AN AID TO UNDERSTANDING CANON 7

Guidelines to Assist Judicial Candidates in Campaign and Political Activities

Prepared by the Judicial Ethics Advisory Committee and published by the Office of the State Courts Administrator

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TABLE OF CONTENTS

Place your cursor over the item you would like to view and press Control+Click to go directly to that item.

To open links to citations, place your cursor over the citation and press Control+Click, or right click on the item and choose "open hyperlink". Most of the legal citations are hyperlinked to the Westlaw database. When you click on a link, you will be asked for your Westlaw sign on information. Once you are signed on, you should be able to retrieve all of the Westlaw hyperlinks you select. Some rules of court and statutes are linked directly to the primary source.

INTRODUCTION 1
History of the Code of Judicial Conduct Related to Canon 7 1
History and Purpose of the Judicial Ethics Advisory Committee (JEAC) 4
History and Purpose of the Judicial Qualifications Commission 4
Purpose of this Booklet 5
Format of Booklet 6
Judicial Ethics Advisory Committee (JEAC) 8

SECTION 105.071, FLORIDA STATUTES 19

FREQUENTLY ASKED QUESTIONS 20
Table of Questions 20
I. Complying with Canon 7 24
  A. What are the sources of authority and guidance regarding a judge's or judicial candidate's political activity? 24
  B. Who must comply with Canon 7? 24
  C. Whose Canon 7 questions and what questions will the Judicial Ethics Advisory Committee (JEAC) answer? 25
  D. Who is a judicial candidate? 25
  E. May a judge retain his or her judicial office while running for a nonjudicial position? 25
  F. Must a judge or hearing officer resign to run for a judicial office? 26
  G. Must an elected state office holder resign to run for a judicial office? 26
II. Canon 7: Appearing Publicly and Communicating with the Public 27
  A. May a judge or judicial candidate attend political party

functions? 27
B. May a judge or judicial candidate participate in the campaigns of other political candidates or publicly endorse another candidate for public office? 33
C. May a judge or judicial candidate publicly discuss his or her views on disputed legal or political issues? 36
D. May a judge or judicial candidate belong to an organization that is bipartisan in membership, is nonpartisan in nature, and addresses political and social issues? 39
E. May a judicial candidate make truthful statements about his or her opponent? 39
F. May a judicial candidate respond to personal attacks or attacks on his or her record? 41
G. What are some examples of nonpartisan and political events a judge or judicial candidate may attend? 41
H. What information may or may not be included in campaign advertising? 43
I. May a judge or judicial candidate join or serve on committees of bar associations, governmental entities, or civic organizations? 48
J. May a judicial candidate respond to candidate questionnaires and other requests for information? 48
K. May a judicial candidate accept endorsements and/or help from politicalparties? 49
L. May a judge or judicial candidate sign a voluntary bar association election campaign pledge? 51
M. May a judge, or a committee campaigning on his or her behalf, post comments and add friends on their respective social networking pages? 51
N. May a judge running for re-election create a Twitter account with a privacy setting open so anyone — including lawyers — would be able to follow the account? 52
III. Activities During Business Hours 52
A. May a judge participate in campaign activities during regular courthouse hours? 52
IV. Soliciting, Accepting, and Spending Money 52
A. May a judicial candidate personally solicit funds in support of his or her candidacy? 52
B. Who may solicit campaign funds for a judicial candidacy? 53
C. Who may ask for judicial campaign contributions and when? 53

D. May a judicial candidate serve as his or her own campaign treasurer? 54
E. What campaign contributions may a judicial candidate accept? 54
F. May a judicial candidate obtain contributions to pay his or her qualifying fee? 55
G. How may a judicial candidate spend campaign money? 55
H. What may a judicial candidate do with unspent campaign funds? 55
I. May a judicial candidate make campaign contributions to the candidate's own campaign? 56
V. Family and Staff Activities 56
A. What political campaign contributions may a judge's spouse make? 56
B. Are there limitations on the political conduct of a judge's or judicial candidate's family? 56
C. Does the Florida Code of Judicial Conduct limit the political conduct of a judge's or judicial candidate's staff? 58
VI. Knowing Supporters 58
A. May a judicial candidate know the names of persons who contributed to the candidate's campaign? 58
B. May a judicial candidate thank the contributors personally? 58
C. Will an attorney's campaign contribution to, or work on, a judge's campaign require the recusal of the judge when the attorney appears before him or her? 59
D. What disclosures must a judge make when attorneys who appear before the judge have been involved in the judge's campaign? 59
VII. Disciplinary Action Under Canon 7 60
A. To whom should a violation of Canon 7 be reported? 60
B. What are the possible sanctions for a violation of Canon 7? 60
C. What are some examples of Canon 7 violations? 61

APPENDICES 66

A. Opinion Number: 2004-07 Election[1] 67
B. Opinion Number: 2004-09 (Election)[1] 71
C. *In re Renke*, 933 So. 2d 482 (Fla. 2006) 76
D. Current Enabling Authority 90
E. Florida Code of Judicial Conduct 92
F. Chapter 105, Florida Statutes, Nonpartisan Elections 135

INTRODUCTION

History of the Code of Judicial Conduct Related to Canon 7

Florida's Code of Judicial Conduct establishes standards for ethical behavior of judges. However, it 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, 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.

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 of the Code of Judicial Conduct, and, in 1994, adopted major revisions to the code based largely on the Model Code of Judicial Conduct adopted by the American Bar Association. In 2016, the court most recently adopted revisions to the code, which is set forth in its entirety at the end of this booklet.

Canon 7 of the Code of Judicial Conduct and chapter 105, Florida Statutes, govern political conduct by judges and judicial candidates. In 1982, the supreme court modified former Canon 7B(3) and the commentary to Canon 7B [now 7C]. The purpose of the revisions was "to resolve the practical problems in our merit retention election system for appellate judges as well as for the election process of trial judges who have no known opposition." *In re Petition to Amend Code of Judicial Conduct*, 414 So. 2d 508, 509 (Fla. 1982). The supreme court stated that the 1982 amendments to Canon 7 and their commentary were essential to remove the prohibition barring a judicial officer from "any type of travel or appearances

before media boards or other groups or entities who would endorse or oppose judicial candidates." *Id.* The supreme court concluded that the pre-amendment restrictions impaired the public's awareness of merit retention candidates and the judicial election process. Thus, the revised 1982 Canon 7 eliminated the absolute ban on campaign activities and permitted judicial candidates freedom to engage in campaign activities in two circumstances:

(1) "It allows an incumbent judge [including both merit retention and elected judicial candidates] with no known opposition to engage in limited campaign activities such as interviews with the media and appearances and speaking engagements before public gatherings and organizations other than political parties." *Id.*

(2) "If the judge's candidacy draws active opposition, he or she then may engage in a full range of campaign activities in the manner presently prescribed by the canons." *Id.*

When first adopted in 1994 (effective January 1, 1995), the new Canon 7C(1) prohibited a candidate from establishing a campaign committee or expending funds earlier than one year before the general election. *In re Code of Judicial Conduct,* 643 So. 2d 1037 (Fla. 1994). This restriction was enjoined by the United States District Court for the Northern District of Florida. *Zeller v. The Florida Bar and Florida Judicial Qualifications Commission,* 909 F. Supp. 1518 (N.D. Fla. 1995). Subsequently, in *In re Code of Judicial Conduct,* 659 So. 2d 692 (Fla. 1995), the court deleted the one-year rule from Canon 7C(1).

In 1996, the Florida Supreme Court on its own motion modified Canon 7A(1)(d) by changing "shall not attend political gatherings" to "shall not attend political party functions." It also deleted the following prefatory language in Canon 7C(3): "After qualifying for judicial office with the appropriate qualifying officer." *In re Code of Judicial Conduct,* 675 So. 2d 111 (Fla. 1996).

In 1998, the supreme court approved a JEAC petition to amend Canon 7 by adding a section F. that reads as follows: "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." *Amendment to Code of Judicial Conduct,* 720 So. 2d 1079 (Fla. 1998).

In 2005, the court amended Canon 7A(3)(d) by adding a provision that states that a judicial candidate 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. This section does not apply to proceedings in which the judicial candidate is a litigant in a personal capacity." *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005).

In *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), the court expressed concern over the propriety of a judicial candidate publicly commenting on pending cases where such comments could affect their future outcomes. The court referred the matter to the JEAC, which then proposed the above amendment. The court also adopted the JEAC's proposed modification of the Commentary on Canon 7A(3)(d) to delete a reference to Canon 3B(9). *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005).

In 2006, the JEAC petitioned the court to consider amendments to the Florida Code of Judicial Conduct. *In re Amendment to Code of Judicial Conduct*, 918 So. 2d 949 (Fla. 2006). The primary purpose of the amendments was to conform certain provisions of Florida's Code with corresponding provisions of the American Bar Association's Model Code of Judicial Conduct. *Id*.

In *In re Amendment to the Code of Judicial Conduct-Amendments to Canon 7*, 985 So. 2d 1073 (Fla. 2008), the court added two new subdivisions to Canon 7A. The two new subdivisions had been proposed by the JEAC. The court had asked the JEAC whether there were other Canon 3 provisions in addition to Canon 3B(9) (earlier added to Canon 7) that should apply to all judicial candidates. *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005). The two new subdivisions added in 2008 were Canon 7A(3)(a) and Canon 7A(3)(e)(iv).

Canon 7C(2) and the Commentary of Canon 7 were amended in *In re Amendments to Code of Judicial Conduct – Canon 7*, 167 So. 3d 399 (Fla. 2015), to "expressly authorize 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."

History and Purpose of the Judicial Ethics Advisory Committee (JEAC)

In an order dated February 3, 1976, the Florida Supreme Court formally recognized the Committee on Standards of Conduct Governing Judges (now the Judicial Ethics Advisory Committee), authorizing the committee to render "written advisory opinions to inquiring judges concerning the propriety of contemplated judicial and non-judicial conduct." *Petition of Committee on Standards of Conduct for Judges*, 327 So. 2d 5 (Fla. 1976) (the enabling authority for the committee). The enabling authority was subsequently amended to enlarge the committee membership and extend the terms of Bar members. The supreme court later authorized the committee to recommend changes in the Code of Judicial Conduct. *See Petition of Committee on Standards of Conduct for Judges*, 367 So. 2d 625 (Fla. 1979). From its inception, the committee has issued a large number of advisory opinions addressing questions raised with respect to each of the canons. The committee also presents campaign conduct forums for judicial candidates in all circuits with contested judicial elections. These forums teach the candidates about Canon 7 of the Code of Judicial Conduct, provide candidates with sources of guidance for campaign conduct, and inform them of possible sanctions for violating Canon 7. These forums aid in maintaining a high level of integrity and professionalism among candidates for judicial office and in increasing public trust and confidence in the judicial system. Membership of the JEAC may be found on page 8 herein. The current version of the enabling authority for the committee can be found in Appendix D.

History and Purpose of the Judicial Qualifications Commission

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)(1). 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)(1), Fla. Const.

In 1997, article V, section 12, 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), 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 (Fla. 2015); *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. den.*, 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.

Purpose of this Booklet

The purpose of this booklet is to provide judicial candidates with a measure of guidance in understanding Canon 7 and its implementation. The committee hopes that the information embodied in the following pages will minimize and possibly eliminate those occasions when judges face disciplinary proceedings as a consequence of their failure to comply with Canon 7. (For a more detailed discussion of judicial ethics and the entire Florida Code of Judicial Conduct, see JUDICIAL ETHICS BENCHGUIDE: ANSWERS TO FREQUENTLY ASKED QUESTIONS.) The committee brings to each judicial candidate's attention that campaign-related misconduct or other behavior contrary to the canons, once brought to the attention of the Judicial Qualifications Commission and factually established before that

body, triggers the power and authority of the Florida Supreme Court to impose sanctions ranging from public reprimand to removal from office. *See In re Schwartz*, 174 So. 3d 987 (Fla. 2015); *In re Griffin*, 167 So. 3d 450 (Fla. 2015); *In re Krause*, 141 So. 3d 1197 (Fla. 2014); *In re Turner*, 76 So. 3d 898 (Fla. 2011); *In re Colodny*, 51 So. 3d 430 (Fla. 2010); *In re Dempsey*, 29 So. 3d 1030 (Fla. 2010); *In re Baker*, 22 So. 3d 538 (Fla. 2009); *In re Renke*, 933 So. 2d 482 (Fla. 2006); *In re Angel*, 867 So. 2d 379 (Fla. 2004); *In re Kinsey*, 842 So. 2d 77 (Fla. 2003); *In re Rodriguez*, 829 So. 2d 857 (Fla. 2002); *In re McMillan*, 797 So. 2d 560 (Fla. 2001); *In re Alley*, 699 So. 2d 1369 (Fla. 1997); *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988); *In re Pratt*, 508 So. 2d 8 (Fla. 1987); and *In re Kay*, 508 So. 2d 329 (Fla. 1987).

The JEAC urges judicial candidates to heed the discipline imposed in the above-cited opinions. The Florida Supreme Court treats campaign misconduct very seriously, and campaign misconduct may lead to removal from office. In *In re Renke*, 933 So. 2d 482 (Fla. 2006), the supreme court removed a judge from office for misleading statements in his campaign literature suggesting he was an incumbent judge and/or had judicial experience, implying he was the chair of a water management district when he was chair only of a river basin board, and creating the impression he had the endorsement of a local firefighters' union when only a few individuals were supporting his candidacy; for grossly exaggerating his credentials as a trial lawyer experienced in complex civil litigation, when in fact he had never first-chaired a major case and his trial experience was limited to a single small claims case; and for falsely reporting as a self-loan to his campaign, allegedly derived as a fee for settling a case, money that was found to constitute an unlawful contribution from his family. As this disciplinary opinion demonstrates, campaign misconduct may result in grave consequences. See *Renke* in Appendix C. Also note that The Florida Bar suspended Mr. Renke from the practice of law for 30 days as discipline for judicial campaign misconduct. *The Florida Bar v. Renke*, 977 So. 2d 579 (Fla. 2008) (unpublished disposition).

Readers should always check cited legal authorities before relying on them.

Format of Booklet

In assembling this booklet, the committee includes a synopsis, organized in a "Frequently Asked Questions" format, of committee advisory opinions and an appendix containing the full texts of the Code of Judicial Conduct including related commentaries and chapter 105, Florida Statutes. Although some committee

opinions and case law cited in this booklet predate the 1994 revisions to Canon 7, these sources interpret sections of the predecessor canon that have been substantially adopted or unchanged in meaning in the more recent revisions to the canons. Canon 7 and section 105.071, Florida Statutes, have been reprinted immediately preceding the "Frequently Asked Questions." The committee stresses that these sources must be read in order for the interpretations that follow to be seen in their proper context. There is no substitute for familiarity with the Code of Judicial Conduct and section 105.071, Florida Statutes.

The JEAC's consensus is that a compilation of the foregoing materials, made readily available to judicial candidates, will enhance and preserve an "independent and honorable judiciary . . . indispensable to justice in our society." Fla. Code Jud. Conduct, Canon 1.

A word of caution to merit retention judges – the committee receives almost all of its requests for advisory opinions from trial court judges. Despite this fact, the advisory opinions are relevant to all those persons set forth in the code, including merit retention judges. Merit retention judges with no stated opposition may not speak before political parties according to the explicit language of Canon 7C(3).

We emphasize that this undertaking is designed and intended to serve only as a guiding instrument to aid judicial candidates in their campaign and political activities. The synopsis of the advisory opinions we have chosen to include is not to be viewed as authority for specific conduct or evidence of a good faith effort to comply with the Code of Judicial Conduct unless the underlying facts are **identical**. *Petition of the Committee on Standards of Conduct for Judges,* 327 So. 2d 5, 6 (Fla. 1976). We further emphasize that "[a]ny determination of the propriety or impropriety of particular conduct by the Judicial Qualifications Commission shall supersede any conflicting opinion of the Committee." *Id.*

Judicial Ethics Advisory Committee (JEAC)

The Judicial Ethics Advisory Committee is composed of three district court of appeal judges, four circuit judges, three county court judges, and two practicing members of The Florida Bar.

The Honorable Spencer D. Levine, Chair
Appellate Judge, Fourth District Court of Appeal

The Honorable Miguel de la O, Vice-Chair
Circuit Judge, Eleventh Judicial Circuit

The Honorable Roberto Arias
County Judge, Duval County

The Honorable Nina Ashenafi-Richardson
County Judge, Leon County

The Honorable W. Joel Boles
Circuit Judge, First Circuit

The Honorable Lisa Davidson
Circuit Judge, Eighteenth Judicial Circuit

The Honorable James A. Edwards
Appellate Judge, Fifth District Court of Appeal

The Honorable K. Douglas Henderson
County Judge, Manatee County

Mark Herron
Attorney at Law, Tallahassee

The Honorable Barbara Lagoa
Appellate Judge, Third District Court of Appeal

Patricia E. Lowry
Attorney at Law, West Palm Beach

The Honorable Michael E. Raiden
Circuit Judge, Tenth Judicial Circuit

The committee gratefully acknowledges the support of the Office of the State Courts Administrator in the preparation of this booklet.

Election Subcommittee of the JEAC

The JEAC created a standing subcommittee on elections to assist the full committee in providing expedited responses to time-sensitive election-related questions. Written inquiries should be directed to the subcommittee chair, Judge Lisa Davidson, by email at lisa.davidson@flcourts18.org or, in exigent circumstances, by phone at 321-617-7281.

Other JEAC members serving on the elections subcommittee are Judge Roberto Arias, Judge Miguel de la O, and Judge Michael Raiden.

Opinions of the Judicial Ethics Advisory Committee may be accessed 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.)

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; [~~or~~]

(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, bumper stickers, 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).]

SECTION 105.071, FLORIDA STATUTES

CANDIDATES FOR JUDICIAL OFFICE; LIMITATIONS ON POLITICAL ACTIVITY

A candidate for judicial office shall not:

(1) Participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which she or he is registered to vote.

(2) Campaign as a member of any political party.

(3) Publicly represent or advertise herself or himself as a member of any political party.

(4) Endorse any candidate.

(5) Make political speeches other than in the candidate's own behalf.

(6) Make contributions to political party funds.

(7) Accept contributions from any political party.

(8) Solicit contributions for any political party.

(9) Accept or retain a place on any political party committee.

(10) Make any contribution to any person, group, or organization for its endorsement to judicial office.

(11) Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed for judicial office by any such person, group, or organization.

A candidate for judicial office or retention therein who violates the provisions of this section is liable for a civil fine of up to $1,000 to be determined by the Florida Elections Commission.

History.—s. 7, ch. 71-49; s. 2, ch. 72-310; s. 38, ch. 77-175; s. 633, ch. 95-147; s. 7, ch. 99-326.

FREQUENTLY ASKED QUESTIONS[1]

Table of Questions

I. Complying with Canon 7

A. What are the sources of authority and guidance regarding a judge's or judicial candidate's political activity?

B. Who must comply with Canon 7?

C. Whose Canon 7 questions and what questions will the Judicial Ethics Advisory Committee (JEAC) answer?

D. Who is a judicial candidate?

E. May a judge retain his or her judicial office while running for a non-judicial position?

F. Must a judge or hearing officer resign to run for a judicial office?

G. Must an elected state office holder resign to run for a judicial office?

II. Canon 7: Appearing Publicly and Communicating with the Public

A. May a judge or a judicial candidate attend political party functions?

B. May a judge or judicial candidate participate in the campaigns of other political candidates or publicly endorse another candidate for political office?

C. May a judge or judicial candidate discuss his or her views on disputed legal or political issues?

D. May a judge or judicial candidate belong to an organization that is bipartisan in membership, is nonpartisan in nature, and addresses political and social issues?

[1] All references to "Opinions" in this part of the booklet are to the Advisory Opinions of the Judicial Ethics Advisory Committee, formerly the Committee on Standards of Conduct Governing Judges. For further explanation, see page 3 of the Introduction.

E. May a judicial candidate make truthful statements about his or her opponent?

F. May a judicial candidate respond to personal attacks or attacks on his or her record?

G. What are some examples of nonpartisan and political events a judge or judicial candidate may attend?

H. What information may or may not be included in campaign advertising?

I. May a judge or judicial candidate join or serve on committees of bar associations or civic organizations?

J. May a judicial candidate respond to candidate questionnaires and other requests for information?

K. May a judicial candidate accept endorsements and/or help from political parties?

L. May a judge or judicial candidate sign a voluntary bar association election campaign pledge?

M. May a judge, or a committee campaigning on his or her behalf, post comments and add friends on their respective social networking pages?

N. May a judge running for re-election create a Twitter account with a privacy setting open so anyone — including lawyers — would be able to follow the account?

III. Activities During Business Hours

A. May a judge participate in campaign activities during regular courthouse hours?

IV. Soliciting, Accepting, and Spending Money

A. May a judicial candidate personally solicit funds in support of his or her candidacy?

B. Who may solicit campaign funds for a judicial candidacy?

C. Who may ask for judicial campaign contributions and when?

D. May a judicial candidate serve as his or her own campaign treasurer?

E. What campaign contributions may a judicial candidate accept?

F. May a judicial candidate obtain contributions to pay his or her qualifying fee?

G. How may a judicial candidate spend campaign money?

H. What may a judicial candidate do with unspent campaign funds?

I. May a judicial candidate make campaign contributions to the candidate's own campaign?

V. Family and Staff Activities

A. What political campaign contributions may a judge's spouse make?

B. Are there limitations on the political conduct of a judge's or judicial candidate's family?

C. Does the Florida Code of Judicial Conduct limit the political conduct of a judge's or judicial candidate's staff?

VI. Knowing Supporters

A. May a judicial candidate know the names of persons who contributed to the candidate's campaign?

B. May a judicial candidate thank the contributors personally?

C. Will an attorney's campaign contribution to or work on a judge's campaign require the recusal of the judge when the attorney appears before him or her?

D. What disclosures must a judge make when attorneys who appear before the judge have been involved in the judge's campaign?

VII. Disciplinary Action Under Canon 7

A. To whom should a violation of Canon 7 be reported?

B. What are the possible sanctions for a violation of Canon 7?

C. What are some examples of Canon 7 violations?

FREQUENTLY ASKED QUESTIONS

I. Complying with Canon 7

A. What are the sources of authority and guidance regarding a judge's or judicial candidate's political activity?

(1) Canon 7, Florida Code of Judicial Conduct.

(2) Florida Supreme Court opinions relating to Canon 7.

(3) The Florida Election Code - Judicial candidates are subject to the Florida Election Code, chapters 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106, Florida Statutes. Chapter 105 concerns qualifying and election procedures. Chapter 106 regulates campaign financing.

(4) Opinions of the Judicial Ethics Advisory Committee (JEAC or "the committee"), formerly the Committee on Standards of Conduct Governing Judges. These opinions have been published in the Florida Law Weekly Supplement since December 1993. Opinions rendered prior to March 1994 are available for reference at the Florida Supreme Court library and may be in your local courthouse library. Access to the opinions is available on the supreme court's website at www.floridasupremecourt.org under *Court Opinions* and through a posting on the Sixth Judicial Circuit's website at www.jud6.org.

(5) 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 chapters 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106, Florida Statutes. These opinions may be found online at http://election.dos.state.fl.us/opinions/TOC_Opinions.shtml. 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.

B. Who must comply with Canon 7?

A judge or judicial candidate must comply with Canon 7. *See* Fla. Code Jud. Conduct, Canon 7; R. Regulating Fla. Bar 4-8.2(b).

C. **Whose Canon 7 questions and what questions will the Judicial Ethics Advisory Committee (JEAC) answer?**

The committee renders advisory opinions to inquiring judges and judicial candidates relating to the propriety of their own contemplated judicial and non-judicial conduct. See the relevant opinions below.

- **Opinion 84-16** (committee has authority to respond only to inquiries of judges or judicial candidates concerning their own conduct; judicial candidates may **not** address questions to committee regarding conduct of political opponents).

- **Opinion 94-35** (committee decided to neither approve nor disapprove specific language of scripts for television campaign commercials but rather to offer ethical provisions for judicial candidates to consider).

- **Opinion 98-18** (committee will **not** answer hypothetical question or question of law).

D. **Who is a judicial 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. *See* Opinion 94-20 below.

- **Opinion 94-20** (person's intent to run for judicial office does **not** qualify that person as candidate since he or she has not taken formal steps toward candidacy).

E. **May a judge retain his or her judicial office while running for a nonjudicial position?**

No. According to Canon 7A(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. See the following summary of a committee opinion related to resigning judicial office:

- **Opinion 96-5** (traffic magistrate may **not** continue to serve in that capacity while candidate for sheriff).

F. **Must a judge or hearing officer resign to run for a judicial office?**

As to a judge, please see section 99.012, Florida Statutes. As to a hearing officer, please see Opinions 11-09 and 08-08 (Code of Judicial Conduct does **not require** hearing officer to resign in order to run for judicial office).

Section 5.03(4)(B) of the Florida State Courts System Personnel Regulations Manual states:

> Employees who seek to run for state office shall submit a written resignation to their employing chief judge or chief justice at least ten (10) days prior to qualifying for the office. County and circuit judgeships are state offices. The resignation will be effective the date the employee qualifies for the office he or she intends to seek. Prior to commencing campaign activities, employees must provide notice of their intent to run for state office to the chief judge or chief justice. If the employee is unsuccessful in seeking office, the chief judge or chief justice may authorize re-employment of the employee. Successful candidates may not be re-employed by the court, except as provided in section 5.03(4)(D).

G. **Must an elected state office holder resign to run for a judicial office?**

A state office holder who is not seeking re-election to that office, and who does not hold any office in a political party, does not have to resign the current position while beginning a judicial campaign. Opinion 14-05 (state legislator **could** run for judge without resigning, but canons "may well call for restrictions on the candidate's conduct for the remainder of the legislative term").

II. Canon 7: Appearing Publicly and Communicating with the Public

A. May a judge or judicial candidate attend political party functions?

Canon 7A(1)(d) provides that a judge or judicial candidate shall **not** attend political party functions except as authorized in Canons 7B(2), 7C(2), and 7C(3). The code defines "political organization" as a political party or other group whose principal purpose is to further election or appointment of candidates to political office. Canon 7B(2)(b)(ii) **permits** a non-judge candidate for appointment to judicial office to attend political party functions. 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 subsection A(3). Canon 7C(3) provides that:

> 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.

Emphasis added.

See the following summaries of committee opinions related to participation in partisan political activities:

- **Opinion 84-22** (judicial candidate should **not** participate in endorsement or rating interview sessions sponsored by partisan political group, and candidate may **not** publicize any rating or endorsement resulting from such interview).

- **Opinion 90-16** (nonpartisan judicial candidate who is not invited to speak as to his or her candidacy may **not** go to premises where political party is holding political meeting wearing candidate's badge and greeting delegates and party members; may **not** give appearance of having attended meeting of specific political party; may **not** attend luncheon hosted by presidents of clubs for political party when purpose in attending is to display candidate's badge and publicize candidacy; may **not** attend dinner dance sponsored by partisan club for purpose of entertainment and displaying candidate's badge or informing patrons of candidacy; may **not** purchase with funds contributed to campaign account advertising space for candidacy in partisan club magazine or publication related to partisan function, even if ad makes no reference to endorsement of candidate; may **not** meet privately with leaders of partisan groups to request invitation to speak on his or her behalf at partisan functions; and when addressing audience, judicial candidate who is asked question, "What political party are you registered with?" may **not** answer).

- **Opinion 92-26** (judge or judicial candidate **may** attend and speak at partisan political "speakings," rallies, or other such functions subject to conditions that all candidates for judicial position **must** be invited, and moderator **must** announce nonpartisan nature of judicial election).

- **Opinion 92-41** (judge **may** attend United States president's inauguration and inaugural ball provided no funds are paid to partisan political organization and attendance at function is not limited to members of one partisan political organization).

- **Opinion 93-07** (judge may **not** speak about "court system" at luncheon sponsored by political party club because judge was not candidate for election and was therefore ineligible under Canon 7C(3) to speak before political groups). *See also* Opinion 88-9.

- **Opinion 93-13** (sitting judge who is Judicial Nominating Commission nominee for appointment by governor to another judicial office may **not** appear before partisan political group along with other nominees for appointment to be interviewed so that partisan group may make recommendation to governor, because Canon 7 **prohibits** judge's

appearance before political group for purpose of endorsement and, in this case, inquiring judge was not candidate for election).

- **Opinion 93-50** (judge may **not** become member of county women's political caucus because it is activist organization that recruits and supports candidates and lobbies for laws).

- **Opinion 94-42** (non-candidate judge may **not** attend political function even if it is merely for purpose of socializing).

- **Opinion 96-10** (judicial candidate may **not** attend testimonial to retiring congressman when event is political fund-raiser).

- **Opinion 96-11** (candidate for judicial office **may** attend political functions to speak on behalf of his or her candidacy as long as function is not fund-raiser and other candidates for office are invited).

- **Opinion 96-19** (judicial candidate **may** attend political rally sponsored by local civic organization in which all candidates are invited and allowed to speak but are required to pay $50 fee, as long as funds are used to pay for otherwise legitimate matter and no fund-raising is involved).

- **Opinion 96-20** (candidate may **not** attend political party meetings open to public since candidate has not been invited to meetings to speak on behalf of his or her candidacy or on matter that relates to law, improvement of legal system, or administration of justice; candidate's campaign manager may **not** attend meetings, distribute campaign literature, or speak with attendees, if candidate is prohibited from doing so).

- **Opinion 97-30** (judge may **not** present educational program on judicial system to group established by organized political partisan group, unless it is nonpartisan citizens group created in good faith).

- **Opinion 98-14** (judge **may** speak, write, lecture, or teach at public forums concerning proposed constitutional amendments if they involve law, legal system, or administration of justice, and **may** publicly advocate position on proposed constitutional amendments, but is **prohibited** from addressing partisan group, regardless of subject matter).

- **Opinion 98-17** (candidate for judicial office **may** attend "Candidate Question and Answer" forum sponsored by Young Republican Club as long as other candidates are invited and event is not fund-raiser; candidate's presence, remarks, and/or actions should **not** be political or partisan).

- **Opinion 00-12** (candidate for re-election to judicial office, having no active opposition, **may** attend political forum hosted by National Hispanic Republican Assembly if all candidates have been invited, if forum is not fund-raiser, and if not precluded by any other canon).

- **Opinion 00-22 (Election)** (candidate for judicial office **may** speak at partisan political event that is not fund-raiser if opponent has been invited to speak and may distribute campaign material if it meets provisions of Canon 7C(3); judicial candidate **may** attend and distribute campaign materials at National Rifle Association (NRA) fund-raiser; and judicial candidate **may** post on website newspaper articles and editorials relating to campaign consistent with Canon 7A(3)).

- **Opinion 00-26 (Election)** (judicial candidate, invited along with other judicial candidates in circuit, may **not** attend informal function as guest of political party for sole purpose of socializing with other guests).

- **Opinion 00-29 (Election)** (judicial candidate may **not** publicize endorsement of political party).

- **Opinion 02-08 (Elections)** (judicial candidate may **not** attend political meeting to socialize and greet participants).

- **Opinion 02-11 (Elections)** (judicial candidate, along with candidate's opponent, **may** attend political party meeting, hand out campaign literature, and speak to audience, but candidate **may** arrive at meeting **only** a reasonable amount of time before speaking and remain only until his or her portion of meeting is concluded).

- **Opinion 02-13 (Elections)** (judicial candidate may **not** "privately" disclose political party affiliation; **may** state views on constitutional or statutory construction and other issues so long as candidate does not advocate political position; and **may** publicize information about his or her

opponent, if truthful, factual, and relevant to qualifications for judicial office).

- **Opinion 03-13** (blanket invitation in political party newsletter inviting all judicial candidates to speak **is sufficient to allow** candidates to attend and speak even if opponent is not present; acceptance of invitation from party's president to candidate and candidate's opponent is **permissible**, even if opponent does not attend; candidate who is not invited to speak may **not** stand outside function and hand out literature; candidate's volunteer workers may **not** wear badges promoting candidate at party functions unless the judicial candidate is properly present).

- **Opinion 04-11 (Election)** (judicial candidate who has no opponent **may** attend and speak at political party club meetings, as long as function is not fund-raiser and other candidates for elected office, if any, are invited).

- **Opinion 06-15 (Election)** (judicial candidate may **not** attend candidate "round up," sponsored by local political party's women's federation, at which candidates are not invited to speak, but **may** attend if candidates are invited to speak and answer questions from audience).

- **Opinion 06-19 (Election)** (judge who is not seeking election may **not** attend nonpartisan political function sponsored by political party in order to socialize and listen to political candidates' speeches).

- **Opinion 07-20** (judge who is not a judicial candidate may **not** attend partisan event to address improvements in law, legal system, and administration of justice).

- **Opinion 10-30 (Election)** (non-judge judicial candidate **may** attend non-partisan candidates' forum and pay for table from which to distribute campaign literature even if event is fund-raising event for sponsoring organization).

- **Opinion 12-06 (Election)** (judicial candidate's spouse **may** attend political party function, but 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 12-20 (Election)** (if speaking engagement at political party function is in compliance with Canon 7 but judicial candidate is unable to attend, candidate **may** have representative attend and speak on candidate's behalf).

- **Opinion 12-25 (Election)** (judicial candidate **may** attend candidate forum hosted by Ronald Reagan Republican Assembly at headquarters of partisan state legislative candidate it endorsed, to which forum all candidates were invited and which forum is not fund-raiser, as long as candidate is not seeking organization's endorsement and organization has not indicated it will endorse a candidate).

- **Opinion 13-20** (JEAC was evenly divided as to whether judge could attend functions sponsored by SUNPAC, political action committee whose primary objectives are political (financing events for elected officials and contributing to their election; half of committee believed attendance might be permissible if event is not political party function, judge does not pay to attend, judge's attendance could not be construed as public endorsement of candidate, and judge does not actively engage in any political activity).

- **Opinion 14-08** (judicial candidate **may** attend event sponsored by political party, at which all candidates in that race have been invited to speak, but may **not** pay for table or advertisement in organization's bulletin).

- **Opinion 16-08 (Election)** – (if sponsor is political party, event must not be fund-raiser and all candidates must be invited; JEAC considers inquiries regarding "attending events sponsored by or otherwise participating in organizations whose goals or activities could be described as political" on case-by-case basis).

- **Opinion 16-09 (Election)** – (judicial candidate **may** accept and advertise endorsement from county commissioner who plans to run for re-election in future election cycle if endorsement is from individual and not political party that person represents, partisan aspect of that official's position is not mentioned, and content of candidate's advertisement mentioning endorsement does not otherwise violate Code).

- **Opinion 16-10 (Election)** – (judicial candidate **may not**

- attend "make-up" candidate forum sponsored by political party where candidates who attended previous open forum were not invited).

B. **May a judge or judicial candidate participate in the campaigns of other political candidates or publicly endorse another candidate for public office?**

A judge or judicial candidate may **not** participate in the campaigns of other political candidates. Fla. Code Jud. Conduct, Canon 7; § 105.071, Fla. Stat.; *In re DeFoor*, 494 So. 2d 1121 (Fla. 1986). However, the commentary to Canon 7A(1)(b) states that a judge or a judicial candidate **may** privately express his or her views on judicial candidates or other candidates for public office. Further, Canon 7C(2) permits "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." See the following summaries of committee opinions related to political campaign participation:

- **Opinion 77-20** (judge **may** attend testimonial dinner for incumbent county commissioner or any distinguished public servant as long as primary object of dinner is to pay honor to distinguished public servant rather than to raise funds for his or her re-election).

- **Opinion 04-21 (Election)** (candidate for open judicial seat may **not** attend social function hosted by United States congressman when invitation suggests event is campaign function).

- **Opinion 04-29 (Election)** (judicial candidate who has same campaign consultant as two judicial candidates running for different judicial seats may **not** mail his or her individual campaign brochure in envelope containing other candidates' brochures even if disclaimer is included).

- **Opinion 04-30 (Election)** (judicial candidate may **not** attend church services and be introduced to congregation as candidate for judicial office by incumbent judge who describes judicial candidate as incumbent judge's "friend and guest").

A judge or judicial candidate shall **not** endorse another candidate for public office. Canon 7A(1)(b) provides that, except as authorized in Canons 7B(2),

7C(2), and 7C(3), a judge or judicial candidate shall **not** publicly endorse or oppose another candidate for public office. See the following summaries of committee opinions related to judicial endorsements:

- **Opinion 82-8** (judge who solicits attorney to run against another judge **violates** Canon 7A(1)(b) by publicly endorsing candidate for public office and Canon 2A by "failing to promote public confidence in the integrity and impartiality of judiciary").

- **Opinion 90-3** (sitting judge may **not** support retention of another member of judiciary in merit retention election when that member is target of rejection campaign; judge **may** speak privately on behalf of judicial officer under attack but may **not** organize or serve on committee to support retention of that person).

- **Opinion 92-32** (judge may **not** sign petition for individual attempting to qualify for election to judicial or nonjudicial, partisan or nonpartisan office even if signature does not refer to judicial office, because signature might reasonably be perceived as endorsement or give appearance of partiality).

- **Opinion 92-40** (judge may **not** give any political candidate permission to use judge's photograph in political candidate's campaign literature, especially when judge appears in judicial robes; judge is **not** to engage in political activity or lend prestige of judicial office to advance private interest of others).

- **Opinion 94-08** (traffic magistrate may **not** make political contributions whether as individual or as magistrate's professional association).

- **Opinion 98-25** (judge-elect may **not** actively participate in nonjudicial campaigns before being sworn into office as county judge).

- **Opinion 00-16** (non-incumbent candidate for judicial office may **not** host weekly radio talk show prior to election; judge-elect may **not** participate in partisan political activities before assuming bench).

- **Opinion 02-10 (Elections)** (traffic hearing officer may **not** publicly endorse or oppose another candidate for public office or contribute to political organization or candidate).

- **Opinion 06-11** (judge may **not** permit placement of campaign sign supporting partisan political candidate in yard of residence jointly-owned by judge and judge's spouse, on automobile occasionally driven by judge and jointly owned by judge and judge's spouse, or on automobile owned solely by judge's spouse).

- **Opinion 07-13** (judge whose spouse plans to run for nonpartisan public office may **not** attend spouse's nonpartisan "meet and greet" campaign gatherings at judge's home and at homes of friends and neighbors, but judge **may** appear as candidate's spouse in family photograph to be used in spouse's campaign).

- **Opinion 08-16 (Election)** (judicial candidate may **not** hire partisan political candidate running for different office or executive officer of partisan political committee to be judicial candidate's campaign manager/consultant).

- **Opinion 10-18 (Election)** (judicial candidate **may** use as campaign consultant sitting member of county commission who is not currently running for office or asserting political party view in support of other nonjudicial or judicial candidate).

- **Opinion 11-10** (judge may **not** attend campaign event for a candidate hosted by judge's spouse and held at judge's home; judge **should** "adamantly and sincerely" encourage spouse to host event elsewhere to avoid appearance of impropriety).

- **Opinion 11-20** (judicial candidates who are running in different races **may** travel together to campaign speaking events if they do not create impression that they are working together or are endorsing each other, and as long as vehicle in which they are traveling does not display the other candidate's campaign advertising).

- **Opinion 12-03 (Election)** (judge may **not** attend victory party for person who was elected unopposed to local office; even if attendees might belong to more than one political party and party is not for one particular group, party would not appear to be "purely social function" and judge's attendance "could give the impression that the judge endorsed the friend's candidacy for public office").

- **Opinion 13-21** (prohibition against judicial endorsement is **not** violated if judge publishes endorsement from lawyer who publicly endorsed another candidate in different race, nor is that lawyer prohibited from co-hosting fund-raiser to benefit judge).

- **Opinion 14-11 (Election)** (trial judge who has opposition for re-election **may** accept public endorsement of circuit's state attorney, county sheriffs, and police chiefs, and **may** indicate their title or designation in publicly stated endorsements).

- **Opinion 14-18** (judicial candidate **may** advertise on moving advertising truck that has LED digital screen that displays advertisements in rotation, separately from other advertisements; but if advertisements are displayed in stationary position and public can see all advertisements at same time, candidates might appear to be running as part of slate or sharing similar political or judicial views).

- **Opinion 16-07** (judicial candidate **may** use photograph of spouse who is sitting judge in campaign advertisement if spouse's position is not identified and ad does not imply spouse actively endorses candidate).

C. **May a judge or judicial candidate publicly discuss his or her views on disputed legal or political issues?**

Canon 7A(3)(e)(i) provides that a judicial candidate shall **not**, "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." This section is less restrictive than the previous code, 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 his or her personal views. *In re Kinsey*, 842 So. 2d 77 (Fla. 2003); Opinion 04-09 (Election). See *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), in which the Court found the "announce" clause in Minnesota's Code of Judicial Conduct unconstitutional. See the following summaries of committee opinions related to public statements on disputed legal or political issues by judges and judicial candidates:

- **Opinion 76-16** (judge **may** participate in efforts to educate general public about constitutional amendment on questions of merit retention of appellate court judges appearing on general election ballot as well as in activities designed to improve law, legal system, and administration of justice, except at partisan political meetings).

- **Opinion 80-14** (judge **may** write letter to editor, for publication in local newspaper, responding to editorial concerning method of selecting and retaining Florida judges).

- **Opinion 94-26** (while exercising appropriate caution stated in opinion, judicial candidate **may** ethically make this statement regarding candidate's position on death penalty: "My sworn duty as a circuit judge will be to faithfully and impartially uphold the law and that duty may include ordering a person's execution in an appropriate case. If I am ever presiding over a case in which the death penalty is sought and it is the legally appropriate punishment, I will impose it").

- **Opinion 95-03** (with appropriate caution, judge **may** present to local Tiger Bay Club historical speech regarding death penalty which is neither pro- nor anti-death penalty).

- **Opinion 98-14** (judge **may** speak, write, lecture, or teach electorate at public forums about issues concerning proposed constitutional amendments and publicly advocate position on any such proposed amendments if they involve law, legal system, or administration of justice; but judge may **not** address partisan group regardless of subject matter of presentation).

- **Opinion 99-6** (retired judge eligible for recall may **not** write United States senator with views on impeachment trial of United States president).

- **Opinion 00-21 (Election)** (non-incumbent judicial candidate may **not** use website address referring to self as judge, nor shall non-incumbent candidate respond to media regarding candidate's clients' pending cases; but candidate **may** use results of bar poll ranking incumbent judge last among other county court judges in five of eight categories, but **must** disclose fact that rankings were based on responses of only 55 lawyers).

- **Opinion 02-13 (Elections)** (judicial candidate may **not** "privately" disclose his or her political party affiliation, but subject to restrictions set forth in opinion, **may** state his or her views on constitutional or statutory construction and other controversial issues, so long as candidate does not advocate opposition to or support of political issues, and with certain restrictions **may** publicize information about his or her opponent, if relevant to qualifications for judicial office).

- **Opinion 04-09 (Election)** (judicial candidate may **not** directly or indirectly solicit endorsement of major political party and cannot authorize surrogate to engage in activities proscribed under Florida Statutes or Florida Code of Judicial Conduct, but **may** state his or her own views on disputed issues as long as candidate also states that he or she will uphold law).

- **Opinion 04-18 (Election)** (judicial candidate for re-election may **not** publicly comment on reasons for ruling on motion filed by judicial opponent in pending legal proceeding or on past conduct and actions of judicial opponent in pending legal proceeding).

- **Opinion 04-24 (Election)** (judicial candidate **may** answer questions posed by newspaper in opinion survey when responses to questions may be published in newspaper, so long as candidate also states that he or she will uphold law).

- **Opinion 10-14 (Election)** (judicial candidate may **not** indicate agreement with criteria used by named U.S. President in nominating justices of U.S. Supreme Court).

- **Opinion 10-19 (Election)** (judicial candidate **may** speak at gatherings of "Tea Party" organizations under limited conditions prescribed by Canon 7(C)(3), avoiding conduct suggesting support of or opposition to party, issue, or candidate).

- **Opinion 10-20 (Election)** (judicial candidate **may** attend town hall meeting, hosted by elected state representative, organized for limited purpose of discussing outcome of legislative session; candidate may not attend functions sponsored by "Organizing for America," community organizing project of Democratic National Committee, unless such conduct complies with Canon 7C(3)).

D. **May a judge or judicial candidate belong to an organization that is bipartisan in membership, is nonpartisan in nature, and addresses political and social issues?**

Yes. In Opinion 95-1, the organization at issue was the Tiger Bay Club. In an earlier opinion, the committee disallowed a judge's membership in the Tiger Bay Club because the club was a political organization, in which membership was prohibited by Canon 7A. In revisiting the issue in Opinion 95-1, the committee found that Tiger Bay clubs are "essentially public awareness organizations that address political and societal issues," are bipartisan in membership, are nonpartisan in nature, and do not appear to be proscribed by Canon 7. See the following summaries of committee opinions related to organization membership:

- **Opinion 94-23** (non-judge judicial candidate **may** serve as member of Nominating Council of Florida Public Service Commission; active participation during candidacy, however, was not addressed).

- **Opinion 13-06** (judge in juvenile division **may** serve on board of directors of not-for-profit organization that provides financial assistance to needy children and families).

- **Opinion 13-20** (judge may **not** be member in SUNPAC, political action committee whose primary objectives are political (financing events for elected officials and contributing to their election; committee was evenly divided as to whether judge could attend functions sponsored by SUNPAC, with half of committee stating attendance might be permissible if event is not political party function, judge does not pay to attend, judge's attendance could not be construed as public endorsement of candidate, and judge does not actively engage in any political activity).

E. **May a judicial candidate make truthful statements about his or her opponent?**

Yes. *See American Civil Liberties Union v. The Florida Bar*, No. TCA 90-40163-WS (N.D. Fla. Mar. 22, 1994), and Opinion 94-16. This committee opinion is summarized below along with other opinions related to statements about opponents:

- **Opinion 94-16** (judicial candidate **may** criticize political opponent when criticism is truthful, pertinent, and material to judicial office; judicial candidate may **not** criticize judge about open case because judge may have to rule on same case and cannot comment on pending case).

- **Opinion 98-27** (judicial candidate **may** use radio, television, or print advertising that reproduces negative or critical newspaper headlines, stories, or opinions about candidate's opponent, but candidate must follow mandates of Canon 7).

- **Opinion 00-21 (Election)** (non-incumbent candidate for judicial office may **not** use website address referring to self as judge, nor shall non-incumbent candidate respond to media regarding candidate's clients' pending cases; candidate **may** use results of bar poll ranking incumbent judge last among other county court judges in five of eight categories, but **must** disclose fact that rankings were based on responses of only 55 lawyers).

- **Opinion 00-23 (Election)** (non-incumbent candidate for judicial office **may** publish campaign ad stating his or her opponent is participant in DROP, so long as candidate complies with Canon 7, its subsections, and cautionary language of advisory opinion).

- **Opinion 02-13 (Elections)** (judicial candidate may **not** "privately" disclose his or her political party affiliation, but subject to restrictions set forth in opinion **may** state his or her views on constitutional or statutory construction and other controversial issues so long as candidate does **not** advocate opposition to or support of political issues, and with certain restrictions **may** publicize information about his or her opponent, if relevant to qualifications for judicial office).

- **Opinion 14-12 (Election)** (judicial candidate **may** educate public about judicial appointment process and **may** mention that incumbent opponent was appointed, and when appointment was made, but committee cautioned candidate "to exercise caution in how and under what circumstances you 'mention' the date of the appointment or by whom the appointment was made. The Committee can envision circumstances in which truthful statements made for inappropriate reasons or in an inappropriate context, particularly when combined with other

circumstances, may be deemed to constitute the injection of party politics into a non-partisan election").

F. **May a judicial candidate respond to personal attacks or attacks on his or her record?**

Yes. Canon 7A(3)(f) **permits** the candidate to respond to personal attacks or attacks on his or her record as long as the response does not violate Canon 7A(3)(e)(ii), which prohibits a candidate from knowingly misrepresenting the identity, qualifications, present position, or other fact concerning the candidate or an opponent. See the relevant opinion summarized below:

- **Opinion 96-24** (judicial candidate **may** publicly defend his or her conduct regarding false personal statements made by opponent and **may** truthfully reveal matters regarding opponent's campaign conduct).

- **Opinion 16-06 (Election)** (incumbent judicial candidate **may** publicly comment about termination (including arrest and conviction) of court employee who later made allegations about judge that appeared in media accounts of campaign).

G. **What are some examples of nonpartisan and political events a judge or judicial candidate may attend?**

See the following summaries of committee opinions related to attendance of nonpartisan and political events by a judge or judicial candidate:

- **Opinion 86-12** (judge **may** attend function hosted by university president and honoring legislative delegation when there would be no fund-raising or mention of fund-raising at function).

- **Opinion 88-16** (county court judge who has announced his or her candidacy for circuit judgeship **may** be present at private homes to meet people).

- **Opinion 96-10** (judicial candidate may **not** attend testimonial to retiring congressman when it is political fund-raiser; judicial candidate **may** attend nonpartisan, pro-life spring banquet but must avoid any indication of how he or she would rule regarding abortion issues).

- **Opinion 96-17** (judge **may** serve as master of ceremonies at candidates forum at local homeowners association meeting).

- **Opinion 98-24** (judicial candidate for merit retention, without active opposition, **may** speak at candidates night event sponsored by local church and open to general public).

- **Opinion 00-22 (Election)** (judicial candidate **may** speak at partisan political event that is not fund-raiser if his or her opponent has also been invited to speak and **may** distribute campaign material as long as all provisions of Canon 7C(3) are met, **may** attend and distribute campaign materials at National Rifle Association (NRA) fund-raiser, and **may** post newspaper articles and editorials relating to campaign on website).

- **Opinion 02-16 (Elections)** (judicial candidate may **not** attend fund-raiser for anti-discrimination political organization).

- **Opinion 02-18 (Elections)** (judicial candidate who is not judge **may** participate in fund-raising function for non-profit organization).

- **Opinion 03-23** (judge who is candidate for re-election with no announced opposition **may** speak to League of Women Voters and NAACP regarding adequate funding for the courts in implementation of Article V, Revision 7, Florida Constitution).

- **Opinion 04-23 (Election)** (judicial candidate **may** purchase table with campaign funds, distribute campaign literature, and meet voters at countywide, nonpartisan event).

- **Opinion 04-27 (Election)** (judge or candidate for judicial office **may** attend various "meet and greet" functions sponsored by nonpartisan groups if events are not fund-raisers; judicial candidate **may** use campaign funds to pay admission and table fees at these events if event is not fund-raiser; judge **may** continue to write weekly newspaper column while in contested re-election campaign).

- **Opinion 04-28 (Election)** (candidate for judicial office **may** attend private "meet and greet" function for judicial and nonjudicial candidates, even when candidate's opponent is not invited, if function is not fund-raiser or connected to any political party).

- **Opinion 04-31 (Election)** (judicial candidate may **not** leave campaign literature on display tables in Republican and Democratic committee headquarters).

- **Opinion 06-25** (judge who is not candidate for re-election or retention **may** attend community-sponsored nonpartisan function in order to socialize and listen to candidates' speeches).

- **Opinion 10-14 (Election)** (non-judge judicial candidate **may** participate, along with campaign committee, in fund-raising event for charitable organization while wearing shirt advertising judicial campaign; **may** purchase and share space in county-fair tent alongside other candidates only if space sharing does not create appearance that candidate is running as part of slate or member of political party).

- **Opinion 10-23 (Election)** (non-judge judicial candidate **may** wear campaign badge or button and distribute campaign literature at fund-raising event for charity).

- **Opinion 12-23 (Election)** (non-judge judicial candidate **may** pay sponsorship fee to nonpartisan organization to enable candidate to attend conference, distribute campaign literature, and speak on behalf of candidacy, regardless of whether event is fund-raiser).

H. What information may or may not be included in campaign advertising?

See Canon 7A, Florida Code of Judicial Conduct, and section 105.071, Florida Statutes. Also note that section 106.143, Florida Statutes, provides that any political advertisement that is paid for by a candidate and that is published, displayed, or circulated prior to, or on the day of, any election must state: "Political advertisement paid for and approved by (name of candidate), (party affiliation), for (office sought)." However, section 105.011, Florida Statutes, provides that a judicial office is a nonpartisan office and a candidate for election or retention to judicial office is prohibited from campaigning for the office based on party affiliation. (emphasis added). In Opinion 94-35, the committee adopted a policy not to examine individual examples of candidates' campaign literature but to provide ethical provisions which judicial candidates must consider. See the following summaries of committee opinions related to judicial campaign advertising:

- **Opinion 84-10** (announced candidate for circuit judge or any lawyer running for judicial office **may** publicize Florida Bar certification in particular specialty).

- **Opinion 84-17** (candidate for election to circuit court who has served as domestic relations commissioner/general master in domestic relations division may **not** characterize position in campaign literature in following terms: "judicial position," "limited jurisdiction family judge," and "judicial officer," because masters remain constantly under control of judge and such wording implies or tends to imply that candidate is incumbent judge).

- **Opinion 88-15** (judge proposing in campaign literature "that court be held on certain types of matters after regular working hours" does **not** violate Canon 7B(1)(c) [now Canon 7A(3)(e)(i)]).

- **Opinion 94-24** (judge who will be up for re-election **may** mail press release and photograph to local newspapers for purpose of announcing candidacy).

- **Opinion 94-35** (JEAC "should **not** approve or disapprove specific language of individual judicial campaign advertisements, but rather **should** provide the ethical provisions which judicial candidates must consider").

- **Opinion 99-26** (judge **may** establish Internet web page to prepare for upcoming election campaign and provide general information to public).

- **Opinion 00-21 (Election)** (non-incumbent candidate for judicial office may **not** use website address identifying candidate as judge, nor shall non-incumbent candidate respond to media regarding candidate's clients' pending cases, but candidate **may** use results of bar poll ranking incumbent judge last among other county court judges in five of eight categories and **must** disclose fact that rankings were based on responses of only 55 lawyers).

- **Opinion 00-22 (Election)** (judicial candidate **may** speak at partisan political event that is not fund-raiser if his or her opponent has also been invited to speak and **may** distribute campaign material as long as Canon 7C(3) provisions are met, **may** attend and distribute campaign materials

at National Rifle Association (NRA) fund-raiser, and **may** post newspaper articles and editorials relating to campaign on website).

- **Opinion 00-24 (Election)** (non-incumbent candidate for judicial office **may** use phrase "quasi-judicial experience" in campaign literature, but because phrase, without qualification, might mislead general public, candidate **must** make specific reference to actual positions he or she has held).

- **Opinion 00-27 (Election)** (judicial candidate **may** film advertisement portraying candidate addressing mock jury in courtroom as if he or she were actually trying case, so long as candidate maintains dignity appropriate to judicial office and acts in manner consistent with integrity and independence of judiciary).

- **Opinion 02-07 (Elections)** (judge in contested election immediately after judge's appointment to bench may **not** use word "re-elect," but **may** use word "retain," in conjunction with judge's campaign advertisements).

- **Opinion 02-12 (Elections)** (judicial candidate may **not** state: "Elect Prosecutor (name of candidate) for Circuit Judge" on candidate's campaign literature, because using words "Prosecutor" or "Assistant State Attorney" as title identifying candidate could erode public confidence in integrity and impartiality of judiciary and commit or appear to commit candidate with respect to issues that may come before court).

- **Opinion 04-20 (Election)** (judicial candidate who is running against incumbent judge **may** state in campaign literature that candidate served as volunteer judge in teen court diversion program).

- **Opinion 04-33 (Election)** (judge who is candidate for re-election **may** reproduce and distribute recommendations or endorsements of newspapers or portion of those recommendations or endorsements in campaign literature).

- **Opinion 06-13 (Election)** (judge **may** include family photograph in campaign advertising when judge's spouse also holds political office, but judge's spouse should **not** attend campaign events with judge).

- **Opinion 06-16 (Election)** (judicial candidate may **not** use title "magistrate" when describing prior service, **may** publicize photographs showing candidate wearing judicial robe when this privilege was extended to magistrates in candidate's circuit, and **may** use word "preside" in campaign materials; judicial candidate who has served as adjunct professor of law **may** use term "part-time law professor" in campaign advertisements).

- **Opinion 06-20 (Election)** (judge standing for re-election may **not** include in campaign literature favorable remarks from juror questionnaires about improving jury process).

- **Opinion 06-21 (Election)** (judicial candidate **may** accept and advertise endorsement from elected partisan official acting in official's individual capacity).

- **Opinion 06-24 (Election)** (judicial candidate **may** advertise endorsement of partisan office holder or endorsement of partisan candidate defeated in recent primary within parameters established in Opinion 06-21 and **may** advertise endorsement of retired judge, but only if retired judge is not subject to recall for judicial service).

- **Opinions 08-10 (Election)** and **08-13 (Election)** (retired judge may **not** use title "judge" which would misrepresent current status of candidate; use of "former judge" or "retired judge" is permitted because it is truthful statement of qualifications; retired judge may **not** use images of himself or herself wearing robe in staged photographs but **may** use photographs showing retired judge wearing robe if images were taken while judge was on bench).

- **Opinion 08-11 (Election)** (judge seeking re-election **may** use images of judge wearing robe; **may** use images of judge with jurors and/or complimentary letters from jurors, if jurors agree to use of photos or comments; **may** use images of judge with colleagues and/or other officials, elected and non-elected, with disclaimer; but may **not** use images of fellow judges, see *In re Renke*, 933 So. 2d 482 (Fla. 2006)); campaign website **may** be created and maintained by committee organized for purpose of assisting re-election effort).

- **Opinion 08-12 (Election)** (special master/magistrate ("CESM"), designated in lieu of code enforcement board, is neither article V judge nor person performing judicial functions under direction or supervision of judge; thus, unlike general master, CESM is **not** "judge" and therefore **may** endorse).

- **Opinion 08-15 (Election)** (judicial candidate **may** use title "Administrative Law Judge" when describing candidate's service with Florida Division of Administrative Hearings (DOAH), even though during part of candidate's service title "hearing officer" was used. Candidate should clarify that for period of time position bore title "hearing officer").

- **Opinion 10-14 (Election)** (judicial candidate may **not** place campaign ad on side of truck that would display other ads for other candidates).

- **Opinion 10-18 (Election)** (judge may **not** publish in campaign materials photograph showing judge delivering acceptance speech with Florida Supreme Court justices looking on).

- **Opinion 10-28 (Election)** (judge **may** contribute to public broadcasting station which will thank judge by name on air but judicial candidate may not personally host website or Facebook page promoting judicial campaign).

- **Opinion 14-04** (candidate's campaign account **may** pay for management of website maintained by candidate's campaign committee; candidate **may** personally oversee (1) design and content of website and (2) paid communications firm that is managing website; principal of that firm **may** be on candidate's committee; website **may** contain link permitting direct contributions, as long as solicitations are made by committee and not by candidate; and single committee member **may** oversee website).

- **Opinion 14-10 (Election)** (judge running for re-election may **not** use in campaign literature or electronic media a picture of self being sworn in by now-deceased former judge).

- **Opinion 16-13 (Election)** (judicial candidate may include "Vote for [candidate's name] on [date]" in personal Facebook profile).

I. **May a judge or judicial candidate join or serve on committees of bar associations, governmental entities, or civic organizations?**

See section 105.071, Florida Statutes, generally, and Canon 7A(1)(a) and Canon 7B(2)(b)(i). See the following summaries of committee opinions related to memberships:

- **Opinion 95-01** (judge **may** become member and attend meetings of Tiger Bay Club).
- **Opinion 98-18** (candidate for judicial office **may** serve on executive committee of local bar association).
- **Opinion 98-31** (judge **may** maintain membership in voluntary bar association even though organization has joined political action committee to support proposed constitutional amendment involving law, legal system, and administration of justice; judge **may** attend fund-raising event sponsored by organization for purpose of supporting proposed constitutional amendment as long as judge is not speaker or guest of honor).
- **Opinion 01-15** (judge may **not** maintain membership in voluntary bar association that endorses judicial candidates).
- **Opinion 13-03** (judge may **not** participate in county elections task force to address address issues encountered in judge's county and throughout state during general election).
- **Opinion 13-16** (judge **may** serve on board development committee and board of directors of scouting organization as long as judge does not participate in fund-raising or otherwise engage in conduct that could reasonably be deemed coercive).

J. **May a judicial candidate respond to candidate questionnaires and other requests for information?**

In Opinion 06-20 (Election), the committee adopted a policy not to examine judicial candidate questionnaires but to offer general guidance regarding the types of answers or comments likely to violate the Code of Judicial Conduct.

See the following summaries of committee opinions related to judicial candidate questionnaires:

- **Opinion 94-34** (judicial candidate **may** respond to judicial candidate questionnaires but **must** be aware that certain campaign-related speech remains impermissible).

- **Opinion 96-21** (judicial candidate may **not** respond to questionnaire from county political party executive committee and may **not** publicly represent or advertise herself or himself as member of any political party).

- **Opinion 06-18 (Election)** (judicial candidate **may** respond to questionnaires that cover subjects such as same-sex marriage, parental notification, school vouchers, and candidate's agreement or disagreement with recent court decisions, as long as candidate follows guidelines set forth in committee opinion).

- **Opinion 14-14 (Election)** (judicial candidate **may** provide biography to partisan political organization in response to organization's request to print biography in its newsletter if "the organization: (1) is not requesting the biography for the purpose of endorsing a judicial candidate; (2) has invited the judicial candidate's opponent(s) to provide a biography to print in the organization's newsletter [which candidate must confirm]; and (3) includes a notice of such invitation in the newsletter if the judicial candidate's opponent does not provide a biography").

K. **May a judicial candidate accept endorsements and/or help from political parties?**

No. Canon 7A(1)(a) **prohibits** a judge or judicial candidate from acting as a leader or holding office in a political organization. Section 105.071, Florida Statutes, **prohibits** judicial candidates from accepting contributions from a political party, and assistance from a political party in gathering petition signatures should be considered a contribution. Opinion 06-08. See summaries of relevant committee opinions below:

- **Opinion 00-29 (Election)** (judicial candidate may **not** publicize endorsement of political party, because advertising endorsement is effectively same as advertising oneself as member of party).

- **Opinion 04-09 (Election)** (judicial candidate may **not** directly or indirectly solicit endorsement of major political party and cannot authorize surrogate to engage in activities proscribed under Florida Statutes or Florida Code of Judicial Conduct, but **may** state his or her own views on disputed issues as long as candidate also states that he or she will uphold law).

- **Opinion 06-08** (judge or judicial candidate may **not** accept political party's campaign assistance in gathering petition signatures).

- **Opinion 06-21 (Election)** (judicial candidate **may** accept and advertise endorsement from elected partisan official acting in official's individual capacity).

- **Opinion 06-24 (Election)** (judicial candidate **may** advertise endorsement of partisan office holder or endorsement of partisan candidate defeated in recent primary within parameters established in Opinion 06-21 (Election) and **may** advertise endorsement of retired judge, but only if retired judge is not subject to recall for judicial service).

- **Opinion 10-14 (Election)** (judicial candidate **may** accept endorsement from nonjudicial elected official who is not campaigning for election, **may** advertise such endorsement on campaign website, **may** advertise such endorsement in printed campaign ads, **may** discuss such endorsement in campaign speech or other forum; but may **not** accept endorsement from nonjudicial candidate for elected office).

- **Opinion 12-18 (Election)** (judicial candidate **may** accept endorsement from nonjudicial elected official who is not campaigning for election and will not be on ballot because is unopposed, as long as endorsement is in official's individual capacity and "partisan aspects of the official's position are not mentioned").

- **Opinion 12-21 (Election)** (judicial candidate may **not** use endorsement of nonjudicial elected official who is running against qualified write-in candidate, as official is "campaigning for election").

- **Opinion 16-15 (Election)** (judicial candidate or committee of responsible persons may **not** solicit contributions for "electioneering communications organization" to be used to support candidacy of judicial

candidate or oppose candidacy of opponent, nor may judicial candidate coordinate campaign activities with "electioneering communications organization," defined under IRC as "political organization").

L. **May a judge or judicial candidate sign a voluntary bar association election campaign pledge?**

Yes, if the candidate qualifies the pledge. A candidate **may** commit to an aspirational goal of providing diversity in appointments. However, this pledge should be qualified by a pledge to follow Canon 3C(4), which provides that "[a] judge shall exercise the power of appointment impartially and on the basis of merit." A commitment to appoint based upon diversity alone, without a commitment to exercise the power of appointment impartially and upon the basis of merit, is a commitment which appears to violate the code. A pledge by a candidate to be "open to hearing from the community concerning ways of improving access to the courts, promoting diversity, and ensuring equal treatment" is not inappropriate so long as such a pledge is made "subject to the requirements of the Florida Code of Judicial Conduct." Opinion 08-14 (Election).

M. **May a judge, or a committee campaigning on his or her behalf, post comments and add friends on their respective social networking pages?**

Yes. However, the judge may **not** add lawyers who may appear before the judge as "friends" on the social networking site, and may **not** permit such lawyers to add the judge as their "friend." Under Canon 2B, the message conveyed to others, as viewed by the recipient, could convey the impression that someone is in a special position to influence the judge. Opinion 09-20. **Nor** may a judge add lawyers who may appear before the judge as connections on the professional networking site LinkedIn or permit lawyers to add the judge at that site; the selection and communication of persons the 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 12-12. However, a judge who is a member of a voluntary bar association may participate in that association's Facebook page, which includes as "fans" or "friends" lawyers who use the Facebook page to communicate among themselves about that organization and other non-legal matters. Opinion 10-06. A judicial candidate may include "Vote for

[candidate's name] on [date]" in the candidate's personal Facebook profile. Opinion 16-13 (Election).

N. **May a judge running for re-election create a Twitter account with a privacy setting open so anyone — including lawyers — would be able to follow the account?**

Yes, under certain circumstances. Canon 2B would not necessarily preclude a judge running for re-election from maintaining a Twitter account "for campaign 'tweets' such as judicial philosophy, campaign slogans, and blurbs about the candidate's background." However, if a user posts a tweet and the judge re-tweets it or marks it as a favorite, "this could convey or permit the tweeter to convey the impression that the tweeter is in a special position to influence the judge." Opinion 13-14. If a judge creates a list of followers or appears on another user's list of followers, that could cast doubt on the judge's ability to act impartially in violation of Canon 5A. The account also may create the opportunity for ex parte communication. Therefore, it is better practice for the judge's campaign manager or another individual connected with the campaign set up the Twitter account.

III. Activities During Business Hours

A. **May a judge participate in campaign activities during regular courthouse hours?**

A judge **should** strive to arrange campaign activities to be conducted outside regular courthouse hours, excluding minor campaign-related activities which may be permissible as long as the conduct 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. Opinion 97-34.

IV. Soliciting, Accepting, and Spending Money

A. **May a judicial candidate personally solicit funds in support of his or her candidacy?**

No. Canon 7C(1) provides that 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. See Opinion 04-07 (Election), which is included in Appendix A.

- **Opinion 08-11** (judge's personal website may **not** refer to or facilitate giving financial and other support to judge's re-election effort).

- **Opinion 10-14 (Election)** (judicial candidate may **not** send email invitations to fund-raising event for candidate's campaign or encourage invitees to attend).

In *The Florida Bar v. Williams-Yulee*, 138 So. 3d 379 (Fla. 2014), The Florida Bar had brought a disciplinary action against a former judicial candidate who had signed a campaign fund solicitation letter at a point when there was no other candidate in the race. The Florida Supreme Court rejected her constitutional challenge to the ban imposed by Canon 7C(1) on a judicial candidate's personal solicitation of campaign contributions, stating that "the Canon is constitutional because it promotes the State's compelling interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary, and that it is narrowly tailored to effectuate those interests." 138 So. 3d at 381. The United States Supreme Court affirmed the decision in *Williams-Yulee v. Florida Bar*, __ U.S. __, 138 S.Ct. 1656, 191 L.Ed.2d 570 (2015).

B. **Who may solicit campaign funds for a judicial 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** 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).

An incumbent judicial candidate may not include on his or her committee of interested persons a political office holder who is also up for election in the same cycle. Opinion 16-05 (Election).

C. **Who may ask for judicial campaign contributions and when?**

A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates may **not** solicit funds for his or her own campaign but **may** "establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign. . . ." Fla. Code Jud. Conduct, Canon 7C(1); Opinion 04-07 (Election).

Florida statutes contain specific regulations. "Any contribution received by a candidate with opposition in an election . . . on the day of that election or less than 5 days prior to the day of that election must be returned . . . and may not be used or expended by or on behalf of the candidate." § 106.08(3)(a), Fla. Stat. The same statutory section requires a candidate to return any contribution received after the candidate withdraws, is defeated, becomes unopposed, or is elected.

A candidate **may** have a campaign website which, if created and maintained by a committee of responsible persons, **may** contain a link permitting direct contributions, as long as solicitations are made by the candidate's committee of responsible persons, and not by the candidate. Opinion 14-04.

D. **May a judicial candidate serve as his or her own campaign treasurer?**

Yes. Section 106.021(1)(a), Florida Statutes, states, "Each candidate for nomination or election to office . . . **shall** appoint a campaign treasurer." Further, "[a] candidate **may** appoint herself or himself as campaign treasurer." § 106.021(1)(c), Fla. Stat. A judge who is his or her own campaign treasurer **may** 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.

E. **What campaign contributions may a judicial candidate accept?**

A candidate for county, circuit, or district court of appeal judge **may** accept not in excess of $1,000 from any person or committee for each election. A candidate for retention as a justice of the supreme court may accept not in excess of $3,000 from any person or political committee for each election. There are two elections per campaign, the primary election and the general election, for candidates for circuit judge and county court judge, and one election, the general election, for candidates for retention as a justice or district court of appeal judge. § 106.08(1)(a), (c), Fla. Stat. Prior to November 1, 2013, a candidate for county, circuit, or appellate judge could accept not in excess of $500 from any person or political committee for each election.

A judge may not accept campaign contributions from a candidate running for non-judicial 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. The distinction between soliciting and accepting contribution "blurs in the context of a campaign" and a candidate should be insulated from all aspects of fund-raising. Opinion 12-01 (Election).

F. **May a judicial candidate obtain contributions to pay his or her qualifying fee?**

Yes. Fla. Code Jud. Conduct, Canon 7C(1). And as an alternative to paying the qualifying fee, a judicial candidate may use the petition method to qualify for re-election. § 105.035, Fla. Stat. See the following summaries of committee opinions related to qualifying fees.

- **Opinion 92-27** (candidate for judicial office **may** use campaign funds to pay filing fee).
- **Opinion 92-29** (judge **may** use petition method to qualify for re-election, thereby avoiding qualifying fee).

G. **How may a judicial candidate spend campaign money?**

"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" (emphasis added). Fla. Code Jud. Conduct, Canon 7C(1). A candidate is therefore **prohibited** from using funds acquired in connection with his or her candidacy for payment of a salary to the candidate or for payment of normal living expenses, other than expenses actually incurred for transportation, meals, and lodging for the candidate and his or her family. § 106.1405, Fla. Stat.

- **Opinion 88-13** (campaign contributions **may** be used to pay qualifying fee, for expenses incurred in traveling to file qualifying documents if such documents are delivered in person, and for reimbursement of campaign-related gas consumption, hotel, and meal costs; candidate should **not** use or permit use of campaign contributions for private benefit of himself or herself or his or her family and permitted expenditures must be directly attributable to election campaign).

H. **What may a judicial candidate do with unspent campaign funds?**

Methods for disposing of surplus campaign funds are described in section 106.141, Florida Statutes. Under the statute, funds that have not been spent or obligated **may** be returned to each contributor on a pro rata basis or donated to

charitable organizations or organizations that meet the qualifications of section 501(c)(3) of the Internal Revenue Code. A candidate elected to office or a candidate who will be elected to office by virtue of being unopposed **may** also transfer from the campaign account to an office account any amount of the funds on deposit in the campaign account up to: $6,000 for supreme court justices, $3,000 for district court of appeal judges, and $3,000 (effective November 1, 2013) for county court or circuit judges. If the judge deposits funds in an office account, the judge is obligated to comply with section 106.141, which requires, among other things, filing a report reflecting the disposition of all remaining funds. *See* Opinion 00-25 (judge **may** return surplus campaign funds pro rata to contributors, including lawyers who may appear in his or her courtroom).The legislature added a new subsection (6) to section 106.141, effective November 1, 2013, allowing a candidate elected to state office or who will be elected to state office by virtue of being unopposed after qualifying has ended to keep up to $20,000 for the next campaign for the same office, in addition to section 106.141(4) and (5) disposition methods. See also page 58 of the Florida Division of Elections 2016 Candidate and Campaign Treasurer Handbook regarding section 106.141(6), Florida Statutes.

I. May a judicial candidate make campaign contributions to the candidate's own campaign?

Yes. § 106.08(1)(b)1, Fla. Stat. Additionally, a committee majority has found **no prohibition** against a judge contributing to the cost of food and advertising associated with a nonpartisan political event in which the judge appears on behalf of his or her own candidacy. Opinion 88-23.

V. Family and Staff Activities

A. What political campaign contributions may a judge's spouse make?

A spouse **may** make campaign contributions if done in the spouse's name and without reference to the judge or his or her judicial position. Opinion 84-19.

B. Are there limitations on the political conduct of a judge's or judicial candidate's family?

See the following summaries of committee opinions related to political conduct of a judge's or judicial candidate's family.

- **Opinion 94-21** (judge's spouse **may** engage in political activities without constraints that apply to judge, and judge's spouse **may** have campaign party for another candidate at spouse's law office even though judge is listed as co-tenant on deed; judge should not attend party).

- **Opinion 98-3** (judicial candidate's spouse who is Florida legislator **may** accompany candidate to nonpartisan events while candidate is actively promoting campaign, mention candidate's campaign to other colleagues or constituents as well as answer questions about candidate's campaign, attend candidate's campaign events, and attend nonpartisan legislative events; judicial candidate's friends who are Florida legislators or school board members may sponsor fund-raiser for candidate).

- **Opinion 03-20** (judge running for re-election **may** retain as consultant a company in which another judge's spouse has ownership interest).

- **Opinion 08-09 (Election)** (parents of judge or judicial candidate may **not** generate letter soliciting campaign contributions for election campaign of judge or judicial candidate).

- **Opinion 10-16 (Election)** (judicial candidate's relatives, other than those in "close familial relationship," **may** solicit contributions and endorsements in support of candidate's election; judge's spouse, who is also member of committee of responsible persons supporting judge's campaign, **may** attend political party dinner event if spouse does not campaign for judge's re-election).

- **Opinion 10-22 (Election)** (judicial candidate's spouse **may** belong to political party executive committee and also campaign for judicial candidate, as long as candidate and spouse avoid injecting partisan politics into campaign).

- **Opinion 11-10** (judge **should** "adamantly and sincerely" encourage spouse to host campaign event for candidate at place other than judge's and spouse's home).

- **Opinion 16-07** (judicial candidate **may** use photograph of spouse who is sitting judge in campaign advertisement if spouse's position is not identified and ad does not imply spouse actively endorses candidate).

C. Does the Florida Code of Judicial Conduct limit the political conduct of a judge's or judicial candidate's staff?

Yes. Canon 7A(3) provides: "A candidate for a judicial office: …**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" (emphasis added). See the following summary of a committee opinion related to political activity of judges' and judicial candidates' staff:

- **Opinion 93-45** (judicial law clerks and employees subject to judge's direction or control may **not** be prohibited from engaging in partisan political activity during personal time, providing such activity is conducted entirely independent of judge and without reference to judge or judge's office).

- **Opinion 12-19 (Election)** (if supporter of judicial candidate displays campaign sign on vehicle on which supporter also displays partisan candidate's campaign sign, judicial candidate **must** have supporter remove judicial candidate's sign if supporter is employee or official "who serves at the pleasure of the candidate" and **should discourage** supporter from displaying it if supporter is employee or official "subject to the candidate's direction and control").

VI. Knowing Supporters

A. May a judicial candidate know the names of persons who contributed to the candidate's campaign?

Yes. In Opinion 77-22, the committee reasoned that, because the law requires all campaign funds to be reported and Canon 7 refers to "public statements of support," it is clear that it was intended that contributors of support not be kept a secret from the candidate.

B. May a judicial candidate thank the contributors personally?

Yes. See the following summaries of committee opinions related to thanking contributors:

- **Opinion 77-22** (judge or judicial candidate **may** personally thank individuals who contributed to his or her campaign).

- **Opinion 92-02** (thank-you notes to campaign contributors should **not** be on judicial stationery in that judicial stationery is to be used for official business only, not private purposes).

C. **Will an attorney's campaign contribution to, or work on, a judge's campaign require the recusal of the judge when the attorney appears before him or her?**

No. *MacKenzie v. Super Kids Bargain Store, Inc. v. Breakstone*, 565 So. 2d 1332 (Fla. 1990). *See also* Opinions 94-10 and 14-09.

The United States Supreme Court held in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), that the Due Process Clause of the United States Constitution requires a judge to recuse himself or herself in a case where a substantial campaign contributor is a party in the case. In *Caperton*, one of the parties had contributed more than $3 million to the campaign of one of the judges hearing the case. In Florida, however, effective November 1, 2013, a candidate for county or circuit judge, or for retention as a district court of appeal judge, may accept not in excess of $1,000 from any person or committee for each election, and a candidate for retention as a supreme court justice may accept not in excess of $3,000 from any person or committee for each election. There are two elections per campaign, the primary election and the general election, for candidates for circuit judge and county court judge, and one election, the general election, for candidates for retention as a justice or district court of appeal judge. § 106.08(1)(a), (c), Fla. Stat. Prior to November 1, 2013, a candidate for retention as a judge of a district court of appeal or supreme court justice, or a candidate for county court judge or circuit judge, could not accept in excess of $500 from any person or political committee for each election.

D. **What disclosures must a judge make when attorneys who appear before the judge have been involved in the judge's campaign?**

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. *See* Commentary to Canon 3E(1). As to actual disqualification,

the issue should be resolved on a case-by-case basis. Disclosure and disqualification arising out of an attorney's appearance extends to any member of the attorney's law firm. Opinion 07-17. See the summaries of relevant committee opinions below:

- **Opinion 07-17** (judge **should** disclose to state if criminal defense attorney appearing before judge is on judge's campaign committee).
- **Opinion 08-02 (Election)** (judge **should** disclose on record in open court that judge is being supported for election by local state attorney, sheriff, and defense lawyers).
- **Opinion 13-19** (judge facing re-election **must** provide notice to parties when member of judge's campaign committee is opposing counsel, even in cases likely to be handled or disposed of without formal court appearances; judge may not use campaign literature or campaign funds in providing notice).
- **Opinion 14-09** (judge seeking re-election whose committee of responsible persons includes attorneys **must** always disclose their status to opposing counsel or parties, regardless of how active or involved they have actually been).

VII. Disciplinary Action Under Canon 7

A. To whom should a violation 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.

B. What are the possible sanctions for a violation of Canon 7?

The Florida Constitution provides:

> The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel. . . . [and] may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it 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.

Art. V, § 12(c)(1), Fla. Const.

Rule 3-4.5 of the Rules Regulating The Florida Bar provides that, when a judge is removed from office by the Florida Supreme Court on the basis of Judicial Qualifications Commission proceedings, the removal order, when the record discloses the appropriate basis, may also order the suspension of the judge as an attorney pending further proceedings under the Rules Regulating The Florida Bar.

The Florida Bar may petition the Florida Supreme Court for discipline of an attorney by admonishment, probation, public reprimand, suspension, or disbarment. R. Regulating Fla. Bar 3-5.1.

C. **What are some examples of Canon 7 violations?**

See the following summaries of Florida Supreme Court opinions related to Canon 7 violations:

- *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 Griffin*, 167 So. 3d 450 (Fla. 2015) (public reprimand ordered for judge who opened campaign account and lent 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 fundraising 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).

- *The Florida Bar v. Williams-Yulee*, 138 So. 3d 379 (Fla. 2014), *aff'd*, 138 S.Ct. 1656 (rejecting constitutional challenge to ban on judicial candidate's personal solicitation of campaign contributions; certiorari review pending).

- *In re Turner*, 76 So. 3d 898 (Fla. 2011) (removing judge 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 him, and engaging in overall pattern of misconduct).

- *In re Colodny*, 51 So. 3d 430 (Fla. 2010) (imposing public reprimand and fine on judge 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) (approving stipulation and imposing public reprimand 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) (approving stipulation and JQC's recommendation that judge receive public reprimand and pay $25,000 fine. Although facts were not described in order, stipulation indicated that judge approved language in campaign mailer that could be interpreted as suggesting that her opponent's contributors were trying to influence judicial decisions of her opponent ("What are they trying to buy?")).

- *In re Renke*, 933 So. 2d 482 (Fla. 2006) (removing judge from office for misleading statements in campaign literature suggesting he was incumbent judge and/or had judicial experience, implying he was chair of water management district when he was only board member, and creating

impression he had endorsement of local firefighters' union when only a few individuals were supporting his candidacy; for grossly exaggerating his credentials as trial lawyer experienced in complex civil litigation, when in fact he had never first-chaired a major case and his trial experience was limited to single small claims case; and for falsely reporting as self-loan to his campaign, allegedly derived as fee for settling case, money that was found to constitute unlawful contribution from his family).

- *In re Woodard*, 919 So. 2d 389 (Fla. 2006) (imposing public reprimand and anger management counseling for number of violations including three related to election activities: judge had telephoned opponent's spouse and suggested opponent reconsider entering race because it would affect judge's retirement and "therefore his grandchildren"; judge had incorrectly stated number of jury trials over which he had presided; and, six years previously, judge had left arraignment session for radio campaign interview).

- *In re Gooding*, 905 So. 2d 121 (Fla. 2005) (imposing public reprimand for incurring campaign expenses when judge's campaign account did not have sufficient funds to cover those expenses and for lending funds to his campaign after end of campaign and depositing those funds into his campaign account after deadline for depositing money into that account).

- *In re Pando*, 903 So. 2d 902 (Fla. 2005) (imposing public reprimand and fine for campaign finance violations 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 Angel*, 867 So. 2d 379 (Fla. 2004) (imposing public reprimand for engaging in pattern of improper conduct, including participating in prohibited partisan political activity).

- *In re Kinsey*, 842 So. 2d 77 (Fla. 2003) (imposing public reprimand and fine of $50,000, plus costs, for improper campaign statements that implied that judge 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) (imposing public reprimand and fine of $40,000 for improper campaign finance activities and reporting practices).

- *In re McMillan*, 797 So. 2d 560 (Fla. 2001) (removing judge 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) (imposing public reprimand 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) (imposing public reprimand for having published in newspaper letter judge wrote on office stationery in which he identified himself as member of judiciary and endorsed retention of another judge).

- *In re Turner*, 573 So. 2d 1 (Fla. 1990) (imposing public reprimand for judge's participation in son's campaign for judicial office).

- *In re Berkowitz*, 522 So. 2d 843 (Fla. 1988) (removing judge from office for several violations of Code of Judicial Conduct, including participation in mailing of sample ballots suggesting partisan endorsements of candidates in nonpartisan race).

- *In re Kay*, 508 So. 2d 329 (Fla. 1987) (imposing public reprimand for mailing sample ballots suggesting partisan endorsement of candidates in nonpartisan race).

- *In re Pratt*, 508 So. 2d 8 (Fla. 1987) (imposing public reprimand for financing and distributing sample ballots suggesting partisan endorsement in race for judicial office in which judge was candidate).

- *In re DeFoor*, 494 So. 2d 1121 (Fla. 1986) (imposing public reprimand for judge's 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) (imposing public reprimand for directly soliciting election support from lawyer).

APPENDICES

FLORIDA SUPREME COURT

Judicial Ethics Advisory Committee

Opinion Number: 2004-07 Election[1]
Date of Issue: February 6, 2004

ISSUES

May a circuit judge who is a candidate for office directly solicit attorneys for public and financial support?

ANSWER: No.

May a circuit judge who is a candidate for office distribute to attorneys at meetings in non-government buildings, campaign material that has a profile of the judge, solicits a financial contribution or in-kind contribution, and contains an envelope for mailing a contribution?

ANSWER: No.

FACTS

The inquiring judge is currently seeking re-election. The inquiring judge asks whether it is permissible to directly solicit attorneys for public and financial support. The judge raises the question based on Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002), which found Canon 7(B)(2) of the Georgia Code of Judicial Conduct unconstitutional. The judge writes that Georgia's Canon 7 is substantially similar or identical to Florida's Canon 7C(1).

The inquiring judge also asks whether it is permissible to distribute to attorneys at meetings, in non-government buildings, campaign material with a profile of the judge, soliciting financial or in-kind contribution, and containing an envelope for mailing a contribution.

DISCUSSION

Canon 7C(1) provides that a candidate 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:

(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 candidates' 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. (Emphasis supplied).

A 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.

The committee is aware of Weaver. In Weaver, the Eleventh Circuit held that Georgia's Canon 7B(2), which prohibits judicial candidates from personally soliciting campaign contributions and publicly stated support, is unconstitutional. The Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Opinions are advisory to the inquiring party, to the Judicial Qualifications Commission, and to the judiciary at large. Petition of the Committee on Standards of Conduct Governing Judges, 698 So. 2d 834 (Fla. 1997). The Committee does not render legal opinions regarding the constitutionality or enforceability of various provisions of the Code of Judicial Conduct and declines to do so in this case. Fla. JEAC Op. 02-16.

Canon 7C(1) prohibits a candidate for a judicial office from personally soliciting campaign funds or from personally soliciting attorneys for publicly stated support. Thus, it would violate Canon 7C(1) to distribute campaign material which has a profile of the judge, solicits a financial contribution or in-kind contribution, and contains an envelope for mailing a contribution. Directly giving material which includes a campaign solicitation for money or in-kind contributions, could be perceived as coercive. The judges' campaign committees are created to raise funds and public support, and a judge should allow the committee to solicit attorneys. To personally solicit attorneys with envelopes for campaign contributions could be seen as paying for "cash register justice."

Furthermore, there are several other canons that apply to the inquiries. Canon 1 reads in part:

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 a judiciary may be preserved.

Canon 2A states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 7A(3)(a), which reads in part: A candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

Providing attorneys envelopes with solicitation forms would create an ethical dilemma for lawyers: Some attorneys may feel compelled to contribute to the inquiring judge's campaign, out of fear of adverse rulings or adverse treatment when attempting to schedule motions. Conversely, some attorneys may feel that by contributing, they curry favor with the judge.

We conclude the appearance of impropriety would be great and would erode public confidence in the judiciary if a judicial candidate distributed literature soliciting campaign contributions. The committee reminds the inquiring judge that judicial candidates have restrictions which do not encumber candidates seeking other elective offices. See § 105.071, Fla. Stat. The commentary to Canon 2A reads in part that:

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.

This is not to say that a judge may not distribute any campaign literature. In JEAC Op. 00-22, the committee was asked whether a judicial candidate could distribute literature at a partisan political event. We stated "[s]o long as all the provisions of Canon 7B(3) are met, the Code of Judicial Conduct and the spirit of Canon 7C(3) permit the distribution of campaign literature and materials by the candidates to attendees of the partisan political event." We also stated that the judge could distribute material as long as the judge did not express a position on any political issue. Id. Given that a judge may distribute campaign literature at a partisan political event, we see no harm in distributing campaign literature at an attorneys' meeting as long as the judicial candidate does not solicit an attorney. See JEAC Op. 02-11. We further remind the judge that the judge may not socialize and greet participants if the event is a political meeting. JEAC Op. 02-08.

We conclude that as long as the judicial candidate scrupulously complies with the provisions of Canon 7A(3) of the Florida Code of Judicial Conduct, the judge may distribute campaign literature.

REFERENCES

Florida Code of Judicial Conduct: Canons 1, 2A, 7, 7A(3), 7B(2), 7B(3) and 7C(1), 7C(3).

Florida Statute § 105.071.

Weaver v. Bonner, 309 F. 3d 1312 (11th Cir. 2002)

Petition of the Committee on Standards of Conduct Governing Judges, 698 So. 2d 834 (Fla. 1997)

Fla. JEAC Ops. 00-22; 02-8; 02-11; 02-16

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. *Petition of the Committee on Standards of Conduct Governing Judges*, 698 So.2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualification Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *Id.*

For further information, contact Judge Richard R. Townsend, Acting Chair, Judicial Ethics Advisory Committee, Post Office Box 1018, Green Cove Springs, Florida 32043.

Participating Members:
Judge Melanie May, Judge McFerrin Smith, III, Marjorie Gadarian Graham, Esquire.

Copies furnished to:

Justice Peggy Quince
All Committee Members
Judicial Qualifications Commission
Office of the State Courts Administrator
(Name of inquiring judge deleted from this copy)

[1] The Judicial Ethics Advisory Committee has appointed an Election Practices Subcommittee. The purpose of the subcommittee is to provide immediate responses to campaign questions in instances where the normal Committee procedure would not provide a response in time to be useful to the inquiring candidate or judge. Opinions designated with the "(Election)" notation are opinions of the Election Practices Subcommittee of the Judicial Ethics Advisory Committee and have the same authority as an opinion of the Committee.

FLORIDA SUPREME COURT

Judicial Ethics Advisory Committee

Opinion Number: 2004-09 (Election)[1]
Date of Issue: February 25, 2004

ISSUES

1. May a candidate for judicial office submit material in writing to a major political party or its executive committee for the purpose of receiving an endorsement by the major political party or its executive committee before the election process?

ANSWER: No.

2. May a candidate for judicial office directly or indirectly take any affirmative action to obtain the endorsement of a major political party in the election process?
ANSWER: No.

3. May a candidate for judicial office announce the candidate's views on disputed legal or political issues, orally or in writing, consistent with the ruling in Republican Party of Minnesota v. White, 536 U.S. 765 (2002)?

ANSWER: Yes, provided the candidate also states that the candidate will uphold the law. See In re Kinsey, 842 So. 2d 77, 87 (Fla. 2003).

FACTS

The inquiring attorney is a candidate for judicial office who has been asked to state in writing to a major political party that the candidate would accept the party's endorsement, if it is granted. The candidate would not have to answer a questionnaire, submit to an interview or answer questions. A member of the party's executive committee would present the candidate's name for the endorsement. It is not clear from the judicial candidate's inquiry whether all the judicial candidates have been offered this opportunity.

The candidate also asks whether the candidate could, "directly or indirectly through others take any affirmative action (verbal, written or otherwise) to seek, request, receive, accept or obtain the endorsement of a major political party in a judicial election."

Furthermore, the candidate asks whether he can announce his views orally or in writing, publicly or privately, consistent with the United States Supreme Court opinion in Republican Party of Minnesota v. White, 536 U. S. 765 (2002).

DISCUSSION

The Committee has answered similar inquiries involving major political parties and judicial candidates. We have determined that a judicial candidate may not publish any rating or endorsement received from a major political party. Fla. JEAC Op. 00-29. We also determined

that a judicial candidate may not attend an interview or submit written materials for the purpose of obtaining an endorsement from a major political party. Fla. JEAC Op. 98-19. Nor could a judicial candidate list extensive partisan activities in a questionnaire received from a major political party. Fla. JEAC Op. 98-19. The instant inquiry is slightly different however.

First, the candidate cannot directly or indirectly solicit the endorsement of a major political party. To do so would violate Canon 7 of the Code of Judicial Conduct and Section 105.071(1), Florida Statutes. Both prohibit inappropriate political activity. Canon 7C(3) limits the political activity in which a judicial candidate may engage, and any activity not permitted by Canon 7C(3) would be partisan party activity. Canon 7 of the Code of Judicial Conduct provides in pertinent part:

> 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 . . .
>
> (d) attend party functions . . .
>
> (3) A candidate for a judicial office:
>
> (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary . . . .
>
> (b) 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;
>
> (c) except to the extent permitted by Section 7C(1), shall not authorize or knowingly permit a[n]y other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

The purpose of the canon is to prevent interjection of partisan politics into a judicial race. The committee's view is that accepting an endorsement in advance indirectly solicits an endorsement. Further, by accepting an endorsement in advance, the candidate could be perceived to be commenting on an affiliation with a political party or to be a member of a major political party. §105.071(3), Fla. Stat.; Fla. JEAC Op. 98-19. It could also appear that the candidate is attempting to convey that the candidate is supported by a major political party. See In re: Alley, 699 So. 2d 1369 (Fla. 1997). In Alley, a judge printed in her campaign brochure the political affiliation of the governor who appointed her. Id. at 1369. She was not a member of the same party and did not state otherwise, but the court found that the brochure was inappropriate and violated the Code of Judicial Conduct. Id. Thus, we conclude that a judicial candidate may not state in writing to a major political party or its executive committee that the candidate would accept the party's endorsement if granted.

Second, a judicial candidate cannot authorize a surrogate to engage in activities which would be proscribed under the Florida Statutes or the Florida Code of Judicial Conduct. Recently, the Florida Supreme Court disciplined a judge for participating in partisan political activities. In re: Angel, 2004 WL 306073 (Fla. Feb. 19, 2004). In Angel, the supreme court publicly reprimanded a judge for appearing and making speeches at partisan political functions because his judicial opponents had not been invited to these events. Id. at *1. More significant, he was disciplined for allowing his family members to make speeches on his behalf. Id. The court held that the use of the surrogates violated Canon 7 and section 105.071, Florida Statutes. Id. at *8. The committee notes that although the Code of Judicial Conduct is binding only on judicial candidates, section 105.09(1) proscribes political parties or organizations from endorsing judicial candidates. A violation of the statute is a misdemeanor of the second degree. § 105.09(2), Fla. Stat.

Finally, regarding the expression of views, the committee is aware of Republican Party of Minnesota v. White, 536 U.S. 765 (2002), which invalidated a Minnesota law prohibiting candidates for judicial office from announcing their views on disputed legal or political issues. The committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. The committee does not render legal opinions regarding the constitutionality or enforceability of various provisions of the Code of Judicial Conduct. Fla. JEAC Op. 02-16. However, this question can be resolved by analyzing Florida case law and the existing Code of Judicial Conduct.

The Florida Supreme Court addressed the applicability of White to the Florida Code of Judicial Conduct in In re Kinsey, 842 So. 2d 77 (Fla. 2003). In Kinsey, the Judicial Qualifications Committee alleged that as a judicial candidate, a judge had violated Canons 1, 2, 3, and 7. The judge responded that the campaign was protected by the First Amendment right to free speech and that Canon 7 could not prevent the judge from speaking about issues of interest to the electorate.

The court noted that the only issue in White was whether the "announce clause" of the Minnesota Code of Judicial Conduct was constitutional. Id. at 86. The court also wrote that a similar provision in the Florida Code of Judicial Conduct had been removed years earlier.[2] Id. at 87. The Florida Supreme Court stated that Florida's Canon 7A(3)(d)(i)-(iii) was narrowly tailored to serve a compelling state interest and met the test articulated by the United States Supreme Court. Id. at 87. The court stated:

> In reviewing the "narrowly tailored" prong of the test, we conclude that the restraints are narrowly tailored to protect the state's compelling interests without unnecessarily prohibiting protected speech. As is clear from the canons and related commentary, a candidate may state his or her personal views, even on disputed issues. However, to ensure that the voters understand a judge's duty to uphold the constitution and laws of the state where the law differs from his or her personal belief, the commentary encourages candidates to stress that as judges, they will uphold the law.

Id. (emphasis added).

In JEAC Op. 02-13(Elections), the committee reached the same conclusion. The committee wrote:

> In summary, this Committee believes that a candidate may state his or her views on constitutional or statutory construction and other controversial issues so long as the candidate does not advocate opposition to or support of political issues, the candidate makes no pledge or promise of conduct in office other than the faithful and impartial performance of the duties of the office, and the candidate does not make statements which commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the Court. The inquiring candidate should note that the Commentary to the Code states that a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. Canon 7A(3)(d)(i)-(ii) reads: A candidate for judicial office . . . shall not: (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or] (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court . . . .

Thus, we conclude that a judicial candidate may state his or her own views orally or in writing on disputed issues as long as the candidate also states that the candidate will uphold the law. Judicial candidates should be cautious, however. The parts of Canon 7 concerning promises, commitments, and pledges will be enforced.

REFERENCES

Florida Statute §§ 105.071, 105.071(3), 105.09(1), 105.09(2);

Republican Party of Minnesota v. White, 536 U.S. 765 (2002);

American Civil Liberties Union of Florida, Inc. v. The Florida Bar, 744 F. Supp. 1094 (N.D. Fla. 1990);

In re Angel, 2004 WL 306073 (Fla. Feb. 19, 2004);

In re Kinsey, 842 So. 2d 77 (Fla. 2003);

In re Alley, 699 So. 2d 1269 (Fla. 1997);

Florida Code of Judicial Conduct: Canons 1, 2A, 7, 7A(3), 7A(3)(d)(i)-(ii), 7B(2), 7C(1), 7C(2), 7C(3);

Fla. JEAC Ops. 96-21; 98-19; 00-29; 02-13; 02-16.

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and to the judiciary at large. Conduct that is

consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. *Petition of the Committee on Standards of Conduct Governing Judges*, 698 So.2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualification Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *Id.*

For further information, contact Judge Richard R. Townsend, Acting Chair, Judicial Ethics Advisory Committee, Post Office Box 1018, Green Cove Springs, Florida 32043.

Participating Members:
Judge Emerson Thompson, Judge McFerrin Smith, and Marjorie G. Graham, Esquire.

Copies furnished to:
Justice Peggy Quince
Thomas D. Hall, Clerk of Supreme Court
All Committee Members
Executive Director of the J.Q.C.
Office of the State Courts Administrator
(Name of inquiring judge deleted from this copy)

[1] The Judicial Ethics Advisory Committee has appointed an Election Practices Subcommittee. The purpose of the subcommittee is to provide immediate responses to campaign questions in instances where the normal Committee procedure would not provide a response in time to be useful to the inquiring candidate or judge. Opinions designated with the "(Election)" notation are opinions of the Election Practices Subcommittee of the Judicial Ethics Advisory Committee and have the same authority as an opinion of the Committee.

[2] See American Civil Liberties Union of Florida, Inc. v. The Florida Bar, 744 F. Supp. 1094 (N.D. Fla. 1990).

In re Renke, 933 So. 2d 482 (Fla. 2006)

Supreme Court of Florida

Inquiry Concerning a Judge, No. 02-466,

Re Judge John RENKE III.

PER CURIAM.

We have for review the recommendation of the Judicial Qualifications Commission (JQC) that Circuit Judge John Renke III be disciplined for numerous violations of the Code of Judicial Conduct. We have jurisdiction. *See* art. V, § 12, Fla. Const. As we explain below, given the flagrant misrepresentations made to the voting public during Judge Renke's judicial campaign, coupled with the serious campaign financial misconduct and violations of law found by the JQC, we conclude that he is presently unfit to hold office and that removal from the bench is the only appropriate sanction in this case.

CHARGES

This case arose out of a series of charges filed against Judge John Renke by the JQC alleging that during his 2002 election campaign for the office of Circuit Court Judge for the Sixth Judicial Circuit, he committed certain acts in violation of Canon 7 of the Code of Judicial Conduct. The original Notice of Formal Charges was filed in October of 2003, and in April of 2004, the JQC entered its findings and recommendations of discipline. The JQC and Judge Renke presented a stipulation to this Court pursuant to article V, section 12 of the Florida Constitution and rule 6(j) of the Florida Judicial Qualifications Commission Rules, in which Judge Renke admitted to the conduct alleged and did not contest either the findings of guilt or the recommendation of discipline. At that time, he also waived a plenary hearing before the Hearing Panel of the JQC and oral argument before this Court.

In July of 2004, we determined that the JQC's recommended disposition should be rejected as too lenient and directed the JQC to conduct further proceedings on the merits of the case. The JQC then amended the charges, adding an additional count concerning an alleged improper $95,800 contribution to the Renke campaign from Judge Renke's father in violation of sections 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes (2002). This campaign financial charge became count 8 of the Second Amended Notice of Formal Charges of August 24, 2005. Before trial, the JQC's charging document asserted:

> 1. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii) you knowingly and purposefully misrepresented in a campaign brochure ... that you were an incumbent judge by describing yourself as John Renke, a Judge With Our Values when in fact you were not at that time a sitting or incumbent judge.
>
> 2. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure ... your holding of an office in the Southwest Florida Water Management District by running a picture of you with a nameplate that says "John K. Renke, III Chair" beneath a Southwest Florida Water

Management District banner, when you were not in fact the Chairman of the Southwest Florida Water Management District.

3. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure ... your endorsement by the Clearwater firefighters by asserting that you were "supported by our areas bravest: John with Kevin Bowler and the Clearwater firefighters" when you did not then have an endorsement from any group of or any group representing the Clearwater firefighters.

4. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented in the same brochure ... your judicial experience when you described yourself as having "real judicial experience as a hearing officer in hearing appeals from administrative law judges," when your actual participation was limited to one instance where you acted as a hearing officer and to other instances where you were sitting as a board member of an administrative agency.

5. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented your endorsement by Pinellas County public officials in a campaign flyer ... when you listed a number of persons, including Paul Bedinghaus, Gail Hebert, John Milford, George Jirotka and Nancy Riley as such, when they in fact were not Pinellas County public officials but instead officials of a private, partisan political organization to wit, the Pinellas County Republican Party.

6. During the campaign in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practicing lawyer and thus your qualifications to be a circuit court judge. In the Candidate Reply you authored which was published by and in the St. Petersburg Times, you represented that you had "almost eight years of experience handling complex civil trials in many areas." This was knowingly false and misleading because in fact you had little or no actual trial or courtroom experience.

7. During the campaign in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you knowingly and purposefully misrepresented your experience as a practicing lawyer and thus your qualifications to be a circuit court judge, as well as your opponents experience, by asserting in a piece of campaign literature that your opponent lacked "the kind of broad experience that best prepares someone to serve as a Circuit Court Judge" and represented to the voting public that the voters would be "better served by an attorney [like you] who has many years of broad civil trial experience." This was knowingly false because your opponent had far more experience as a lawyer and in the courtroom and in fact you had little or no actual trial or courtroom experience.

8. During the campaign, in violation of Canon 2, Canon 2 A and Canon 7 A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of "loans" totaling $95,800 purportedly made by you to the campaign which were reported as such, but in fact these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke II (or his law firm) far in excess of the $500 per person limitation on such contributions imposed by controlling law.

9. During the campaign, in violation of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii), you made a deliberate effort to misrepresent your qualifications for office and those of your opponent as detailed in Charges 1 through 7, *supra*, which cumulative misconduct constitutes a pattern and practice unbecoming a candidate for and lacking the dignity appropriate to judicial office, which had the effect of bringing the judiciary into disrepute.

Subsequently, after a final hearing before an adjudicatory panel, the JQC found Judge Renke guilty on counts 1, 2, 3, 6, 7, 8 and 9; however, the JQC did not find Judge Renke guilty of counts 4 or 5. Based on these findings, the JQC recommended a $40,000 fine, a public reprimand by this Court, and that Judge Renke be responsible for the costs of these proceedings.

FINDINGS OF FACT

In judicial disciplinary proceedings, this Court reviews the findings of the JQC to determine if they are supported by clear and convincing evidence and reviews the recommendation of discipline to determine whether it should be approved or whether other discipline is appropriate. *In re Andrews*, 875 So.2d 441, 442 (Fla.2004). As we have noted before, the clear and convincing evidence standard

> requires more proof than a "preponderance of the evidence" but less than "beyond and to the exclusion of a reasonable doubt." If the findings meet this intermediate standard, then they are of persuasive force and are given great weight by this Court. This is so because the JQC is in a position to evaluate the testimony and evidence first-hand. However, the ultimate power and responsibility in making a determination rests with this Court.

In re Graziano, 696 So.2d 744, 753 (Fla.1997) (citations omitted) (quoting *In re Davey*, 645 So.2d 398, 404 (Fla.1994)). After extensive review of the record and the evidence submitted by both sides, we find an abundance of competent evidence to support the JQC's conclusions that the charges found proven were established by clear and convincing evidence.

Counts 1, 2 and 3

The basis of these charges is founded upon various statements made in one of Judge Renke's campaign brochures, and all involve violations of Canon 7 A(3)(a) and Canon 7 A(3)(d)(iii). The Code of Judicial Conduct was recently amended by this Court, effective January 2006; while the text of the particular Canon subsection has not changed, Canon 7 A(3)(d)(iii) is now Canon 7(A)(3)(d)(ii). It reads, as it did at the time that Judge Renke was charged, that a candidate for judicial office shall not "knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent." [FN1]

> FN1. The text of Canon 7 A(3)(a) has been changed since the beginning of these proceedings against Judge Renke, but the modification does not affect this case, since Judge Renke was not accused of committing himself to a particular stance on an issue during his campaign. Canon 7 A(3)(a) now provides that a candidate for judicial office "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." (Emphasis added.)

The record reflects that Judge Renke arranged for the Mallard Group, a political campaign company headed by John Herbert, to do all of the direct mail campaign work; however, the judge reviewed and approved all of the campaign materials designed by Herbert. Regarding the first charge, the JQC concluded that the phrase "a judge with our values," written in large yellow print, surrounding a photo of the Renke family, and coupled with other text from the brochure stating that Renke had "real judicial experience as a hearing officer and in hearing appeals from administrative law judges," knowingly and purposefully created the impression that Judge Renke was running as an incumbent judge when he was not.

Count 2 concerned a picture, prominently displayed in the same brochure, of Judge Renke sitting just beneath a large banner stating "Southwest Florida Water Management District" in front of a nameplate reading, "John K. Renke Chair." The JQC concluded that this was a deliberate attempt to convey to the public that he was the chairman of the Southwest Florida Water Management District (SWFWMD), a public body of considerable importance and responsibility in the area, when actually he was only chair of the Coastal River Basin Board. In fact, the parties agree no such position as chairman of the SWFWMD even exists.

Finally, with regards to the third charge, the JQC concluded that a picture of Judge Renke, surrounded by firefighters with the caption "Supported by our area's bravest: John with Kevin Bowler and the Clearwater firefighters," was an attempt to wrongfully convince the public that he had the official support of the Clearwater firefighters. The panel found that the use of the photograph with the accompanying caption was an intentional misrepresentation of Judge Renke's campaign endorsements.

We conclude that the JQC's findings that these three charges have been established by clear and convincing evidence are supported by the evidence received at the hearing. In *In re Kinsey,* 842 So.2d 77 (Fla.2003), this Court concluded that "a voter should not be required to read the fine print in an election campaign flyer to correct a misrepresentation contained in large, bold letters." *Id.* at 90. This admonition has special meaning to the misconduct established here.

As to the first charge, Judge Renke himself testified that the statement, "a judge with our values," could be misleading to the voting public. As to count 2, Judge Renke admitted that the photograph was also inaccurate. While he points to other text in the same pamphlet indicating that Judge Renke was only "awarded an appointment by the Governor to the Governing Board of the Southwest Florida Water Management District," *In re Kinsey* provides that smaller or other text elsewhere in a brochure does not serve to rectify bold misstatements made in the same document. 842 So.2d at 90. In reference to the third charge, again, Judge Renke testified at his hearing that he did not have the support of the Clearwater firefighters union or any actual Clearwater firefighters group or organization. While Judge Renke stated that he did have the support of the particular firefighters posing with him in the campaign brochure photograph, he conceded that he was aware that the firefighters were represented by a union and that he had never asked for their endorsement.

The record provides abundant evidentiary support for the JQC's findings and its conclusion that there was a clear pattern of intentional misrepresentation with regard to the three charges concerning this particular brochure, specifically that Judge Renke was attempting to convey to the voters that he was running as an incumbent judge, was the chair of the SWFWMD, and finally that he was endorsed by the local firefighters. These findings establish clear violations of the judicial canon's prohibition on knowing misrepresentations of a candidate's experience and qualifications for judicial office. Accordingly, we uphold the JQC's findings of guilt on counts 1, 2 and 3.

Counts 6 and 7

Counts 6 and 7 are similar to counts 1-3 but are even more serious, as they involve substantial misrepresentations as to the relevant qualifications for judicial office. These two charges are related to statements Judge Renke made prior to the election, by which the JQC concludes he vastly overstated his relevant legal experience and qualifications for the bench. Count 6 concerned a "Candidate Reply" authored by Judge Renke and submitted to the *St. Petersburg Times*, in which he claimed he had "almost eight years of experience handling complex civil trials in many areas." The JQC, rejecting Judge Renke's explanation that he did not grasp the difference between handling a complex "trial" versus mere "litigation experience," concluded that this was a false statement. Count 7 concerned a piece of campaign literature in which Judge Renke stated that his opponent in the judicial election did not have the kind of broad experience necessary to be a circuit judge and that the public would instead be "better served by an attorney [like you] who has many years of broad civil trial experience." The JQC, concluding that this was a clear misrepresentation regarding his qualifications, disregarded Renke's claim that the statement regarding his years of "broad civil trial experience" was accurate, since his opponent's experience was primarily in the area of criminal law.

As with the first set of charges, we also find that the findings of misconduct on counts 6 and 7 are supported by clear and convincing evidence. Among other testimony given at the hearing below, Judge Renke testified that he had never acted as lead counsel in a jury trial and that the only trial he tried on his own was a small claims case. He also testified that the claim regarding his eight years of "broad civil trial experience" "may not be the best and most accurate way to depict what [he] had done over eight years." He went on to confirm that he had no criminal law experience, had never examined a witness outside of the above-mentioned small claims court case, and that he was never "on his feet" in a courtroom in a case in which his father was lead counsel.

Furthermore, while Judge Renke disputed that he was "called out" by the newspaper's editorial board regarding his claim that he had eight years of trial experience in the courtroom prior to his publishing the "Candidate's Reply" at issue in count 6, the testimony makes clear that he was asked by the editorial board how many times he had, in fact, served as first chair. Although he replied that he had never served as first chair, he nevertheless still included the claim regarding his broad trial experience in his "Candidate's Reply."

As the JQC found, in reality Judge Renke had virtually no trial experience at all, and his explicit campaign statements to the contrary constitute blatant misrepresentations as to his qualifications. We find abundant evidence to support the JQC's conclusion that throughout his

campaign he knowingly misrepresented his experience and qualifications for judicial office in direct violation of the judicial canons of ethics.

Count 9

Because we find support for the JQC's findings of guilt on counts 1, 2, 3, 6, and 7 as outlined above, we also conclude that its finding of guilt on count 9 is supported by clear and convincing evidence. This charge concerns a deliberate and calculated effort on the part of Judge Renke to misrepresent his experience and qualifications for judicial office. We agree, based on the charges specified in counts 1, 2, 3, 6, and 7, that Judge Renke engaged in cumulative misconduct constituting a pattern unbecoming a candidate and lacking in the dignity appropriate to judicial office which has brought the judiciary into disrepute.

Count 8

This charge, added after our rejection of the previously recommended discipline based on the charges set out above, involves a series of campaign "loans" from Judge Renke's father to his campaign in 2002. The JQC found that the father provided substantial campaign funds to Judge Renke in 2002 and that Renke disguised these funds as earned income from which he made loans to his campaign fund. Judge Renke contended that it was mere coincidence that his income dramatically rose in 2002.

The record reflects that until his election to the bench, Judge Renke was employed in his father's law firm, where he had worked since his graduation from law school. The firm consisted of John Renke, II, Judge Renke, and a third attorney, Thomas Gurran. John Renke, II's wife Margaret worked at the firm for over twenty years as a secretary, receiving no salary; Judge Renke's wife also occasionally performed clerical duties at the firm.

Judge Renke was paid on an hourly basis, earning between $9.00 and $11.00 an hour with no benefits. Judge Renke's tax records show the following net income after taxes for the eight years he worked for his father's firm:

1995:	$ 10,941
1996:	$ 16,020
1997:	$ 18,600
1998:	$ 15,325
1999:	$ 11,480
2000:	$ 12,682
2001:	$ 35,987
2002:	$140,116

There was nothing in writing between father and son regarding Judge Renke's compensation, and the evidence shows that there were many disputes between Judge Renke and his father regarding his pay. While John Renke continually claimed that he would retire soon and leave the firm to his son, Judge Renke testified that he ultimately decided to run for the judgeship due to his financial concerns. As the JQC concluded, the evidence overwhelmingly indicated that Judge Renke was underpaid throughout these years and he and his family functioned very close to a financial survival line. [FN2]

FN2. This evidence would also appear to support the JQC findings as to Judge Renke's misrepresentations regarding his legal experience.

The evidence indicates that there was a verbal agreement between Judge Renke and his father that he would be paid twenty percent of the recovery in the firm's larger cases, but there was disputed evidence as to whether this percentage fee was always paid. This fee arrangement is at the heart of count 8, specifically regarding a series of cases known collectively as the "Driftwood litigation" and involving various claims connected with a homeowner's association. The firm had handled the cases since 1995, resulting in significant settlements and attorney's fees. The primary dispute on review between Judge Renke and the JQC involves when the Renkes actually earned the fees generated by these cases. Judge Renke argues that the 2002 payments from his father were his share of the Driftwood settlement, to which he was rightfully entitled. He asserts that it was mere coincidence that he received these substantial increases in income at a time when he was in need of campaign funds.

The JQC rejected this explanation and concluded that while the Driftwood cases had been preliminarily settled in 2001, and a fee of $123,553 had been paid to the senior Renke, this fee was to be held in escrow pending the court's approval of the final settlement. The insurance company for the defendant in the Driftwood cases made the payment to stop the accrual of further fees and interest, making the check payable to "John K. Renke, II Trust Account." The agreement provided that if the court did not approve the settlement, John Renke was to return the funds. The JQC noted that a real question existed as to whether the final settlement would be approved or not, with the Renkes arguing that they technically "earned" the money when the check arrived from the insurance company in 2001. However, the JQC found that the Driftwood Homeowner's Association and Board of Directors still had to approve various changes in the settlement agreement. Furthermore, there was a thirty-day "safeguard period" included after final court approval of the settlement before the funds could become available to ensure that an appeal had not been taken. Court approval of the settlement and a vested right to the fee did not occur until 2003.

Regarding his campaign financing, the JQC found that Judge Renke spent a total of $105,800 on his campaign. The official election filings showed he received approximately $10,000 in public contributions and that he loaned his own campaign $95,800. These monies came in the form of three different loans in the amounts of $6,000, $40,000 and $49,800, which matched incremental compensation installments paid to Judge Renke by his firm. In 2002, the year of the campaign, his final reported salary totaled $140,116, a sum far in excess of any sums previously received. Out of his total net income of $140,116, the sum of $101,800 was attributed directly to the Driftwood fees. Thus the cost of the campaign was $105,800, and the Driftwood fees were supposedly the basis for $101,800 of Judge Renke's compensation that year, out of which he loaned his campaign $95,800.

The JQC concluded that the firm was not yet entitled to the Driftwood fees since final court approval of the settlement did not happen until August of 2003, and, even though the firm was already holding $123,553 of this money, it was being held in a form of trust and had not yet been earned because the final settlement in the case had not been approved. It should also be noted that Thomas Gurran, the second attorney working for the senior Renke, was likewise entitled to a

share of the Driftwood fees; however, he was not paid until October of 2003, after the final court approval of the settlement in August 2003. Thus, the JQC concluded Judge Renke had not actually earned these fees at the time of the payment to him by his father. While it appears that a dispute existed as to the exact fee arrangement between Judge Renke and his father, the JQC concluded that such a dispute was irrelevant, since the compensation he was paid in 2002 was allegedly based solely on the pending Driftwood litigation fees. The JQC, therefore, found Judge Renke guilty of count 8, since he knowingly accepted the unearned fee amounts from his father and then directly loaned them to his own campaign. The JQC concluded that the 2002 payments were actually campaign contributions from his father.

Once again, we find adequate evidentiary support for the JQC's conclusion that these fees were not actually earned until the firm had the completely vested right to them upon final court approval and the expiration of the time for an appeal. We agree that there is clear and convincing evidence to support the JQC's conclusion that the payments to Judge Renke were intended to be campaign contributions rather than earned income. Judge Renke does not contest any of the actual evidence used by the JQC in reaching its conclusions, nor does he argue that any of the evidence is "indecisive, confused and contradictory," as was the case when this Court overturned some of the JQC's findings in *In re Davey,* 645 So.2d 398, 405 (Fla.1994). Instead, he relies on bits and pieces of the total evidentiary picture in an attempt to paint the circumstances in a manner to fit his explanations. A thorough review of the trial record, some of which we have outlined above, reveals that the JQC's finding of guilt on this charge is warranted.

Of particular note is the testimony of Steven Mezer, an attorney who represented the Timber Oaks Community Services Association (TOSCA) as part of the Driftwood litigation. He testified that the insurance check was to be held in trust until the court approved the final settlement and that it was his understanding that John Renke was not entitled to the money before such court approval. Mezer also testified that there were many contingencies that could affect the final approval of the settlement, since they were dealing with a large community membership that needed to be educated regarding all amendments, and also because there was infighting among the board members regarding the final deal. He stated that, as of 2002, there were indications that some board members were very much opposed to the settlement agreement and that there were also some changes in the constituency of the board. Furthermore, Mezer testified that none of these issues were a secret and he had ongoing discussions with John Renke regarding these problems throughout 2002.

The testimony of Margaret Renke further demonstrates the discrepancies surrounding both the purpose and the timing of the payments made to Judge Renke in 2002. On the one hand, she testified that Judge Renke was paid his portion of the Driftwood fees in a piecemeal fashion because John Renke was concerned that the settlement might not go through; however, she also testified that the fee was split up to cover campaign expenses as they arose, "when [Judge Renke] needed it." Then again, however, she also stated that Judge Renke could have wanted the sum split up for tax purposes. Her testimony was also inconsistent with regard to the purpose of the payment and whether it was to remedy years of general underpayment or was due Judge Renke as payment for his specific work on the Driftwood cases.

John Renke's testimony also reveals inconsistencies in Judge Renke's version of events and furthermore raises questions as to the credibility of his testimony. For example, concerning the fee-sharing arrangement between the two, John Renke testified that the original plan was for Judge Renke to get twenty percent of settlements over $10,000 and that this was not up to his own personal discretion. He then testified that, in 2000, he changed his mind and told his son that he would give him half of the fees from the Driftwood settlement. However, one of the JQC prosecutors noted that in John Renke's prior three depositions, he had never once mentioned this supposed adjustment in the Driftwood fee-sharing arrangement. An additional discrepancy arose regarding the reason he paid his son the money when he did; during one of his previous depositions, he stated that the money was for Judge Renke's work solely on Driftwood, but at the hearing, John Renke testified to a whole list of other cases that Judge Renke worked on as reasons to compensate him in 2002. The senior Renke also testified he understood the insurance check to be his money at the time it was delivered to him, and that he was entitled to put it in any account of his choosing, spend it or do with it what he wanted. [FN3] However, he eventually conceded that the attorney's fees in Driftwood were contingent on court approval of the settlement and that while he received the Driftwood check in 2001, he did not begin to disburse any payments to Judge Renke until 2002, after his son had decided to run for the judgeship. According to John Renke, the reason that he paid Judge Renke the compensation in piecemeal fashion was to minimize his own risk in case the settlement did not go through. Contradictions in John Renke's testimony, as well as the discrepancies between his statements at his deposition and then later at trial, bear on his credibility as a witness and the veracity of his explanation for the payments to his son.

> FN3. To defend his belief that he could place the money in an account of his choosing, John Renke read aloud a provision from the settlement agreement's "Post-Signing Procedure," which stated: "TOSCA's Insurer will, within 10 days after this agreement is signed by the attorneys, deposit in an interest-bearing account at a place and of a type to be designated by John K. Renke, II:(a) $98,000 for plaintiffs' attorneys fees incurred through the December 1998 mediation."

Based upon our review of the record, we find ample support for the JQC's conclusion that both the timing of the payments from John Renke to his son and their prompt deposit into Judge Renke's campaign account indicate that these funds were not the product of mere coincidence in the payment of earned legal fees, but rather were meant to be campaign contributions. Given the many discrepancies in the testimony of both John and Margaret Renke concerning the purpose and timing of the payments to their son, as well as uncontroverted testimony by an opposing attorney in the Driftwood litigation that the settlement agreement was not final when the payments were made to Judge Renke in 2002 and other evidence in the record, we find that the JQC's conclusion on this charge is supported by clear and convincing evidence.

DISCIPLINE

According to article V, section 12(c)(1) of the Florida Constitution, this Court has discretion to either accept, reject, or modify the commission's findings and recommendation of discipline. *In re Alley*, 699 So.2d 1369 (Fla.1997) (noting that in 1996, article V, section 12 of the Florida Constitution was amended to allow the Supreme Court to modify the recommendations of the JQC). Although this Court gives the findings and recommendations of the JQC great weight, the

ultimate power and responsibility in making a determination to discipline a judge rests with this Court. *In re Angel,* 867 So.2d 379, 382 (Fla.2004).

As mentioned above, this case originally came before us in July of 2004, when the JQC charged Judge Renke only with the campaign literature violations that form the bases of counts 1 through 7 and count 9 of the current proceedings. However, we remanded the case back to the JQC to conduct additional proceedings, having determined that the recommended penalty of a $20,000 fine, a thirty-day suspension, and a public reprimand was not severe enough for the violations presented at that time.

After our rejection and remand, the JQC then added count 8, ultimately concluding that in addition to the serious campaign violations, Judge Renke also violated state campaign finance laws by accepting an illegal campaign contribution from his father. However, despite the addition of this substantial charge, the JQC's recommended penalty now is barely any different than it was two years ago, with the fine increasing only $20,000, to a total of $40,000. Given our original reservations with the discipline originally recommended by the JQC, we are satisfied that the addition of such egregious campaign finance violations merits a more substantial sanction, lest our warnings of more serious consequences go unheeded.

Given the history of this case before this Court, coupled with the previous warnings we have issued in published opinions regarding misconduct during judicial elections, the deliberate misrepresentations made by Judge Renke during his campaign, and the substantial violation of campaign finance laws, we find that removing Judge Renke from the bench is the only sanction appropriate for the serious misconduct established here.

Importantly, our previous opinions have cautioned against the exact type of misconduct that is before us in this case. Almost ten years ago, in *In re Alley,* 699 So.2d 1369 (Fla.1997), we faced similar alleged violations on behalf of a candidate for judicial office; in that case, Judge Alley was charged with knowingly misrepresenting her qualifications and those of her opponent in her campaign literature, including mailers and newspaper advertisements. *Id.* at 1369. Among other violations, she claimed to have circuit court judicial experience, when in fact she had only served as a general master. *Id*. She also argued that her opponent had no circuit court judicial experience, when actually the opponent did have extensive experience serving in that capacity. *Id*. Finally, Judge Alley was charged with fostering an overly partisan tone in her election and creating false impressions as to her campaign endorsements. *Id.*

At the time we reviewed that case, we were constrained by the language of article V regarding our ability to modify the JQC's proposed discipline. *Id.* at 1370. However, we expressed our frustration with the recommended discipline in that case, regarding violations similar to the ones we face today, stating, "we find it difficult to allow one guilty of such egregious conduct to retain the benefits of those violations and remain in office." *Id*. Thus, we are especially troubled by Judge Renke's conduct, given the explicit warnings regarding similar misconduct and the potential consequences we issued in *In re Alley*.

This Court continued to send loud and clear warnings concerning judicial election misconduct in *In re McMillan,* 797 So.2d 560 (Fla.2001). In that case, Judge McMillan, while a candidate for office, clearly indicated during his campaign that he would favor both the State and

the police in court proceedings and also that he would side against the defense; he was further charged with making unfounded attacks on an incumbent judge and the local court system. *Id.* at 562. As did Judge Renke, Judge McMillan initially made a stipulation regarding these charges. The JQC then recommended a penalty of a public reprimand and six months' suspension without pay; again, as in the instant case, we rejected this recommendation, remanding the case back to the JQC for further proceedings. *Id.* at 564. The JQC then amended the charges to add additional allegations, as it did with Judge Renke; in the case of Judge McMillan, this included charges of improper conduct once he was on the bench, including presiding over proceedings in a case in which he had a conflict of interest. *Id.*

On review, we agreed with the JQC's findings of guilt on all charges, concluding that they were supported by clear and convincing evidence. *Id.* at 566. We also agreed with the JQC's ultimate determination to remove Judge McMillan from the bench, especially in light of the additional charges concerning improper conduct once he became a judge. In our opinion we concluded:

> This Court has emphasized that the object of disciplinary proceedings is not for the purpose of inflicting punishment, but rather to gauge a judge's fitness to serve as an impartial judicial officer. *See In re Kelly*, 238 So.2d 565, 569 (Fla.1970). In making that determination, the Court has often pointed out that judges should be held to higher ethical standards than lawyers by virtue of their position in the judiciary and the impact of their conduct on public confidence in an impartial justice system. *See In re Boyd*, 308 So.2d 13, 21 (Fla.1975). At the same time, the Court has recognized that the discipline of removal should not be imposed upon a judge unless the Court concludes that "the judge's conduct is fundamentally inconsistent with the responsibilities of judicial office." *In re Graziano*, 696 So.2d 744, 753 (Fla.1997).

In re McMillan, 797 So.2d at 571. In removing a judge from the bench and sounding this warning before Judge Renke's campaign in 2002, we again were hoping to deter the kind of conduct we are faced with here, and putting all judicial candidates on notice that we would no longer tolerate such serious misconduct.

Unfortunately, we are compelled to repeat and emphasize the same warning we did ten years ago in *In re Alley* and more recently in *In re McMillan*:

> [A]s we attempted to make clear in *In re Alley*, to allow someone who has committed such misconduct during a campaign to attain office to then serve the term of the judgeship obtained by such means clearly sends the wrong message to future candidates; that is, the end justifies the means and, thus, all is fair so long as the candidate wins.

In re McMillan, 797 So.2d at 573. Today we make clear that those warnings cannot be ignored by those who seek the trust of the public to place them in judicial office.

In our decision to remove Judge Renke, we have concluded that the series of blatant, knowing misrepresentations found in Judge Renke's campaign literature and in his statements to

the press amount to nothing short of fraud on the electorate in an effort to secure a seat on the bench. Furthermore, as found by the JQC, the payments from Judge Renke's father, though disguised as compensation, were clearly illegal donations to a judicial campaign in obvious violation of our state campaign finance laws. In essence, Judge Renke and his cohorts created a fictitious candidate, funded his candidacy in violation of Florida's election laws, and successfully perpetrated a fraud on the electorate in securing the candidate's election. Unlike the situation in *In re Alley*, we no longer feel restrained to permit someone who has successfully achieved judicial office by such blatant misconduct to hold onto this office.

Neither are we swayed by the mitigation proffered in this case. It is not enough to point to Judge Renke's successes as a judge if he only attained that position through his own fraudulent and illegal campaign misconduct. It appears that the JQC may have decided that, as a matter of law, if a judge who has committed serious misconduct is serving adequately as a judge, he is presently fit to hold office. However, even accepting the JQC's findings of fact on this issue, we hold that regardless of Judge Renke's present abilities and reputation as a judge, one who obtains a position by fraud and other serious misconduct, as we have found Judge Renke did, is by definition unfit to hold that office.

In determining the discipline appropriate in cases of judicial wrongdoing, our obligation is first and foremost to the public and to our state's justice system. Florida has chosen a nonpartisan election process for selecting judges, and conduct that substantially misleads the voting public and interferes with its right to make a knowing and intelligent decision as to a judicial candidate's qualifications will simply not be tolerated in selecting members of the judiciary. Those who seek to assume the mantle of administrators of justice cannot be seen to attain such a position of trust through such unjust means. The JQC's finding of guilt on the severe campaign finance improprieties evidenced here, when coupled with Judge Renke's efforts to mislead the voting public as to his experience and qualifications to serve as judge, lead us to conclude that his conduct during his judicial campaign was "fundamentally inconsistent with the responsibilities of judicial office." *In re Graziano,* 696 So.2d 744, 753 (Fla.1997). Accordingly, we conclude that Judge Renke is presently unfit to hold judicial office and removal is warranted.

CONCLUSION

We conclude that there is clear and convincing evidence in support of the findings of fact of the JQC on all charges. For the reasons stated above, John Renke III is hereby removed as a judge of the Sixth Judicial Circuit, effective upon this opinion becoming final. We direct that Renke pay the costs of these proceedings. *See In re Hapner,* 737 So.2d 1075, 1077 (Fla.1999). We remand this case to the JQC for a determination of the amount of such costs.

It is so ordered.

PARIENTE, C.J., and ANSTEAD, LEWIS, QUINCE, and CANTERO, JJ., concur.
WELLS, J., concurs in part and dissents in part with an opinion, in which BELL, J., concurs.

WELLS, J., concurring in part and dissenting in part.

I concur in the approval of the findings and conclusions of the Judicial Qualifications Commission (JQC) as to the charges against Judge Renke.

I dissent from the majority's decision to remove Judge Renke from office. While I agree that the violations committed by Judge Renke are serious-warranting serious discipline-I do not concur with the Court's removal of Judge Renke when the hearing panel of the Judicial Qualifications Commission has not recommended removal. To the contrary, the hearing panel stated in its findings, conclusions, and recommendations that "after thorough deliberation, the Panel unanimously rejected removal from office." I know of no precedent in which this Court has removed a judge when there has not been a recommendation by the JQC to do so. Here, the Court is not only doing so without a JQC recommendation, the Court is rejecting the JQC's recommendation that the judge not be removed from office.

I do not conclude that the Court could never remove a judge from office without a recommendation to do so from the hearing panel of the JQC, but I do conclude that this Court can only do so when adhering strictly to the constitution and upon specifically stated standards. The constitutional provision upon which the Court is authorized to act is article V, section 12(c)(1), which states:

> (c) SUPREME COURT.-The supreme court shall receive recommendations from the judicial qualifications commission's hearing panel.
>
> (1) The supreme court may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it 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. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

I read this section to authorize this Court to remove a judge from office only for conduct "demonstrating a present unfitness to hold office."

In this case, the hearing panel of the JQC specifically found that there had not been demonstrated a present unfitness to hold office. The hearing panel stated:

> The Panel believes that Judge Renke has been a very good judge for three years and the Panel thus strongly holds that he is not presently unfit to serve as a judge.

The hearing panel, of course, heard live evidence and had the power to evaluate the credibility of witnesses. The Court did not. I do not believe that the constitution allows this Court's majority to simply substitute its judgment for that of the hearing panel which heard and evaluated the evidence.

I cannot agree with the majority that this specific finding by the JQC can be avoided by this Court's finding that Judge Renke obtained his position by fraud. The JQC did not charge Judge Renke with obtaining his position by fraud. Rather, the JQC charged Judge Renke with making a series of misrepresentations during the election campaign. I am uncertain what the standards are by which campaign misrepresentations rise to the level of fraud.

Neither did the JQC panel find Judge Renke guilty of having obtained his position by fraud. In the thirty-three pages of the JQC's "Findings, Conclusions and Recommendations" I do not find the word "fraud."

Whether there was fraud would properly be decided as an issue of fact. This has always been the law of this State. *See Gibson v. Love,* 4 Fla. 217 (1851); *Lab. Corp. of Am. v. Prof'l Recovery Network,* 813 So.2d 266 (Fla. 5th DCA 2002). I know of no precedent for the Court to make a finding of fraud as the Court does here.

The JQC is a constitutionally authorized entity which is constitutionally independent from this Court. Art. V, § 12(a)-(b), Fla. Const. I believe this Court should give the findings, conclusions, and recommendations of the JQC not only the deference given by an appellate court to the findings of fact of any lower tribunal, but enhanced deference by reason of the JQC's constitutional empowerment. In its brief and argument before this Court, the JQC contended that the discipline in this case should be as recommended by the hearing panel. There has been no brief or argument contending that Judge Renke should be removed.

This Court removed judges from office in *In re McMillan,* 797 So.2d 560 (Fla.2001); *In re Shea,* 759 So.2d 631 (Fla.2000); and *In re Graziano,* 696 So.2d 744 (Fla.1997). Each time, we did so upon the recommendation of the JQC. In doing so, we recognized that removal is the ultimate sanction:

> Removal is the ultimate sanction in judicial disciplinary proceedings. This Court will approve a recommendation that a judge be removed from the bench when we conclude that the judge's conduct is fundamentally inconsistent with the responsibilities of judicial office.

Shea, 759 So.2d at 638-39 (citation omitted). With a directly contrary recommendation from the JQC, I cannot join in the majority's use of this ultimate sanction. A finding by this Court of fraud cannot be a proper basis since fraud was not found by the JQC in this case. What is the standard that we will apply in future cases? What is the role of the hearing panel of the JQC?

It is my view that since the majority does not conclude that it can approve the discipline recommended by the hearing panel, the proper course would be to again remand to the hearing panel for further consideration of a more severe sanction that is short of removal from office. I would join in that remand.

BELL, J., concurs.

Current Enabling Authority

The following is the current enabling authority, amended at *Code of Judicial Conduct*, 816 So. 2d 1084, 1094–1095 (Fla. 2002).

ENABLING AUTHORITY

Pursuant to the authority conferred in Article V, sections 2(b) and 15, Florida Constitution, there is created a Judicial Ethics Advisory Committee, to be composed of three district court of appeal judges, four circuit judges, three county court judges, and two practicing members of The Florida Bar. The Florida Bar members will serve staggered four-year terms, with a new appointment every two years. The purpose of the Committee shall be to render written advisory opinions to inquiring judges concerning the propriety of contemplated judicial and nonjudicial conduct.

1. The judges on the Committee shall be selected by their respective court conferences. The Bar members shall be selected by The Florida Bar's Board of Governors.

2. The members of the Committee shall elect a chair and a vice-chair, and each shall serve for a term of one calendar year. No officer shall serve more than two successive terms. A majority vote of all of the members of the Committee shall be required to elect the chair and vice-chair.

3. The chair shall advise each of the chief judges of the several circuits as to the duties and obligations of the Committee, and the chair shall preside at all meetings. The vice-chair shall preside in the absence of the chair and exercise all powers delegated by the chair.

4. A quorum for the transaction of any committee business, whether in a meeting or by circulated writing, shall be seven members of the Committee. A majority of the members shall be required to concur in any advisory opinion issued by the Committee.

5. The Committee shall render advisory opinions to inquiring judges relating to the propriety of contemplated judicial and nonjudicial conduct, but all opinions shall be advisory in nature only. No opinion shall bind the Judicial Qualifications Commission in any proceeding properly before that body. Actions in accordance with an opinion of the Committee may, however, in the discretion of the Commission, be considered as evidence of a good faith effort to comply with the Code of Judicial Conduct; provided that no opinion issued to one judge or justice shall be authority for the conduct, or evidence of good faith, of another judge or justice unless the underlying facts are identical. All opinions rendered by the Committee shall be in

writing, and a copy of each opinion, together with the request therefor, shall be filed with the Clerk of the Supreme Court and with the chair of the Judicial Qualifications Commission. All references to the name of the requesting judge shall be deleted. In addition, the Committee may from time to time submit to the Supreme Court formal proposals and recommendations relating to the Code of Judicial Conduct.

6. No judge on the Committee shall participate in any matter before the Committee in which the judge has a direct or indirect interest.

7. Any determination of the propriety or impropriety of particular conduct by the Judicial Qualifications Commission shall supersede any conflicting opinion of the Committee.

8. Opinions of the Committee may be published and compiled by The Florida Bar.

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.

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

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; [or]

(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, 2006 (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 of the Code of Judicial Conduct

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. 2d 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.

Chapter 105, Florida Statutes, Nonpartisan Elections

105.011 Definitions.
105.031 Qualification; filing fee; candidate's oath; items required to be filed.
105.035 Petition process of qualifying for certain judicial offices and the office of school board member.
105.036 Initiative for method of selection for circuit or county court judges; procedures for placement on ballot.
105.041 Form of ballot.
105.051 Determination of election or retention to office.
105.061 Electors qualified to vote.
105.071 Candidates for judicial office; limitations on political activity.
105.08 Campaign contribution and expense; reporting.
105.09 Political activity in behalf of a candidate for judicial office limited.
105.10 Applicability of election code.
105.101 Effect of revision of county court judge selection method.
105.102 Effect of revision of circuit court judge selection method.

105.011 Definitions.—

(1) As used in this chapter, the term "judicial office" includes the office of:

(a) Justice of the Supreme Court.

(b) Judge of a district court of appeal.

(c) Judge of a circuit court.

(d) County court judge.

(2) A judicial office is a nonpartisan office, and a candidate for election or retention thereto is prohibited from campaigning or qualifying for such an office based on party affiliation.

History.—s. 1, ch. 71-49; s. 1, ch. 72-310; s. 36, ch. 77-175.

105.031 Qualification; filing fee; candidate's oath; items required to be filed.—

(1) TIME OF QUALIFYING.—Except for candidates for judicial office, nonpartisan candidates for multicounty office shall qualify with the Division of Elections of the Department of State and nonpartisan candidates for countywide or less than countywide office shall qualify with the supervisor of elections. Candidates for judicial office other than the office of county court judge shall qualify with the Division of Elections of the Department of State, and candidates for the office of county court judge shall qualify with the supervisor of elections of the county. Candidates for judicial office shall qualify no earlier than noon of the 120th day, and no later than noon of the 116th day, before the primary election. Candidates for the office of school board member shall qualify no earlier than noon of the 71st day, and no later than noon of the 67th day, before the primary election. Filing shall be on forms provided for that purpose by the Division of Elections and furnished by the appropriate qualifying officer. Any person other than a write-in candidate who qualifies within the time prescribed in this subsection shall be entitled to have his or her name printed on the ballot.

(2) FILING IN GROUPS OR DISTRICTS.—Candidates shall qualify in groups or districts where multiple offices are to be filled.

(3) QUALIFYING FEE.—Each candidate qualifying for election to a judicial office or the office of school board member, except write-in judicial or school board candidates, shall, during the time for qualifying, pay to the officer with whom he or she qualifies a qualifying fee, which shall consist of a

filing fee and an election assessment, or qualify by the petition process. The amount of the filing fee is 3 percent of the annual salary of the office sought. The amount of the election assessment is 1 percent of the annual salary of the office sought. The Department of State shall transfer all filing fees to the Department of Legal Affairs for deposit in the Elections Commission Trust Fund. The supervisor of elections shall forward all filing fees to the Elections Commission Trust Fund. The election assessment shall be deposited into the Elections Commission Trust Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This subsection does not apply to candidates qualifying for retention to judicial office.

(4) CANDIDATE'S OATH.—

(a) All candidates for the office of school board member shall subscribe to the oath as prescribed in s. 99.021.

(b) All candidates for judicial office shall subscribe to an oath or affirmation in writing to be filed with the appropriate qualifying officer upon qualifying. A printed copy of the oath or affirmation shall be furnished to the candidate by the qualifying officer and shall be in substantially the following form:

State of Florida
County of _____

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says he or she: is a candidate for the judicial office of _____; that his or her legal residence is _____ County, Florida; that he or she is a qualified elector of the state and of the territorial jurisdiction of the court to which he or she seeks election; that he or she is qualified under the constitution and laws of Florida to hold the judicial office to which he or she desires to be elected or in which he or she desires to be retained; that he or she has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he or she seeks; that he or she has resigned from any office which he or she is required to resign pursuant to s. 99.012, Florida Statutes; and that he or she will support the Constitution of the United States and the Constitution of the State of Florida.

(Signature of candidate)
(Address)

Sworn to and subscribed before me this _____ day of _____, (year), at _____ County, Florida.

(Signature and title of officer administering oath)

(5) ITEMS REQUIRED TO BE FILED.—

(a) In order for a candidate for judicial office or the office of school board member to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. Except for candidates for retention to judicial office, a properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by subsection (3) or, in lieu thereof, the copy of the notice of obtaining ballot position pursuant to s. 105.035. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by subsection (4), which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, duly acknowledged.

3. The loyalty oath required by s. 876.05, signed by the candidate and duly acknowledged.

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021. In addition, each candidate for 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, (name of candidate), a judicial candidate, have received, read, and understand the requirements of the Florida Code of Judicial Conduct.

(Signature of candidate)
(Date)

5. The full and public disclosure of financial interests required by s. 8, Art. II of the State Constitution or the statement of financial interests required by s. 112.3145, whichever is applicable. A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

(b) If the filing officer receives qualifying papers that do not include all items as required by paragraph (a) prior to the last day of qualifying, the filing officer shall make a reasonable effort to notify the candidate of the missing or incomplete items and shall inform the candidate that all required items must be received by the close of qualifying. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.

(6) Notwithstanding the qualifying period prescribed in this section, a filing officer may accept and hold qualifying papers submitted not earlier than 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.

History.—s. 3, ch. 71-49; s. 36, ch. 77-175; s. 1, ch. 78-260; s. 5, ch. 79-365; s. 54, ch. 79-400; s. 17, ch. 81-105; s. 10, ch. 83-251; s. 1, ch. 89-152; s. 34, ch. 89-338; s. 5, ch. 91-107; s. 630, ch. 95-147; s. 2, ch. 95-156; s. 13, ch. 97-13; s. 13, ch. 99-6; s. 2, ch. 99-326; s. 2, ch. 99-355; s. 23, ch. 2002-17; s. 65, ch. 2005-277; s. 21, ch. 2005-286; s. 40, ch. 2007-30; s. 4, ch. 2010-16; s. 51, ch. 2011-40.

105.035 Petition process of qualifying for certain judicial offices and the office of school board member.—

(1) A person seeking to qualify for election to the office of circuit judge or county court judge or the office of school board member may qualify for election to such office by means of the petitioning process prescribed in this section. A person qualifying by this petition process is not required to pay the qualifying fee required by this chapter.

(2) The petition format shall be prescribed by the Division of Elections and shall be used by the candidate to reproduce petitions for circulation. If the candidate is running for an office that will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate's petition must indicate, prior to the obtaining of registered electors' signatures, for which group or district office the candidate is running.

(3) Each candidate for election to a judicial office or the office of school board member shall obtain the signature of a number of qualified electors equal to at least 1 percent of the total number of registered electors of the district, circuit, county, or other geographic entity represented by the office sought as shown by the compilation by the Department of State for the last preceding general election. A separate petition shall be circulated for each candidate availing himself or herself of the provisions of this section. Signatures may not be obtained until the candidate has filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021.

(4)(a) Each candidate seeking to qualify for election to the office of circuit judge or the office of school board member from a multicounty school district pursuant to this section shall file a separate petition from each county from which signatures are sought. Each petition shall be submitted, prior to noon of the 28th day preceding the first day of the qualifying period for the office sought, to the supervisor of elections of the county for which such petition was circulated. Each supervisor of elections to whom a petition is submitted shall check the signatures on the petition to verify their status as electors of that county and of the geographic area represented by the office sought. No later than the 7th day before the first date for qualifying, the supervisor shall certify the number shown as registered electors and submit such certification to the Division of Elections. The division shall determine whether the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate. If the required number of signatures has been obtained, the candidate shall, during the time prescribed for qualifying for office, submit a copy of such notice and file his or her qualifying papers and oath prescribed in s. 105.031 with the Division of Elections. Upon receipt of the copy of such notice and qualifying papers, the division shall certify the name of the candidate to the appropriate supervisor or supervisors of elections as having qualified for the office sought.

(b) Each candidate seeking to qualify for election to the office of county court judge or the office of school board member from a single county school district pursuant to this section shall submit his or her petition, prior to noon of the 28th day preceding the first day of the qualifying period for the office sought, to the supervisor of elections of the county for which such petition was circulated. The supervisor shall check the signatures on the petition to verify their status as electors of the county and of the geographic area represented by the office sought. No later than the 7th day before the first date for qualifying, the supervisor shall determine whether the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate. If the required number of signatures has been obtained, the candidate shall, during the time prescribed for qualifying for office, submit a copy of such notice and file his or her qualifying papers and oath prescribed in s. 105.031 with the qualifying officer. Upon receipt of the copy of such notice and qualifying papers, such candidate shall be entitled to have his or her name printed on the ballot.

History.—s. 37, ch. 77-175; s. 2, ch. 89-152; s. 35, ch. 89-338; s. 23, ch. 90-315; s. 631, ch. 95-147; s. 6, ch. 99-318; s. 3, ch. 99-326; s. 66, ch. 2005-277.

105.036 Initiative for method of selection for circuit or county court judges; procedures for placement on ballot.—

(1) Subsequent to the general election in the year 2000, a local option for merit selection and retention or the election of circuit or county court judges may be placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State for circuit court judges or the county supervisor of elections for county court judges. The ballot shall provide for a vote on the method for selection of judges not currently used for filling judicial offices in the county or circuit.

(2) Certification of ballot position for the method of selection of circuit court judges shall be issued when the Secretary of State has received a verification certificate from each supervisor of elections in a circuit indicating that the requisite number of valid signatures of electors in the circuit has been submitted

and verified by the supervisor or supervisors of that circuit. Certification of ballot position for the method of selection of county court judges shall be issued when the supervisor of elections in a county indicates that the requisite number of signatures of electors in the county has been submitted to and verified by the supervisor. Each signature shall be dated when made and shall be valid for a period of 2 years following such date, provided all requirements of law are complied with.

(3) The sponsor of an initiative for merit selection and retention or election of circuit or county court judges must register as a political committee pursuant to s. 106.03.

(4) The Secretary of State shall adopt rules pursuant to ss. 120.536(1) and 120.54 prescribing the style and requirements of the circuit court and county court forms for collection of signatures.

(5) No later than 5 p.m. 151 days prior to the general election at which the proposed judicial selection initiative is to be voted on, the sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee or filing of the undue burden oath required by s. 99.097. Verification must be completed at least 91 days prior to the general election. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked and the number of signatures verified as valid and as being of registered electors of the applicable county or circuit. This certificate must be immediately transmitted to the Secretary of State for petitions related to the method of selection of circuit court judges. The supervisor must retain the signature forms for at least 1 year following the election in which the issue appeared on the ballot or until the committee that circulated the petition is no longer seeking to obtain ballot position as determined by the Division of Elections for circuit court petitions or by the supervisor of elections for county court petitions.

(6) Upon a determination by the Secretary of State for circuit court petitions or by the supervisor of elections for county court petitions that the requisite number of valid signatures has been obtained, a certification of ballot position must be issued for the proposed method of selection of judges. A request to exercise a local option to change the method for selection of circuit or county court judges is deemed filed with the Secretary of State for circuit court judges or the supervisor of elections for county court judges upon the date of the receipt of a certificate or certificates indicating the petition has been signed by the constitutionally required number of electors.

(7) Within 10 days after each general election for which an initiative to change the method of selection of circuit or county court judges was placed on the ballot in any circuit or county in the state, the Secretary of State must notify the Chief Justice of the Supreme Court of Florida of the changed method for selection of judges for any circuit or county where the initiative passed.

(8) The Department of State shall have the authority to promulgate rules in accordance with ss. 120.536(1) and 120.54 to carry out the provisions of this section.

History.—s. 9, ch. 99-355.

105.041 Form of ballot.—

(1) BALLOTS.—The names of candidates for nonpartisan office which appear on the ballot at the primary election shall be grouped together on a separate portion of the ballot or on a separate ballot. The names of candidates for election to nonpartisan office which appear on the ballot at the general election and the names of justices and judges seeking retention to office shall be grouped together on a separate portion of the general election ballot.

(2) LISTING OF CANDIDATES.—

The order of nonpartisan offices appearing on the ballot shall be determined by the Department of State. The names of candidates for election to each nonpartisan office shall be listed in alphabetical order.

With respect to retention of justices and judges, the question "Shall Justice (or Judge) (name of justice or judge) of the (name of the court) be retained in office?" shall appear on the ballot in alphabetical order and thereafter the words "Yes" and "No."

(3) REFERENCE TO PARTY AFFILIATION PROHIBITED.—No reference to political party affiliation shall appear on any ballot with respect to any nonpartisan office or candidate.

(4) WRITE-IN CANDIDATES.—Space shall be made available on the general election ballot for an elector to write in the name of a write-in candidate for judge of a circuit court or county court or member of a school board if a candidate has qualified as a write-in candidate for such office pursuant to s. 105.031. This subsection shall not apply to the offices of justices and judges seeking retention.

History.—s. 4, ch. 71-49; s. 38, ch. 77-175; s. 55, ch. 79-400; s. 1, ch. 80-305; s. 18, ch. 81-105; s. 4, ch. 99-326; s. 3, ch. 99-355; s. 2, ch. 2000-361; s. 22, ch. 2005-286; s. 34, ch. 2008-95.

105.051 Determination of election or retention to office.—

(1) ELECTION.—In circuits and counties holding elections:

(a) The name of an unopposed candidate for the office of circuit judge, county court judge, or member of a school board shall not appear on any ballot, and such candidate shall be deemed to have voted for himself or herself at the general election.

(b) If two or more candidates, neither of whom is a write-in candidate, qualify for such an office, the names of those candidates shall be placed on the ballot at the primary election. If any candidate for such office receives a majority of the votes cast for such office in the primary election, the name of the candidate who receives such majority shall not appear on any other ballot unless a write-in candidate has qualified for such office. An unopposed candidate shall be deemed to have voted for himself or herself at the general election. If no candidate for such office receives a majority of the votes cast for such office in the primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

(c) The candidate who receives the highest number of votes cast for the office in the general election shall be elected to such office. If the vote at the general election results in a tie, the outcome shall be determined by lot.

(2) RETENTION.—With respect to any justice or judge who qualifies to run for retention in office, the question prescribed in s. 105.041(2) shall be placed on the ballot at the general election. If a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, the justice or judge shall be retained for a term of 6 years commencing on the first Tuesday after the first Monday in January following the general election. If less than a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, a vacancy shall exist in such office upon the expiration of the term being served by the justice or judge.

History.—s. 5, ch. 71-49; s. 38, ch. 77-175; s. 19, ch. 81-105; s. 632, ch. 95-147; s. 5, ch. 99-326; s. 4, ch. 99-355; s. 23, ch. 2005-286.

105.061 Electors qualified to vote.—

(1) Each qualified elector of the territorial jurisdiction of a court shall be eligible to vote for a candidate for each judicial office of such court or, in the case of a justice or a judge seeking retention, for or against retention of such justice or judge.

(2) The election of members of a school board shall be by vote of the qualified electors as prescribed in chapter 1001.

History.—s. 6, ch. 71-49; s. 38, ch. 77-175; s. 6, ch. 99-326; s. 5, ch. 99-355; s. 887, ch. 2002-387.

105.071 Candidates for judicial office; limitations on political activity.—A candidate for judicial office shall not:

(1) Participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which she or he is registered to vote.

(2) Campaign as a member of any political party.

(3) Publicly represent or advertise herself or himself as a member of any political party.

(4) Endorse any candidate.

(5) Make political speeches other than in the candidate's own behalf.

(6) Make contributions to political party funds.

(7) Accept contributions from any political party.

(8) Solicit contributions for any political party.

(9) Accept or retain a place on any political party committee.

(10) Make any contribution to any person, group, or organization for its endorsement to judicial office.

(11) Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed for judicial office by any such person, group, or organization.

A candidate for judicial office or retention therein who violates the provisions of this section is liable for a civil fine of up to $1,000 to be determined by the Florida Elections Commission.

History.—s. 7, ch. 71-49; s. 2, ch. 72-310; s. 38, ch. 77-175; s. 633, ch. 95-147; s. 7, ch. 99-326.

105.08 Campaign contribution and expense; reporting.—

(1) A candidate for judicial office or the office of school board member may accept contributions and may incur only such expenses as are authorized by law. Each such candidate shall keep an accurate record of his or her contributions and expenses, and shall file reports pursuant to chapter 106.

(2) Notwithstanding any other provision of this chapter or chapter 106, a candidate for retention as a justice or a judge who has not received any contribution or made any expenditure may file a sworn statement at the time of qualifying that he or she does not anticipate receiving contributions or making expenditures in connection with the candidacy for retention to office. Such candidate shall file a final report pursuant to s. 106.141, within 90 days following the general election for which the candidate's name appeared on the ballot for retention. Any such candidate for retention to judicial office who, after filing a statement pursuant to this subsection, receives any contribution or makes any expenditure in connection with the candidacy for retention shall immediately file a statement to that effect with the qualifying officer and shall begin filing reports as an opposed candidate pursuant to s. 106.07.

History.—s. 8, ch. 71-49; s. 38, ch. 77-175; s. 3, ch. 89-152; s. 634, ch. 95-147; s. 8, ch. 99-326; s. 6, ch. 99-355.

105.09 Political activity in behalf of a candidate for judicial office limited.—

(1) No political party or partisan political organization shall endorse, support, or assist any candidate in a campaign for election to judicial office.

(2) Any person who knowingly, in an individual capacity or as an officer of an organization, violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 71-49; s. 38, ch. 77-175; s. 635, ch. 95-147.

105.10 Applicability of election code.—If any provision of this chapter is in conflict with any other provision of this code, the provision of this chapter shall prevail.

History.—s. 10, ch. 71-49; s. 38, ch. 77-175.

105.101 Effect of revision of county court judge selection method.—No county court judge elected prior to or at the election that approves any revision to the selection of county court judges shall be affected in his or her term of office. Any county judge wishing to apply for a subsequent term will be elected or retained pursuant to the method of election or selection and retention of county court judges in effect in the county for the election preceding the end of the judge's term of office.

History.—s. 11, ch. 99-355.

105.102 Effect of revision of circuit court judge selection method.—No circuit court judge elected prior to or at the election that approves any revision to the selection of circuit court judge shall be affected in his or her term of office. Any circuit court judge wishing to apply for a subsequent term will be elected or retained pursuant to the method of election or selection and retention of circuit court judges in effect in the circuit for the election preceding the end of the judge's term of office.

History.—s. 12, ch. 99-355.