.
- A judge should avoid expressing a position on any political issue.
- A judge should avoid conduct that suggests or appears to suggest support of or opposition to a particular political party, a political issue, or another candidate.

[Canon 7C\(3\)](#). However, the candidate should not attend a candidates' forum held by a partisan political organization if the candidate is seeking the organization's endorsement or the organization has indicated it will endorse a candidate. [Opinion 12-25 \(Election\)](#).

6. May Appellate Judge Standing for Merit Retention Attend Political Gatherings?

A judge who has certified that he or she has drawn active opposition may attend political gatherings subject to the same six limitations in B above. If a judge has not drawn opposition, he or she should not attend such gatherings even if he or she is on the merit retention ballot.

7. May Attorney Running for Judicial Office Attend Political Gatherings During Campaign?

According to [Canon 7E](#), an attorney who is a candidate for judicial office is subject to [rule 4-8.2\(b\), Rules Regulating The Florida Bar](#), and must also comply with [Canon 7](#). *See* [Opinion 10-30](#) (non-judge judicial candidate may attend nonpartisan candidates' forum and pay for table from which to distribute campaign literature even if the forum is fund-raising event for sponsoring organization; *but see* [Opinion 11-15](#)). A non-judge candidate may pay a sponsorship fee to attend a conference of a nonpartisan organization, pass out literature, and speak on behalf of his or her candidacy. [Opinion 12-23 \(Election\)](#) (whether event was fund-raiser is irrelevant because [Canon 7](#) – only canon applicable to non-judge candidate – would not be violated as organization is not political party and conference is not partisan event). A judicial candidate may not attend a “make-up” political forum where candidates who attended earlier forum are not invited. [Opinion 16-10 \(Election\)](#).

8. May Non-Judge Seeking Judgeship Through the Appointment Process Attend Political Gatherings?

Yes. [Canon 7B\(2\)](#) specifically allows attendance of political gatherings by a non-judge applicant for appointment. A judge applicant for appointment to a vacancy or newly created judgeship at another tier of court may not attend political gatherings, however, because a judge is bound by the general prohibition of [Canon 7A\(1\)\(d\)](#) referenced in A above.

9. May Judge Solicit Funds in Support of Judge's Own Candidacy?

[Canon 7B\(1\)](#) provides that a candidate for appointment to judicial office or a judge seeking other governmental office may not solicit or accept funds – personally, through a committee, or otherwise – to support his or her candidacy. [Canon 7C\(1\)](#) provides that a candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates may not personally solicit campaign funds or solicit attorneys for publicly stated support. *See* [Opinion 04-07 \(Election\)](#). A judge may not send invitations, via e-mail or other means, to a fund-raiser for his or her judicial campaign and may not encourage invitees to attend such events. [Opinion 10-14 \(Election\)](#). A judge may contribute to a public broadcasting station which will thank the judge on air but the judge may not personally host a website or Facebook page promoting his or her judicial campaign. [Opinion 10-28](#). A judicial candidate's campaign website may not contain the campaign treasurer's photograph with information about how to contribute to the campaign. [Opinion 10-21 \(Election\)](#). *See* [Opinion 12-01 \(Election\)](#), [Opinion 12-15 \(Election\)](#), and [Opinion 12-17 \(Election\)](#). A judge who is his or her own campaign treasurer may, however, collect contributions from a

post office box, record them, and deposit them in the campaign account, which are just ministerial rather than fund-raising acts. [Opinion 12-17 \(Election\)](#).

A judge may not accept campaign contributions from a candidate running for nonjudicial office or an officer in a local political party organization, but a “committee of responsible persons established to secure funds for the campaign” may accept the contributions. [Opinion 12-01 \(Election\)](#) (distinction between soliciting and accepting contribution “blurs in the context of a campaign” and candidate should be insulated from all aspects of fund-raising).

10. Who May Solicit Campaign Funds for Judicial Candidacy?

[Canon 7C\(1\)](#) provides that a judge or judicial candidate subject to public election may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate’s campaign and to obtain public statements of support for his or her candidacy. *See* [Opinion 04-07 \(Election\)](#). A judge’s relatives, other than those in a “close familial relationship,” may solicit contributions and endorsements in support of judge’s election. [Opinion 10-16 \(Election\)](#). A judicial candidate’s spouse may belong to a political party executive committee and also campaign for the judicial candidate at non-political functions but must avoid partisan politics in the judicial campaign. [Opinion 10-22 \(Election\)](#). The spouse may attend a political party function, but the judicial candidate “must encourage the spouse not to campaign at the event, which would include wearing a campaign badge or otherwise being identified as the candidate’s spouse.” [Opinion 12-06 \(Election\)](#). A judicial candidate may not have a volunteer campaign manager who is an officer of a political party. [Opinion 10-21 \(Election\)](#).

The committee of responsible persons may hold an event at the home of the candidate’s parents at which campaign funds will be solicited, and may solicit funds in a flyer promoting the event, but the candidate and his or her parents must “remove themselves from the party when the solicitation occurs.” [Opinion 12-14 \(Election\)](#).

Neither the candidate nor the committee of responsible persons may solicit contributions for an electioneering communications organization (ECO) to be used to support the candidacy of the judicial candidate or oppose the candidacy of the judicial candidate’s opponent, nor may the candidate coordinate his or her campaign activities with an ECO. [Opinion 16-15 \(Election\)](#).

11. When May Judicial Candidate Subject to Public Election Establish Campaign Committee?

[Canon 7C\(1\)](#) formerly prohibited a candidate from establishing a campaign committee or expending funds earlier than one year before the general election. (Previously, there had been no time limit on the establishment of a campaign committee or on the expenditure of funds in furtherance of a judicial campaign.) However, this restriction was enjoined by the United States District Court for the Northern District of Florida in *Zeller v. The Florida Bar*, 909 F. Supp. 1518 (N.D. Fla. 1995), and the Florida Supreme Court deleted the time-restrictive language from [Canon 7C\(1\)](#) in *In re Code of Judicial Conduct*, 659 So. 2d 692 (Fla. 1995).

12. May Judicial Candidate Publicly Endorse Another Candidate for Public Office?

Under [Canon 7A\(1\)\(b\)](#), a judicial candidate may not publicly endorse another candidate for public office. This prohibition is not violated if the judge publishes an endorsement from a lawyer who publicly endorsed another candidate in a different race, nor is the lawyer prohibited from co-hosting a fund-raiser to benefit the judge. [Opinion 13-21](#).

A judge may not accept endorsement from a nonjudicial candidate for elected office. [Opinion 10-14 \(Election\)](#). However, a judge may accept endorsement from a nonjudicial elected official who is not campaigning for election, if the “partisan aspects of the official’s position are not mentioned.” [Opinion 16-09 \(Election\)](#); [Opinion 14-11 \(Election\)](#); [Opinion 12-18 \(Election\)](#); [Opinion 10-14 \(Election\)](#). This is not the case if the nonjudicial elected official is opposed by an individual who qualified as a write-in candidate. [Opinion 12-21 \(Election\)](#) (committee distinguished situation from that in [Opinion 12-18 \(Election\)](#)).

A judge may use as a campaign consultant a sitting member of a county commission who is not currently running for office or asserting a political party view in support of other nonjudicial or judicial candidates. [Opinion 10-18 \(Election\)](#). Judicial candidates who are running in different races may travel together to campaign speaking events if they do not create the impression that they are working together or are endorsing each other, and as long as the vehicle does not display either candidate’s campaign advertising. [Opinion 11-20 \(Election\)](#). A judge may not attend a victory party for a person who was elected unopposed to a local office; even if attendees might belong to more than one political party and the party is not for one particular group, the party would not appear to be a “purely social function” and the judge’s attendance “could give the impression that the judge endorsed the friend’s candidacy for public office.” [Opinion 12-03 \(Election\)](#). However, a judge who is not up for re-election and whose adult child ran for judicial office may attend the adult child’s post-election gathering after the polls

close and with no possibility of a runoff. A majority of the committee determined that attendance under these circumstances did not constitute a public endorsement for purposes of [Canon 7. Opinion 14-16](#).

13. May Judicial Candidate Respond to Personal Attacks on Own Record?

[Canon 7A\(3\)\(f\)](#) permits the candidate to respond to personal attacks or attacks on his or her record if the response does not violate [Canon 7A\(3\)\(e\)\(ii\)](#), which prohibits a candidate from knowingly misrepresenting the identity, qualifications, present position of, or any other fact concerning the candidate or an opponent. [Canon 7A\(3\)\(a\)](#) states that a judicial candidate “shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism.”

14. May Judge Publicly Discuss His or Her Views on Disputed Legal or Political Issues?

Since 2006, [Canon 7A\(3\)\(e\)\(i\)](#) has provided that a judicial candidate must not “make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” This section is less restrictive than the former version, which prohibited a candidate from announcing his or her views on disputed legal or political issues. The commentary to [Canon 7A\(3\)\(e\)](#) states that a candidate should emphasize in any public statement his or her duty to uphold the law regardless of personal views. A judge may not indicate publicly his or her views on criteria used by a named U.S. President in nominating a Supreme Court justice. [Opinion 10-14 \(Election\)](#). A judge may attend a town hall meeting hosted by an elected state representative, which is for a limited purpose of discussing the outcome of a legislative session, but a judicial candidate may not attend functions sponsored by a community organizing project of the Democratic National Committee, unless such conduct complies with limited conditions prescribed by [Canon 7C\(3\). Opinion 10-20 \(Election\)](#). A judge may speak at gatherings of “Tea Party” organizations under limited conditions prescribed by [Canon 7C\(3\). Opinion 10-19 \(Election\)](#). A judicial candidate may not wear jewelry or apparel depicting an elephant or donkey if “a reasonable person objectively viewing the jewelry or apparel would conclude that the judicial candidate is ‘commenting on the candidate’s affiliation with [a] political party’ or is engaging in ‘conduct that suggests or appears to suggest support of . . . a political party’” in violation of [Canon 7C\(3\). Opinion 12-13 \(Election\)](#).

The current language seems to take into account a judge’s First Amendment speech rights and balance those against the need in society for a fair, impartial, and

unbiased judiciary. The language is more narrowly tailored so that individual judges weigh the implications of their speech more on a case-by-case basis, always cognizant that, by virtue of their office, their free speech rights are not unbridled. They must be able to hear cases with an open mind and be clear in public statements so that the public does not fear that disputes have been prejudged without benefit of judicial process.

In 2008, the Florida Supreme Court added [Canon 7A\(3\)\(e\)\(iv\)](#), which prohibits judicial candidates from commending or criticizing jurors for their verdict, “other than in a court pleading, filing or hearing in which the candidate represents a party in the proceeding in which the verdict was rendered.”

15. Will Attorney’s Contribution to Judge’s Campaign Require Recusal of Judge When Attorney Appears Before That Judge?

A contribution alone, without more, is not sufficient to require recusal. [MacKenzie v. Super Kids Bargain Store, Inc., 565 So. 2d 1332 \(Fla. 1990\)](#).

16. May Judge Participate in Campaigns of Other Political Candidates?

The Commentary to [Canon 7A\(1\)\(b\)](#) states that a judge or judicial candidate is not prohibited from privately expressing his or her views on judicial candidates or other candidates for public office. *See also* [§ 105.071, Fla. Stat.](#); [In re DeFoor, 494 So. 2d 1121 \(Fla. 1986\)](#). However, [Canon 7A\(1\)\(b\)](#) says judges are to provide no public support or opposition. [Opinions 00-15](#) and [98-25](#) illustrate this point. A judge whose spouse runs for public office may not attend a campaign gathering at the judge’s home or other locations but may appear in a family photograph to be used in campaign. [Opinion 07-13](#). A judge may not publish in campaign materials a photograph showing the judge delivering an acceptance speech as justices of the Florida Supreme Court watch and listen. [Opinion 10-18 \(Election\)](#). If a supporter displays a judicial candidate’s campaign sign on a vehicle on which another candidate’s campaign sign is displayed, under [Canon 7A\(3\)\(c\)](#) the judge (1) must have the supporter remove the judicial candidate’s sign if the supporter “serves at the pleasure of the candidate,” (2) must discourage the supporter from displaying that sign if “the supporter is an employee or official subject to the candidate’s direction and control,” and (3) should have the supporter remove the sign if the supporter falls into neither above category, to avoid the impression that the judicial candidate is running as part of a slate. [Opinion 12-19 \(Election\)](#).

[Canon 7C\(2\)](#) “authorize[s] judges facing active opposition in a merit retention election for the same judicial office to campaign together, including to pool

campaign resources, in order to conduct a joint campaign designed to refute the allegations made in opposition to their continued judicial service, educate the public about merit retention, and express each judge's views as to why he or she should be retained in office," to the extent not otherwise prohibited by Florida law. *In re Amendments to Code of Judicial Conduct — Canon 7*, 167 So. 3d 399 (Fla. 2015)," to the extent not otherwise prohibited by Florida law.

17. To Whom Should Violations of Canon 7 Be Reported?

Allegations of campaign misconduct by judges and successful judicial candidates will fall under the jurisdiction of the Judicial Qualifications Commission. Alleged [Canon 7](#) violations by unsuccessful candidates will be subject to attorney discipline.

18. May Judge Belong to Organization That Is Bipartisan in Membership and Nonpartisan in Nature and Addresses Political and Societal Issues?

A judge may belong to an organization that is bipartisan in membership and nonpartisan in nature and addresses political and societal issues. [Opinion 95-01](#).

The organization at issue in that opinion was the Tiger Bay Club. In an earlier opinion, [Opinion 92-28](#), the committee disallowed a judge's membership in the Tiger Bay Club because the club was a political organization, membership in which was proscribed by [Canon 7A](#). In revisiting the issue in [Opinion 95-01](#), the committee found that Tiger Bay Clubs are "essentially public awareness organizations that address political and social issues," are bipartisan in membership, are nonpartisan in nature, and do not appear to be proscribed by [Canon 7](#).

In [Opinion 09-08](#), the committee advised that a judge who serves as president of a local Inn of Court may contact legislators on behalf of that organization to suggest passage or defeat of legislation relating to funding and duties of the judiciary.

A judge may not be a member in SUNPAC, a political action committee whose primary objectives are political (financing events for elected officials and contributing to the election of those officials). [Opinion 13-20](#). The JEAC committee was evenly divided as to whether the judge could attend functions sponsored by SUNPAC. Half of the committee members believed attendance might be permissible if the event is not a political party function, the judge does not pay to attend, the judge's attendance could not be construed as a public endorsement of a candidate, and the judge does not actively engage in any political

activity.

19. May Judge Serve as Officer in Local Bar Association?

A judge may not be an officer in a local bar association. [Opinion 94-44](#). Citing [Opinions 79-15](#) and [79-16](#), the committee stated that a judge's participation in a bar election and service as an officer could result in conflicts of interest and the appearance of impropriety that violate the code. However, the committee believed that a judge may ethically serve as an appointed chair of a local bar association committee. In [Opinion 98-18](#), the committee also advised a judge that it is permissible to serve on the executive committee of a local bar association. In [Opinion 10-03](#), the committee advised that a judge may serve as president of the local chapter of the American Board of Trial Advocates.

20. May Judge Discuss Appointment Process or Details of Opponent's Appointment?

A judicial candidate may educate the public about the judicial appointment process, as long as the candidate complies with [Canon 7](#). A candidate may mention that the incumbent opponent was appointed, and when and by whom, but should be careful not to interject partisan politics into the discussion. [Opinion 14-12 \(Election\)](#).

21. What Are Some Examples of [Canon 7](#) Violations?

The most serious violations, which can result in removal from office, include making explicit campaign promises that suggest how a judge will rule in particular kinds of cases and making unfounded attacks on an opponent. Also serious and likely to result in a reprimand are suggestions in sample ballots or campaign literature of partisan endorsements in a nonpartisan judicial race.

The following reported cases illustrate [Canon 7](#) violations that have resulted in disciplinary action in Florida:

- [In re Griffin, 167 So. 3d 450 \(Fla. 2015\)](#) (court approved stipulation that judge receive public reprimand for opening campaign account and lending money to her campaign before filing necessary qualification paperwork);
- [In re Krause, 166 So. 3d 176 \(Fla. 2015\)](#) (court approved stipulation that judge receive 30-day suspension without pay for single incident of participating in her husband's judicial campaign by using social media to seek friends' assistance to help him "correct perceived misstatements of his

- judicial opponent”);
- ***In re Krause*, 141 So. 3d 1197 (Fla. 2014)** (judge was ordered to receive public reprimand and pay fine of \$25,000 for committing several campaign violations, including using campaign funds to purchase table at Republican Party fund-raising event, which allowed her to speak for three minutes; failing to include “for” on campaign materials between her name and judicial office she sought; and accepting over \$500 in campaign contributions from her husband);
 - ***In re Turner*, 76 So. 3d 898 (Fla. 2011)** (judge removed from office for violating campaign finance laws, engaging in practice of law, injecting himself into personal life of court employee, failing to act with order and decorum in proceeding before judge, and engaging in overall pattern of misconduct);
 - ***In re Colodny*, 51 So. 3d 430 (Fla. 2010)** (judge publicly reprimanded and fined for listing contributions to campaign fund as loans made by her, when funds were in fact loans from her father made in violation of statutory contribution limits);
 - ***In re Dempsey*, 29 So. 3d 1030 (Fla. 2010)** (judge publicly reprimanded for statements in campaign literature overstating years of legal experience and using term “re-elect” when judge previously had been appointed, not elected, to bench);
 - ***In re Baker*, 22 So. 3d 538 (Fla. 2009)** (judge publicly reprimanded and fined, with stipulation indicating that judge approved language in campaign mailer that could be interpreted as suggesting that opponent’s contributors were trying to influence judicial decisions of opponent (“what are they trying to buy?”));
 - ***In re Renke*, 933 So. 2d 482 (Fla. 2006)** (judge removed from bench for misrepresenting during judicial campaign that he was running as incumbent judge, that he was chairman of water management district, that he had official support of city’s firefighters, and that he had eight years of complex civil trial experience, and for campaign finance misconduct, including accepting from his father illegal campaign contributions disguised as earned income);
 - ***In re Woodard*, 919 So. 2d 389 (Fla. 2006)** (imposing reprimand and anger

management counseling for number of violations, including three related to election activities: judge telephoned opponent's spouse and suggested opponent might wish to reconsider running against judge because it would affect judge's retirement and "therefore his grandchildren"; judge incorrectly stated number of jury trials over which he had presided; and judge had left arraignment session to attend radio interview for his campaign);

- ***In re Gooding*, 905 So. 2d 121 (Fla. 2005)** (judge publicly reprimanded for campaign finance violations, including incurring campaign expenses when campaign lacked funds to cover expenses and lending to campaign substantial sums after campaign ended and after statutory deadline for depositing money into campaign account);
- ***In re Pando*, 903 So. 2d 902 (Fla. 2005)** (judge publicly reprimanded and fined for campaign finance violations including accepting loans from family members in excess of \$500 statutory limit, misrepresenting source of such loans in submitting and certifying campaign finance reports, and making misleading statements in JQC deposition regarding the source of \$25,000 loan);
- ***In re Angel*, 867 So. 2d 379 (Fla. 2004)** (judge publicly reprimanded for engaging in pattern of improper conduct, namely participating in prohibited partisan political activity);
- ***In re Kinsey*, 842 So. 2d 77 (Fla. 2003)** (judge publicly reprimanded and ordered to pay fine of \$50,000, plus costs, for making improper campaign statements which implied she would favor one group of citizens over another or would make rulings based upon sway of popular sentiment in community);
- ***In re Rodriguez*, 829 So. 2d 857 (Fla. 2002)** (judge publicly reprimanded and fined \$40,000 for improper campaign finance activities and reporting practices);
- ***In re McMillan*, 797 So. 2d 560 (Fla. 2001)** (judge removed from bench for cumulative misconduct fundamentally inconsistent with responsibilities of judicial office, including campaign promises to favor state and police in court proceedings, as well as unfounded attacks on incumbent judge and local court system);
- ***In re Alley*, 699 So. 2d 1369 (Fla. 1997)** (judge publicly reprimanded for

conduct unbecoming candidate for judicial office, including misrepresenting qualifications, injecting party politics into nonpartisan race, and misrepresenting opponent's qualifications);

- *In re Glickstein*, 620 So. 2d 1000 (Fla. 1993) (judge publicly reprimanded for endorsing, in letter written on office stationery and published in newspaper, retention of another judge);
- *In re McGregor*, 614 So. 2d 1089 (Fla. 1993) (judge publicly reprimanded for actively campaigning for spouse in political campaign);
- *In re Turner*, 573 So. 2d 1 (Fla. 1990) (judge publicly reprimanded for participation in son's campaign for judicial office);
- *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988) (removed judge from office for several code violations, including participation in mailing of sample ballots suggesting partisan endorsements of candidates in nonpartisan race);
- *In re Kay*, 508 So. 2d 329 (Fla. 1987) (judge publicly reprimanded for mailing sample ballots suggesting partisan endorsement of candidates in nonpartisan race);
- *In re Pratt*, 508 So. 2d 8 (Fla. 1987) (judge publicly reprimanded for financing and distributing sample ballots suggesting partisan endorsement in race for judicial office in which she was candidate);
- *In re DeFoor*, 494 So. 2d 1121 (Fla. 1986) (judge publicly reprimanded for participation in two political campaigns, which included lobbying, organizing, and developing strategies on behalf of candidates);
- *In re Lantz*, 402 So. 2d 1144 (Fla. 1981) (judge publicly reprimanded for directly soliciting election support from Bar member).

Appendix I

Florida Supreme Court Judicial Discipline Opinion Summaries

In re Kelly, 238 So. 2d 565 (Fla. 1970) (judge publicly reprimanded for ordering procedural changes outside of normal methods and advancing his own ambitions by criticizing fellow judges and court procedures during meetings he arranged with news media).

In re Dekle, 308 So. 2d 5 (Fla. 1975) (justice publicly reprimanded for using ex parte memorandum from attorney for one party in case before him in preparing judicial opinion).

In re Boyd, 308 So. 2d 13 (Fla. 1975) (justice publicly reprimanded for improperly receiving ex parte memorandum from attorney representing parties in case before court).

In re Lee, 336 So. 2d 1175 (Fla. 1976) (judge publicly reprimanded for public sexual conduct unbecoming member of judiciary).

In re LaMotte, 341 So. 2d 513 (Fla. 1977) (judge removed from bench for using state-issued credit card to pay for unauthorized personal travel expenses).

In re Taunton, 357 So. 2d 172 (Fla. 1978) (judge publicly reprimanded for knowingly placing himself in position whereby impartiality could be questioned through ex parte conferences with defendant and refusal to execute judgment against him, among other unethical actions on behalf of defendant).

In re Shearer, 377 So. 2d 970 (Fla. 1979) (proceedings against judge dismissed and reprimand recommendation rejected after court found that judge properly asserted Fifth Amendment rights when interrogated by police during investigation of accident causing property damage).

In re Crowell, 379 So. 2d 107, 110 (Fla. 1980) (judge removed from office after engaging in pattern of conduct over long period of time involving persistent abuse of contempt power).

In re Lantz, 402 So. 2d 1144 (Fla. 1981) (judge publicly reprimanded for repeated instances of arrogance and lack of courtesy in courtroom; creation of appearance of impropriety in asking law professor, who was litigant before him, to assist in law school admission of friend; adverse comments casting doubt on impartiality of

judiciary; direct solicitation of election support from bar member; refusal to release to counsel untranscribed notes of court reporter; ordering \$10,700 attorney's fee for personal friend who had withdrawn from relevant case).

In re Gridley, 417 So. 2d 950 (Fla. 1982) (judge not disciplined for announcing strongly held religious beliefs against death penalty and writing series of letters to local newspaper; three dissenting members of court stated judge should have been disciplined because he had thrown his impartiality into question).

In re Turner, 421 So. 2d 1077 (Fla. 1982) (judge publicly reprimanded for ex parte communication with litigant, including inappropriate late-night visits to her home and shining flashlight into her bedroom window; arrogant, arbitrary, and capricious abuse of judicial powers in incarcerating attorneys accused of contempt without due process and in making public derogatory comments about attorneys in courtroom).

In re Leon, 440 So. 2d 1267 (Fla. 1983) (judge disciplined for engaging in improper ex parte conversations with another judge and state attorney regarding cases).

In re Speiser, 445 So. 2d 343 (Fla. 1984) (judge publicly reprimanded for advising employer defense attorneys, after judge's appointment to circuit bench but before taking office, as to "weak points" of state in prosecution of drug case and advising state attorney of "weak points" of defense case in similar drug-related cases).

In re Byrd, 460 So. 2d 377 (Fla. 1984) (judge publicly reprimanded for promoting, advertising, and conducting gambling with respect to golf tournament).

In re Muszynski, 471 So. 2d 1284 (Fla. 1985) (judge publicly reprimanded for ordering police officer to turn radio volume down or off while both were at restaurant; when police officer told judge that radio was as low as possible and regulations prohibited him from turning it off, judge, after identifying himself as circuit judge, "arrogantly castigated" officer. Later, judge sent officer letter directing him to appear at courthouse to explain alleged contemptuous conduct; letter stated failure to appear would constitute separate and independent contempt).

In re Tyler, 480 So. 2d 645 (Fla. 1985) (judge publicly reprimanded for violations of disciplinary rules as practicing attorney prior to election as county court judge, including failure to inform clients of election to bench and consequent inability to represent them).

In re Damron, 487 So. 2d 1 (Fla. 1986) (judge removed from office for engaging

in ex parte communications, acting in threatening manner towards parties and individuals, and soliciting political favor by promise of judicial acts).

In re DeFoor, 494 So. 2d 1121 (Fla. 1986) (judge publicly reprimanded for several incidents, including using office and authority to promote electronic device for personal gain).

In re Block, 496 So. 2d 133 (Fla. 1986) (judge publicly reprimanded for sharing fees with non-lawyer and placing bets with bookies in violation of Florida criminal statutes).

In re Clayton, 504 So. 2d 394 (Fla. 1987) (judge publicly reprimanded for ex parte determination of criminal cases).

In re Eastmoore, 504 So. 2d 756 (Fla. 1987) (judge publicly reprimanded for rude and overbearing behavior and improper wielding of judicial power in ordering news reporter to his chambers and failing to afford parent full opportunity to testify in child-custody matter).

In re Byrd, 511 So. 2d 958 (Fla. 1987) (judge publicly reprimanded for use of funds, while practicing as attorney and while on bench, for payment of personal debts and pledging of certificate of deposit held by trustee as collateral for personal loan).

In re Pratt, 508 So. 2d 8 (Fla. 1987) (judge publicly reprimanded for financing and distributing sample ballots suggesting partisan endorsement in race for judicial office in which she was candidate).

In re Kay, 508 So. 2d 329 (Fla. 1987) (judge publicly reprimanded for mailing sample ballots suggesting partisan endorsement of candidates in nonpartisan race).

In re Sturgis, 529 So. 2d 281 (Fla. 1988) (judge publicly reprimanded for, among other things, twice displaying handgun while presiding at hearings and using position as circuit judge to prevent inspection of official court records relevant to matters involving judge's misdeeds).

In re Berkowitz, 522 So. 2d 843 (Fla. 1988) (judge removed from bench for practicing law after assuming judicial office; committing trust account violations; failing to file accurate tax returns; and giving deceptive testimony on campaign irregularities).

In re Hayes, 541 So. 2d 105 (Fla. 1989) (judge publicly reprimanded for making

“gross unjudicial statements” to journalist about murder trial while trial was in progress).

In re Tye, 544 So. 2d 1024 (Fla. 1989) (judge publicly reprimanded for confronting, with pistol in hand, group of people he believed were participating in illegal drug transaction).

In re Capua, 561 So. 2d 574 (Fla. 1990) (judge publicly reprimanded for commingling funds; failing to properly prepare and give to clients statements accounting for monies received for them; and signing order to release son, charged in domestic disturbance, on his own recognizance without bond hearing).

In re Carnesoltas, 563 So. 2d 83 (Fla. 1990) (judge publicly reprimanded for, among other things, using judicial power to demean and ridicule attorney who had opposed judge in different case and, after having that attorney removed from courtroom, continuing to act as judge in matter to defendant’s detriment).

In re Zack, 570 So. 2d 938 (Fla. 1990) (judge publicly reprimanded for use of profane language in reference to county sheriff before employee of sheriff’s office).

In re Turner, 573 So. 2d 1 (Fla. 1990) (judge publicly reprimanded for participation in son’s campaign for judicial office).

In re Trettis, 577 So. 2d 1312 (Fla. 1991) (judge publicly reprimanded for rude and overbearing behavior in court, including engaging in improper tirades and outbursts, engaging in verbal abuse and intimidation of courthouse personnel and other judges, failing to disqualify self in proceedings when impartiality might have been questioned, allowing personal relationships to influence judicial conduct, lending prestige of office in attempt to create employment position within judicial system for others; judge also agreed to undergo treatment to deal with stress).

In re Norris, 581 So. 2d 578 (Fla. 1991) (judge publicly reprimanded for three-day drinking binge, driving while intoxicated, discharging firearm in house, and attempting suicide).

In re Meyerson, 581 So. 2d 581 (Fla. 1991) (judge publicly reprimanded for failing to timely pay trust funds to clients’ service providers when closing private practice; charging clients excessive fees; failing to comply with financial disclosure laws; and failing to obtain consent of clients to divide legal fees).

In re Perry, 586 So. 2d 1054 (Fla. 1991) (judge publicly reprimanded for, among

other things, verbally abusing and intimidating attorneys, witnesses, and parties).

In re Shenberg, 632 So. 2d 42 (Fla. 1991) (judge suspended without pay for corruptly requesting, soliciting, and agreeing to accept pecuniary benefit to influence performance of judicial duties).

In re Santora, 592 So. 2d 671 (Fla. 1992) (judge removed from chief judge position for public statements to newspaper affirmatively embracing and endorsing discriminatory racial stereotypes); 602 So. 2d 1269 (Fla. 1992) (judge publicly reprimanded for same conduct).

In re Carr, 593 So. 2d 1044 (Fla. 1992) (judge publicly reprimanded for using inappropriate language in open court and slurring nationality of witness).

In re Marko, 595 So. 2d 46 (Fla. 1992) (judge publicly reprimanded for rude, improper, and inappropriate remarks to party in dissolution of marriage hearing).

In re Fowler, 602 So. 2d 510 (Fla. 1992) (judge publicly reprimanded for conviction for furnishing false information about traffic accident to police officer).

In re Fleet, 610 So. 2d 1282 (Fla. 1992) (judge publicly reprimanded for displaying handgun, loading it, and questioning unruly and threatening defendant while on bench in open court).

In re Garrett, 613 So. 2d 463 (Fla. 1993) (judge removed from bench for knowingly shoplifting electronic item from store).

In re McGregor, 614 So. 2d 1089 (Fla. 1993) (judge publicly reprimanded for actively campaigning for spouse in spouse's campaign for county court clerk).

In re Glickstein, 620 So. 2d 1000 (Fla. 1993) (judge publicly reprimanded for endorsing, in letter written on office stationery and published in newspaper, retention of another judge).

In re Graham, 620 So. 2d 1273 (Fla. 1993), *cert. denied*, 510 U.S. 1163, 114 S.Ct. 1186, 127 L.Ed.2d 537 (1994) (judge removed from office for repeatedly using judicial position to make allegations against and improperly criticize fellow judges, elected officials, and others without reasonable factual basis or regard for their reputations; exceeding and abusing judicial power by imposing improper sentences and by improperly using contempt power; acting in undignified and discourteous manner toward individuals appearing in his court; acting in manner that impugned public perception of integrity and impartiality of judiciary; and closing public

proceedings).

In re Gloeckner, 626 So. 2d 188 (Fla. 1993) (judge publicly reprimanded for involvement in incident in which judge was charged with misdemeanor driving under the influence and careless driving).

In re Colby, 629 So. 2d 120 (Fla. 1993) (judge publicly reprimanded for convicting defendants without plea or trial when defendants failed to appear).

In re Vitale, 630 So. 2d 1065 (Fla. 1994) (judge publicly reprimanded for failure to vacate order that both parties agreed was mistakenly entered by judge).

In re Abel, 632 So. 2d 600 (Fla. 1994) (judge publicly reprimanded for sending on court stationery letter in which judge acted as character witness and reference on behalf of criminal defendant).

In re McIver, 638 So. 2d 45 (Fla. 1994) (judge publicly reprimanded for engaging in unlawful gambling in card games and for being found guilty of misdemeanor gambling charges related to those games).

In re Perry, 641 So. 2d 366 (Fla. 1994) (judge publicly reprimanded for unnecessarily abusing and berating recruiting officer for wearing army dress uniform to court and for exercising contempt powers in arbitrary and improper manner without regard for due process).

In re Stafford, 643 So. 2d 1067 (Fla. 1994) (judge publicly reprimanded for writing letter on official court stationery to federal probation officer as character witness and reference on behalf of convicted defendant).

In re Miller, 644 So. 2d 75 (Fla. 1994) (judge publicly reprimanded for writing letters to newspaper criticizing judicial system and for giving mother notice of child custody hearing after hearing had begun and forcing her to act as her own attorney in case in which judge lacked jurisdiction).

In re Davey, 645 So. 2d 398 (Fla. 1994) (judge publicly reprimanded for misrepresenting merits of case to former law partners and concealing negotiations, settlement, and fees).

In re Golden, 645 So. 2d 970 (Fla. 1994) (judge publicly reprimanded for making sexist and racial remarks; using crude, profane, and inappropriate language when presiding over legal proceedings; and failing to diligently perform duties of office).

In re McAllister, 646 So. 2d 173 (Fla. 1994) (judge removed from office for, among other things, “sexual harassment of a judicial assistant, a willingness to engage in ex parte communications and the intentional abuse directed toward the public defender’s office”).

In re Fogan, 646 So. 2d 191 (Fla. 1994) (judge sanctioned for writing character reference letter on official court stationery for personal friend facing sentencing in federal court; friend’s federal probation officer had not requested letter).

In re Ward, 654 So. 2d 549 (Fla. 1995) (judge publicly reprimanded for writing character reference letter for criminal defendant recommending probation; letter was not response to official request by defendant’s probation officer).

In re Esquiroz, 654 So. 2d 558 (Fla. 1995) (judge publicly reprimanded for incident leading to plea of nolo contendere for charge of driving under the influence).

In re Fletcher, 666 So. 2d 137 (Fla. 1995) (judge publicly reprimanded for incident of colliding with dock while operating boat and leaving scene of accident).

In re Johnson, 692 So. 2d 168 (Fla. 1997) (judge removed from office for repeatedly falsifying public records by backdating pleas accepted in DUI cases).

In re Wright, 694 So. 2d 734 (Fla. 1997) (judge publicly reprimanded for rude, abusive manner in addressing assistant state attorneys and crime victim during two separate incidents).

In re Graziano, 696 So. 2d 744 (Fla. 1997) (judge removed from office after hiring friend as guardian ad litem despite friend’s lesser qualifications than other applicants; granting her raise despite poor performance evaluations; and using insulting or threatening language toward court employees).

In re Alley, 699 So. 2d 1369 (Fla. 1997) (judge publicly reprimanded for conduct unbecoming candidate for judicial office, including misrepresenting qualifications, injecting party politics into nonpartisan race, and misrepresenting opponent’s qualifications).

In re Hapner, 718 So. 2d 785 (Fla. 1998) (judge who had resigned from bench was formally removed from office, effective as of date of her resignation, for actions while practicing law prior to election to county court (failure to communicate with clients; failure to document fee agreements; failure to meet deadlines; making misrepresentations to clients, appellate court, and Investigative

Panel of JQC; failure to pay Bar dues; and allowing operating and trust accounts to become overdrawn all) and for giving inaccurate and misleading testimony in domestic violence proceeding against former spouse; judge subsequently assessed JQC costs in [737 So. 2d 1075 \(Fla. 1999\)](#)).

In re Wood, [720 So. 2d 506 \(Fla. 1998\)](#) (judge publicly reprimanded for rude and intemperate behavior in courtroom).

In re Ford-Kaus, [730 So. 2d 269 \(Fla. 1999\)](#) (judge removed from office for mishandling appeal, including intentionally inserting in brief false date for certificate of service and overbilling and lying to client, while in private practice prior to election to circuit bench).

In re Wilson, [750 So. 2d 631 \(Fla. 1999\)](#) (judge publicly reprimanded for attempting to hinder law enforcement by asking restaurant employees not to identify her as witness to crime of theft of video surveillance camera and for lying to deputies about her knowledge of crime).

In re Frank, [753 So. 2d 1228 \(Fla. 2000\)](#) (retired appellate judge publicly reprimanded for actions while on bench, including making false or misleading statements under oath concerning his involvement in divorce litigation of his daughter; not recusing himself from appeals based on his friendship with attorney in those appeals; improperly interfering with Bar grievance proceeding of that attorney; threatening to have son-in-law arrested or committed to psychiatric facility during divorce proceedings involving his other daughter).

In re Luzzo, [756 So. 2d 76 \(Fla. 2000\)](#) (judge publicly reprimanded for accepting free tickets to baseball games from law firm whose lawyers appeared before him).

In re Newton, [758 So. 2d 107 \(Fla. 2000\)](#) (judge publicly reprimanded for pattern of abusive, demeaning, and sarcastic comments to litigants, witnesses, and attorneys).

In re Schwartz, [755 So. 2d 110 \(Fla. 2000\)](#) (judge publicly reprimanded for continually making rude and sarcastic remarks to counsel during oral arguments; in addition to reprimand, judge required to offer written apology, enter counseling for stress management, and video and audiotape future oral argument panels).

In re Shea, [759 So. 2d 631 \(Fla. 2000\)](#) (judge removed from office for threatening to recuse himself from all of attorney's cases unless attorney agreed to withdraw from representing client with whom judge had legal dispute; repeated instances of hostile behavior toward attorneys, court personnel, and other judges also

contributed to removal from the bench).

In re Richardson, 760 So. 2d 932 (Fla. 2000) (judge publicly reprimanded for trying to influence police officers who arrested him by announcing he was judge, wanting to speak to chief of police, and stating he was “pro police”; underlying charge for which judge was arrested was ultimately dismissed, but attempt to avoid arrest was found serious enough to merit discipline).

In re Haymans, 767 So. 2d 1173 (Fla. 2000) (judge publicly reprimanded for engaging in pattern of rudeness and disrespect toward lawyers, parties, witnesses, victims, and court personnel).

In re McMillan, 797 So. 2d 560 (Fla. 2001) (judge removed from bench for cumulative misconduct fundamentally inconsistent with responsibilities of judicial office, including campaign promises to favor state and police in court proceedings, as well as unfounded attacks on incumbent judge and local court system).

In re Baker, 813 So. 2d 36 (Fla. 2002) (judge admonished for soliciting communications from computer experts concerning technical issues related to issues of damages in case before him without involvement of litigants or their attorneys).

In re Rodriguez, 829 So. 2d 857 (Fla. 2002) (judge publicly reprimanded and fined \$40,000 for improper campaign finance activities and reporting practices).

In re Holloway, 832 So. 2d 716 (Fla. 2002) (while serving as witness in friend’s child custody hearing, judge had ex parte meeting with presiding judge in case, questioned that judge’s impartiality by making crude remarks, contacted police during investigation, and lied under oath; judge also used judicial position to have brother’s case heard earlier). (Note: this judge resigned from bench before Florida Supreme Court took final action.)

In re Kinsey, 842 So. 2d 77 (Fla. 2003) (judge publicly reprimanded and ordered to pay fine of \$50,000, plus costs, for making improper campaign statements that implied she would favor one group of citizens over another or would make rulings based upon sway of popular sentiment in community).

In re Schapiro, 845 So. 2d 170 (Fla. 2003) (judge publicly reprimanded for engaging in pattern of inappropriately chastising, berating, and embarrassing lawyers appearing before him).

In re Cope, 848 So. 2d 301 (Fla. 2003) (judge publicly reprimanded for being

publicly intoxicated while attending judicial conference in California; engaging in inappropriate conduct of intimate nature with intoxicated woman during same judicial conference).

In re Angel, 867 So. 2d 379 (Fla. 2004) (judge publicly reprimanded for engaging in pattern of improper conduct, namely participating in prohibited partisan political activity).

In re Andrews, 875 So. 2d 441 (Fla. 2004) (judge publicly reprimanded for making inappropriate comments to news media about defendant in case before him).

In re Pando, 903 So. 2d 902 (Fla. 2005) (judge publicly reprimanded and fined for campaign finance violations including accepting loans from family members in excess of \$500 statutory limit, misrepresenting source of such loans in submitting and certifying campaign finance reports, and making misleading statements in JQC deposition regarding source of \$25,000 loan).

In re Gooding, 905 So. 2d 121 (Fla. 2005) (judge publicly reprimanded for campaign finance violations, including incurring campaign expenses when campaign lacked funds to cover expenses and lending to campaign substantial sums after campaign ended and after statutory deadline for depositing money into campaign account).

In re Allawas, 906 So. 2d 1052 (Fla. 2005) (judge publicly reprimanded for not expeditiously issuing rulings in dozen cases, which conduct adversely impacted administration of justice).

In re Diaz, 908 So. 2d 334 (Fla. 2005) (judge publicly reprimanded, suspended, and fined for sending anonymous email to judge referring to another judge who reported illegal immigrants to federal authorities when he became aware of their status during hearings and containing comment recipient interpreted as implied threat of retaliation by Hispanic voters).

In re Henson, 913 So. 2d 579 (Fla. 2005) (judge removed from office for practicing law while still judge and, acting as attorney between terms of judicial service, advising client in criminal matter to flee country rather than face prosecution).

In re Maloney, 916 So. 2d 786 (Fla. 2005) (judge publicly reprimanded for directing police to release immediately from custody family friend who had been arrested for driving under influence of alcohol).

In re Woodard, 919 So. 2d 389 (Fla. 2006) (judge publicly reprimanded and ordered to anger management counseling for leaving arraignment to conduct re-election campaign interview; asserting in campaign literature inaccurate level of experience; arriving late to scheduled hearings; beginning hearings prior to scheduled start time without presence of party's attorney; issuing bench warrant leading to incarceration of expert witness without considering extenuating circumstances caused by hurricanes; acting rudely toward counsel, witnesses, and parties).

In re Adams, 932 So. 2d 1025 (Fla. 2006) (judge publicly reprimanded for engaging in romantic relationship with attorney who appeared before him and for whom he granted continuance and dismissed charges).

In re Renke, 933 So. 2d 482 (Fla. 2006) (judge removed from bench for misrepresenting during judicial campaign that he was running as incumbent judge, that he was chairman of water management district, that he had official support of city's firefighters, and that he had eight years of complex civil trial experience, and for campaign finance misconduct, including accepting from his father illegal campaign contributions disguised as earned income).

In re Downey, 937 So. 2d 643 (Fla. 2006) (judge publicly reprimanded and required to retire at end of term for habitual viewing of pornography from courthouse computer; failing to disclose juror-written communication; instigating improper contact and communication with female attorneys).

In re Albritton, 940 So. 2d 1083 (Fla. 2006) (judge publicly reprimanded, suspended, and fined for pattern of improper conduct, including using judicial position to pressure attorneys to expend personal monies for his entertainment; making rude comments to attorneys and litigants; requiring church attendance as condition of probation).

In re Sloop, 946 So. 2d 1046 (Fla. 2006) (judge removed from office for failing to halt unjustified arrest and incarceration of traffic defendants waiting properly within adjoining courtroom; repeatedly displaying abusive and insulting behavior toward litigants).

In re Maxwell, 994 So. 2d 974 (Fla. 2008) (judge publicly reprimanded for ordering release of sister of former colleague despite the facts that arrestee had no first appearance and was serving sentence of five years' probation for obtaining controlled substances by fraud, thus making her ineligible for pretrial release program).

In re Aleman, 995 So. 2d 395 (Fla. 2008) (judge publicly reprimanded for unreasonably forcing attorney to prepare handwritten motion for judge’s disqualification within short time period, which was found to be improper in context of first-degree murder case in which death penalty was being sought).

In re Allen, 998 So. 2d 557 (Fla. 2008) (judge publicly reprimanded for personally attacking fellow judge in appellate court concurring opinion).

In re Barnes, 2 So. 3d 166 (Fla. 2009) (judge publicly reprimanded for inappropriately filing petition for writ of mandamus seeking to compel fellow judges “to provide for a meaningful First Appearance Hearing for all citizens accused of a crime who cannot immediately make bond”).

In re Henderson, 22 So. 3d 58 (Fla. 2009) (judge publicly reprimanded for acting as friend and mentor to convicted felon, including acting as proponent in felon’s leasing apartment, when felon was criminal defendant in judge’s court).

In re Baker, 22 So. 3d 538 (Fla. 2009) (judge publicly reprimanded and fined, with stipulation indicating that judge approved language in campaign mailer that could be interpreted as suggesting that opponent’s contributors were trying to influence judicial decisions of opponent (“what are they trying to buy?”)).

In re Bell, 23 So. 3d 81 (Fla. 2009) (judge publicly reprimanded for ordering arrest of woman as putative primary aggressor, without complaint from former husband or law enforcement officials, when former husband, with whom judge previously had interacted in professional settings, and woman, whom judge and his family knew from social interactions, appeared before judge for determination whether probable cause existed to charge former husband with domestic battery against her).

In re Dempsey, 29 So. 3d 1030 (Fla. 2010) (judge publicly reprimanded for statements in campaign literature overstating years of legal experience and using term “re-elect” when judge previously had been appointed, not elected, to bench).

In re Eriksson, 36 So. 3d 588 (Fla. 2010) (judge publicly reprimanded for revoking bond for defendant who sought recusal, thereby punishing defendant for exercising legitimate legal right, and for employing unduly rigid process in dealing with self-represented litigants, so as to impede their ability to obtain relief and protection they sought from court).

In re Colodny, 51 So. 3d 430 (Fla. 2010) (judge publicly reprimanded and fined for listing contributions to campaign fund as loans made by her, when funds were

in fact loans from her father made in violation of statutory contribution limits).

In re Turner, 76 So. 3d 898 (Fla. 2011) (judge removed from office for violating campaign finance laws, engaging in practice of law, injecting himself into personal life of court employee, failing to act with order and decorum in proceeding before judge, and engaging in overall pattern of misconduct).

In re Singbush, 93 So. 3d 188 (Fla. 2012) (judge publicly reprimanded, ordered to submit to Judicial Qualifications Commission (“JQC”) signed letter of apology to public, fellow judges, and legal community, and to submit written weekly logs to special counsel of JQC documenting timeliness of court proceedings for violating Code of Judicial Conduct by being habitually late for court, offering to resume hearings at inconvenient times, taking multiple lengthy smoke breaks, which compromised parties’ ability to have their cases heard promptly, routinely failing to appear on time at first appearances, taking long lunch breaks when scheduled for first appearance duties, and having previously responded to allegations of tardiness in response to 6(b) notice of investigation).

In re Nelson, 95 So. 3d 122 (Fla. 2012) (judge publicly reprimanded for DUI).

In re Shea, 110 So. 3d 414 (Fla. 2013) (judge publicly reprimanded for pattern of rude and intemperate behavior and required to write letters of apology and continue mental health treatment; sanctions would likely have been more severe but for judge’s self-initiated participation in anger management therapy and request for guidance from other judges).

In re Barry Michael Cohen, 134 So. 3d 448 (Fla. 2014) (judge was ordered to receive public reprimand for making inappropriate comments, including public statement made about pending case and public involvement in partisan political campaign).

In re Sheehan, 139 So. 3d 290, 292 (Fla. 2014) (public reprimand was ordered for judge who pleaded guilty to DUI; supreme court stated that her conduct was reprehensible: “Such disregard of criminal law and public safety undermines the public’s confidence in the integrity of the judiciary and will not be tolerated”).

In re Krause, 141 So. 3d 1197 (Fla. 2014) (judge was ordered to receive public reprimand and pay fine of \$25,000 for committing several campaign violations, including using campaign funds to purchase table at Republican Party fund-raising event, which allowed her to speak for three minutes; failing to include “for” on campaign materials between her name and judicial office she sought; and accepting

over \$500 in campaign contributions from her husband).

In re Kautz, 149 So. 3d 681 (Fla. 2014) (public reprimand was ordered for judge who appeared on behalf of sister at sister’s first appearance; at times demeaned individuals who appeared before her in injunction, juvenile, and dependency cases; and “failed to appreciate the input from the other stakeholders in the court system to the extent that she on occasion ruled in a way that made it appear she either did not know the law or refused to apply it”).

In re Flood, 151 So. 3d 1097 (Fla. 2014) (public reprimand was ordered for judge who had “inappropriate relationship with her bailiff, over whom she exercised supervisory authority”).

In re Hawkins, 151 So. 3d 1200 (Fla. 2014) (judge was removed from office for regularly using court resources for her ministries business at work, “failing to maintain and enforce high standards of conduct and personally observe those standards by her failure to pay state sales tax on the sale of her business products and failure to register the name of her business under the fictitious name law,” linking sale of her business products to judicial office by appearing on her business website in judicial robes, lacking candor during disciplinary investigation, and “obfuscation and frustration of proper discovery”).

In re Recksiedler, 161 So. 3d 398 (2015) (public reprimand was ordered for judge who failed to disclose, and then provided incorrect information about, her driving record).

In re Krause, 166 So. 3d 176 (Fla. 2015) (court approved stipulation that judge receive 30-day suspension without pay for single incident of participating in her husband’s judicial campaign by using social media to seek friends’ assistance to help him “correct perceived misstatements of his judicial opponent”).

In re Griffin, 167 So. 3d 450 (Fla. 2015) (court approved stipulation that judge receive public reprimand for opening campaign account and lending money to her campaign before filing necessary qualification paperwork).

In re Watson, 174 So. 3d 364 (Fla. 2015) (judge removed from bench because of “pattern of deceit and deception” in case she was involved in while in private practice).

In re Schwartz, 174 So. 3d 987 (Fla. 2015) (court approved revised consent judgment imposing 30-day suspension without pay, \$10,000 fine, and requirement to write letter of apology on judge who cursed at and threatened to sue store owner

who displayed opponent's campaign sign but refused to display hers; judge also improperly removed official court documents from file).

In re Murphy, 181 So. 3d 1169 (Fla. 2016) (court found unfit for office and removed judge who used profanity in open courtroom, threatened public defender with violence and had physical confrontation with him, and then resumed docket with defendants whose attorneys were not present).

In re Collins, 195 So. 3d 1129 (Fla. 2016) (court approved revised consent judgment imposing public reprimand, completion of anger management course, and attendance at domestic violence course for judge who berated and belittled victim of domestic violence for failing to respond to subpoena to testify against her abuser, father of her child; during contempt proceedings, judge was "discourteous and impatient toward the distraught victim," raising her voice, being sarcastic, speaking harshly, and interrupting victim, and sentenced her to spend three days in jail).

In re Holder, 195 So. 3d 1133 (Fla. 2016) (court approved stipulated discipline of public reprimand and completion of six additional CJE hours on ethics for judge who, intending to help defendant who was Army Green Beret over whose case he was presiding, engaged in inappropriate ex parte communication with state attorney and made public offer to convert defendant's remaining community control to probation before conducting hearing on that matter).

Appendix II

Overview of Canons, Florida Code of Judicial Conduct

Introduction And Caveat

This summary serves as a reference guide to the various parts of the [Florida Code of Judicial Conduct](#) (the “code”) but should not be viewed as a substitute for reading the code. If a code provision in the summary appears relevant to an issue in which the judge or judicial candidate is interested, the judge or judicial candidate should read the entire code provision and the commentary that follows. In addition, when one code provision appears to permit certain judicial conduct, other code provisions should be consulted to ensure that the conduct in question is not prohibited elsewhere.

Definitions

The Florida Supreme Court added a “definitions” section in the January 1, 1995, revision to the code. Some of the words and phrases defined in this new section are “candidate,” “economic interest,” “member of the judge’s family,” and “political organization.” The text of the canons does not indicate which words or phrases are contained in the definitions section, so it is important to refer regularly to that section for guidance and additional information.

Specific Canons

1. **Canon 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary**

[Canon 1](#) is a general provision that exhorts judges to uphold the integrity and independence of the judiciary by following high standards of conduct. This canon sets the tone for the entire [Code of Judicial Conduct](#), but the only specific requirement is found in the commentary, which states that judges “must comply with the law, including the provisions of this code.” Therefore, as a general provision, [Canon 1](#) is unlikely to be cited alone as a provision that was violated by a judge. Rather, when a judge violates other canons, which contain specific proscriptions that are usually the basis of guidance and discipline, [Canon 1](#) is relevant because any code violation is likely to damage the perception that the judiciary is “independent and honorable.”

2. **Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities**

Canon 2 provides that a judge must avoid impropriety and the appearance of impropriety by:

- a. respecting and complying with the law;
- b. not allowing relationships to influence the judge's judicial behavior, not lending the prestige of judicial office to advance private interests, not giving the appearance that others are in the position to influence the judge, and not testifying voluntarily as a character witness; and
- c. not holding membership in an organization that practices invidious discrimination.

Canon 2 is broad in its application to a judge's conduct. To avoid impropriety and the appearance of impropriety, a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 2A. The [commentary to Canon 2A](#) specifically states that "[t]he prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge."

While **Canon 2A** is a broad description of the conduct expected of judges, **Canons 2B and 2C** are more specific. **Canon 2B** regulates when a judge can write letters of recommendation because, by doing so, a judge is advancing the private interests of another. In addition, **Canon 2B** prohibits a judge from testifying voluntarily as a character witness because such testimony could lend the prestige of the judicial office to the party for whom the judge testifies.

Canon 2C, which prohibits a judge from holding membership in an organization that practices invidious discrimination, was added to the January 1, 1995, revised code. The [commentary to Canon 2C](#) states that "[m]embership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired."

3. **Canon 3: A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently**

a. **In General**

Canon 3A reiterates the theme in **Canons 1 and 2** that a person becoming a judge

must accept the fact that a judge's first responsibility is to the law, the [Code of Judicial Conduct](#), and the duties that a judge must carry out. [Canon 3A](#) states, "The judicial duties of a judge take precedence over all the judge's other activities." The remainder of [Canon 3](#) sets out the obligations that a judge has with respect to the various judicial duties that come with the position.

b. Adjudicative Responsibilities

[Canon 3B](#) provides that a judge must hear and decide matters assigned to the judge, must be faithful to and competent in the law, and must not be influenced by outside factors. In addition, a judge must keep order and decorum in all proceedings and be patient, dignified, and courteous to individuals he or she meets in an official capacity.

Paragraphs (5) and (6) of [Canon 3B](#) were added to the code as part of the January 1, 1995, revision. Under these two paragraphs, a judge must "perform judicial duties without bias or prejudice" and "require lawyers in proceedings before the judge to refrain from manifesting . . . bias or prejudice" against any persons in a proceeding.

Paragraph (7) of [Canon 3B](#) also contains new provisions. In addition to the former language providing that a judge must accord every person with a legal interest in a proceeding the opportunity to be heard, paragraph (7) now sets forth new rules regarding ex parte communications. Generally, "[a] judge shall not initiate, permit, or consider ex parte communications," but some ex parte communications are permitted "for scheduling, administrative purposes, or emergencies that do not deal with substantive matters." To engage in ex parte communication, however, the judge must believe that no party will gain an advantage as a result of the communication, and the judge must be sure that all parties are notified of the substance of the communication. A judge also may participate in ex parte communications in other limited circumstances, such as when the parties agree that the judge may confer separately with the parties and their lawyers for the purpose of mediating or settling a case.

Also included in [Canon 3B](#)'s list of required and prohibited conduct is that a judge must "dispose of all judicial matters promptly, efficiently, and fairly." [Canon 3B](#) prohibits a judge from commending or criticizing jurors for their verdict but allows a judge to thank a jury for service; [Canon 3B](#) prohibits a judge from disclosing or using for nonjudicial purposes any nonpublic information that the judge acquires in his or her judicial capacity.

In another revision to the code, paragraph (9) of [Canon 3B](#) sets less restrictive limits on the public comments that a judge may make regarding cases. “A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.” Paragraph (10) of [Canon 3B](#) prohibits a judge from making “pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office” regarding “parties or classes of parties, cases, controversies, or issues likely to come before the court.”

c. Administrative Responsibilities

As with the adjudicative responsibilities detailed in [Canon 3B](#), [Canon 3C](#) requires that a judge discharge administrative responsibilities diligently, without bias or prejudice, and in a competent manner. The judge must require those under his or her authority to carry out their administrative duties in the same diligent manner that is required of the judge and also to refrain from manifesting bias or prejudice in their official duties. A 1995 addition to the code is that “[a] judge shall not make unnecessary appointments.” [Fla. Code Jud. Conduct, Canon 3C\(4\)](#). Also, appointments must be made impartially and on the basis of merit, and a judge must avoid nepotism and favoritism.

d. Disciplinary Responsibilities

Under the disciplinary provisions, which were new to the 1995 version of the code, a judge must take appropriate action when he or she has information or actual knowledge indicating that another judge has violated the Code of Judicial Conduct or that a lawyer has violated the Rules Regulating The Florida Bar. The Florida Supreme Court issued an opinion clarifying the meaning of “appropriate action,” indicating that it may include directly communicating with the judge or lawyer who has committed the violation, taking other direct action if available, and reporting the violation to the appropriate authority or agency. *In re Code of Judicial Conduct*, 656 So. 2d 926 (Fla. 1995).

e. Disqualification

[Canon 3E](#) instructs a judge regarding when disqualification is necessary on ethical grounds. Generally, “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” [Fla. Code Jud. Conduct, Canon 3E\(1\)](#). Such instances include, but are not limited to, when the judge has a personal bias or prejudice toward a party or attorney or has personal

knowledge of disputed evidentiary facts, when the judge previously served as a lawyer in the controversy, when the judge or a member of the judge's family has an economic interest in the proceeding that is more than de minimis, when the judge has a relative who is involved in the case, or when the judge has made a public statement that commits, or appears to commit, the judge as to parties, issues, or controversies in a proceeding.

f. Remittal of Disqualification

[Canon 3F](#) provides that a judge who is disqualified under [Canon 3E](#) may continue to preside in the case if the parties and the lawyers agree, out of the presence of the judge, to waive disqualification.

4. Canon 4: A Judge Is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

[Canon 4](#) addresses a judge's quasi-judicial activities, while [Canon 5](#) addresses extrajudicial activities. Quasi-judicial activities refer to activities that are not directly related to a judge's work as a judge but are related to the law, the legal system, and the administration of justice. Extrajudicial activities regulated under [Canon 5](#) refer to activities not associated with the judge's official duties.

Both [Canon 4](#) and [Canon 5](#) contain subparagraph A, which is part of the 1995 code revision and 2008 amendments. [Canons 4A](#) and [5A](#) provide a framework for deciding which quasi-judicial and extrajudicial activities are appropriate. Such activities must not '(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) undermine the judge's independence, integrity, or impartiality; (3) demean the judicial office; (4) interfere with the proper performance of judicial duties; (5) lead to frequent disqualification of the judge; or (6) appear to a reasonable person to be coercive.'

As long as a judge does not violate the general prohibitions under [Canon 4A](#), he or she is encouraged to "speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch within our system of government." [Fla. Code Jud. Conduct, Canon 4B](#). The [commentary to Canon 4B](#) notes that judges are uniquely qualified to participate in improving the law, the legal system, and the administration of justice, including, but not limited to, "the improvement of the role of the judiciary as an independent branch of government, the revision of substantive and procedural law, the improvement of criminal and juvenile justice, and the improvement of justice in the areas of civil, criminal,

family, domestic violence, juvenile delinquency, juvenile dependency, probate, and motor vehicle law.” The [commentary to Canon 4B](#) also states that judges’ support of pro bono legal services is an activity that relates to improvement of the administration of justice. As with other code provisions, however, judges are reminded in [Canon 4B](#) that the permission to participate in these activities is “subject to the requirements of this Code.” In other words, a judge cannot engage in the conduct permitted under [Canon 4](#) if doing so would violate any other provision of the code.

[Canon 4C](#) indicates that a judge may appear at a public hearing or may otherwise consult with the executive or legislative branches of government only on matters concerning the law, the legal system, or the administration of justice, or when the judge is acting pro se in a matter regarding the judge or his or her own interests.

[Canon 4D](#) provides that “[a] judge is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice,” subject to a number of restrictions. For example, the judge may not serve such an organization in an official capacity if the organization is likely to be involved in legal proceedings that ordinarily would come before the judge. A judge also would have to decline to serve if the organization is likely to be involved frequently in adversary proceedings in the judge’s court or in a court over which the judge’s court has appellate jurisdiction.

Judges may assist such organizations in planning fund-raising and in managing and investing the organization’s funds but are not permitted to solicit funds for the organization personally or directly. The 1995 revision to the code added language permitting judges to solicit funds from other judges “over whom the judge does not exercise supervisory or appellate authority.” [Canon 4D\(2\)\(a\)](#). In addition, a judge shall not personally or directly solicit membership in such an organization if the solicitation might reasonably be perceived as coercive. [Canon 4D\(2\)\(d\)](#). In the 2008 amendments to the code, the Florida Supreme Court added language to [Canon 4D](#) stating that a judge may appear or speak at, and even be featured on the program of a fund-raising event but only “if the event concerns the law, the legal system, or the administration of justice and the funds raised will be used for a law-related purpose(s).” [Fla. Code Jud. Conduct, Canon 4D\(2\)\(b\)](#). The 2008 amendments also allow a judge to use court premises, staff, stationery, equipment, or other resources for fund-raising purposes but only “for incidental use for activities that concern the law, legal system, or the administration of justice, subject to the requirements of this Code.” [Fla. Code Jud. Conduct, Canon 4D\(2\)\(e\)](#).

5. Canon 5: A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties

Canon 5 permits judges to participate in a wide range of extrajudicial activities, including speaking, writing, lecturing, and teaching concerning non-legal subjects. As with Canon 4, however, judges must abide by restrictions on these activities. All of the restrictions on a judge's activities in educational, religious, charitable, fraternal, sororal, or civic organizations are the same as the restrictions on quasi-judicial conduct regulated by Canon 4, with one addition. Canon 5C(2) adds that a judge is prohibited from accepting an appointment to a governmental committee or position that is concerned with matters other than the improvement of the law, the legal system, the judicial branch, or the administration of justice.

The remainder of Canon 5 addresses Financial Activities (5D), Fiduciary Activities (5E), Service as Arbitrator or Mediator (5F), and Practice of Law (5G). Canon 5D prohibits judges from engaging in financial and business dealings that would appear to exploit the judge's judicial position or involve the judge in ongoing business relationships with lawyers or other persons likely to come before the judge's court. Judges may, however, engage in a limited range of extrajudicial financial activities. Judges may hold and manage investments owned by the judge and members of the judge's family, and a judge may manage and participate in any business that is closely held by the judge or the judge's family or in a business that is engaged primarily in investing the judge's or the judge's family's financial resources. Otherwise, a judge is prohibited from engaging in such business ventures. Canon 5D also requires that judges minimize the number of cases in which financial interests would cause them to be disqualified.

Under Canon 5D(5), judges may accept gifts, bequests, favors, or loans only in limited circumstances. For example, a judge may accept a gift incident to a public testimonial, resource materials supplied by publishers for official use, invitations to bar-related functions, a gift, award, or benefit incident to the business of the judge's spouse, or a loan from a lending institution on the same terms available to the general public. Judges also may accept any other gift, bequest, favor, or loan if (1) the donor is not a party or someone who is likely to come before the judge's court or to have his or her interests come before the judge's court, and (2) when its value or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source exceeds \$100, the judge reports it in the same manner as it would be reported under Canon 6B(2).

The provisions under Canon 5 should be read together with the provisions of Canon 6, which regulates fiscal matters of a judge. Canon 6 addresses all of a

judge's fiscal matters, including those related to judicial and extrajudicial conduct.

[Canon 5E](#) provides that a judge shall not serve as a fiduciary except for a member of the judge's family, and then only if doing so would not interfere with the judge's judicial duties.

[Canon 5F](#) prohibits a judge from acting as an arbitrator or mediator (although senior judges may serve as mediators (and, effective October 1, 2016, as arbitrators, or voluntary trial resolution judges) in cases outside the circuit in which they are presiding as a judge), while [Canon 5G](#) prohibits a judge from practicing law, except that a judge may act pro se and give legal advice to a member of the judge's family without compensation. (In [Opinion 95-33](#), the committee advised that a retired judge subject to recall could serve as a hearing officer for a city because, under the application section of the code, such judges are expressly exempted from [Canons 5C\(2\), 5E, 5F, and 6A.](#))

6. [Canon 6: Fiscal Matters of a Judge Shall Be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports As Required by \[Article II, Section 8, of the Constitution of Florida\]\(#\), and Shall Publicly Report Gifts; Additional Financial Information Shall Be Filed with the Judicial Qualifications Commission to Ensure Full Financial Disclosure](#)

[Canon 6](#) addresses both compensation for quasi-judicial and extrajudicial services and financial reporting. Under [Canon 6A](#), judges may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities described in [Canons 4 and 5](#). There are, however, restrictions on compensation and expense reimbursement. The compensation must not exceed a reasonable amount or an amount that a non-judge would receive, and expense reimbursements must be limited to actual costs incurred by the judge and, when appropriate, the judge's spouse. Most importantly, there must not be any appearance that the judge is being influenced in the performance of judicial duties or the appearance of any other impropriety. As with other canons, the activity permitted under [Canon 6](#) is permissible only if it does not violate the provisions of any of the other canons. For example, a judge would be prohibited from speaking so frequently before groups that the speaking engagements interfered with the judge's judicial duties. [Fla. Code Jud. Conduct, Canon 3A and Commentary to Canon 6A.](#)

Sections B and C of [Canon 6](#) contain the judicial financial reporting requirements. A judge must file the same public reports required by law for all public officials under [article II, section 8, of the Florida Constitution](#). Judges also must file a

public report of all gifts that are required to be disclosed under [Canon 5D\(5\)\(h\)](#).

In addition, [Canon 6C](#) requires that judges provide to the JQC a list of the corporations and other business entities in which the judge has a financial interest, unless the judge has provided that list in the report required under [Canon 6B](#). The report to the commission is confidential, except that a party may request information during or after the pendency of a cause as to whether the judge has a financial interest in particular business entities.

7. [Canon 7](#): A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

The provisions of [Canon 7](#) apply both to judges and to candidates for judicial office. Generally, judges and candidates for election or appointment to judicial office are prohibited from acting as leaders in a political organization, publicly endorsing or opposing another candidate for public office, making speeches on behalf of political organizations, attending political gatherings, or asking for or making contributions to political organizations or candidates. Judges must also resign from judicial office when they become candidates for nonjudicial offices except while a candidate for a position in a state constitutional convention.

Under [Canon 7A\(3\)](#), a candidate for judicial office is required to maintain the dignity appropriate to judicial office and to encourage his or her family to adhere to the same standards that apply to the candidate. A candidate must prohibit those who serve at his or her pleasure from doing on the candidate's behalf what the candidate is prohibited from doing under [Canon 7](#).

Candidates for judicial office are prohibited from making “pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” [Fla. Code Jud. Conduct, Canon 7A\(3\)\(e\)\(i\)](#). They may not knowingly misrepresent information concerning themselves or an opponent, but they may respond to personal attacks or attacks on their record, as long as they do so in accordance with [Canon 7A\(3\)\(e\)](#). In 2005, the Florida Supreme Court amended [Canon 7A\(3\)\(d\)](#) to add a provision which states that while a proceeding is pending or impending in any court, a judicial candidate shall not make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. This section does not apply to proceedings in which the judicial candidate is a litigant in a personal capacity. [Fla. Code Jud. Conduct, Canon 7A\(3\)\(d\)\(iii\) \[now Canon 7A\(3\)\(e\)\(iii\)\]](#).

Canon 7B regulates candidates seeking appointment to judicial or other governmental office. Candidates for appointment to judicial office and judges seeking another governmental office are prohibited from soliciting or accepting funds in any way. Their political activities are limited to communicating with the appointing authority, seeking support or endorsement from organizations that, and individuals who, regularly make recommendations for appointment to the office, and providing information about their qualifications for the office. Non-judge candidates for appointment to judicial office may retain an office in a political organization, attend political gatherings, and continue to contribute financially to political organizations or candidates.

Canon 7C provides specific guidance for judges and judicial candidates subject to public election. All candidates for a judicial office that is filled by public election are prohibited from personally soliciting funds or attorneys for publicly-stated support. Such candidates may, however, establish committees to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy. Formerly, candidates were prohibited from spending funds for their campaign or establishing a committee to solicit contributions or public support earlier than one year before the general election. This prohibition was deleted from the code in *In re Code of Judicial Conduct*, 659 So. 2d 692 (Fla. 1995). Candidates may not use campaign contributions for their private benefit.

A candidate for merit retention in office may conduct only limited campaign activities until he or she certifies that the candidacy has drawn active opposition. Such merit retention candidates may campaign more freely after mailing a certificate in writing to the Secretary of State and JQC that their candidacy has drawn active opposition, including “campaigning together and conducting a joint campaign designed to educate the public on merit retention and each candidate's views as to why he or she should be retained in office, to the extent not otherwise prohibited by Florida law.”

Canon 7C(3) provides that a judicial candidate involved in an election or re-election who has qualified for judicial office, or a merit retention candidate who has certified that he or she has active opposition, may participate in some political functions. For example, the candidate may attend a political party function to speak on behalf of his or her candidacy or on a matter regarding the law, the improvement of the legal system, or the administration of justice. The function must not be a fund-raiser, and other candidates for that office must be invited. Such candidates attending a political party function must avoid suggesting that they support or oppose a political party, a political issue, or another candidate.

[Canon 7D](#) restricts the political activity that may be engaged in by incumbent judges. [Canon 7E](#) states that [Canon 7](#) applies to all incumbent judges and judicial candidates. A successful candidate is subject to judicial discipline for his or her campaign conduct, while an unsuccessful candidate who is a lawyer is subject to lawyer discipline under [rule 4-8.2\(b\), Rules Regulating The Florida Bar](#).

Application of the Code of Judicial Conduct

Generally, the code applies to justices of the supreme court and judges of the district courts of appeal, circuit courts, and county courts. The code applies in part to anyone who performs judicial functions, including, but not limited to, civil traffic infraction hearing officers, court commissioners, general or special magistrates, child support hearing officers, and judges of compensation claims. Retired judges eligible to serve on assignment to temporary judicial duty shall comply with all provisions of the code except [Canons 5C\(2\), 5E, 5F\(1\), and 6A](#).

Appendix III

Florida Code of Judicial Conduct

Adopted September 29, 1994, effective Jan. 1, 1995 (643 So. 2d 1037).

As amended through October 1, 2016 (194 So. 3d 1015).

Preamble

Definitions

Canons

1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.
2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities.
3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.
4. A Judge is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties.
 - A. Extrajudicial Activities in General.
 - B. Avocational Activities.
 - C. Governmental, Civic or Charitable Activities.
 - D. Financial Activities.
 - E. Fiduciary Activities.
 - F. Service as Arbitrator or Mediator.
 - G. Practice of Law.
6. Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not

Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by [Article II, Section 8, of the Constitution of Florida](#), and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed with the Judicial Qualifications Commission to Ensure Full Financial Disclosure.

- A. Compensation for Quasi-Judicial and Extrajudicial Services and Reimbursement of Expenses.
 - B. Public Financial Reporting.
 - C. Confidential Financial Reporting to the Judicial Qualifications Commission.
 - D. Limitation of Disclosure.
7. A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity.
- A. All Judges and Candidates.
 - B. Candidates Seeking Appointment to Judicial or Other Governmental Office.
 - C. Judges and Candidates Subject to Public Election.
 - D. Incumbent Judges.
 - E. Applicability.
 - F. Statement of Candidate for Judicial Office.

Application of the Code of Judicial Conduct.

- A. Civil Traffic Infraction Hearing Officer.
- B. Retired/Senior Judge.

Effective Date of Compliance.

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct establishes standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Definitions Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Definitions and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which, if proven, can result in disciplinary action. When “should” or “should not” is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is not to be construed to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and

reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Definitions

“Appropriate authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, opens a campaign account as defined by Florida law, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election or appointment to nonjudicial office.

“Court personnel” does not include the lawyers in a proceeding before a judge.

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality.

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, sororal, or civic organization, or service by a judge’s spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially

affect the value of the securities.

“Fiduciary” includes such relationships as personal representative, administrator, trustee, guardian, and attorney in fact.

“Impartiality” or “impartial” denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

“Judge.” When used herein this term means [Article V, Florida Constitution](#) judges and, where applicable, those persons performing judicial functions under the direction or supervision of an Article V judge.

“Knowingly,” “knowledge,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

“Member of the candidate’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

“Member of the judge’s family residing in the judge’s household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

“Public election.” This term includes primary and general elections; it includes

partisan elections, nonpartisan elections, and retention elections.

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control.

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

[Amended Jan. 5, 2006 ([918 So. 2d 949](#)).]

Canon 1

A Judge Shall Uphold the Integrity And Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Canon 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.
- C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.

COMMENTARY

Canon 2A. Irresponsible or improper conduct by judges erodes public confidence in the judiciary. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Sections 3B(9) and (10) that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

See also Commentary under Section 2C.

Canon 2B. Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business, although a judge may use judicial letterhead to write character reference letters when such letters are otherwise permitted under this Code.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the

acceptance of awards, see Section 5D(5) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also [Canon 7](#) regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Canon 2C. Florida [Canon 2C](#) is derived from a recommendation by the American Bar Association and from the United States Senate Committee Resolution, 101st Congress, Second Session, as adopted by the United States Senate Judiciary Committee on August 2, 1990.

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See [New York State Club Ass'n Inc. v. City of New York](#), 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); [Board of Directors of Rotary International v. Rotary Club of Duarte](#), 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); [Roberts v. United States Jaycees](#), 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). Other relevant factors include the size and

nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

This Canon is not intended to prohibit membership in religious and ethnic clubs, such as Knights of Columbus, Masons, B'nai B'rith, and Sons of Italy; civic organizations, such as Rotary, Kiwanis, and The Junior League; young people's organizations, such as Boy Scouts, Girl Scouts, Boy's Clubs, and Girl's Clubs; and charitable organizations, such as United Way and Red Cross.

Although [Section 2C](#) relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates [Canon 2](#) and [Section 2A](#) and gives the appearance of impropriety. In addition, it would be a violation of [Canon 2](#) and [Section 2A](#) for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under [Canon 2](#) and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of [Section 2A](#).

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under [Section 2C](#) or under [Canon 2](#) and [Section 2A](#), the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

[Commentary amended Jan. 5, 2006 ([918 So. 2d 949](#)).]

Canon 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the specific standards set forth in the following sections apply.

B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
- (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.
- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.
- (6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words, gestures, or other conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national

origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

(c) A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of

their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) A judge shall not, with respect to parties or classes of parties, cases, controversies or issues likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities.

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimus interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge's spouse or a person within the third degree of relationship to the

judge participated as a lower court judge in a decision to be reviewed by the judge;

(f) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit the judge with respect to:

(i) parties or classes of parties in the proceeding;

(ii) an issue in the proceeding; or

(iii) the controversy in the proceeding.

(2) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification.

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

[Amended Jan. 23, 2003 ([838 So. 2d 521](#)); Jan. 5, 2006 ([918 So. 2d 949](#)).]

COMMENTARY

[Canon 3B\(4\)](#). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and business-like while being patient and deliberate.

[Canon 3B\(5\)](#). A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the

media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Canon 3B(7). The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief as *amicus curiae*.

Certain *ex parte* communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all *ex parte* communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

Canon 3B(8). In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues

resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with the judge to that end.

Canon 3B(9) and 3B(10). Sections 3B(9) and (10) restrictions on judicial speech are essential to the maintenance of the integrity, impartiality, and independence of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Sections 3B(9) and (10) do not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by [Rule 4-3.6 of the Rules Regulating The Florida Bar](#).

Canon 3B(10). Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

Canon 3C(4). Appointees of a judge include assigned counsel, officials such as referees, commissioners, special magistrates, receivers, mediators, arbitrators, and guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4). See also [Fla.Stat. § 112.3135 \(1991\)](#).

Canon 3D. Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or reporting the violation to the appropriate authority or other agency. If the conduct is minor, the Canon allows a judge to address the problem solely by direct communication with the offender. A judge having knowledge, however, that another judge has committed a violation of this Code that raises a substantial question as to that other judge's fitness for office or has knowledge that a lawyer

has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, is required under this Canon to inform the appropriate authority. While worded differently, this Code provision has the identical purpose as the related Model Code provisions.

Canon 3E(1). Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. The fact that the judge conveys this information does not automatically require the judge to be disqualified upon a request by either party, but the issue should be resolved on a case-by-case basis. Similarly, if a lawyer or party has previously filed a complaint against the judge with the Judicial Qualifications Commission, that fact does not automatically require disqualification of the judge. Such disqualification should be on a case-by-case basis.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

Canon 3E(1)(b). A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

Canon 3E(1)(d). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known

by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Section 3E(1)(d)(iii) may require the judge’s disqualification.

Canon 3E(1)(e). It is not uncommon for a judge’s spouse or a person within the third degree of relationship to a judge to also serve as a judge in either the trial or appellate courts. However, where a judge exercises appellate authority over another judge, and that other judge is either a spouse or a relationship within the third degree, then this Code requires disqualification of the judge that is exercising appellate authority. This Code, under these circumstances, precludes the appellate judge from participating in the review of the spouse’s or relation’s case.

Canon 3F. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

[Commentary amended June 15, 1995 (656 So. 2d 926); Aug. 24, 1995 (659 So. 2d 692); Nov. 9, 1995 (662 So. 2d 930); Jan. 23, 2003 (838 So. 2d 521); Jan. 5, 2006 (918 So. 2d 949).

Canon 4

A Judge Is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

- A. A judge shall conduct all of the judge’s quasi-judicial activities so that they do not:
- (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge;
 - (2) undermine the judge’s independence, integrity, or impartiality;
 - (3) demean the judicial office;
 - (4) interfere with the proper performance of judicial duties;
 - (5) lead to frequent disqualification of the judge; or
 - (6) appear to a reasonable person to be coercive.
- B. A judge is encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, the administration of

justice, and the role of the judiciary as an independent branch within our system of government, subject to the requirements of this Code.

C. A judge shall not appear at a public hearing before, or otherwise consult with an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

D. A judge is encouraged to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice, subject to the following limitations and the other requirements of this Code.

(1) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(a) will be engaged in proceedings that would ordinarily come before the judge, or

(b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(2) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(a) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(b) may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit the judge's title to be used in conjunction with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice and the funds raised will be used for a law related purpose(s);

(c) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the

administration of justice;

(d) shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive;

(e) shall not make use of court premises, staff, stationery, equipment, or other resources for fund-raising purposes, except for incidental use for activities that concern the law, the legal system, or the administration of justice, subject to the requirements of this Code.

[Amended Feb. 20, 2003 (840 So. 2d 1023); May 22, 2008 (983 So. 2d 550).]

COMMENTARY

Canon 4A. A judge is encouraged to participate in activities designed to improve the law, the legal system, and the administration of justice. In doing so, however, it must be understood that expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge and may undermine the independence and integrity of the judiciary. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See **Canon 2C** and accompanying Commentary.

Canon 4B. This canon was clarified in order to encourage judges to engage in activities to improve the law, the legal system, and the administration of justice. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including, but not limited to, the improvement of the role of the judiciary as an independent branch of government, the revision of substantive and procedural law, the improvement of criminal and juvenile justice, and the improvement of justice in the areas of civil, criminal, family, domestic violence, juvenile delinquency, juvenile dependency, probate and motor vehicle law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Support of pro bono legal services by members of the bench is an activity that relates to improvement of the administration of justice. Accordingly, a judge may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as

feasible, and acting in an advisory capacity to pro bono programs. Judges are encouraged to participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession, which may include the expression of opposition to the persecution of lawyers and judges in other countries.

The phrase “subject to the requirements of this Code” is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

Canon 4C. See **Canon 2B** regarding the obligation to avoid improper influence.

Canon 4D(1). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Canon 4D(2). A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice as long as the solicitation cannot reasonably be perceived as coercive. Personal or direct solicitation of funds for an organization and personal or direct solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge’s signature.

A judge may be a speaker or guest of honor at an organization’s fund-raising event if the event concerns the law, the legal system, or the administration of justice, and the judge does not engage in the direct solicitation of funds. However, judges may not participate in or allow their titles to be used in connection with fund-raising activities on behalf of an organization engaging in advocacy if such participation would cast doubt on the judge’s capacity to act impartially as a judge.

Use of an organization letterhead for fund-raising or membership solicitation does not violate [Canon 4D\(2\)](#) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

[Commentary amended Feb. 20, 2003 ([840 So. 2d 1023](#)); May 22, 2008 ([983 So. 2d 550](#)).]

Canon 5

A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) undermine the judge's independence, integrity, or impartiality;
- (3) demean the judicial office;
- (4) interfere with the proper performance of judicial duties;
- (5) lead to frequent disqualification of the judge; or
- (6) appear to a reasonable person to be coercive.

B. Avocational Activities. A judge is encouraged to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.

C. Governmental, Civic or Charitable Activities.

- (1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.
- (2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the judicial branch, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical,

educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally or directly participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) shall not personally or directly participate in membership solicitation if the solicitation might reasonably be perceived as coercive;

(iii) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage

investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose

appearance or interest in a case would in any event require disqualification under Canon 3E;

- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value, or the aggregate value in a calendar year of such gifts, bequests, favors, or loans from a single source, exceeds \$100.00, the judge reports it in the same manner as the judge reports gifts under Canon 6B(2).

E. Fiduciary Activities.

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator.

- (1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.
- (2) A senior judge may serve as a mediator in a case in a circuit in which the

senior judge is not presiding as a judge only if the senior judge is certified pursuant to [rule 10.100, Florida Rules for Certified and Court-Appointed Mediators](#). Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may not advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation, arbitration, or voluntary trial resolution services and shall not permit an entity with which the senior judge associates to do so. A senior judge shall not serve as a mediator, arbitrator, or voluntary trial resolution judge in any case in a circuit in which the judge is currently presiding as a senior judge. A senior judge who provides mediation, arbitration, or voluntary trial resolution services shall not preside over any case in the circuit where such services are provided; however, a senior judge may preside over cases in circuits in which the judge does not provide such dispute-resolution services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator, arbitrator, or voluntary trial resolution judge by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator, arbitrator, or voluntary trial resolution judge within the previous three years. A senior judge shall disclose any negotiations or agreements for the provision of services as a mediator, arbitrator, or voluntary trial resolution judge between the senior judge and any parties or counsel to the case.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. [Amended Jan. 10, 2002 ([816 So. 2d 1084](#)); Feb. 20, 2003 ([840 So. 2d 1023](#)); Nov. 3, 2005, effective Jan. 1, 2006 ([915 So. 2d 145](#)); May 22, 2008 ([983 So. 2d 550](#)); June 19, 2014 ([141 So. 3d 1172](#)); July 7, 2016, effective Oct. 1, 2016 ([194 So. 3d 1015](#)).]

COMMENTARY

[Canon 5A](#). Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. For that reason, judges are encouraged to participate in extrajudicial community activities.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a

judge and may undermine the independence and integrity of the judiciary. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See [Canon 2C](#) and accompanying Commentary.

[Canon 5B](#). In this and other sections of Canon 5, the phrase “subject to the requirements of this Code” is used, notably in connection with a judge’s governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

[Canon 5C\(1\)](#). See [Canon 2B](#) regarding the obligation to avoid improper influence.

[Canon 5C\(2\)](#). [Canon 5C\(2\)](#) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by [Canon 4D](#). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

[Canon 5C\(2\)](#) does not govern a judge’s service in a nongovernmental position. See [Canon 5C\(3\)](#) permitting service by a judge with educational, religious, charitable, fraternal, sororal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under [Canon 5C\(2\)](#), but service on the board of a public law school or any private educational institution would generally be permitted under [Canon 5C\(3\)](#).

[Canon 5C\(3\)](#). [Canon 5C\(3\)](#) does not apply to a judge’s service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see [Canon 5C\(2\)](#).

See [Commentary to Canon 5B](#) regarding use of the phrase “subject to the following limitations and the other requirements of this Code.” As an example of the meaning of the phrase, a judge permitted by [Canon 5C\(3\)](#) to serve on the board of a fraternal institution may be prohibited from such service by [Canons 2C](#) or [5A](#) if the institution practices invidious discrimination or if service on the board

otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of [Canon 5](#) in addition to [Canon 5C](#). For example, [Canon 5G](#) prohibits a judge from serving as a legal advisor to a civic or charitable organization.

[Canon 5C\(3\)\(a\)](#). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly reexamine the activities of each organization with which the judge is affiliated in order to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past.

[Canon 5C\(3\)\(b\)](#). A judge may solicit membership or endorse or encourage membership efforts for a nonprofit educational, religious, charitable, fraternal, sororal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Personal or direct solicitation of funds for an organization and personal or direct solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of [Canon 5C\(3\)\(b\)](#). It is also generally permissible for a judge to pass a collection plate at a place of worship or for a judge to serve as an usher or food server or preparer, or to perform similar subsidiary and unadvertised functions at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations, so long as they do not entail direct or personal solicitation. However, a judge may not be a speaker, guest of honor, or otherwise be featured at an organization's fund-raising event, unless the event concerns the law, the legal system, or the administration of

justice as authorized by [Canon 4D\(2\)\(b\)](#).

Use of an organization letterhead for fund-raising or membership solicitation does not violate [Canon 5C\(3\)\(b\)](#) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

[Canon 5D\(1\)](#). When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See [Canon 2B](#); see also [Canon 3B\(11\)](#).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see [Commentary to Canon 3E\(1\)](#) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in [Canon 5A](#) against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in [Canon 2](#) against activities involving impropriety or the appearance of impropriety and the prohibition in [Canon 2B](#) against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See [Commentary for Canon 5B](#) regarding use of the phrase "subject to the requirements of this Code."

[Canon 5D\(2\)](#). This Canon provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

[Canon 5D\(3\)](#). Subject to the requirements of this Code, a judge may participate in

a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by [Canon 5D\(3\)](#), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

[Canon 5D\(5\)](#). [Canon 5D\(5\)](#) does not apply to contributions to a judge's campaign for judicial office, a matter governed by [Canon 7](#).

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

[Canon 5D\(5\)\(a\)](#). Acceptance of an invitation to a law-related function is governed by [Canon 5D\(5\)\(a\)](#); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by [Canon 5D\(5\)\(h\)](#).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See [Canons 5A\(1\) and 2B](#).

[Canon 5D\(5\)\(d\)](#). A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, [Canon 5D\(5\)\(e\)](#).

[Canon 5D\(5\)\(h\)](#). [Canon 5D\(5\)\(h\)](#) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to

come before the judge.

Canon 5E(3). The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of **Canon 5D(4)**.

Canon 5F(1). **Canon 5F(1)** does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties. An active judge may take the necessary educational and training programs to be certified or qualified as a mediator or arbitrator, but this shall not be a part of the judge's judicial duties. While such a course will allow a judge to have a better understanding of the arbitration and mediation process, the certification and qualification of a judge as a mediator or arbitrator is primarily for the judge's personal benefit. While actually participating in the mediation and arbitration training activities, care must be taken in the selection of both cases and locations so as to guarantee that there is no interference or conflict between the training and the judge's judicial responsibilities. Indeed, the training should be conducted in such a manner as to avoid the involvement of persons likely to appear before the judge in legal proceedings.

Canon 5F(2). The purpose of the admonitions in this canon is to ensure that the impartiality of a senior judge is not subject to question. Although a senior judge may act as a mediator, arbitrator, or voluntary trial resolution judge in a circuit in which the judge is not presiding as a senior judge, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. These provisions are intended to prohibit a senior judge from soliciting lawyers to use the senior judge's mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity and to require a senior judge to ensure that entities with which the senior judge associates as a mediator abide by the same prohibitions on advertising or promoting the senior judge's mediation service as are imposed on the senior judge.

Canon 5G. This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See **Canon 2B**.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

[Commentary amended Feb. 20, 2003 (840 So. 2d 1023); Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); May 22, 2008 (983 So. 2d 550); June 19, 2014 (141 So. 3d 1172); July 7, 2016, effective Oct. 1, 2016 (194 So. 3d 1015).]

Canon 6

Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed With the Judicial Qualifications Commission to Ensure Full Financial Disclosure

A. Compensation for Quasi-Judicial and Extrajudicial Services and Reimbursement of Expenses.

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- (1) Compensation. Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.
- (2) Expense Reimbursement. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, to the judge's spouse. Any payment in excess of such an amount is compensation.

B. Public Financial Reporting.

- (1) Income and Assets. A judge shall file such public report as may be required by law for all public officials to comply fully with the provisions of [Article II, Section 8, of the Constitution of Florida](#). The form for public financial disclosure shall be that recommended or adopted by the Florida Commission on Ethics for use

by all public officials. The form shall be filed with the Florida Commission on Ethics on the date prescribed by law, and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

(2) Gifts. A judge shall file a public report of all gifts which are required to be disclosed under [Canon 5D\(5\)\(h\)](#) of the Code of Judicial Conduct. The report of gifts received in the preceding calendar year shall be filed with the Florida Commission on Ethics on or before July 1 of each year. A copy shall be filed simultaneously with the Judicial Qualifications Commission.

(3) Disclosure of Financial Interests Upon Leaving Office. A judge shall file a final disclosure statement within 60 days after leaving office, which report shall cover the period between January 1 of the year in which the judge leaves office and his or her last day of office, unless, within the 60-day period, the judge takes another public position requiring financial disclosure under [Article II, Section 8, of the Constitution of Florida](#), or is otherwise required to file full and public disclosure for the final disclosure period. The form for disclosure of financial interests upon leaving office shall be that recommended or adopted by the Florida Commission on Ethics for use by all public officials. The form shall be filed with the Florida Commission on Ethics and a copy shall be filed simultaneously with the Judicial Qualifications Commission.

C. Confidential Financial Reporting to the Judicial Qualifications Commission.

To ensure that complete financial information is available for all judicial officers, there shall be filed with the Judicial Qualifications Commission on or before July 1 of each year, if not already included in the public report to be filed under Canon 6B(1) and (2), a verified list of the names of the corporations and other business entities in which the judge has a financial interest as of December 31 of the preceding year, which shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and not be opened or the contents thereof disclosed except in the manner hereinafter provided.

At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business entity which is a party to the cause or which has a substantial direct or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the chair to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the chair shall render a

prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the chair of the Commission on forms to be approved by it.

D. Limitation of Disclosure.

Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in [Sections 3E](#) and [3F](#), or as otherwise required by law.

[Amended Jan. 10, 2002 ([816 So. 2d 1084](#)).]

COMMENTARY

[Canon 6A](#). See [Section 5D\(5\)\(a\)–\(h\)](#) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. Judges must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

[Canon 6C](#). Subparagraph A prescribes guidelines for additional compensation and the reimbursement of expense funds received by a judge.

Subparagraphs B and C prescribe the three types of financial disclosure reports required of each judicial officer.

The first is the Ethics Commission's constitutionally required form pursuant to [Article II, Section 8, of the Constitution](#). It must be filed each year as prescribed by law. The financial reporting period is for the previous calendar year. A final disclosure statement generally is required when a judge leaves office. The filing of the income tax return is a permissible alternative.

The second is a report of gifts received during the preceding calendar year to be filed publicly with the Florida Commission on Ethics. The gifts to be reported are in accordance with [Canon 5D\(5\)\(h\)](#). This reporting is in lieu of that prescribed by

statute as stated in the Supreme Court's opinion rendered in [In re Code of Judicial Conduct, 281 So.2d 21 \(Fla.1973\)](#). The form for this report is as follows:

Form 6A. Gift Disclosure

All judicial officers must file with the Florida Commission on Ethics a list of all gifts received during the preceding calendar year of a value in excess of \$100.00 as provided in [Canon 5D\(5\)](#) and [Canon 6B\(2\)](#) of the Code of Judicial Conduct.

Name: _____

Telephone: _____

Address: _____

Position Held: _____

Please identify all gifts you received during the preceding calendar year of a value in excess of \$100.00, as required by [Canon 5D\(5\)](#) and [Canon 6B\(2\)](#) of the Code of Judicial Conduct. _____

OATH

State of Florida

County of _____

I, _____, the public official filing this disclosure statement, being first duly sworn, do depose on oath and say that the facts set forth in the above statement are true, correct, and complete to the best of my knowledge and belief.

 (Signature of Reporting Official)

 (Signature of Officer Authorized to Administer Oaths)

My Commission expires _____.

Sworn to and subscribed before me this

_____ day of _____, 20_____.

COMMENTARY [cont'd]

The third financial disclosure report is prescribed in subparagraph C. This provision ensures that there will be complete financial information for all judicial

officers available with the Judicial Qualifications Commission by requiring that full disclosure be filed confidentially with the Judicial Qualifications Commission in the event the limited disclosure alternative is selected under the provisions of [Article II, Section 8](#).

The amendment to this Canon requires in 6B(2) a separate gift report to be filed with the Florida Commission on Ethics on or before July 1 of each year. The form to be used for that report is included in the commentary to Canon 6. It should be noted that [Canon 5](#), as it presently exists, restricts and prohibits the receipt of certain gifts. This provision is not applicable to other public officials.

With reference to financial disclosure if the judge chooses the limited disclosure alternative available under the provision of [Article II, Section 8, of the Constitution of Florida](#), without the inclusion of the judge's Federal Income Tax Return, then the judge must file with the Commission a list of the names of corporations or other business entities in which the judge has a financial interest even though the amount is less than \$1,000. This information remains confidential until a request is made by a party to a cause before the judge. This latter provision continues to ensure that complete financial information for all judicial officers is available with the Judicial Qualifications Commission and that parties who are concerned about a judge's possible financial interest have a means of obtaining that information as it pertains to a particular cause before the judge.

[Canon 6D, Section 3E](#) requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Definitions Section. [Canon 5D](#) requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; [Section 6B](#) requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

[Commentary amended Jan. 10, 2002 ([816 So. 2d 1084](#)).]

Canon 7

A Judge or Candidate for Judicial Office Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates.

- (1) Except as authorized in Sections 7B(2), 7C(2) and 7C(3), a judge or a candidate for election or appointment to judicial office shall not:
 - (a) act as a leader or hold an office in a political organization;
 - (b) publicly endorse or publicly oppose another candidate for public office;
 - (c) make speeches on behalf of a political organization;
 - (d) attend political party functions; or
 - (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.
- (2) A judge shall resign from judicial office upon becoming a candidate for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.
- (3) A candidate for a judicial office:
 - (a) shall be faithful to the law and maintain professional competence in it, and shall not be swayed by partisan interests, public clamor, or fear of criticism;
 - (b) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;
 - (c) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;
 - (d) except to the extent permitted by Section 7C(1), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;
 - (e) shall not:
 - (i) with respect to parties or classes of parties, cases, controversies, or issues

that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office; [øf]

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

(iii) while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. This section does not apply to proceedings in which the judicial candidate is a litigant in a personal capacity[; or]

(iv) commend or criticize jurors for their verdict other than in a court pleading, filing or hearing in which the candidate represents a party in the proceeding in which the verdict was rendered.

(f) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 7A(3)(e).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) A candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals; and

(iii) provide to those specified in Sections 7B(2)(a)(i) and 7B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition,

unless otherwise prohibited by law:

- (i) retain an office in a political organization,
- (ii) attend political gatherings, and
- (iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

C. Judges and Candidates Subject to Public Election.

(1) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.

(2) A candidate for merit retention in office may conduct only limited campaign activities until such time as the judge certifies that the judge's candidacy has drawn active opposition. Limited campaign activities shall only include the conduct authorized by subsection C(1), interviews with reporters and editors of the print, audio and visual media, and appearances and speaking engagements before public gatherings and organizations. Upon mailing a certificate in writing to the Secretary of State, Division of Elections, with a copy to the Judicial Qualifications Commission, that the judge's candidacy has drawn active opposition, and specifying the nature thereof, a judge may thereafter campaign in any manner authorized by law, subject to the restrictions of subsection A(3). This includes candidates facing active opposition in a merit retention election for the same judicial office campaigning together and conducting a joint campaign designed to educate the public on merit retention and each candidate's views as to why he or she should be retained in office, to the extent not otherwise prohibited by Florida law.

(3) A judicial candidate involved in an election or re-election, or a merit retention candidate who has certified that he or she has active opposition, may attend a political party function to speak in behalf of his or her candidacy or on a

matter that relates to the law, the improvement of the legal system, or the administration of justice. The function must not be a fund raiser, and the invitation to speak must also include the other candidates, if any, for that office. The candidate should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue, or another candidate. Conduct limited to that described above does not constitute participation in a partisan political party activity.

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

E. Applicability. [Canon 7](#) generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 4-8.2\(b\) of the Rules Regulating The Florida Bar](#).

F. Statement of Candidate for Judicial Office. Each candidate for a judicial office, including an incumbent judge, shall file a statement with the qualifying officer within 10 days after filing the appointment of campaign treasurer and designation of campaign depository, stating that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct. Such statement shall be in substantially the following form:

STATEMENT OF CANDIDATE FOR JUDICIAL OFFICE

I, _____, the judicial candidate, have received, have read, and understand the requirements of the Florida Code of Judicial Conduct.

Signature of Candidate

Date

[Amended Aug. 24, 1995 ([659 So. 2d 692](#)); May 30, 1996 ([675 So. 2d 111](#)); Nov. 12, 1998 ([720 So. 2d 1079](#)); March 10, 2005 ([897 So. 2d 1262](#)); Jan. 5, 2006 ([918 So. 2d 949](#)); July 3, 2008 ([985 So. 2d 1073](#)); June 11, 2015 ([167 So. 3d 399](#)).

COMMENTARY

Canon 7A(1). A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 7A(1) from making the facts public.

Section 7A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not “an office in a political organization.”

Section 7A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate’s name on the same ticket.

Section 7A(1)(b) prohibits judges and judicial candidates from publicly endorsing or opposing candidates for public office to prevent them from abusing the prestige of judicial office to advance the interests of others. Section 7C(2) authorizes candidates facing active opposition in a merit retention election for the same judicial office to campaign together and conduct a joint campaign designed to educate the public on merit retention and each candidate’s views as to why he or she should be retained in office, to the extent not otherwise prohibited by Florida law. Joint campaigning by merit retention candidates, as authorized under Section 7C(2), is not a prohibited public endorsement of another candidate under Section 7A(1)(b).

Canon 7A(3)(b). Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

Canon 7A(3)(e). Section 7A(3)(e) prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate’s duty to uphold the law regardless of his or her personal views. Section 7A(3)(e) does not prohibit a candidate from making pledges or promises respecting improvements in court

administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment.

Canon 7B(2). Section 7B(2) provides a limited exception to the restrictions imposed by Sections 7A(1) and 7D. Under Section 7B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 7B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 7B(1), 7B(2)(a), 7E and Application Section.

Canon 7C. The term “limited campaign activities” is not intended to permit the use of common forms of campaign advertisement which include, but are not limited to, billboards, bumperstickers, media commercials, newspaper advertisements, signs, etc. Informational brochures about the merit retention system, the law, the legal system or the administration of justice, and neutral, factual biographical sketches of the candidates do not violate this provision.

Active opposition is difficult to define but is intended to include any form of organized public opposition or an unfavorable vote on a bar poll. Any political activity engaged in by members of a judge’s family should be conducted in the name of the individual family member, entirely independent of the judge and without reference to the judge or to the judge’s office.

Canon 7D. Neither Section 7D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge’s activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C and its Commentary.

[Commentary amended Aug. 24, 1995 (659 So. 2d 692); March 10, 2005 (897 So. 2d 1262); Jan. 5, 2006 (918 So. 2d 949); July 3, 2008 (985 So. 2d 1073); June 11, 2015 (167 So. 3d 399).]

Application

This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with [Canons 1, 2A, and 3](#), and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

If the hiring or appointing authority for persons who perform a judicial function is not a judge then that authority should adopt the applicable provisions of this Code.

A. Civil Traffic Infraction Hearing Officer

A civil traffic infraction hearing officer:

- (1) is not required to comply with [Section 5C\(2\), 5D\(2\) and \(3\), 5E, 5F, and 5G](#), and [Sections 6B and 6C](#).
- (2) should not practice law in the civil or criminal traffic court in any county in which the civil traffic infraction hearing officer presides.

B. Retired/Senior Judge

(1) A retired judge eligible to serve on assignment to temporary judicial duty, hereinafter referred to as “senior judge,” shall comply with all the provisions of this Code except [Sections 5C\(2\), 5E, 5F\(1\), and 6A](#). A senior judge shall not practice law or serve as a mediator, arbitrator, or voluntary trial resolution judge in a circuit in which the judge is presiding as a senior judge, and shall refrain from accepting any assignment in any cause in which the judge’s present financial business dealings, investments, or other extra-judicial activities might be directly or indirectly affected.

(2) If a retired justice or judge does not desire to be assigned to judicial service, such justice or judge who is a member of The Florida Bar may engage in the practice of law and still be entitled to receive retirement compensation. The justice

or judge shall then be entitled to all the rights of an attorney-at-law and no longer be subject to this Code.

[Amended Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); Jan. 5, 2006 (918 So. 2d 949); June 19, 2014 (141 So. 3d 1172); July 7, 2016, effective Oct. 1, 2016 (194 So. 3d 1015).]

COMMENTARY

Section A. Please see *In re Florida Rules of Practice and Procedure for Traffic Courts—Civil Traffic Infraction Hearing Officer Pilot Program*, 559 So.2d 1101 (Fla.1990), regarding civil traffic infraction hearing officers.

[Commentary amended Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); Jan. 5, 2006 (918 So. 2d 949).]

Effective Date of Compliance

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except [Sections 5D\(2\), 5D\(3\) and 5E](#) and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

COMMENTARY

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in [Section 5E](#), continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in [Section 5D\(3\)](#), continue in that activity for a reasonable period but in no event longer than one year.

Appendix IV

Ethics for Court Personnel

ETHICS FOR COURT PERSONNEL

What We Know About the Application of the Canons to Judicial Staff

The Code of Judicial Conduct makes only eight references, direct or indirect, to judicial staff or other persons who may be authorized to carry out certain responsibilities for a judge or who are subject to a judge's direction and control. The following outline attempts to capture as succinctly as possible what we can know with certainty about the Code's application to judicial staff.

I. **Canon 2 – Avoidance of Impropriety: Advancement of Private Interests and Improper Use of Influence**

2B: Judges are not permitted to lend the prestige of office to advance their own private interests or the private interests of others.

This canon also prohibits a judge from conveying or permitting others to convey the impression that they are in a special position to influence the judge.

Discussion:

Judges can be disciplined if their staff do something to suggest that by virtue of their position they can lend the prestige of the judge's office to help someone obtain an advantage or can exercise their special position to influence the judge. Although the [Application section of the Code](#) does not apply to a judge's staff, and therefore the Judicial Qualifications Commission (JQC) does not have jurisdiction over them, they could face dismissal for a violation if they jeopardize the judge with the JQC. A staff member who is an attorney may also be subject to discipline by The Florida Bar for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and for conduct prejudicial to the administration of justice. [Rule 4-8.4, Rules Regulating The Florida Bar](#). See also [rule 4-8.4\(f\)](#), which expressly proscribes an attorney's knowingly assisting a judge in conduct that violates the canons or other law.

II. Canon 3 – Impartiality and Diligence: Dignity and Courtesy

3B(4): “A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge’s direction and control.”

This canon requires the judge to mandate “similar conduct” of staff.

Discussion:

One can argue that a judge may be subject to discipline for failure to control, discipline, or possibly dismiss staff members over whom the judge has authority who are impatient, undignified, or discourteous to litigants, attorneys, etc., with whom they come into contact. Court staff represent the court in its administrative capacity when at work, on duty, and acting under a judge’s supervision and control. Any undignified or rude act on their part reflects poorly on the court. For attorneys, such conduct may fall under the catch-all [rule 4-8.4](#) as egregious conduct that could be prejudicial to the administration of justice.

III. Canon 3 – Impartiality and Diligence: Manifestations of Bias or Prejudice

3B(5): Judges must perform judicial duties without bias or prejudice. This means that they cannot, in the performance of their judicial duties, by words or conduct manifest bias or prejudice based on “race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.”

Judges also cannot permit staff, court officials, and others subject to their direction and control to engage in such conduct. Moreover, [Canon 3D\(2\)](#), under the heading “Disciplinary Responsibilities,” provides in pertinent part:

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

Discussion:

The commentary to [3D](#) states that “Appropriate action may include direct communication with the . . . lawyer . . . , other direct action if available, or reporting the violation to the appropriate authority or other agency” or body. If the

conduct engaged in by the lawyer “raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects,” then the judge is required to report the lawyer to the appropriate authority; i.e., The Florida Bar’s Department of Lawyer Regulation. Judges, therefore, have the authority, and sometimes the affirmative duty, to discipline or discharge staff for a bias manifestation. In addition, the above quoted matter from [Canon 3D](#) is relevant because [rule 4-8.4\(d\), Rules Regulating The Florida Bar](#), is the Bar’s anti-bias provision, approved by the Florida Supreme Court in *The Florida Bar Re: Amendments to Rules Regulating The Florida Bar*, 624 So. 2d 720 (Fla. 1993). This decision actually predates the anti-bias provision in the canons and requires discipline for lawyers who manifest bias in connection with the practice of law. So, not only might judges discipline or dismiss lawyer employees for a bias manifestation, they might also be required to report them to The Florida Bar, which could ultimately result in suspension or revocation of their license to practice.

There is, of course, an argument to be made that the Bar rule pertains only to “conduct in connection with the practice of law” and that serving as a law clerk is not the “practice” of law. *See Fla. R. Jud. Admin. 2.505(b)* (anyone serving as a staff attorney, law clerk, or judicial assistant to a judge or justice is not permitted to “practice as an attorney”). This is not, however, an argument most would want to make in defending against a discipline complaint, especially in light of the more general language in [rule 4-8.4](#) on conduct prejudicial to the administration of justice.

IV. Canon 3 – Impartiality and Diligence: Public Comment about Pending or Impending Matters

3B(9): Judges must abstain, while a proceeding is pending or impending in any court, from public comment that might reasonably be expected to affect its outcome or impair its fairness, or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

Judges are required to prohibit “court personnel” subject to their “direction and control” from violating this public comment rule.

Discussion:

[Canon 3B](#) pertains specifically to judicial performance of adjudicative responsibilities. It also addresses supervisory responsibilities of the judge in this context. Court staff who make a public comment about a pending or impending matter in any court risk subjecting their judge to criticism and/or discipline if that

comment might reasonably be expected to affect the outcome or impair the fairness of the matter. Is this limit on free speech rights constitutional? Probably. See *Pickering v. Board of Ed. of Tp. High School Dist. 205, Will County, Illinois*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968); *Board of Regents of State v. Snyder*, 826 So. 2d 382 (Fla. 2d DCA 2002); see also *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002) (discussed below in the context of [Canon 7](#) and political speech. Although this case is frequently cited as support for extending the bounds of judicial free speech, its likely effect in Florida is more circumscribed and will have less impact here than in some other states. *White* concerned only the constitutionality of Minnesota’s “announce clause,” completely prohibiting judges from announcing views on disputed legal or political issues. Florida has no “announce clause,” having amended the [Code](#) a number of years ago to eliminate it. In Florida judges are not entirely prohibited from expressing their views on controversial subjects, but still may not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, [Canon 3B\(9\)](#)). See generally [D’Alemberte](#), *Searching for the Limits of Judicial Free Speech*, 61 *Tulane L. Rev.* 611, 614–620, discussing sanctions on speech as disfavored generally, but citing United States Supreme Court authority finding valid reasons for holding judges to a stricter standard; this is not a recent article, but it is well reasoned, and the rationale for limiting judicial comment seems equally persuasive with regard to placing some valid time, place, and manner restrictions on court staff as well.

V. Canon 3 – Impartiality and Diligence: Fidelity and Discharge of Duties

3C(1): A judge must diligently discharge administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration.

3C(2): A judge must also require staff to observe the same standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in performing their official duties.

Discussion:

[Canon 3C](#), entitled “Administrative Responsibilities,” concerns the judge’s obligation to maintain professional competence and diligently discharge duties. In performing administrative responsibilities, the judge has a concomitant supervisory responsibility role as well. Generally speaking, the “standards of fidelity and diligence” by extension apply to staff and refer to maintaining professional

competence, completing projects thoroughly and promptly, and abiding by professional ethics codes that apply to staff. See [Opinion 97-03](#) (wherein JEAC opined that under [Canon 3C\(2\)](#), “Although the responsibility in this particular Canon is placed upon the judge, the Committee believes that a law clerk who willfully or negligently violates an applicable standard of fidelity or diligence is guilty of a transgression by acting in such a way as to thwart the judge’s opportunity to exercise supervision”). Further, it should be noted that while there may be some “academic” debate about the direct application of the [Code of Judicial Conduct](#) to non-judge court staff, at least one court has concluded that a law clerk does possess duties under the canons. See *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958, 968 (5th Cir. 1980) (“In giving an interview with the press, the clerk most likely breached duties imposed upon her by [Canons 3 A\(6\)](#) . . . and [3 B\(2\)](#) . . . of the Code of Judicial Conduct for United States Judges”).

VI. Canon 4 – Activities to Improve the Law, the Legal System, or the Administration of Justice: Fund-raising and Member Solicitation

4D(2)(a) & (d): A judge serving as a member, officer, director, trustee, or non-legal advisor to an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice may not personally or directly participate in the solicitation of funds or other fund-raising activities, and shall not personally or directly participate in membership solicitation if it might reasonably be perceived as coercive, except that the judge may solicit funds from other judges over whom he or she exercises no supervisory or appellate authority.

4D(2)(e): A judge may not use court staff or other court resources for fund-raising purposes unless incidental to activities that concern the law, the legal system, or the administration of justice.

Discussion:

The provisions in [Canon 4D\(2\)\(a\)](#) and [\(2\)\(d\)](#) are, arguably, not references to staff at all, and [Canon 4D\(2\)\(d\)](#) is probably aimed more at preventing other members of the organization or governmental entity with which a judge may have an affiliation from invoking the judge’s name in connection with fund-raising or membership solicitation. Still, [Canon 4D\(2\)\(e\)](#) does refer to court staff, and the commentary to [Canon 4D\(2\)](#) states in pertinent part:

In addition, a judge must also make reasonable efforts to ensure that the

judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

Also, it is worthy of note that [Canon 4](#) addresses not only fund-raising, but also activities and service to improve the law, the legal system, and the administration of justice. Moreover, on an affirmative note, in 2003, the Florida Supreme Court amended [Canon 4](#) to clarify that judges in Florida are not only allowed, but actually encouraged, to participate in activities to improve the law, the legal system, and the administration of justice. The Court has recognized such service as intrinsically good. Outlines frequently focus on the "shalt nots," the negative prohibitions, and it is important to recognize the affirmative aspects as well. However, the rules regarding funds solicitation are just as restrictive as ever.

Please see the following discussion of [Canon 5](#) and [Opinion 93-45](#) for further discussion of related issues, such as involvement in activities to improve the law, the legal system, or the administration of justice and [Canon 5](#) charitable and civic involvement.

VII. Canon 5 – Extrajudicial Activity: Fund-raising and Member Solicitation – Charitable and Civic

5C(3)(b)(i) & (ii): A judge cannot solicit funds for any educational, religious, charitable, fraternal, or civic organization except from other judges over whom the judge does not exercise supervisory or appellate authority, and cannot participate in membership solicitation for such organizations if it might reasonably be perceived as coercive.

5C(3)(b)(iii): A judge must not permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Discussion:

These references, like certain of the preceding references in [Canon 4](#), are only indirectly related to law clerks and other court staff and do not mention court personnel at all. The references to "permitting" the use of the prestige of office are clear enough, though. Staff cannot do for the judge what the judge may not do directly.

Does this mean that court staff may not solicit funds for an educational, religious charitable, fraternal, or civic organization? They probably can, within some important limitations. They may not act as the judge's representative, but they may

not be prohibited from involvement in charity work, including fund-raising, on their own time. They also should conduct the activity independently of the judge, without reference to the judge or the judge's office. Court letterhead should never be used, and there is no reason to mention the particular court position held. It is strongly recommended that staff avoid soliciting support for such an organization any time on court premises, even if to do so would not interfere with the performance of work duties. The appearance of impropriety would be too great as a judge's staff are identified in connection with the judge while on premises. The key is to not be perceived as engaging in the activity on the judge's behalf. *See Opinion 93-45.* (This opinion refers to partisan political activity by judicial staff, but provides an instructive analogy to their civic and "extra-curricular activities." The opinion suggests that within valid time/place/manner restrictions, staff may engage in political activity completely unconnected from the court. This is probably true of civic or charitable activities as well.)

VIII. Canon 7 – Political Activity: Involvement of Court Staff

7A(1): "Except as authorized in [Sections 7B\(2\)](#), [7C\(2\)](#) and [7C\(3\)](#), a judge or candidate for election or appointment to judicial office shall not:

- (a) act as a leader or hold an office in a political organization;
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) attend political party functions; or
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions."

7A(3)(c): The judge must prohibit "employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon."

7A(3)(d): This section, with limited exceptions for campaign committees, also places a responsibility on the judge not to permit "any other person" to do for the judge what he or she may not do as a candidate.

7C(1): A judge cannot, during his or her own campaign, personally solicit campaign funds or solicit attorneys for publicly stated support, but may establish a committee to do so.

7D: “A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.”

Discussion:

[Canon sections 7A](#) and [7D](#) refer to political activity anytime, and [Canon 7C](#) refers to campaign conduct specifically. In the past, before the 1994 revisions to the Code of Judicial Conduct, the committee interpreted [Canon 7](#) to mean that employees could not engage in any activity prohibited by [Canon 7](#) as a whole, at least while the employing judge was in the midst of a campaign between competing candidates or on the basis of merit retention. [Opinion 93-45](#), issued before the 1994 revisions to [Canon 7](#), clarified the matter somewhat.

The Florida Supreme Court has expressed that court staff may engage “in partisan political activity during personal time, provided such activity is conducted entirely independent of the judge and without reference to the judge o[r] judge’s office.” Supreme Court Conference Minutes of September 8, 1992, as cited in [Opinion 93-45](#).

In [Opinion 93-45](#), analogy was drawn to members of a judge’s family, who are specifically mentioned in the [Canon 7](#) commentary as having the right to participate in the political process. Similarly, the current commentary to [Canon 7A\(3\)\(b\)](#) states, “Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.”

Under the current [Canon 7](#), court staff, like family members, may, in the committee’s opinion, safely participate in “other political activity” subject to the caveats that appear in [Opinion 93-45](#).

More recently the United States Supreme Court addressed the bounds of judicial free speech limits for judges in a political context, and this opinion too may have implications for non-judge staff. In [Republican Party of Minnesota v. White](#), 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), the Court in a 5-4 decision held

unconstitutional the so-called “announce clause” of [Minnesota’s Code of Judicial Conduct](#), which prohibited judicial candidates from announcing views on disputed legal or political issues. In the majority opinion, Justice Scalia observed that the text of the Minnesota announce clause as written prohibited a candidate’s “mere statement of his current position, even if he does not bind himself to maintain that position after election.” *Id.* at 770. Rejecting the state’s argument that the announce clause served the compelling interest of preserving the impartiality and appearance of impartiality of the state’s judiciary, Justice Scalia noted that the parties and the courts below left the term “impartiality” undefined and that a definition was “essential” to properly conducting a strict-scrutiny analysis. *Id.* at 775. The majority opinion discusses three possible definitions of impartiality, and then holds that under any definition of the term “impartiality,” the announce clause failed strict scrutiny and was unconstitutional. *Id.* at 775–784. See generally [Matthew J. Medina, *The Constitutionality of the 2003 Revisions to Canon 3\(E\) of the Model Code of Judicial Conduct*](#), 104 Colum. L. Rev. 1072 (2004).

White involved a challenge only to the announce clause, and the Court explicitly limited its holding to that provision. *Id.* at 773 n.5. Nevertheless, will the [First Amendment](#) principles announced in *White* apply to the [Canon 7A](#) limitations on political activity? The Florida Supreme Court in *In re Kinsey*, 842 So. 2d 77, 86-89 (Fla. 2003), held *White* inapplicable to Florida’s Code of Judicial Conduct, reasoning that Florida had previously adopted a narrowly tailored promises and commitments clause. The New York Court of Appeals similarly found *White* distinguishable on challenges to portions of New York’s code. See *In re Watson*, 794 N.E.2d 1, 6–7 (N.Y. 2003) (distinguishing case from *White* as “political activity” at issue related to improper contribution to political party, not announcement of political views); *In re Raab*, 793 N.E.2d 1287, 1290, 1293 (N.Y. 2003) (distinguishing *White* and holding that it did not compel result in challenge to promises clause). How or whether *White* has any impact in Florida or represents an expansion of the speech rights of judges, law clerks, or other non-judge court staff is not absolutely certain. Clearly, staff should not make any promises or commitments about how they will do their jobs or attempt to wield influence, and that would be true with or without the *White* decision. It would also be unwise to assume that *White* stands for the broad proposition that because judges may not be prevented from announcing their views on some controversial issues, appellate court staff can now speak their minds frankly in any forum at any time.

In addition to the canons and the case law, there are also some useful caveats in [Section 5.03](#) of the State Courts System’s Personnel Regulations Manual that apply to all state courts system employees, summarized as follows:

1. An employee shall not use regular working hours to conduct activities associated with a political campaign.
2. No resources of the State Courts System may be used by an employee for campaign purposes.
3. No employee shall use the authority of his or her position to secure support for or oppose a candidate, party, or issue in a partisan election.
4. No employee shall hold or be a candidate for public or political office while in the employment of the state unless authorized by the employing chief judge or chief justice, and the office must involve “no interest which conflicts or interferes with his or her court employment.”
5. “The employee may not solicit or accept campaign contributions from persons or entities who are regulated by or are doing business with the court, or whose interests have come, or are likely to come before the court in a case or controversy.”

(Note: While the Personnel Regulation actually deals with State Courts System employees who want to run for public office while employed by the State Courts System, it contains useful analogies to State Courts System employees who merely want to be politically active. With regard to the question whether a law clerk may run for public office while employed, there is sparse authority. *See* [Opinion 00-33](#). In order to do so however, the law clerk will need the permission of the chief justice, his or her chief judge, and the judge for whom the clerk serves as personal staff. The law clerk will also need to satisfy the judges that the political campaign will not interfere with the employee’s work responsibilities and that it will not create any conflicts of interest in the performance of job duties. It is the author’s opinion that this is a very difficult burden for a law clerk or other judicial branch attorney to meet. In [Opinion 00-33](#), JEAC observed that [Canon 3C\(4\)](#) does not expressly prohibit a judge from hiring an elected city council member as a staff attorney, but a majority noticed that an elected city council member is “on duty” all the time and that the hiring would, in the opinion of most committee members, be “rife with the appearance of impropriety.” With regard to community activities that may have political overtones, in [Opinion](#)

01-12, really a Canon 4-related opinion, the committee expressed the opinion that a law clerk could serve on the Board of Directors of Florida Legal Services, if the entity acts only as an administrative body to assign cases and does not make policy decisions of political significance or that may imply commitment to causes that might come before the court to adjudicate. This opinion illustrates how much more difficult it would be to comply if one is an elected official. The application of this opinion to staff other than law clerks is uncertain because it has not been addressed. Law clerks assist judges in their adjudicative role.)