



# **AN AID TO UNDERSTANDING CANON 7**

## **Guidelines to Assist Judicial Candidates in Campaign and Political Activities**

**Prepared by the Judicial Ethics Advisory Committee and  
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and The Florida Bar**

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# INTRODUCTION

## History of the Canon

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 nonjudicial conduct." Petition of the Committee on Standards of Conduct for Judges, 327 So. 2d 5 (Fla. 1976). The Supreme Court subsequently authorized the Committee to recommend changes in the Code. See Petition of the 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 current Code of Judicial Conduct, replacing the code adopted in In re The Florida Bar—Code of Judicial Conduct, 281 So. 2d 21 (Fla. 1973), and its subsequent amendments, was adopted by the Supreme Court September 29, 1994, and became effective January 1, 1995. See In re Code of Judicial Conduct, 643 So. 2d 1037 (Fla. 1994). The Code, as amended through February 20, 2003, 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 (2003), 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 (Fla. 1982). The Supreme Court stated that the 1982 amendments to Canon 7 and their commentary were essential to remove the preexisting prohibition foreclosing a judicial officer from "any type of travel or appearance before media boards or other groups or entities who [sic] would endorse or oppose judicial candidates." Id. The Supreme Court concluded that the pre-amendment restrictions impaired the public's awareness of the merit retention candidate and the judicial election process. Thus, the revised 1982 Canon 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."

(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. at 509.

The Committee's experience during the past several years has demonstrated that literal obedience to Canon 7 is at times difficult and cannot be accomplished through adherence to formulated principles. Indeed, the Committee members occasionally express divergent views about the Canon's application. Their disagreement results from factual settings which present circumstances not readily susceptible of determination through a "bright-line" doctrine.

## **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. In this regard, the Committee signals to each 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 Pratt, 508 So. 2d 8 (Fla. 1988), In re Kay, 508 So. 2d 329 (Fla. 1988), In re Berkowitz, 522 So. 2d 843 (Fla. 1988), In re Alley, 699 So. 2d 1369 (Fla. 1997), In re McMillan, 797 So. 2d 560 (Fla. 2001), In re Rodriguez, 829 So. 2d 857 (Fla. 2002), In re Kinsey, 842 So. 2d 77 (Fla. 2003), and In re Angel, 867 So. 2d 379 (Fla. 2004).

## **Format of booklet**

In assembling this booklet, the Committee includes a synopsis, organized in a "Frequently Asked Questions" format, of Committee advisory opinions; chronological summaries of selected Committee opinions interpreting Canon 7; 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 Canon and Section 105.071.

The Committee'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." Canon 1. A word of caution to merit retention judges -- the Committee receives almost all 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**

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 Richard Townsend, Chair  
County Judge, Clay County

Marjorie Gadarian Graham, Vice-Chair  
Attorney at Law, Palm Beach Gardens

The Honorable Robert T. Benton, II  
Appellate Judge, First District Court of Appeal

The Honorable Karen Cole  
Circuit Judge, Fourth Judicial Circuit

The Honorable Lisa Davidson  
Circuit Judge, Eighteenth Judicial Circuit

Ervin A. Gonzalez  
Attorney at Law, Coral Gables

The Honorable Phyllis Kotey  
County Judge, Alachua County

The Honorable Melanie G. May  
Appellate Judge, Fourth District Court of Appeal

The Honorable Jose M. Rodriguez  
Circuit Judge, Eleventh Judicial Circuit

The Honorable C. McFerrin Smith, III  
Circuit Judge, Seventh Judicial Circuit

The Honorable Jeffrey D. Swartz  
County Judge, Miami-Dade County

The Honorable Emerson Thompson  
Appellate Judge, Fifth District Court of Appeal

## **Elections Practices Subcommittee**

A standing subcommittee on election practices, consisting of four members, has been appointed by the Chair to assist the Judicial Ethics Advisory Committee in providing a rapid response to judicial campaign practice questions arising in the course of the campaign period when response time is often short.

The Honorable Emerson Thompson, Chair  
Appellate Judge, Fifth District Court of Appeal

The Honorable C. McFerrin Smith, III, Vice-Chair  
Circuit Judge, Seventh Judicial Circuit

Marjorie Gadarian Graham,  
Attorney at Law, Palm Beach Gardens

The Honorable Karen K. Cole  
Circuit Judge, Fourth Judicial Circuit  
(Alternate Member)

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

# **CANON 7 OF THE CODE OF JUDICIAL CONDUCT**

## **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 non-judicial 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 maintain the dignity appropriate to judicial office and act in a manner consistent with the 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;**

**(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 any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;**

**(d) shall not:**

**(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;**

**(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; or**

**(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;**

**(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 7A(3)(d).**

**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.<sup>1</sup> 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).**

**(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.**

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<sup>1</sup>When first adopted, 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). Previously, there had been no time limit on the establishment of a campaign committee or on the expenditure of funds in furtherance of a judicial campaign. This restriction was enjoined by the United States District Court for the Northern District of Florida. Zeller v. Florida Bar and Florida Judicial Qualifications Commission, Case No. TCA 95-40073-MMP (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).

**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 August 24, 1995 (659 So. 2d 692); May 30, 1996 (675 So. 2d 111); November 12, 1998 (720 So. 2d 1079).

**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.*

*Canon 7A(3)(a). 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)(d). Section 7A(3)(d) prohibits a candidate for judicial office from making statements that appear to 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. See also Section 3B(9), the general rule on public comment by judges. Section 7A(3)(d) 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.*

## 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<sup>2</sup>

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<sup>2</sup>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 the Introduction on pages 1-2.

# FREQUENTLY ASKED QUESTIONS

## I. Complying with Canon 7

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

- (1) Canon 7, Florida Code of Judicial Conduct.
- (2) Florida Supreme Court Decisions Relating to Canon 7.
- (3) The Florida Election Code, Florida Statutes - Judicial candidates are subject to the Florida Election Code, Chapters 97 through 106, Florida Statutes (2003). Chapter 105 concerns qualifying and election procedures. Chapter 106 regulates campaign financing.
- (4) Opinions of the Judicial Ethics Advisory 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. Internet access to the opinions, along with a chronological index, is available through a posting on the Sixth Judicial Circuit's web site at [www.jud6.org](http://www.jud6.org). You may also call the Office of the State Courts Administrator at (850) 922-5079 for information about obtaining copies of these opinions.
- (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 through 106, Florida Statutes. Candidates for judicial office may request and receive such advisory opinions if they inquire in accordance with the instructions contained in Rule 1S-2.010(4), Florida Administrative Code.

### B. Who must comply with Canon 7?

A judge or judicial candidate must comply with Canon 7. See Canon 7, Florida Code of Judicial Conduct; Rule 4-8.2(b), Rules Regulating The Florida Bar.

### C. Whose Canon 7 questions will the Committee answer?

The Committee is confined to rendering advisory opinions to inquiring judges and judicial candidates relating to the propriety of their own contemplated judicial and nonjudicial conduct. Petition of the Committee on Standards of Conduct for Judges, 327 So. 2d 5 (Fla. 1976).

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

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

A judge or judicial candidate shall not attend political party functions except as authorized in Canon 7B(2), 7C(2), and 7C(3), Code of Judicial Conduct. Canon 7A(1)(d). 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 Canon 7C(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.

**B. May a judicial candidate publicly endorse another candidate for public office?**

No. Canon 7A(1)(b) also provides that a judicial candidate may not publicly oppose another candidate for public office.

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

Canon 7A(3)(d)(ii) provides that a judicial candidate shall not make statements that commit or appear to commit him or her with respect to cases, controversies, or issues that are likely to come before the court. 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)(d) 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. See In re Kinsey, 842 So. 2d 77 (Fla. 2003) and Opinion 2004-09 (Election).

**D. May a judge participate in the campaigns of other political candidates?**

No. However, the commentary to Canon 7A(1)(b) states that a judge or a judicial candidate is not prohibited from privately expressing his or her views on judicial candidates or other candidates for public office. Canon 7, Florida Code of Judicial Conduct; Section 105.071, Fla. Stat.; Inquiry Concerning a Judge, DeFoor, 494 So. 2d 1121 (Fla. 1986).

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

Yes. Opinion 95-1. The organization at issue in the opinion 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, membership in which was proscribed 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.

**F. 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.

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

Yes. Canon 7A(3)(e) 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)(d) which prohibits a candidate from knowingly misrepresenting the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

**III. Soliciting, Accepting, and Spending Money**

**A. May a judge 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 2004-07 (Election) which is included in the Appendix.

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

Canon 7C(1) provides that a judge or judicial candidate subject to public election may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. See Opinion 2004-07 (Election).

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

A candidate for judicial office 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 . . ." Canon 7C(1). The committee charged with obtaining contributions for the candidate's campaign may solicit contributions before the candidate has active and announced opposition, according to a majority of the Committee, as long as the candidate complies with Canon 7C(1) and Chapters 99, 105, and 106, Florida Statutes. Opinions 76-15 and 2004-07 (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 five 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." Section 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.

**D. May I be my 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." Section 106.021(1)(c), Fla. Stat.

**E. What campaign contributions may I accept?**

A candidate for county, circuit, or appellate judge may accept not in excess of \$500 from any person or committee for each election, there being a maximum of two elections per campaign,

the first primary and the general election, for candidates for circuit judge and county judge, and one election, the general election for candidates for retention as a justice or district court of appeal judge. Section 106.08(1)(a), (c), Fla. Stat.

**F. May I obtain contributions to pay my qualifying fee?**

Yes. The qualifying fee is a necessary expenditure whether or not active opposition develops, so a Committee majority stated that receipt of modest contributions through a committee is not proscribed by the canons. Opinion 78-11.

**G. How may I spend campaign money?**

"A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family." 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. See Section 106.1405, Fla. Stat.

**H. What may I do with unspent campaign funds?**

Various methods for disposing of surplus campaign funds are described in Section 106.141, Florida Statutes. Under the statute, the funds that have not been spent or obligated may be returned to each contributor on a pro rata basis or donated to charity: up to \$6,000 for Supreme Court justices, \$3,000 for District Court of Appeal judges, and \$1,500 for county court or circuit judges may be deposited in an elected or retained candidate's office account. If the judge deposits funds in an office account, the judge is obligated to comply with Section 106.141, Florida Statutes, which requires, among other things, filing a report reflecting the disposition of all remaining funds.

**I. What political campaign contributions may my spouse make?**

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

**J. May I make campaign contributions to my own campaign?**

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.

**IV. Knowing Your Supporters**

**A. May I know the names of persons who contributed to my campaign?**

Yes. In Opinion 77-22, the Committee reasoned that, since 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. See Opinions 77-22 and 78-6.

**B. May I thank the contributors personally?**

Yes. The note or statement should be in good taste. Opinion 77-22. (no definition of "good taste" is given); Opinion 92-02 (thank you note should not be on official letterhead).

**C. Will an attorney's campaign contribution to 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).

**V. Disciplinary Action Under Canon 7**

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

Violations of Canon 7 by judges should be reported to the Judicial Qualifications Commission, created by Article V, section 12 of the Florida Constitution. A Canon 7 violation by an attorney candidate should be reported to The Florida Bar.

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

The Florida Constitution provides, “[t]he 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 . . . .” Fla. Const., art. V, Section 12(c)(1).

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. Rule 3-5, Rules Regulating The Florida Bar.

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

Here are several Florida Supreme Court judicial discipline decisions involving Canon 7 violations: In re Lantz, 402 So. 2d 1144 (Fla. 1981) (holding a judge who directly solicited election support from a member of the Bar should be publicly reprimanded); In re DeFoor, 494 So. 2d 1121 (Fla. 1986) (reprimanding judge publicly for his participation in two political campaigns, which included lobbying, organizing, and developing strategies on behalf of the candidates); In re Pratt, 508 So. 2d 8 (Fla. 1987) (holding judge should be publicly reprimanded for financing and distributing sample ballots suggesting partisan endorsement in race for judicial office in which she was a candidate); In re Kay, 508 So. 2d 329 (Fla. 1987) (reprimanding judge publicly for mailing sample ballots suggesting partisan endorsement of candidates in non-partisan race); In re Berkowitz, 522 So. 2d 843 (Fla. 1988) (removing judge from office for several violations of the Code of Judicial Conduct including participation in the mailing of sample ballots suggesting partisan endorsements of candidates in a nonpartisan race); In re Turner, 573 So. 2d 1 (Fla. 1990) (reprimanding judge publicly for his participation in his son's campaign for judicial office); In re Glickstein, 620 So. 2d 1000 (Fla. 1993) (holding judge should be publicly reprimanded for writing a letter on office stationery endorsing the retention of

another judge, in which he identified himself as a member of the judiciary, which was published in the newspaper); In re Alley, 699 So. 2d 1369 (Fla. 1997) (judge publicly reprimanded for conduct unbecoming a candidate for judicial office, including misrepresenting her qualifications, injecting party politics into a nonpartisan race, and misrepresenting her opponent's qualifications); In re McMillan, 797 So. 2d 560 (Fla. 2001) (judge removed from the bench for cumulative misconduct fundamentally inconsistent with the responsibilities of judicial office, including campaign promises to favor the State and police in court proceedings, as well as unfounded attacks on an incumbent judge and the local court system); In re Rodriguez, 829 So. 2d 857 (Fla. 2002) (judge publicly reprimanded and fined \$40,000 for improper campaign finance activities and reporting practices); In re Kinsey, 842 So. 2d 77 (Fla. 2003) (holding judge should be publicly reprimanded and pay a fine of \$50,000, plus costs, for making improper campaign statements which imply that she would favor one group of citizens over another or would make rulings based upon the sway of popular sentiment in the community); and In re Angel, 867 So. 2d 379 (Fla. 2004) (holding that judge should be publicly reprimanded for engaging in a pattern of improper conduct, namely participating in prohibited partisan political activity).

# SUMMARIES OF SELECTED OPINIONS OF THE JUDICIAL ETHICS ADVISORY COMMITTEE<sup>3</sup>

## **Opinion 76-15**

### Issue

Whether a candidate for judicial office, either incumbent or not, may solicit or accept campaign contributions through a campaign committee before he or she has active and announced opposition.

### Response

This conduct is permitted. The majority view (5-4) was based on a consideration of the general laws relating to all candidates (Chapters 99 and 106) and the relevant provisions of Canon 7. In particular, the majority view was that reference to "active opposition" does not limit or otherwise prohibit a candidate for judicial office from soliciting or accepting campaign contributions as long as the judicial candidate complies with the provisions of Canon 7C(1) and the pertinent section of the campaign reporting laws.

## **Opinion 76-16**

### Issue

Whether a judge may participate in efforts to educate the general public about constitutional amendment No. 2 on the questions of merit retention of Supreme Court justices and appellate court judges appearing on the general election ballot, November 2, 1976.

### Response

The Committee responded in the affirmative. Canons 4 and 5 appear to encourage the participation of judges in activities designed to improve the law, the legal system, and the administration of justice. The Committee noted that Opinion 74-3 is distinguishable from the present opinion because Opinion 74-3 stated that it would be unethical for a judge to explain the new Article V judicial system to a partisan political party meeting. This inquiry related to appearances in all types of public gatherings except partisan political meetings.

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<sup>3</sup>Please remember that these synopses of advisory opinions are not to be viewed as authority for specific conduct. Compliance with the advisory opinion may, if the underlying facts are identical, be evidence of a good faith effort to comply with the Code of Judicial Conduct. 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.

## **Opinion 77-20**

### Issue

Whether a judge may attend a testimonial dinner for an incumbent county commissioner. The testimonial is not for the purpose of announcing candidacy for any public office nor to announce the commissioner's retirement. The commissioner is not presently a candidate for any public office, and the \$40.00 tickets are complimentary to the judge.

### Response

Five members were of the view that there is no prohibition if the primary object of the dinner is to pay honor to a distinguished public servant rather than to raise funds for his or her reelection.

One member felt there was insufficient information upon which to base an opinion but expressed concern that the price of the ticket would indicate that it is a fundraising affair and could be construed as a purely political affair.

Three members were of the opinion that the conduct is proscribed by Canon 7.

## **Opinion 77-22**

### Issue

Whether a judge may personally thank individuals who contributed to his or her upcoming campaign.

### Response

Seven members were of the opinion that the canons do not prohibit a judge or candidate from such conduct. One member's view was that it would be preferable if the campaign committee rather than the judge express gratitude but that member agreed the expression of thanks by the judge is not prohibited by the canons.

## **Opinion 78-11**

### Issue

Whether a judge may accept contributions from lawful sources toward the payment of his or her qualifying fee. [The inquiring judge was an incumbent judge and anticipated submitting his or her name under the merit retention plan to be voted on in the November election.]

### Response

Since the qualifying fee is a necessary expenditure, whether or not active opposition develops, a majority was of the view that the receipt of modest contributions, through a committee, from friends, relatives, and others interested in the maintenance of a good judiciary, is not proscribed by the canons. This interpretation is consistent with Opinion 76-15.

## **Opinion 80-14**

### Issue

Whether a judge may write a letter to the editor, for publication in a local newspaper, responding to an editorial concerning the method of selecting and retaining Florida judges, a matter that directly affects the independence and quality of the judiciary.

### Response

A judge may do so. In Opinion 76-16, the Committee observed that Canons 4 and 5 encourage judges to speak and write about methods of judicial selection and retention. An earlier Committee opinion stated "that a judge may state . . . views publicly . . . [about issues on a ballot] which relate to the law, improvement of the legal system, and administration of justice." (Opinion 78-14).

### **Opinion 82-8**

#### Issue

Whether a judge may solicit an attorney to run against another judge.

### Response

A majority of the Committee was of the opinion that such solicitation violates Canon 7A(1)(b) by "publicly endorsing a candidate for public office" and Canon 2A by "failing to promote public confidence in the integrity and impartiality of the judiciary." Other expressed reasons for avoiding this form of campaign involvement included: (1) that it is "odious and demeaning for a sitting judge . . . [to promote opposition for a colleague];" (2) initiating opposition for a fellow judge creates "ill will [among fellow judges] who must work together;" and (3) while a judge may have an interest in ridding the bench of those unfit to serve, this is the job of the Judicial Qualifications Commission, not a sitting judge. One of two dissenting members would not preclude the solicitation unless the activities become "notorious" and extend to the public arena.

### **Opinion 84-10**

#### Issue

Whether an announced candidate for circuit judge may run television commercials which state that the candidate is certified by The Florida Bar as a civil trial attorney.

### Response

A lawyer running for judicial office may publicize Florida Bar certification in a particular specialty.

### **Opinion 84-16**

#### Issue

Whether a candidate for judicial office may address a question to the Committee regarding conduct of political opponents whose candidacies have been announced in the news media.

### Response

The Committee has authority to respond only to the inquiries of judges or judicial candidates concerning their own conduct.

### **Opinion 84-17**

#### Issue

Whether a candidate for election to the circuit court who has served as a domestic relations commissioner/general master in the domestic relations department may characterize the

position in campaign literature in the following terms: "Judicial position," "limited jurisdiction family judge," and "judicial officer."

#### Response

The Committee unanimously responded that the campaign literature is misleading and inappropriate with one member noting that, despite public belief that masters are judges, masters remain constantly under the control of a judge. Another member concluded that such wording implies or tends to imply that the candidate is an incumbent judge. Being appointed a "domestic relations commissioner" cannot be equated with "judicial experience" or "the holding of a judicial position." One member wrote that a reference to "judicial experience" would not be inappropriate so long as the candidate did not refer to himself or herself as a "judicial officer."

#### **Opinion 84-19**

##### Issue

Whether a judge's spouse may contribute to the campaign of a state representative or other state or local office holder.

#### Response

A judge's spouse may make campaign contributions as long as it is done in the name of the spouse and without any reference to the judge or his or her judicial position.

#### **Opinion 84-22**

##### Issue

Whether Canon 7 permits a candidate for judicial office to participate in and publicize his or her involvement in the following activities conducted by a County Democratic Executive Committee and open to all candidates:

- (1) participate in an endorsement interview session;
- (2) participate in a rating interview session;
- (3) publicize an endorsement, which is the result of an endorsement interview session; and
- (4) publicize a rating, which is the result of a rating interview session.

#### Response

Half of the Committee members voted that Section 105.071(1), Florida Statutes, prohibits a candidate for judicial office from attending a partisan political function; the other half believed that the candidate may attend, but with limitations on what the candidate may say or do at the function.

A 6-4 majority voted that the judicial candidate should not participate in an endorsement or rating interview session sponsored by a partisan political group. The Committee unanimously voted that any rating or endorsement resulting from such an interview may not be publicized by the candidate.

#### **Opinion 86-12**

##### Issue

Whether a judge may attend a function hosted by the president of a university and honoring a legislative delegation. There would be no fund-raising or mention of fund-raising at the function.

Response

Yes.

**Opinion 88-9**

Issue

Whether a judge may appear at a partisan political meeting to discuss the judicial system and the need for a new court building in the judge's circuit.

Response

The Committee adhered to its previous Opinion 87-16, a majority stating that Canon 7 would be violated by such an appearance, despite the fact that such an appearance would not be for the advancement of a political objective. Two Committee members disagreed, stating that the appearance should be permitted, in accordance with Opinion 77-21, since the activity described by the judge may fulfill a purpose permitted under Canon 4. See Canon 7C(3).

**Opinion 88-13 (amendment)**

Issue

Whether campaign contributions may be used for the payment of the qualifying fee, the expenses incurred in traveling to Tallahassee for the filing of the qualifying documents if such documents are delivered in person, and for the reimbursement of campaign related gas consumption, hotel, and meal costs.

Response

Campaign contributions may be used for the expenses described above. The Committee emphasized that, "[a] candidate should not use or permit the use of campaign contributions for the private benefit of himself [or herself] or the members of his [or her] family." Canon 7B(2) [now Canon 7C(1)]. Permitted expenditures must be directly attributable to the election campaign.

Two Committee members stated that a candidate could determine that the presence of his or her spouse is essential to the candidacy, and, therefore, the cost of such presence may be paid from campaign contributions.

**Opinion 88-15**

Issue

Whether it is a violation of Canon 7B(1)(c) [Canon 7A(3)(d)] for a judge to propose in campaign literature "that court be held on certain types of matters after regular working hours."

Response

A majority of the Committee concluded, without explanation, that such a comment does not violate the Canon.

**Opinion 88-16**

Issue

Whether a county judge who has announced his or her candidacy for a circuit judgeship is prohibited from being present at private homes to meet persons.

Response

The Committee found no prohibition against being present at a person's home in order to meet people.

### **Opinion 90-3**

#### Issue

Whether a sitting judge may support the retention of another member of the judiciary in a merit retention election when that member is the target of a rejection campaign by the head of another branch of government, not for legal incompetency or personal misconduct, but because the governmental official disagrees with a judicial ruling that the member of the judiciary participated in while discharging responsibility as required by his or her constitutional oath of office.

If the answer to the above is in the affirmative, whether the following activities are appropriate:

- (1) Speaking in private and in public on behalf of the judicial member under attack,
- (2) Writing both for private and public publications in support of the judicial member under attack,
- (3) Organizing or serving on a committee to support the retention of the judicial member under attack (not involving fund-raising),
- (4) Making a personal financial contribution to a committee to retain in office the judicial member under attack.

#### Response

The Committee unanimously determined that the judge may not engage in public activity on behalf of a member of the judiciary when such member is the target of a rejection campaign undertaken by the head of another branch of government for reasons unrelated to competency or misconduct. The Committee concluded that Canon 7A(1)(b) bars activities publicly undertaken on behalf of the targeted judge and Canon 7A(1)(c) [now Canon 7A(1)(e)] bars a contribution to the candidate. The Committee concluded, however, that the judge may speak privately on behalf of the judicial officer under attack, but may not organize or serve on a committee to support the retention of that person.

### **Opinion 90-16**

#### Issues

- (1)(a) Whether a nonpartisan judicial candidate, who is not invited for the purpose of speaking as to his or her candidacy, may go to the premises upon which a political party is holding a political meeting and stand at the doorway wearing a judicial candidate's badge for the purpose of greeting the delegates and the party members in their exit.
- (b) In other words, whether the nonpartisan judicial candidate may "give the appearance" of having attended a meeting of a specific political party.
- (2)(a) Whether a nonpartisan judicial candidate, who has not been invited for the purpose of speaking as to his or her candidacy, may attend a luncheon hosted by presidents of various clubs for a political party where the judge's purpose in attending is to display his or her judicial candidate's badge and inform persons of his or her candidacy.
- (b) If the answer to the foregoing question is in the affirmative, whether the lunch ticket may be paid from the candidate's campaign account.

- (3) Whether a nonpartisan judicial candidate, who has not been invited for the purpose of speaking as to his or her candidacy, may attend a dinner dance sponsored by a partisan club for the purpose of entertainment and displaying his or her badge, as well as informing the patrons of his or her candidacy.
- (4) Whether a nonpartisan judicial candidate may purchase with funds contributed to his or her campaign account advertising space for a candidacy in a partisan club magazine or publication related to a partisan function, as long as the ad makes no reference to any endorsement of the candidate.
- (5) Whether a nonpartisan judicial candidate may meet privately with leaders of various partisan groups or associations for the purpose of requesting an invitation to speak on his or her own behalf at future partisan functions.
- (6) Whether, when addressing an audience, a nonpartisan judicial candidate who is asked a direct question, "What political party are you registered with?", may respond to the question. The inquirer noted that it is an unsatisfactory and evasive reply to give the response that he or she is running in a nonpartisan race.

#### Response

The Committee responded in the negative to all questions posed based upon its interpretation of Canon 7. See Canon 7C(3).

#### **Opinion 92-02**

##### Issue

Whether a judge may legally and ethically send a note of thanks for campaign contributions on judicial stationery.

##### Response

"Thank you" notes to campaign contributors should not be on judicial stationery. Judicial stationery is to be used for official business only, not private purposes.

#### **Opinion 92-13**

##### Issue

Whether a judge may respond to an organization's criticism of one of the judge's recent rulings and whether this well publicized criticism (appearing in widely distributed literature, and on radio and in a local newspaper) constitutes active opposition sufficient to allow the judge to engage in all campaign activities authorized for judges running in contested elections.

##### Response

An organization distributing literature opposing the judge's reelection and local major newspaper coverage highly publicizing an emotional visitation case constitute active opposition sufficient to consider the reelection "opposed," and to allow the judge to engage in all activities authorized for a judge with a named opponent.

#### **Opinion 92-19**

##### Issues

(1) Whether a county judge running without opposition for an open circuit seat is restricted to limited campaign activities.

(2) Whether the campaigning of several lawyers for an open circuit seat, where the lawyers may change the seat for which they are running during qualifying week, constitutes active opposition.

#### Responses

(1) Incumbent judges seeking election or reelection to judicial office without opposition are restricted to limited campaign activities.

(2) Where several lawyers are presently campaigning for an open circuit seat, although not the seat for which the inquiring judge is running, but the lawyers may change the seat for which they are seeking election during qualifying week, this conduct constitutes active opposition and the incumbent judge may engage in all campaign activities authorized by Canon 7 for a judge who has a named opponent.

#### **Opinion 92-26**

##### Issue

Whether a nonpartisan judicial candidate may, by invitation, attend and speak at democratic party political "speaking" or rallies.

##### Response

A judge or judicial candidate may attend and speak at such functions subject to the conditions that all other candidates for the judicial position must be invited to the function and the moderator must announce the nonpartisan nature of the judicial election.

#### **Opinion 92-27**

##### Issue

Whether a candidate for judicial office may use campaign funds to pay filing fees.

##### Response

Using campaign funds to pay filing fees is not prohibited by the Canon.

#### **Opinion 92-29**

##### Issue

Whether a judge may use the petition method to qualify for reelection, thereby avoiding the qualifying fee.

##### Response

The payment of qualifying fees or the use of the petition method to qualify are both statutory mechanisms for election of judges and either method is available to the candidate.

#### **Opinion 92-32**

##### Issue

Whether a judge may sign, without reference to his or her judicial office, a petition for an individual attempting to qualify for election to a judicial or nonjudicial, partisan or nonpartisan office where the petition does not indicate that the signature is an endorsement and where the judge's sole purpose in signing the petition is to allow the petitioner to qualify for the ballot without paying the qualifying fee.

### Response

The Committee found that Canons 7 and 2 prohibit a judge's signing of a petition for an individual under these circumstances, even if the judge does not refer to the judge's office. The signature might reasonably be perceived as an endorsement and further, the incumbent judge might have to sit on a canvassing board and the appearance of the judge's signature on the petition might give the appearance of partiality. The Committee concluded that the canons do not allow a judge to sign a petition for an individual who wants to qualify for election to a judicial or nonjudicial, partisan or nonpartisan office even if the judge does not refer to the judge's office.

**Opinion 92-33** [political activity by judicial assistant]. See discussion of opinion 93-45 on page 27 of this booklet. Opinion 92-33 suggested that judicial assistants must limit their political activity. The Committee has receded from its position expressed in Opinion 92-33 and the Committee's more current interpretation of the canons with regard to political activity by non-judge court staff is more accurately reflected in Opinion 93-45.

### **Opinion 92-40**

#### Issue

Whether a judge may allow a government official to use in political campaign literature a photograph of the judge in judicial robes swearing in the official.

#### Response

The Committee suggested that the conduct is prohibited by both Canons 2 and 7 and a judge should not give permission for the use of the judge's photograph in political campaign literature, especially when the judge appears in the photograph in judicial robes. A judge is not to engage in political activity or lend the prestige of judicial office to advance the private interest of others. In this instance it made no difference that the judge was also related to the political candidate.

### **Opinion 92-41**

#### Issue

Whether a judge may attend the U. S. President's Inauguration and Inaugural Ball.

#### Response

Attendance at such an event is permitted under the canons provided that no funds are paid to a partisan political organization and attendance at the function is not limited to members of one partisan political organization.

### **Opinion 93-07**

#### Issue

Whether a judge may speak about the "court system" at a local Women's Republican Club luncheon.

#### Response

Such attendance is prohibited under the Code because the judge is not currently a candidate for election and is therefore ineligible under Canon 7(C)(3) to speak before political groups.

### **Opinion 93-13**

#### Issue

Whether a sitting judge who is a Judicial Nominating Commission nominee for appointment by the Governor to another judicial office may appear before a partisan political group along with other nominees for the appointment to be interviewed so that the partisan political group may make a recommendation to the Governor.

#### Response

Canon 7 prohibits a judge's appearance before a political group for the purpose of an endorsement. Although appointment by the Governor may be a political process, the inquiring judge is not a candidate for election. Therefore, an appearance before a political group as described does not fall within the range of political activities allowed for a judicial candidate.

The Committee also cited Section 105.09, Florida Statutes, as authority for prohibiting the proposed appearance.

### **Opinion 93-45**

#### Issue

Whether judicial law clerks may engage in political activity.

#### Response

Employees subject to the 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 the judge and without reference to the judge or the judge's office. (Quoting from 9/8/92 minutes of the Florida Supreme Court. The Court requested the Clerk to notify the Committee of its view in this matter. The Supreme Court minutes were in response to Opinion 92-33, an opinion from which the Committee on Standards receded in 93-45.)

### **Opinion 93-47**

#### Issue

Whether a sitting judge whose reelection is opposed by a local citizen who publishes his or her opposition in a newsletter constitutes active opposition.

#### Response

All Committee members agree that this opposition is sufficient for the judge to file a certificate with the Secretary of State with a copy to the Judicial Qualifications Commission stating that the judge's candidacy has drawn active opposition.

### **Opinion 93-50**

#### Issue

Whether a judge may become a member of a County Political Women's Caucus.

#### Response

Membership in a County Women's Political Caucus is prohibited by the Code because, among other things, it is an activist organization that recruits and supports candidates and lobbies for various laws.

### **Opinion 94-08**

### Issue

Whether a traffic magistrate may make political contributions.

### Response

There are no exceptions to the prohibition against political contributions as the rule applies to judges or traffic magistrates. Political contributions appear to be prohibited whether from the inquiring traffic magistrate as an individual or from the inquiring traffic magistrate in behalf of a professional association.

### **Opinion 94-10**

#### Issues

- (1) Whether a former announced opponent, now withdrawn, may practice before a judge if that judge has no personal hostile feelings toward the attorney.
- (2) Whether negative publicity in a local newsletter constitutes active opposition.

#### Responses

- (1) Yes, a former announced opponent, now withdrawn, may practice before the judge if the judge has no personal hostile feelings toward the attorney.
- (2) Negative publicity in a local newsletter does constitute active opposition.

### **Opinion 94-16**

#### Issues

- (1) Whether a judge may criticize a political opponent.
- (2) Whether a judicial candidate may criticize a judge about an open case.

#### Responses

- (1) The Committee found that in general it would be proper to criticize a political opponent when the criticism is truthful, pertinent, and material to judicial office.
- (2) A judicial candidate may not criticize a judge about an open case because the candidate could possibly have to rule on the same case and the incumbent judge cannot comment on a pending case.

### **Opinion 94-20**

#### Issue

Whether a person's intent to run for judicial office in the future qualifies that person as a candidate.

#### Response

A person's intent to run for office in the future would not qualify that person as a candidate since he or she has not taken any formal steps or formally announced his or her candidacy. The Committee agreed that a person may become a candidate prior to formally opening a campaign account. The Committee recognized that when a person becomes a candidate may vary from situation to situation depending on the nature of the community.

### **Opinion 94-21**

#### Issues

- (1) Whether a judge's spouse may engage in political activities.

(2) Whether a judge's spouse may have a campaign party for a judicial candidate at the spouse's law firm when the judge is a co-tenant on the deed.

#### Responses

(1) A judge's spouse is free to "politic" without the constraints that apply to the judge.

(2) A judge's spouse can have a campaign party for another candidate at the spouse's law office even though the judge is listed as a co-tenant on the deed. The judge should not attend the party.

#### **Opinion 94-23**

##### Issue

Whether a non-judge judicial candidate must resign from the Nominating Council of the Florida Public Service Commission. The candidate will not participate on the council during his or her candidacy.

##### Response

The Committee felt that there is no ethical impropriety in the candidate remaining a member of the Council while a candidate.

#### **Opinion 94-24**

##### Issues

(1) Whether an incumbent judge who will be seeking reelection may mail a press release and photograph to local newspapers for the purpose of announcing his or her candidacy.

(2) Whether the judge's proposed activity would violate Canon 7B(3) [now Canon 7C(2)] since the judge has no active opposition.

##### Responses

(1) A sitting judge who will be up for reelection may mail a press release and photograph to local newspapers for the purpose of announcing his or her candidacy.

(2) The Committee offered no opinion as to the various election laws that may apply. The present Canon 7C(2) applies only to merit retention judges and not incumbent trial judges seeking reelection.

#### **Opinion 94-26**

##### Issue

Whether a judicial candidate may ethically state the following regarding the candidate's position on the 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."

##### Response

The judicial candidate may make such a statement but several Committee members cautioned the candidate against suggesting a predisposition to exercise judicial discretion in favor of the death penalty.

### **Opinion 94-34**

#### Issue

Whether a judicial candidate may respond to a judicial candidate questionnaire.

#### Response

A judicial candidate may respond to judicial candidate questionnaires, but many responses may not necessarily fit into the "yes" or "no" or "undecided" boxes on the questionnaire. Depending upon the subject matter of the question, some complex legal or political questions may not be answerable ethically. Other questions may need a thoughtfully drafted explanation or elaboration to appropriately satisfy ethical considerations. Despite the Federal District Court decisions which invalidated a portion of former Canon 7B(1)(c) and all of former 7B(1)(a), judges and judicial candidates must be aware that certain campaign related speech remains impermissible under the Canon, e.g., Canon 3A(6) [now Canon 3B(9)] which provides that judges should abstain from public comment about pending or impending proceedings in "any court."

### **Opinion 94-35**

#### Issue

Whether two proposed scripts for television campaign commercials for a circuit court seat are ethically proper.

#### Response

The Committee concluded that "it should not approve or disapprove specific language of individual judicial campaign advertisements but rather should provide the ethical provisions which judicial candidates should consider."

### **Opinion 94-42**

#### Issue

Whether a non-candidate judge may attend a political function for a judicial candidate if the judge does not speak, does not endorse any candidate, does not purchase a ticket and does not make a contribution.

#### Response

The Code prohibits a non-candidate judge from attending a political function even if it is considered merely a social event.

### **Opinion 95-01**

#### Issue

Whether a judge may become a member of and attend meetings of a Tiger Bay Club.

#### Response

Membership in and attendance at meeting of Tiger Bay Clubs are permitted.

### **Opinion 95-03**

#### Issue

Whether a judge may deliver an historical, neither pro-death or anti-death penalty, speech to a Tiger Bay Club.

### Response

A judge may present an historical, neither pro-death nor anti-death penalty, speech to a local Tiger Bay Club.

### **Opinion 95-30**

#### Issues

(1) Whether a judge may certify that he or she has opposition on the basis of an attorney's statement that the judge will have opposition.

(2) Whether a judge must comply with the Canon 7C(1) one year rule.

#### Responses

(1) Under the present Code, only merit retention judges are subject to the Canon 7C(1) limited campaign activities rule.

(2) The Florida Supreme Court deleted the Canon 7C(1) one-year rule. In re Code of Judicial Conduct, 659 So. 2d 692 (Fla. 1995).

### **Opinion 96-5**

#### Issue

Whether a traffic magistrate may ethically continue to serve as a traffic magistrate while seeking election to office of Sheriff.

#### Response

No. A traffic magistrate is bound by Canon 7A(2) and may not continue to serve as a traffic magistrate while a candidate for the office of Sheriff.

### **Opinion 96-10**

#### Issues

(1) Whether a judicial candidate may attend a testimonial to a retiring Congressman where the invitation states that it is a paid political advertisement and there is a minimum charge of \$100.00 per person to attend the testimonial.

(2) Whether a judicial candidate may attend a spring banquet held by the Tampa Bay Friends for Life where the invitation states that it is a nonpartisan, pro-family event.

#### Responses

(1) Attendance of the testimonial is prohibited since it is a political fund-raiser. Canon 7C(3).

(2) Attendance of the spring banquet is permitted since there will be speakers from both political parties. The Committee did caution the candidate that the event could be viewed as political or controversial and that the candidate's attendance could be viewed as a commitment to how he or she would rule regarding abortion issues in violation of Canon 7A(3)(d)(ii). The candidate should take care to avoid such an appearance.

### **Opinion 96-11**

#### Issues

(1) Whether a judicial candidate may attend a partisan political function that is not a fund-raiser in order to meet people and have alternative petitions signed.

(2) Whether a judicial candidate may make a speech at this partisan political function if invited.

(3) Whether a judicial candidate must ensure that any opposing candidates are also invited to attend the partisan political function.

#### Responses

(1)-(3) A candidate for judicial office may attend political functions to speak in behalf of his or her candidacy as long as the function is not a fund-raiser and the other candidates for the office are also invited. Canon 7A(1)(d) and 7C(3).

#### **Opinion 96-17**

##### Issue

Whether a judge may serve as master of ceremonies at a candidates' forum at a local homeowners' association meeting.

##### Response

The judge may engage in this activity. Since the meeting is not partisan, nothing in Canon 7 would directly prohibit the judge from serving as master of ceremonies.

#### **Opinion 96-19**

##### Issue

Whether a judicial candidate may attend a political rally (sponsored by a local civic organization) where all candidates are invited and allowed to speak but who are required to pay a \$50 fee to help defray the cost of the event.

##### Response

The candidate may attend the event and pay the fee as long as the funds are used to pay for an otherwise legitimate matter. There should be no fund-raising involved and all the fees must be spent to defray the cost of the rally.

#### **Opinion 96-20**

##### Issues

(1) Whether a judicial candidate may attend local Republican and Democratic meetings which are open to the public and distribute campaign literature and speak with and to attendees.

(2) Whether a candidate's campaign manager may attend the meetings, distribute campaign literature, and speak with attendees, if the candidate is prohibited from doing so.

##### Response

(1) No. The candidate may not attend the political party functions since the candidate has not been invited to these meetings to speak on behalf of his or her candidacy or on a matter that relates to the law, improvement of the legal system, or the administration of justice. Canon 7C(3) and Opinion 90-16.

(2) No. The candidate's campaign manager may not do what the candidate is prohibited from doing under Canon 7. Under Canon 7A(3)(c), the candidate may not, except as permitted by Canon 7C(1), authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under Canon 7.

## **Opinion 96-21**

### Issue

Whether a judicial candidate may respond to a questionnaire from a county Republican executive committee and list "political activities or previous offices held."

### Response

No. The Code of Judicial Conduct bars the candidate from responding to the questionnaire by listing the candidate's extensive partisan experience. Canon 7C(3). Section 105.071, Florida Statutes, provides that a candidate shall not publicly represent or advertise herself or himself as a member of any political party.

## **Opinion 96-24**

### Issue

Whether a judicial candidate may publicly defend her conduct regarding personal false statements made by her opponent.

### Response

The candidate may truthfully defend her own conduct and may truthfully reveal matters regarding her opponent's campaign conduct. Canon 7A(3)(d)(iii) and 7A(3)(e).

## **Opinion 97-30**

### Issue

(1) Whether a judge may ethically present an educational program on the judicial system to an organized political partisan group at the judge's courthouse.

(2) Whether a judge may ethically present an educational program on the judicial system to an organized political partisan group that establishes a nonpartisan citizen group for the purpose of traveling to the courthouse to attend the program.

### Responses

(1) No. Subject to the exceptions in Canon 7A(1), which are not applicable to the current inquiry, a judge may not speak to an organized political partisan group at any location. This prohibition applies even if the subject matter of the speech is the judicial system.

(2) The judge must determine whether the citizens' group was created in good faith and is a bona-fide nonpartisan group, or whether it is a subterfuge to the proscriptions of Canon 7A(1)(d). If the citizens' group was created in good faith and is a bona-fide nonpartisan group, the judge is permitted to present an educational speech on the judicial system consistent with the provisions of Canon 4. If not, the judge is precluded from making the presentation.

## **Opinion 97-34**

### Issues

(1) Whether a judge may draft, write, or edit judicial campaign materials in the judge's chambers during regular courthouse hours.

(2) Whether a judge may actively campaign outside the courthouse during regular courthouse hours as long as another judge is covering the judge's docket.

## Responses

(1) A judge should strive to arrange his or her campaign activities to be conducted outside regular courthouse hours, i.e., lunch hours, evenings, weekends and holidays. Minor campaign related activities, e.g., brief telephone calls or handling minor emergency matters, during regular office hours 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. The judge must maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

(2) A judge should strive to minimize campaign activities during normal courthouse hours. Requesting one judge to handle another judge's calendar/docket to campaign could potentially "interfere" with the proper performance of judicial duties for both judges. However, since attendance at certain campaign functions, e.g., breakfasts and luncheons, and travel time to and from these functions may occasionally encroach on regular courthouse hours, some minor campaign activities may be permissible, so 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. Additionally, the judge must maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

## **Opinion 98-3**

### Issues

(1) Whether a judicial candidate's spouse, who serves as a member of the Florida Legislature, may accompany the candidate to nonpartisan events while the candidate is actively promoting the campaign.

(2) Whether a judicial candidate's spouse, who serves as a member of the Florida Legislature, may mention the candidate's campaign to other colleagues or constituents, as well as answer questions about the candidate's campaign.

(3) Whether a judicial candidate and the candidate's spouse, a member of the Florida Legislature, may attend nonpartisan legislative events, i.e., opening day of the legislative session, open house sponsored by the Governor, etc.

(4) Whether a judicial candidate's spouse, who serves as a member of the Florida Legislature, may attend the candidate's campaign events, such as fund-raisers, coffees, etc.

(5) Whether a judicial candidate's friends who serve in the Florida Legislature and/or on the school board may sponsor a fund-raiser for the candidate.

### Responses

(1) Yes. The Code of Judicial Conduct applies to judicial candidates, justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts, as well as others who perform judicial functions. It does not apply to members of the Florida Legislature. Except to the extent permitted by Canon 7C(1) of the Code of Judicial Conduct, the judicial candidate must 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.

(2) Yes. The Code of Judicial Conduct applies to judicial candidates, justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts, as well as others who perform judicial functions. It does not apply to members of the Florida Legislature. Except to the extent permitted by Canon 7C(1) of the Code of Judicial Conduct, the

judicial candidate must 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.

(3) Yes. The Code of Judicial Conduct does not prohibit these activities. The candidate must at all times, however, maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

(4) Yes. The Code of Judicial Conduct applies to judicial candidates, justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts, as well as others who perform judicial functions. It does not apply to members of the Florida Legislature. Except to the extent permitted by Canon 7C(1) of the Code of Judicial Conduct, the judicial candidate must 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.

(5) Yes. The Code of Judicial Conduct applies to judicial candidates, justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts, as well as others who perform judicial functions. It does not apply to members of the Florida Legislature or to school board members. Except to the extent permitted by Canon 7C(1) of the Code of Judicial Conduct, the judicial candidate 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 Canon 7.

## **Opinion 98-14**

### Issues

(1) Whether a judge may address the electorate about proposed constitutional amendments at partisan and nonpartisan public forums.

(2) Whether an individual judge or a circuit (as an entity) may publicly advocate a position on proposed constitutional amendments.

### Responses

(1) A judge may speak, write, lecture, or teach the electorate at public forums about issues concerning proposed constitutional amendments if they involve the law, the legal system, and the administration of justice. However, subject to the exceptions delineated in Canon 7A(1) (which are not applicable to the current inquiry), a judge is ethically prohibited from addressing a partisan group regardless of the subject matter of the presentation.

(2) Subject to the exceptions delineated in Canon 7A(1) (which are not applicable to the current inquiry), an individual judge may address public forums about the proposed constitutional amendments by speaking, writing, lecturing, or teaching so long as the amendments concern the law, the legal system, and the administration of justice. This permits an individual judge to advocate or take a position regarding the amendments. However, it is inappropriate for a judicial circuit (as an entity) to publicly advocate a position on any proposed constitutional amendments.

## **Opinion 98-17**

### Issue

Whether a candidate for judicial office may attend a “Candidate Question and Answer” forum and reception sponsored by the local Young Republican Club.

### Response

Assuming that the event is not a fund-raiser to benefit any individual candidate or the local Young Republican Club, the judicial candidate *may* attend the event. However, the candidate should be cautious that his or her presence, remarks, and/or actions are not construed by others to be political or partisan.

### **Opinion 98-18**

#### Issues

- (1) Whether a candidate for judicial office may serve on the Executive Committee of a local bar association.
- (2) Whether a newly elected judge may continue to serve on the Executive Committee of a local bar association.
- (3) Whether political parties may endorse judicial candidates.

#### Responses

- (1) The Code of Judicial Conduct does not prohibit a judicial candidate from serving on the executive committee of a local bar association.
- (2) This is a remote hypothetical question. The Committee respectfully declined to render an opinion on this issue.
- (3) This is not an ethical issue, but one of law. Accordingly, the Committee respectfully declined to render an opinion on this issue.

### **Opinion 98-24**

#### Issue

Whether a judicial candidate for merit retention, without active opposition, may speak at a Candidates' Night event sponsored by a local church and open to the general public.

#### Response

Yes. See Canon 7C(2).

### **Opinion 98-25**

#### Issue

Whether a judge-elect may actively participate in nonjudicial campaigns before he is sworn into office as a county judge.

#### Response

No. A judge-elect is no longer a "private citizen", and must curtail his political involvement accordingly. A judge-elect is bound by the political restrictions in the Code of Judicial Conduct and should comply with the restrictions applicable to a sitting judge who is not a candidate. Canon 7(1)(b) prohibits a judge or a candidate for election from publicly endorsing or publicly opposing another candidate for political office.

A judge-elect participating in the political arena would be lending the prestige of his office to advance the private interests of the candidate that the judge-elect is supporting. His involvement could easily convey the impression that the candidate is in a special position to influence the judge-elect.

"One is not bound by the Canons of Judicial Conduct until he legally assumes the duties and responsibilities of a judge." Opinion 74-13. However, the Judicial Qualifications

Commission may investigate and recommend the removal or reprimand of any judge whose conduct in or outside of office warrants such action. The Florida Supreme Court has consistently ruled that pre-judicial conduct may be used as a basis for removal or reprimand of a judge. Inquiry Concerning A Judge, P. Kevin Davey, 645 So.2d 398 (Fla. 1994); Inquiry Concerning A Judge Mark A. Speiser, 445 So.2d 343 (Fla. 1984).

## **Opinion 98-27**

### Issue

Whether a judicial candidate may use radio, television or print advertising which reproduces negative or critical newspaper headlines, stories or opinions about the candidate's opponent.

### Response

A judicial candidate is bound by the Florida Code of Judicial Conduct. See Canon 7. The judicial candidate has posed a question regarding reproducing negative or critical newspaper headlines or critical stories, or critical opinions about the candidate's opponent. The candidate did not provide copies of the materials that she was considering reproducing. However, even if the candidate had submitted these items, the Committee would be reluctant to add to its function the review of judicial candidates' campaign advertisements. In Opinion 94-35 the Committee responded to a request by a judicial candidate for an opinion regarding the ethical propriety of two proposed scripts for television campaign commercials, stating that the Committee "should not approve or disapprove specific language of individual campaign advertisements, but, rather, should provide the ethical provisions which judicial candidates must consider."

In ACLU Of Fla., Inc., v. The Florida Bar, 744 F. Supp. 1094 (N.D. Fla. 1990), Judge William Stafford stated:

*A person does not surrender his constitutional right to freedom of speech when he becomes a candidate for judicial office. A state cannot require so much. Indeed, when a state decides that its trial judges are to be popularly elected, as Florida has done, it must recognize the candidates' right to make campaign speeches and the concomitant right of the public to be informed about the judicial candidates. ACLU, 744 F. Supp. at 1097.*

Nevertheless, Canon 7A(3)(d), which was adopted by the Florida Supreme Court after ACLU, provides restrictions to which a candidate for a judicial office shall adhere. Canon 7A(3)(d) states:

*(3) A candidate for judicial office*

*(d) shall not:*

*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; or*

*iii. knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.*

It would not be a violation per se of the Code for a judicial candidate to reproduce negative articles about the candidate's opponents, but the candidate must follow the mandates of Canon 7. Committee Opinions 94-16 and 94-35 are instructive in this regard. In Opinion 94-16, the Committee stated: "The code does not directly address what is ethically acceptable when a candidate wishes to criticize a political opponent. Our committee finds that in general it would be proper to criticize a political opponent when the criticism is truthful, pertinent and material to judicial office. We find it would also be improper to criticize a judge on any open case as the candidate could conceivably have to rule on the same case and, of course, the incumbent judge

could not comment on a pending case." In Opinion 94-35, the Committee stated that a candidate must carefully craft each advertisement so that there are no improper pledges or misrepresentations.

The Committee would be remiss if it did not direct attention to the Florida Supreme Court's decision in In re Alley, 699 So.2d 1369 (Fla. 1997). In that decision, the Florida Supreme Court sounded a warning to all judicial candidates that it will take judicial campaign ethical violations seriously. Judge Nancy Alley was reprimanded by the Court for judicial election campaign violations. One of those violations was sending campaign mailers that improperly included a portion of a newspaper editorial which falsely implied that Alley, not her opponent, had been endorsed by the newspaper. The Court stated "we find it difficult to allow one guilty of such egregious conduct to retain the benefits of those violations and remain in office. Yet, we are constrained by the JQC's recommendation." The Supreme Court is no longer constrained by the JQC's recommendation. Prior to the 1996 amendment to Article V, section 12, of the Florida Constitution, the Florida Supreme Court's "constitutional prerogative" in judicial disciplinary proceedings was "limited to approving or reducing the disciplinary recommendations of the JQC." In re Inquiry concerning a Judge Fowler, 602 So.2d 510 (Fla. 1992). In 1996, Article V, section 12 of the Florida Constitution, was amended to allow the Supreme Court to modify the recommendations of the JQC. In re Alley, 699 So.2d 1369 (Fla. 1997). Therefore, the Florida Supreme Court is no longer bound by the disciplinary recommendations of the JQC and may now impose a harsher sanction than recommended by the JQC.

## **Opinion 98-31**

### Issues

- (1) Whether a judge may maintain membership in a voluntary bar association that has taken an official position on a proposed constitutional amendment which involves the law, the legal system and the administration of justice.
- (2) Whether a judge may maintain membership in the organization if the organization has joined a political action committee (PAC) for the purpose of supporting the proposed constitutional amendment.
- (3) Whether a judge may maintain membership in the organization if the organization plans to solicit contributions on behalf of a PAC for the purpose of supporting the proposed constitutional amendment, as long as the judge does not personally participate in the solicitation of funds or have his/her name placed on any letterhead or solicitation letter.
- (4) Whether the judge may attend a fund-raising event sponsored by the organization for the purpose of supporting the proposed constitutional amendment.
- (5) Whether the judge may attend the fund-raising event sponsored by the organization for the purpose of raising funds to give to a PAC established to support the proposed constitutional amendment.

### Responses

(1)-(5) Yes. Since it is permissible for a judge to belong to a voluntary bar association, and it is permissible for a judge personally to advocate the passage of constitutional amendments designed to improve the law, the legal system or the administration of justice, then it is permissible for a judge to belong to a voluntary bar association that advocates the passage of such constitutional amendments. The Committee perceived no problem with the bar

organization joining a political action committee devoted to passage of the constitutional amendment.

The judge may maintain membership in the organization, even though the organization plans to solicit contributions on behalf of the PAC formed to support the proposed constitutional amendment, as long as the judge does not personally participate in the solicitation of funds or have his/her name placed on any letterhead or solicitation letter. Canon 4D(2)(d) prohibits a judge from using or permitting the use of the prestige of judicial office for fund-raising or membership solicitation. In accord, see Canon 5C(3)(b)(iii).

A judge may attend the fund-raising event sponsored by the organization to raise funds to support the constitutional amendment, regardless of whether the funds are earmarked for the organization or for the political action committee. The commentary to Canon 4D(2) states that "A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code."

In summary, the judge may maintain membership in a voluntary bar association even though the organization has joined a political action committee to support a proposed constitutional amendment. The judge may also attend the fund-raising event, as long as the judge is not a speaker or a guest of honor. See Canons 4, 5, and 7.

## **Opinion 99-6**

### Issue

Whether a retired judge eligible for recall may write a letter to a Florida United States Senator and express his views on the impending impeachment trial of the President of the United States.

### Response

As a retired judge eligible for recall to judicial service, the inquiring judge should comply with all the provisions of the Code except for Sections 5C(2), 5E, 5F, and 6A. Application of the Code of Judicial Conduct, Section B.

Canon 7D directs that 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. Canon 4B allows a judge to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice, subject to the requirements of this Code. Pursuant to Canon 4C, 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.

The Committee has prohibited judges from publicly advocating their personal opinions about political matters. In Opinion 93-64, all Committee members responding to the inquiry concluded that it would be a violation of the Code of Judicial Conduct to actively advocate for handgun control. "The Committee perceives this to be a political issue not involved in the administration of justice." In Opinion 94-05, the inquiring judge asked whether as a private citizen he could sign a petition calling for a proposed constitutional amendment banning gill netting in state waters. A majority of the Committee found that there may be ethical problems in the judge signing the petition.

The impeachment trial of the United States President is a political issue not involving the "administration of justice," as that term has been construed in prior Committee opinions. Eight of the participating members of the Committee believe that it would be improper for the

inquiring judge to write the United States Senator with his views on the impeachment trial of the President of the United States.

### **Opinion 99-26**

#### Issue

Whether a judge may establish a web page on the internet to prepare for an upcoming election campaign and to provide general information to the public.

#### Response

Under Canon 2, a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. Under Canon 4 a judge may engage in activities to improve the law, the legal system, and the administration of justice. Canon 7 provides guidelines for a political activity.

Nothing in Canon 2 suggests that maintenance of a web site would give the appearance of impropriety. Further, such a web site may well be of assistance to the public in understanding the law, the legal system and the administration of justice. As the inquiring judge recognizes, however, this site may not be used as a forum for the discussion of pending legal matters. See Canon 3B(9). Moreover, the site must not be of a commercial nature, and the judge establishing the site should avoid links to commercial sites.

The Committee also concludes that nothing in the Code of Judicial Conduct prohibits the use of an Internet web site for campaign purposes. A web site may be used for campaign purposes, consistent with the use of any other type of campaign literature or media advertising. In establishing the web site, as with any other campaign activities, the judge must be cognizant of the requirements and restrictions of Canon 7A(3). This Committee is not in a position to authoritatively determine the applicability of Section 106.143, Florida Statutes, to the proposed activity. Nevertheless, the Committee would caution the inquiring judge to make a determination whether, and to what extent, the proposed web site constitutes a "political advertisement." Because Section 106.143 covers political advertisements and campaign literature "published, displayed, or circulated," it would appear that a candidate using a web site for political purposes must conform his or her activities to the requirements of the statute.

### **Opinion 00-12**

#### Issue

Whether a candidate for re-election to judicial office, having no active opposition, may attend a political forum hosted by the national Hispanic Republican Assembly.

#### Response

Yes. If not otherwise precluded by canon, Section 7C(3) will not prohibit the judge from attending a political party function if all candidates for that office, if any, have been invited and the forum is not a fund-raiser.

### **Opinion 00-16**

#### Issues

(1) Whether a non-incumbent candidate for judicial office may host a weekly radio talk show prior to the election and, if elected, continue to host the program before taking office.

(2) Whether a judge-elect may actively participate in partisan political activities before assuming the bench.

- (3) Whether a political party may support a judicial candidate.

### Responses

(1) No, at least under circumstances in which it is anticipated discussion will focus upon current legal matters likely to come before the courts. There would appear to be no prohibition, however, if the program were in the nature of a political advertisement, so long as the candidate otherwise observes the requirements of the Code of Judicial Conduct and Florida election law.

(2) No. Canon 7A(1)(b) prohibits all judges and candidates for judicial office from publicly endorsing or publicly opposing another candidate. Bound by the same restrictions imposed upon sitting judges, a judge-elect actively participating in a political campaign would impermissibly lend the prestige of judicial office to advance another's private interests.

(3) Yes. In Concerned Democrats of Florida v. Reno, 358 F.Supp. 60 (S.D. Fla. 1978), the court struck down Section 105.09, Florida Statutes, which prohibited a political party from supporting, endorsing, or assisting any judicial candidate.

### **Opinion 00-19**

#### Issue

Whether an attorney seeking a judicial appointment who is also campaigning for election to judicial office may raise funds to support his or her election campaign.

#### Response

Yes. An attorney seeking a judicial position through the judicial nominating process is not precluded from simultaneously seeking election to judicial office. Although Canon 7B(1) prohibits a candidate from soliciting or accepting funds to secure appointment, Canon 7C(1) expressly permits a candidate for elective judicial office to establish a committee for the purpose of securing and managing funds for the election campaign.

### **Opinion 00-21 (Elections)**

#### Issues

(1) Whether a non-incumbent candidate for judicial office may use a website address identifying himself as a judge.

(2) Whether the candidate may utilize results of a bar poll ranking the incumbent judge last among other county court judges in five of eight categories, and, if so, whether he or she must disclose the fact rankings were based on responses of only 55 lawyers.

(3) Whether use of voice recordings of incumbent judge in open court are governed by the same provisions applying to use of a bar poll.

(4) Whether a non-incumbent candidate may respond to the media regarding his or her client's pending cases.

#### Responses

(1) No. Canon 7A(3)(d)(iii) provides a candidate may not knowingly misrepresent the identify, qualifications, present position or other fact concerning the candidate or an opponent.

(2) Yes, but care must be taken not to mislead the voting public. Under the Code, the dispositive issue regarding criticism of an opponent appears to be whether such criticism is truthful, pertinent, and material to judicial office. As for the number of lawyers responding, such information must be disclosed if failure to do so would likely mislead the public as to the incumbent's qualifications.

(3) Yes, but statements taken out of context which may raise doubt about a judge and diminish public confidence in the judiciary must be avoided.

(4) No. Such comments by a non-incumbent candidate would be inappropriate given language under Canon 3B(9) which prohibits judges, while a proceeding is pending or impending in any court, from making any public comment that might reasonably be expected to affect the outcome of a case or otherwise impair its fairness.

### **Opinion 00-22 (Elections)**

#### Issues

(1) Whether a candidate for judicial office may speak at a partisan political event which is not a fund-raiser if his or her opponent has also been invited to speak, and, if so, whether the candidate may distribute campaign literature while in attendance.

(2) Whether a judicial candidate may attend and distribute campaign materials at a National Rifle Association fund-raiser.

(3) Whether a judicial candidate may post newspaper articles and editorials relating to the campaign on a website.

#### Responses

(1) Yes. Canon 7C(3) permits a candidate to attend a political party function to speak in behalf of his or her candidacy so long as the event is not a fund-raiser and the invitation to speak includes all other candidates, if any, for the same office. As long as one meets all provisions of Canon 7C(3), it is permissible to distribute campaign literature to persons attending partisan political events.

(2) Yes. The NRA is neither a “political party” nor a “political organization” as that term is defined in the Code. Consequently, upon observing other requirements of the Code, the candidate is not precluded from attending and distributing campaign materials at an NRA fund-raiser.

(3) Yes. Posting newspaper articles and editorials on a website is permissible if the site’s content is consistent with the requirements and restrictions of Canon 7A(3).

### **Opinion 00-23 (Elections)**

#### Issue

Whether a non-incumbent candidate for judicial office may publish a campaign ad stating his or her opponent is a participant in the DROP program.

#### Response

Yes, so long as the candidate complies with all criteria set forth in Canon 7, its subsections, and the cautionary language of the advisory opinion.

### **Opinion 00-24 (Elections)**

#### Issue

Whether a non-incumbent candidate for judicial office may use the phrase “quasi-judicial experience” in his or her campaign literature.

#### Response

Yes, but because the phrase, without qualification, might mislead the general public, the candidate must make specific reference to the actual positions he or she has held.

### **Opinion 00-25**

#### Issue

Whether a judge may return surplus campaign funds pro rata to contributors, including lawyers who may appear in his or her courtroom.

#### Response

Yes. Section 106.141(4)(a), Florida Statutes, permits candidates to return surplus campaign funds to each contributor on a pro rata basis.

### **Opinion 00-26 (Elections)**

#### Issue

Whether a judicial candidate, invited along with all other judicial candidates in the circuit, may attend an informal function as the guest of a political party for the sole purpose of socializing and talking one on one to other guests.

#### Response

No. Canon 7C(3) permits attendance at political party functions only in response to an “invitation to speak.”

### **Opinion 00-27 (Elections)**

#### Issue

Whether a judicial candidate may film an advertisement portraying the candidate addressing a mock jury in a courtroom as if he or she were actually trying a case.

#### Response

Yes, so long as the candidate maintains the dignity appropriate to judicial office and acts in a manner consistent with the integrity and independence of the judiciary. More specifically, he or she must otherwise comply with Canon 7A(3)(d)(iii) which provides candidates must not knowingly misrepresent the identify, qualifications, present position, or other fact concerning the candidate or an opponent.

### **Opinion 00-29 (Elections)**

#### Issue

Whether a judicial candidate may publicize an endorsement of a political party obtained without inviting or interviewing any of the candidates.

#### Response

No. Section 105.071, Florida Statutes, provides candidates for judicial office shall not publicly represent or advertise themselves as members of any political party. Because party endorsements are generally not made outside party affiliation, advertising the endorsement is effectively the same as advertising oneself as a member of the party.

### **Opinion 01-15**

#### Issue

Whether a judge may maintain membership in a voluntary bar association that endorses judicial candidates.

## Response

No. Neither judges nor candidates for judicial office may hold membership in a voluntary bar association that endorses judicial candidates. Such endorsements represent a fairly recent practice at odds with the traditional role of most voluntary bar associations. Though membership in voluntary bar associations is generally permissible, membership in an association that endorses judicial candidates might easily be construed as tacit endorsement of candidates by individual judge members in violation of Canon 7A(1)(b). Similarly, such an organizational endorsement may be seen, under Canon 2B, as impermissibly lending the prestige of judicial office to advance the private interest of those the association chooses to endorse. Perhaps more to the point, judges must perform their duties independently and impartially and are precluded from participating in any activity that might call into question the integrity of the judiciary. Consequently, judicial membership in a voluntary bar association that endorses judicial candidates violates Canons 4A(1) and 5A(1) as it may cast doubt upon the judge's capacity to act impartially.

## **Opinion 02-07 (Elections)**

### Issues

(1) Whether a judge in a contested election immediately after the judge's gubernatorial appointment, may use the word "re-elect" in conjunction with the judge's campaign advertisements.

(2) Whether a judge in a contested election immediately after the judge's gubernatorial appointment, may use the word "retain" in conjunction with the judge's campaign advertisements.

### Responses

(1) No. Section 106.143(5), Florida Statutes, provides a candidate who is not an incumbent of the office for which the candidate is running shall not use the word "re-elect" in any political advertisement. Where the use of a word in conjunction with a campaign is likely to lead others to draw an inaccurate conclusion or will likely result in confusion, the word is to be avoided.

(2) Yes. A candidate who was previously appointed and had not stood for election for the judge's current position is permitted to use "retain" in conjunction with campaign advertisements.

## **Opinion 02-08 (Elections)**

### Issue

Whether a judicial candidate may attend a political meeting to socialize and greet the participants, but not speak.

### Response

No. Canon 7C(3) does not permit a judicial candidate to be on the premises upon which a political party is holding a political meeting for the purpose of meeting and greeting delegates where the candidate, and others, have not been invited for the purposes of speaking on behalf of the candidacy.

## **Opinion 02-10 (Elections)**

### Issues

(1) Whether a traffic hearing officer can endorse judicial candidates?

(2) Whether a traffic hearing officer can make financial contributions to the campaign of judicial candidates?

Response

No. Consistent with the provisions of Canon 7A(1)(b) and (e), a traffic hearing officer cannot publicly endorse or oppose another candidate for public office or make a contribution to a political organization or candidate. Additionally, judicial candidates are no different from other candidates in regard to the impropriety of endorsements or campaign contributions.

**Opinion 02-11**

Issue

Whether a judicial candidate, who, along with his opponent, is invited to speak at a political party meeting may do any of the following: hand out campaign literature; speak with the attendees; and attend the meeting until called upon to speak.

Response

Yes. Subject to the restrictions of Canon 7, a candidate may attend a political party meeting, hand out campaign literature, and speak to the audience. Candidates may arrive at a political party function a reasonable time prior to their speaking time, and may remain at the meeting only until their portion of the meeting is concluded. A candidate may not attend a political party meeting while the party is conducting party business.

**Opinion 02-12**

Issue

Whether a judicial candidate may state: “Elect Prosecutor (name of candidate) for Circuit Judge” on the candidate’s campaign literature.

Response

No. Campaign literature which outlines the candidate’s qualifications, including past legal experience is not only permitted, but encouraged, as long as it is accurate. However, using the words “Prosecutor” or “Assistant State Attorney” as a title identifying the candidate is not permitted. These titles could erode public confidence in the integrity and impartiality of the judiciary and commit or appear to commit the candidate with respect to issues that may come before the court.

**Opinion 02-13 (Elections)**

Issues

(1) Whether a judicial candidate may “privately” disclose his or her political party affiliation if asked; use facilities owned or leased by a political party for various campaign activities; and utilize publicly available information which is provided by a political party.

(2) Whether a candidate for judicial office may express his or her philosophy regarding the candidate’s general approaches to the construction of the Constitution and Florida Statutes and express personal opinions about controversial issues such as religious freedom and abortion.

(3) Whether a judicial candidate may publicize information about his or her opponent’s business practices and dealings as gleaned from public records and newspaper articles.

Responses

(1) No. According to Section 105.071, Florida Statutes, the only permitted political activity or expression by a judicial candidate is the exercise of the candidate’s right to vote and

accepting contributions from any political party is forbidden. The disclosure of political party affiliation to any member of the public in the course of a campaign improperly injects partisan politics into a non-partisan race—which is strictly prohibited by Canon 7. Likewise, utilization of facilities owned or leased by a political party and utilizing publicly available information provided by a political party injects party politics into a nonpartisan election. In addition, Section 105.09, Florida Statutes, classifies endorsing, supporting, or assisting any candidate in a campaign for election to judicial office by a political party as a second degree misdemeanor.

(2) Yes. 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. Moreover, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views.

(3) Yes. A candidate may publicize information about his or her opponent, if it is relevant to the qualifications for judicial office and it does not misrepresent the identity, qualifications, present position, or other fact concerning the opponent.

### **Opinion 02-16 (Elections)**

#### Issue

Whether a judicial candidate may attend a fund-raiser for an anti-discrimination political organization.

#### Response

No. Attendance at such an affair may be perceived as a public endorsement by the judge of a particular candidate or issue. Moreover, a judicial candidate's attendance and participation at such an event could cause persons to question his or her impartiality.

### **Opinion 02-18 (Elections)**

#### Issue

Whether a judicial candidate, who is not a judge, may participate in a fund-raising function for a non-profit organization.

#### Response

Yes. Although Canon 5C does not permit a judge to use the prestige of judicial office for fund-raising for a non-profit civic or charitable organization—until the candidate is elected, he or she is not bound by the Canon.

### **Opinion 03-13**

#### Issues

(1) Whether a blanket invitation in a political party newsletter inviting all judicial candidates to speak is sufficient to allow the candidate to attend and speak even if the opponent is not present.

(2) Whether [acceptance of] an invitation from the political party's president for a candidate and the candidate's opponent, which the candidate attends and the opponent does not attend, is permissible. If so, whether the candidate may speak, greet, and hand out literature.

(3) Whether a candidate not invited to speak may stand outside the function at the

beginning or end of the political party meeting and hand out literature greeting the participants.

(4) Whether a judicial candidate's volunteer workers may wear badges stating to vote for the candidate at party functions and hand out literature.

### Responses

(1) Yes, a blanket invitation is permissible, so long as it is an actual invitation to judicial candidates to attend and speak.

(2) Yes. A candidate may attend in response to an invitation from the political party's president extended to the candidate and the opponent, whether or not the opponent attends. Once the candidate has been properly invited to speak, distribution of campaign literature and materials by the candidate is permitted.

(3) No. Canon 7C(3) specifically provides that a candidate may not participate in partisan political activity, unless the candidate attends the political party function to speak on behalf of the candidate's candidacy, with certain other conditions.

(4) No, unless the judicial candidate is properly present under the provisions of Canon 7.

### **Opinion 03-20**

#### Issue

Whether a judge running for re-election may retain as a consultant a company in which another judge's spouse has an ownership interest.

#### Response

Yes, so long as the judge does not authorize or knowingly permit the consultant, the consultant's employees or its agents to do for the judge anything Canon 7 prohibits candidates from doing, except to the extent permitted by Canon 7C(1).

### **Opinion 03-23**

#### Issue

Whether a judge, who is a candidate for re-election with no announced opposition, can speak to the League of Women Voters and the NAACP regarding adequate funding for the courts in the implementation of Article V, Revision 7.

#### Response

Yes. Speaking on the importance of adequate funding for the courts in light of the implementation of Article V, Revision 7, is a quasi-judicial activity concerning the law, the legal system, and administration of justice—thus, permitted under Canon 4B. Additionally, meeting with the League of Women Voters and the NAACP is not inappropriate political activity, as they are bipartisan/nonpartisan organizations.

### **Opinion 04-07 (Elections)**

#### Issues

(1) Whether a circuit judge who is a candidate for office may directly solicit attorneys for public and financial support.

(2) Whether a circuit judge who is a candidate for office may 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.

## Responses

(1) No. Canon 7C(1) provides that a candidate for a judicial office that is filled by public election between public candidates shall not personally solicit campaign funds or solicit attorneys for publicly stated support.

(2) No. The appearance of impropriety would be great and would erode public confidence in the judiciary if a judicial candidate distributed literature soliciting campaign contributions. See Appendix.

## **Opinion 04-09 (Elections)**

### Issues

(1) Whether a candidate for judicial office may 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.

(2) Whether a candidate for judicial office may directly or indirectly take any affirmative action to obtain the endorsement of a major political party in the election process.

(3) Whether a candidate for judicial office may 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).

### Responses

(1) No. Section 105.071(1), Florida Statutes, and Canon 7 prohibit a judicial candidate from directly or indirectly soliciting the endorsement of a major political party. Therefore, 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.

(2) No. 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. Section 105.09(1), Florida Statutes, proscribes political parties or organizations from endorsing judicial candidates.

(3) Yes. 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. See Appendix

## **Opinion 04-11 (Elections)**

### Issue

Whether a judicial candidate who has no opponent may attend and speak at Democratic and Republican club meetings.

### Response

Yes. Judicial candidates may attend political functions to speak about their candidacy as long as the function is not a fund-raiser, and the other candidates, if any, are also invited. Thus, the judicial candidate may attend and speak even though the candidate has no opposition. The judicial candidate may not, however, attend if the political party function is a social gathering where the candidate would not speak to the body, but would merely have the opportunity to speak to other guests.

# Appendix

# FLORIDA SUPREME COURT

## *Judicial Ethics Advisory Committee*

Opinion Number: 2004-07 Election<sup>1</sup>

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

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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)

<sup>1</sup> 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)<sup>1</sup>

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 any 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.<sup>2</sup> *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.

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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)

<sup>1</sup> 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.

<sup>2</sup> See *American Civil Liberties Union of Florida, Inc. v. The Florida Bar*, 744 F. Supp. 1094 (N.D. Fla. 1990).

# Code of Judicial Conduct

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

*As amended through February 20, 2003 (840 So. 2d 1023)*

## **Preamble**

## **Definitions**

## **Table of 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**

## **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.

"**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.

## **CANON 1**

### **A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**

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

#### ***COMMENTARY***

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

## **CANON 2**

### **A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES**

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

C. A judge should not hold membership in an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership in a fraternal, sororal, religious, or ethnic heritage organization shall not be deemed to be a violation of this provision.

#### ***COMMENTARY***

*Canon 2A. Irresponsible or improper conduct by judges erodes public confidence in the judiciary. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the*

*judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*

*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.*

## **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 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.

(11) 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.

(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 January 23, 2003 (838 So. 2d 521).

### **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). The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does 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 masters, 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. Sec. 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 or body. 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 also 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, effective Nov. 9, 1995 (656 So. 2d 926);  
Aug. 24, 1995 (659 So. 2d 692); January 23, 2003 (838 So. 2d 521).

## **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) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

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 agency 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 participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(b) 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;

(c) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4D(2)(a), if the membership solicitation is essentially a fund-raising mechanism;

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Amended February 20, 2003 (840 So. 2d 1023).

### **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. 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 Section 2C and accompanying Commentary.*

*Canon 4B. The canon is 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 Section 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 and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and 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.*

*Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 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.*

*A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.*

Amended February 20, 2003 (840 So. 2d 1023).

## **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) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

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 participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 5C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(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 Section 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. 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.

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 January 10, 2002 (816 So. 2d 1084); February 20, 2003 (840 So. 2d 1023).

### **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. 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 Section 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 Section 2B regarding the obligation to avoid improper influence.*

*Canon 5C(2). Section 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 Section 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.*

*Section 5C(2) does not govern a judge's service in a nongovernmental position. See Section 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 Section 5C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 5C(3).*

*Canon 5C(3). Section 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 Section 5C(2).*

*See Commentary to Section 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 Section 5C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 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 Section 5C. For example, Section 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. Solicitation of funds for an organization and 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.*

*Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 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.*

*A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.*

*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 Section 2B; see also Section 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 Section 3E(1) relating to disqualification.*

*Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 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 Section 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 Section 5B regarding use of the phrase "subject to the requirements of this Code."*

*Canon 5D(2). This Section 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 Section 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). Section 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 Section 5D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 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 Sections 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, Section 5D(5)(e).*

*Canon 5D(5)(h). Section 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 Section 5D(4).*

*Canon 5F. Section 5F 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 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 Section 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.*

Amended February 20, 2003 (840 So. 2d 1023).

## 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 January 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 is generally 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

*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. Section 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.*

## 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 maintain the dignity appropriate to judicial office and act in a manner consistent with the 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;

(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 any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(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; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 7A(3)(d).

#### 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.<sup>4</sup> 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.

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<sup>4</sup>When first adopted, 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). Previously there had been no time limit on the establishment of a campaign committee or on the expenditure of funds in furtherance of a judicial campaign. This restriction was enjoined by the United States District Court for the Northern District of Florida. Zeller v. Florida Bar and Florida Judicial Qualifications Commission, Case No. TCA 95-40073-MMP (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).

(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).

(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 August 24, 1995 (659 So. 2d 692); May 30, 1996 (675 So. 2d 111); November 12, 1998 (720 So. 2d 1079).

## 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.*

*Canon 7A(3)(a). 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)(d). Section 7A(3)(d) prohibits a candidate for judicial office from making statements that appear to 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. See also Section 3B(9), the general rule on public comment by judges. Section 7A(3)(d) 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.*

## **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 magistrate, court commissioner, special master, general master, 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. Traffic Magistrate**

A traffic magistrate:

(1) is not required to comply with Section 5C(2), 5D(2) and (3), 5E, 5F, and 5G, and Section 6B and 6C.

(2) should not practice law in the civil or criminal traffic court in any county in which the magistrate presides.

### **B. Retired/Senior Judge**

A judge who has retired from judicial service and who has complied with the procedures established by the Supreme Court of Florida so as to be eligible for recall to judicial service should comply with all the provisions of this Code except Sections 5C(2), 5E, 5F, and 6A. A retired judge who is subject to recall shall not practice law 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. A retired judge who is subject to recall may serve

as a mediator, may place his or her name on the mediator master list maintained by the chief judge, and 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 judge may in no other way advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation services. A retired judge assigned to adjudicate a case shall disclose any negotiations or agreements for the provision of mediation services between the judge and any of the parties or counsel to the case. The purpose of these admonitions is to ensure that the judge's impartiality is not subject to question.

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.

#### 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 traffic magistrates.*

*Section B. Although a retired judge subject to recall may act as a mediator or arbitrator, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. See Canon 5D(1). This provision is intended to prohibit a senior judge from soliciting lawyers to use his or her mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity. If a senior judge is rendering mediation services for compensation in civil personal injury matters, he or she should not accept a judicial assignment for that type of case in the same court where the senior judge is mediating those cases. On the other hand, the senior judge could be assigned judicial duties in other jurisdictions of that same court, e.g., criminal, family law, or probate matters, or be assigned as a senior judge in other geographic areas in which the judge does not conduct mediation proceedings.*

#### 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

### NONPARTISAN ELECTIONS

- 105.011 Definitions.
- 105.031 Qualification; filing fee; candidate's oath; items required to be filed.
- 105.035 Alternative method 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.
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- 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 first primary election. Candidates for the office of school board member shall qualify no earlier than noon of the 50th day, and no later than noon of the 46th day, before the first 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 seeking to qualify by the alternative method, as set forth in s. 105.035, if the person has submitted the necessary petitions by the required deadline and is notified after the fifth day prior to the last day for qualifying that the required number of signatures has been obtained, shall be entitled to subscribe to the candidate's oath and file the qualifying papers at any time within 5 days from the date he or she is notified that the necessary number of signatures has been obtained. 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 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 alternative method. 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 forward all filing fees to the Department of Revenue 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 shall 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 taken the oath required by ss. 876.05-876.10, Florida Statutes; 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; and that he or she has resigned from any office which he or she is required to resign pursuant to s. 99.012, Florida Statutes.

(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.

(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.

**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.

**105.035 Alternative method 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 alternative method shall not be required to pay the qualifying fee required by this chapter. A person using this petitioning process shall file an oath with the officer before whom the candidate would qualify for the office stating that he or she intends to qualify by this alternative method for the office sought. Such oath shall be filed at any time after the first Tuesday after the first Monday in January of the year in which the election is held, but prior to the 21st day preceding the first day of the qualifying period for the office sought. The form of such oath shall be prescribed by the Division of Elections. No signatures shall be obtained until the person has filed the oath prescribed in this subsection.

(2) Upon receipt of a written oath from a candidate, the qualifying officer shall provide the candidate with a petition format prescribed by the Division of Elections to be used by the candidate to reproduce petitions for circulation. If the candidate is running for an office which 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.

(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 21st 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. Prior to 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 21st 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. Prior to 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.

**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 judicial office and candidates for the office of school board member which appear on the ballot at the first primary election shall either be grouped together on a separate portion of the ballot or on a separate ballot. The names of candidates for election to judicial office and candidates for the office of school board member 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.**—

(a) Except as provided in paragraph (b), 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."

(b)1. The names of candidates for the office of circuit judge shall be listed on the first primary ballot in the order determined by lot conducted by the director of the Division of Elections of the Department of State after the close of the qualifying period.

2. Candidates who have secured a position on the general election ballot, after having survived elimination at the first primary, shall have their names listed in the same order as on the first primary ballot, notwithstanding the elimination of any intervening names as a result of the first primary.

(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.

#### **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 first primary election. If any candidate for such office receives a majority of the votes cast for such office in the first 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 first 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.

#### **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.