IN THE SUPREME COURT OF FLORIDA

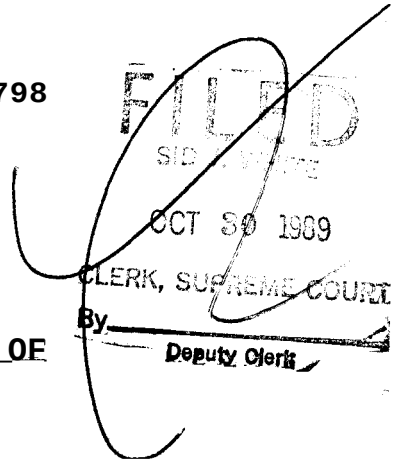
HONORABLE MARY ANN MacKENZIE,
Judge of the Circuit Court of
Florida, Eleventh Judicial
Circuit,

Respondent/Petitioner,

vs. CASE NO: **74,798**

SUPER KIDS BARGAIN STORE, INC.

Petitioner/Respondent
_____/



BRIEF OF AMICUS CURIAE. CONFERENCE OF CIRCUIT JUDGES OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

Amicus Curiae, Conference of Circuit Judges of Florida, adopts and incorporates herein by reference the Statement of the Case and the Statement of the Facts set forth in the Brief of Respondent/ Petitioner, the Honorable Mary Ann MacKenzie.

SUMMARY OF ARGUMENT

The ramifications of the certified question are far broader than the question as stated. The opinion of the district court leaves unanswered more questions than it resolves and achieves a result in conflict with the existing system of judicial selection, contrary to existing precedent pertaining to the disqualification of trial judges and likely to significantly disrupt the conduct of judicial business.

Acting upon the constitutional mandate that judges of the circuit and county courts be elected, the Legislature has allowed for contributions to judicial campaigns, but limited those contributions as to amount. The mandatory rule adopted by the district court serves to destroy this constitutional and statutory system by discouraging contributions from attorneys and parties who are likely to appear before judges in the circuit or county courts. This court should not, by adopting the mandatory rule set forth in the opinion of the district court, judicially legislate an alteration in the system of electing judges to the trial bench in this state.

Neither existing statutory law, rules of procedure, applicable provisions of the Code of Judicial Conduct or the Code of Professional Responsibility require or sanction the mandatory rule requiring disqualification of trial judges in all cases where they, or their spouses, have received campaign contributions. Neither does existing case law support this mandatory rule. To the contrary, all existing authority premises disqualification of

circuit judges upon a familial relationship with a party or attorney, an interest in the outcome of the case, prior representation of a party by the judge, or an existing personal bias or prejudice.

The mandatory rule of disqualification based upon campaign contributions fails to consider a myriad of factors that may play a role in the making of campaign contributions and serves to require disqualification for any campaign contribution, regardless of whether the reason for making the contribution is laudable or undesirable. Furthermore, the mandatory rule of the district court can only serve to encumber the process of assigning cases and judges, encourage judge shopping and delay the prompt administration of justice in the trial courts of this state. It may further serve to penalize the judiciary by discouraging well qualified candidates lacking the resources to run a judicial campaign or impair the ability of those candidates, if elected, to perform their judicial functions.

This court should not sanction the drastic alteration in the Florida court system that would result from a rule of absolute disqualification based upon campaign contributions made to a judicial candidate or his spouse. Rather than by judicial decree, any alteration in the system of electing judicial candidates or administering justice in the State of Florida is appropriately achieved through the vote of the citizens, the legislative process or, alternately, through the adoption of duly promulgated rules or amendments to the Code of Judicial Conduct.

An affirmative answer to the certified question pending before this Court will not provide the necessary guidance to members of the bar and the judiciary and will only serve to encourage the filing of motions for disqualification, review through petitions for writs of prohibition and certification of factually specific questions to this Court. This case-by-case analysis can only serve to delay the judicial process and result in the additional expenditure of judicial resources contrary to the goals of an already overworked judicial system.

ARGUMENT

THE CERTIFIED QUESTION BEFORE THIS COURT SHOULD BE ANSWERED IN THE NEGATIVE: ACCEPTANCE OF A CAMPAIGN CONTRIBUTION BY A TRIAL JUDGE OR A TRIAL JUDGE'S SPOUSE DOES NOT REQUIRE DISQUALIFICATION OF THAT JUDGE IN CASES INVOLVING THE CONTRIBUTING ATTORNEY

The District Court of Appeal for the Third District, in its en banc opinion dated September 14, 1989, certified to this Court the following question of great public importance:

> Is a trial judge required to disqualify herself on motion where counsel for a litigant has given a $500 campaign contribution to the political campaign of the trial judge's spouse?

However, as is evident from the majority and the dissenting opinions in the district court, the ramifications of the certified question are far broader than the question as stated. Unfortunately, the opinion of the District Court raises and leaves unanswered more questions than it resolves. As the ensuing discussion will illustrate these unanswered questions, and their ramifications, achieves a result in conflict with the existing system of judicial selection, contrary to existing precedent pertaining to disqualification of trial judges and likely to significantly disrupt the conduct of judicial business.

A. CODIFIED AUTHORITY DOES NOT REQUIRE DISQUALIFICATION OF A TRIAL JUDGE BASED UPON THE ACCEPTANCE OF A CAMPAIGN CONTRIBUTION BY THE JUDGE OR THE JUDGE'S SPOUSE FROM AN ATTORNEY

In the State of Florida it is constitutionally mandated that the judges of the circuit and county courts be elected by a vote of the qualified electors within the territorial jurisdiction of

the respective court. Florida Constitution, Article V, Section 10(b). In furtherance of this constitutional mandate, the Florida Legislature has enacted laws governing the elective system, including the election of county and circuit judges. Within the scope of this legislation are laws restricting campaign contributions. Implicit in this legislation is the recognition that, by limiting the amount of financial contributions to potential office holders, the Legislature can serve to reduce the tendency or possibility of creating a quid pro quo relationship between the contributor and the candidate and further avoid the creation of an appearance of influence or corruption.

Acting upon these concerns and its legislative authority, the Florida Legislature, in §106.08(e), Fla.Stat., has limited contributions to candidates for the positions of county or circuit judge to the sum of $1,000. Thus, in this area of vital concern to the Legislature, it has made the decision that, to accomplish the public good in this particular field, contributions of less than $1,000 are not only legal but also presumed not to create the appearance of a quid pro quo relationship or of any influence or corruption. Had the Legislature felt that such a contribution by an attorney would create the appearance of or fear of bias by a trial judge, a lesser amount or a complete prohibition would have been imposed.[1]

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[1] At least two commentators have suggested that the best way for the state to protect its citizens from due process violations occasioned by an extraordinary judicial campaign contributions may be to prevent those contributions from becoming extraordinary in the first

Instead, the Legislature has determined that, because the citizens of the State of Florida have constitutionally determined to elect their county and circuit judge and, because a judicial election campaign, as any other campaign, requires funds that must be raised through donations and contributions, contributions to judicial campaigns will be allowed, but limited as to amount. Implicit in this legislation is the acknowledgement that to disallow the funding of judicial campaigns through contributions may well serve to restrict judicial candidates to only those able to underwrite their own campaigns, thereby potentially excluding well-qualified candidates.

However, the decision of the district court may serve to destroy this constitutionally and statutorily created system by discouraging contributions from attorneys or parties who are likely to appear before judges in the particular county or circuit. Attorneys are thereby placed in the dilemma of contributing to judicial campaigns for candidates who may be well qualified to serve, but who will thereafter be unable to hear cases involving the attorney, or avoiding campaign activity entirely in order to eliminate the possibility of future conflicts which may serve to limit the attorney's ability to practice in that county or circuit. Similarly, judicial candidates will be forced to decide between

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place. This may be accomplished, consistent with the First Amendment, by limiting contributions to judicial campaigns. Note, Judicial Campaign Contributions, **86** MICH.L.REV. **382** (Nov. **1987**); Note, Disqualifying Judges, 40 STAN.L.REV. **449** (January, **1988**).

accepting contributions and having their ability to perform their primary judicial function restricting or risking the inability to conduct an adequate campaign and thereby be completely foreclosed from performing the judicial functions. Such a result is contrary to constitutional guarantees, legislative intent and the codes of conduct adopted by this Court for both attorneys and the judiciary.

The first consideration to be addressed is the extent to which the Legislature, or this Court, should act to restrict the electorial process as it pertains to the judiciary. The starting point for this analysis must be a recognition of the First Amendment freedom of political association. Although this right is not absolute, any legislation or action limiting this right must be narrowly tailored to achieve the legitimate state interest of regulating the electorial process so as to protect the political rights of the public and the integrity of the political system, while also avoiding unnecessary infringement upon these associational freedoms. Buckley V. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976); Cousins v. Wigoda, 419 U.S. 477, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975); Treiman V. Malmquist, 342 So.2d 972 (Fla. 1977). Any regulations or restrictions placed upon the elective process must be reasonable and necessary and not inconsistent with the constitution. Unreasonable and necessary restraints on the elective process are prohibited and the state may not impose unnecessary or unreasonable qualifications upon candidates so as to impose upon the sovereign right of the people to select their officers. Treiman V. Malmquist, supra. This

principle applies not only to legislative restrictions, but is equally applicable to judicial review.

In Richmond v. Shevin, 354 So.2d 1200 (1977) this Court affirmed the final judgment of the circuit court upholding the constitutionality of certain portions of the election law as applied to a judicial trust fund. This Court quoted with approval from the final judgment of the trial court that: ". . . it is not for this court to determine what is best for the people of the State of Florida but only to determine whether the Legislature, in enacting the laws under consideration, did so within the confines of legitimate authority." Id. at 1203. However, the result in the district court takes this step by indirectly subverting the legislative authorization of campaign contributions to a judicial candidate. As recognized by the dissent in the opinion below: "However well motivated, such action constitutes a violation of this court's function and, in effect, amounts to judicial legislation." Breakstone v. MacKenzie, 14 FLW 2223, 2228 (Fla. 3rd DCA 1988), (Nesbitt, Judge, dissenting.)

It is entirely possible that the people of the State of Florida, through their Legislature, may determine that it is time for a change from an elected judiciary that involves competing candidates and campaigns. It is entirely possible that the people of the State of Florida, through their Legislature, may choose to revise the system to eliminate the elected judiciary, alter the method of funding judicial election campaigns, or otherwise modify the system. However, it is the prerogative of the Legislature to

devise the appropriate system for elections, determine whether an evil exists and enact the appropriate changes. It is not the role of the judiciary to mandate such a change by undermining the existing system.

Existing statutory law, as well as codes of professional conduct adopted by this Court further support the conclusion that the mere fact of a campaign contribution by an attorney should not serve to automatically disqualify a judge from hearing a case involving that attorney.

Beyond the express authorization of contributions up to $1,000 to a judicial candidate contained in Section 106.08(1)(e), Florida Statutes, the Legislature has also chosen not to include as a substantive basis for disqualification of a trial judge campaign contributions made to a judicial candidate by an attorney. **See**, Sections 38.02, 38.10, Florida Statutes. No other portion of Chapter 38, or the remainder of Florida Statutes, makes the receipt of a legal campaign contribution a basis for mandatory disqualification.

Nor do the Rules of Procedure address this issue. Florida Rule of Criminal Procedure 3.230(d), and Rule 1.432(d), Florida Rules of Civil Procedure, address judicial disqualification, but neither requires mandatory disqualification in the event of judicial campaign contributions.

To the contrary, the Code of Judicial Conduct specifically recognizes the elective status of the Florida judiciary addressing, in Canon 7, B., issues pertaining to campaign conduct. Subsection

(2) of that Canon prohibits a candidate from direct solicitation of campaign funds or support, instead requiring the candidate to "establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy." Subsection (2) goes on to expressly reject any prohibition upon solicitation from "any person or corporation authorized by law." Addressing issues of judicial financial activities and disqualification, Canon 5 of the Code of Judicial Conduct does not include political contributions and does not require disqualification based upon campaign contributions made to a family member or to a judicial candidate. Similarly, Canon 3, C. provides a representative list of circumstances under which a judicial disqualification is required. Campaign contributions are not included as a basis for disqualification.

Although the list is not intended to be exclusive, in developing and adopting the Code of Judicial Conduct, this Court has addressed issues of financial activities and campaign conduct, including contributions, and has not made the mere receipt of a campaign contribution by the judge or judge's spouse as grounds for disqualification. To the contrary, the Code of Judicial Conduct clearly anticipates disqualification primarily in circumstances where an interest in the outcome exists on the part of the presiding judge, there has been prior representation by the judge or where there exists a personal bias or prejudice.

This Court's recognition of the organized bar's involvement

in the judicial campaigning process is illustrated in the preamble to the Rules of Professional Conduct which, in itemizing a lawyer's responsibilities, includes:

> A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

Rules Regulating the Florida Bar, Chapter 4. Applying this principle, appellate court decisions have recognized the obligation of the bar to make the state election system work by direct participation on an individual basis, including campaigning actively in support of or against judicial candidates. Marexcelso Compania Naviera v. Florida National Bank, 533 So.2d 805, 807 (Fla. 4th DCA 1988); Caleffe v. Vitale, 488 So.2d 627, 629 (Fla. 4th DCA 1986); Ravbon v. Burnette, 135 So.2d 228, 230 (Fla. 2nd DCA 1961).

Contrary to these judicial recitations of the obligations of the trial bar, the district court in the instant case has created unreasonable impediments to the fulfillment of these obligations that will no doubt result in a chilling effect upon the participation of members of the bar in the judicial election process. This chilling effect can only serve to impair the existing state election system by discouraging members of the bar from participating in the campaign process, either through campaign contributions or statements of support, thereby impairing the public's ability to look to the bar for guidance in choosing among judicial candidates. The guidance of the bar in this area is of paramount importance due to the absence of daily contact between the public and the judiciary and the prohibitions upon pledges or

promises contained in the Code of Judicial Conduct. Canon 7, B. (1)(c). The net result may well be a less competent judiciary where selection is based upon factors other than the qualifications of the judicial candidate.

B. EXISTING CASE LAW DOES NOT SUPPORT DISQUALIFICATION OF A TRIAL JUDGE BASED UPON THE ACCEPTANCE OF A CAMPAIGN CONTRIBUTION BY THE JUDGE OR THE JUDGE'S SPOUSE FROM AN ATTORNEY

The mandatory rule set forth by the majority in the opinion below offends the presumption of regularity and propriety upon which our legal system is based. Breakstone v. MacKenzie, 14 FLW at 2230 (Schwartz, Chief Judge, dissenting); Robinson v. State, 325 So.2d 427 (Fla. 1st DCA 1976). The lack of prejudice on the part of a judge against a lawyer or a judge's ability to impartially hear cases is generally presumed. McDermott v. Grossman, 429 So.2d 393 (Fla. 3rd DCA 1983).

Although there may be facts peculiar to the instant case which overcome this presumption of impartiality and support the disqualification of the trial judge, the mandatory rule imposed by the district court in the instant case goes far beyond these considerations. Instead, an underlying presumption of impropriety is adopted with the further presumption that a judge will no longer abide by his or her oath and, in every case, permit the fact of a contribution to influence his or her judgment regardless of the significance of the contribution and whether the contribution is known by the judge. This rule can only serve to impair the perception of the general public regarding the judicial system and the presumption of regularity and propriety upon which it is based.

This rule fosters an injustice upon the trial bench of this state and undermines the existing electorial system and public confidence in the legal system.

The question raised in this case and certified by the district court has not been specifically addressed prior to the decision of the Third District Court of Appeal; however, we are not without guidance from existing case law in resolving this question.

As a starting point it is well established that disqualification of a judge is premised upon whether his impartiality may reasonably be questioned. Livingston v. State, 441 So.2d 1083, 1086-87 (Fla. 1983). In raising the issue a petitioner must assert facts reasonably sufficient to create a well founded fear in the mind of the party that he or she will not receive a fair trial. Fischer v. Knuck, 497 So.2d 240, 242 (Fla. 1986). If the motion is legally insufficient, it must be denied and the judge must then continue to discharge his judicial functions in the case. State ex rel Jensen v. Cannon, 163 So.2d 535, 537 (Fla. 3rd DCA 1964). Of course, the legal sufficiency of a motion and the grounds stated therein is purely a question of law. City of Palatka v. Frederick, 128 Fla. 366, 174 So. 826 (1937).

Applying these rules to factual circumstances similar to those arising in the instant case, the courts of this state have generally not required disqualification of the judge.

In Ervin v. Collins, 85 So.2d 833 (Fla. 1956) disqualification of members of this Court was sought in an action to which the

Governor was a party. Disqualification was sought as a result of the alleged close, intimate, and personal friendships between the Governor and certain justices, as well as the Governor having appointed other justices to the court with alleged personal and political friendships being alleged. This court determined these allegations to be insufficient to constitute the legal basis for disqualification.

Similarly, in Raybon v. Burnette, 135 So.2d 228 (Fla. 2nd DCA 1961) the court found disqualification to be inappropriate based upon allegations that one of the attorneys of the law firm representing the plaintiff was a candidate for the office of circuit judge and the trial judge whose disqualification was sought, was the other candidate. It was further alleged that all of the members of the law firm actively supported the candidacy of their partner, and the plaintiff actively campaigned for the election of the firm member. Finally, it was alleged that the defendant's attorney and the members of his law firm publicly endorsed and supported the judge in the election and contributed money to his campaign. In its opinion, the district court recognized the existing system of electing circuit judges and the obligation of the bar to campaign and become otherwise involved in the electorial process. As a result, the denial of the motion for disqualification was affirmed on appeal.

Finally, in Marexcelso Compania Naviera v. Florida National Bank, 533 So.2d 805 (Fla. 4th DCA 1988), disqualification was sought based upon allegations that favoritism existed on the part

of the trial judge as a result of that judge's soliciting political support from opposing counsel, but not from plaintiff's counsel. In affirming the denial of the disqualification motion the court found the facts exhibited "the type of endorsements and financial support that lawyers are generally encouraged to give judicial candidates." Adopting a general rule the court went on to state:

> We conclude that, standing alone, solicitation of an endorsement and campaign contribution from the lawyer for one of the parties in a law suit by the campaign staff of the trial judge does not create the existence of a reasonable basis for the other party to doubt the trial judge's impartiality.

Id. at 807. Thus, absent a specific and substantial political relationship disqualification will not be required.

Applying this reasoning to the facts of the instant case, the general rule set forth by the district court in its opinion creates a presumption of a specific and substantial political relationship as a result of a campaign contribution in the amount of $500. Although the facts of the Breakstone case may require disqualification of the judge in question based upon other elements, there is no support for the proposition that the mere fact of a campaign contribution to a judge or his or her spouse creates the type of specific and substantial relationship that the courts have, in the past, relied upon to require disqualification. Where disqualification has been required it has generally involved circumstances where a specific attorney is actually running an ongoing re-election campaign or there is a familial relationship. See, Caleffe v. Vitale, 488 So.2d 627 (Fla. 4th DCA 1986); Roudner

V. MacKenzie, 536 So.2d 299 (Fla. 3rd DCA 1988). Alternately, some affirmative act on the part of the judge illustrating prejudice or lack of impartiality will be required. See, McDermott v. Grossman, 429 So.2d 393 (Fla. 3rd DCA 1983).

Sister states dealing with almost identical issues have uniformly found campaign contributions to be insufficient to require disqualification. In Ainsworth V. Combined Insurance Company of American, 774 P.2d 1003 (Nev. 1969) Nevada's highest court recognized that:

> This state's constitution and code of judicial conduct specifically compel and countenance the election of all state judges, and leading members of the state bar play important and active roles in guiding the public's selection of qualified jurists. Under these circumstances, it would be highly anomalous if an attorney's prior participation in a justice's campaign could create a disqualifying interest, an appearance of impropriety or a violation of due process sufficient to require the justice's recusal from all cases in which that attorney might be involved.

Id. at 1020. Quoting from In Re: Petition to Recall Dunleavv, 769 P.2d 1271, 1275 (Nev. 1988). The Ainsworth court concluded:

> If the mere fact that an attorney had contributed to a judge's campaign constituted a reasonable ground for the subsequent disqualification of that judge, upon a challenge made after the judge has ruled on the merits of a motion, the conduct of judicial business in the courts of this state would be severely and intolerably obstructed.

Id. at 1020.

Similarly, in Texas, disqualification based upon campaign contributions has been found insufficient to require disqualification where there is an absence of any allegation of judicial relationship to a party, previous representation or the

judge's having an interest in the result of the case. River Road Neighborhood Association v. South Texas Sports, Inc., 673 SW.2d 952 (Tex. App. 4 Dist., 1984). The same Texas court in Rocha V. Ahmad, 662 SW.2d 77 (Tex. App. 4 Dist., 1983) applied provisions similar to the Florida Code of Judicial Conduct and found that disqualification was not required based upon political contributions and other po1itical activities. The court recognized facts equally applicable to the analysis under Florida's electorial system:

> Under our system, which requires the candidates for judicial office to stand for election, it is necessary, unfortunately, that candidates for judicial office seek contributions for the purpose of defraying all or part of the expense of what is, in reality, a political campaign.
>
> * * *
>
> It is not surprising that attorneys are the principle source of contributions in a judicial election. We judicially know that voter apathy is a continuing problem, especially in judicial races. . .

Id. Concluding that disqualification was not required, the court observed the ramifications of the position urged by the moving party:

> If a judge cannot sit on a case in which a contributing lawyer is involved as counsel, judges who have been elected would have to recuse themselves in perhaps a majority of the cases filed in their courts. Perhaps the next step would be to require a judge to recuse himself in any case in which one of the lawyers had refused to contribute or, where still, had contributed to that judge's opponent.

Id. Undoubtedly the same considerations and possible ramifications apply under the mandatory rule adopted by the district court in the

instant case. See also, Frade v. Costa, 171 NE.2d 683 (Mass. 1961).

C. EFFECTIVE AND EFFICIENT ADMINISTRATION OF JUSTICE IN THE STATE OF FLORIDA WILL BE SIGNIFICANTLY IMPAIRED BY MANDATORY DISQUALIFICATION FOR CAMPAIGN CONTRIBUTIONS

As initially noted in this brief, the opinion of the district court in Breakstone raises and leaves unanswered more questions than it resolves. The opinion provides a foundation for continued litigation and appeals pertaining to its scope and its application to a variety of factual scenarios. Although it is recognized that any opinion or rule will not apply to every factual circumstance that may arise and each case may possess its own unique characteristics, the mandatory rule adopted by the district court does not serve to further the administration of justice in this state.

The district court in Breakstone certifies to this Court the question of whether a $500 campaign contribution requires disqualification. However, the opinion of the district court repeatedly references the "substantial" nature of that contribution. Even so, aside from finding the $500 contribution to be substantial, the court offers no other guidance in this regard. As a result, left unanswered is the question of substantiality for purposes of a monetary contribution and the question of what dollar figure becomes "insubstantial." In an analogous situation involving a judge holding an account in an insolvent bank and thereby possessing creditor status, this Court

found the five or six dollars owed by the bank to be sufficiently substantial to require recusal. State ex rel Mickle v. Rowe, 100 Fla. 1382, 131 So. 331 (1931). Thus, left is the question of whether a five or six dollar contribution is sufficiently substantial to create the presumption of prejudice or whether a contribution more closely approaching the statutory limit imposed by the Legislature is required before the presumption will take effect.

If substantiality is going to be the test, we are left with unresolved questions as to the extent to which non-financial contributions will create the presumption. Does a bumper sticker or yard sign violate this test, or is an endorsement required? Will attendance at a reception violate the test? Although these activities may be as innocuous as a small financial contribution, of which the candidate may or may not be aware, other activities may be less substantial in scope than a financial contribution, but more important to the judicial campaign. Whereas in some campaigns or some communities a $500 contribution will be substantial, in other campaigns or communities it may constitute the proverbial "drop in the bucket."

The mandatory rule allows no room for consideration of the individualized factors that may be relevant to the question of bias, or the appearance of bias, such as the amount of the contribution in question, the timing of the contribution and the pattern of support, if any, existing between the contributor and the judge. The amount factor might depend upon the total amount

of contributions received and the percentage contributed by the attorney. The timing factor may relate to a specific case or the length of time mad before re-election. A pattern of past contributions would determine where there is a well established pattern of support indicating a course of dealing between the judge and the attorney that might raise the probability of bias. No such flexibility is permitted under a mandatory rule. See, Notes, Judicial Campaign Contributions, 86 MICH.L.REV. 382, 418 (Nov. 1987).

The mandatory rule also serves to create the presumption of bias without considering the myriad of reasons for campaign contributions to judicial races. First, small amounts are often contributed simply because it is a common practice. Although the total amount a candidate may receive from this type of contribution can be substantial, no single contribution stands out above the rest. Second, a contribution may occur because a lawyer believes a candidate would be a good judge. Typically only a small fraction of the voters will make this type of contribution. Third, a contribution may be made because the contributor agrees with the policy which the candidate represents. If one of the reasons for electing a judge is to hold him accountable to the public, this is also a laudable reason for contribution. Finally, a contribution may occur to curry favor with the judge. This obviously is the least desirable form of contribution and the one for which the disqualification rule is intended. However, the question becomes whether a rule of absolute disqualification is appropriate to

simply alleviate the form of contribution which may constitute a relatively small portion of the total contributions. Additionally, the other categories will not be deterred from a rule of disqualifying the judges as none are directed toward a specific performance by a specific judge in a specific case. **See**, Note, Disaualifvina Judges, **40** STAN.L.REV. **449**, **479-483** (January, **1988**).

Once the presumption takes effect, lingering questions remain as to the length of time for which disqualification is required and whether it applies to any political race, or only a judicial contest.

For the trial bar further questions arise relating to the extent to which personal involvement on the part of the attorney is required before disqualification takes effect or whether disqualification applies to any matters handled by any partners or associates of the contributing attorney. For large or statewide law firms the problem may become unmanageable and essentially preclude some firms from litigating in the county or circuit courts of this state. A change of firms by a contributory attorney may further complicate the matter and further expand the scope of the disqualification.

Finally, of greatest concern to this amicus is the effect upon the administration of justice in the trial courts in this state. The mandatory rule of the district court can only serve to encumber the process of the assignment of cases and judges and delay the prompt administration of justice in the trial courts of this state. In smaller circuits the inevitable result may be the

disqualification of all judges within the circuit, thereby requiring special appointments by this Court or judges crossing circuits or counties to hear cases. The inconvenience, delay and expense inherent in such a process is evident.

Even in larger circuits or counties, the mandatory rule of the district court can only serve to encourage judge shopping. Carefully placed campaign contributions may serve to guarantee that an attorney or a firm will not have a case heard before a particular judge believed to be unfavorably disposed to the attorney or firm, the position, client or manner of practice. The result may be an overload of case work for particular judges and a paucity of assignments for others. Because the system of campaign contributions and support is premised upon the theory of obtaining the most qualified possible judiciary, the mandatory rule of the district court will serve to defeat this purpose. The net result may be judges who have obtained the largest amount of campaign contributions or other support having an unreasonably light case load as a result of disqualifications, while less qualified members of the bench may be forced to handle more cases based upon a lack of endorsements. Alternately, more qualified candidates for the bench may have difficulty in obtaining campaign contributions or endorsements should the trial bar fear subsequent disqualifications and the inability to have a well qualified judicial candidate hear their cases should he be elected. Thus, the mandatory rule imposed by the district court serves to penalize lawyers for carrying out their ethical responsibilities and

supporting the most qualified judicial candidates. The judiciary may be penalized by the inability to obtain well qualified candidates who may simply lack the independent financial resources to run a campaign. The end result is unnecessary harm to the judicial system without the resolution of any of the problems of public perception that the mandatory rule is designed to eliminate.

This Court should not sanction such a drastic alteration in the Florida court system, a result not appropriately accomplished unilaterally by judicial decree, but more appropriately achieved through the political or legislative process. This process will serve to allow the complete examination of the issues and conflicting interests, a balancing of those interests and input from the general public that is inherent in the political and legislative process. The "checks and balances" system essential to our constitutional form of government requires as much.

Alternately, this matter is more appropriately addressed through the adoption of duly promulgated rules or amendments to the Code of Judicial Conduct where input from various interests can be solicited and a complete analysis can be conducted. Such a process can only result in the adoption of rules and standards that will provide a greater degree of guidance to the bar and the judiciary and avoid the type of case by case analysis the opinion of the district court encourages. This case by case analysis will only serve to encourage more motions for disqualification, petitions for writs of prohibition to the district court and the certification of factually specific questions to this Court. The delay in the

judicial process and the expenditure of judicial resources through such a method is apparent and contrary to the goals of the judicial system. Such legal maneuvering can only serve to further impair the public's perception of the bar and the judiciary, creating a cure far worse than the illness.

CONCLUSION

The Conference of Circuit Judges of Florida respectfully suggests that the question certified to this Court by the District Court of Appeal for the Third District be answered in the negative and that the writ of prohibition issued by the district court be vacated. Alternately, the Conference of Circuit Judges of Florida would respectfully suggest that any affirmance of the writ of prohibition granted by the district court be limited to the facts of that case and the mandatory rule adopted by the district court be rejected.

Respectfully submitted this 30 day of October, **1989.**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to:

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by U.S. Mail this 30 day of October, 1989.

KEITH C. TISCHLER