IN THE SUPREME COURT OF FLORIDA

HONORABLE MARY ANN MACKENZIE,
as Judge of the Eleventh
Judicial Circuit Court, in and
for Dade County, Florida,

Petitioner,

v. CASE NO. **74,798**

SUPER KIDS BARGAIN STORES, INC.,

Respondent.

HONORABLE MARY ANN MACKENZIE,
as Judge of the Eleventh
Judicial Circuit Court, in
and for Dade County, Florida,

Petitioner,

v. CASE NO. **74,800**

ARTHUR BREAKSTONE, et al.,

Respondents.
_____/

AMICUS CURIAE BRIEF OF THE DADE COUNTY BAR ASSOCIATION

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STATEMENT OF THE CASE AND OF THE FACTS

In the instant case, the facts have been set forth in the third district's opinion in Breakstone v. MacKenzie, 13 F.L.W. 2595 (Fla. 3d DCA Nov. 29, 1988), on rehearing en banc, 14 F.L.W. 2223 (Fla. 3d DCA Sept. 14, 1989) (The Third District's opinion on rehearing en banc is cited in this brief by refernce to the pages of the slip opinion.). In that decision, the district court 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 $500.00 CAMPAIGN CONTRIBUTION TO THE POLITICAL CAMPAIGN OF THE TRIAL JUDGE'S SPOUSE.

This Court, on the petition of Judge MacKenzie, accepted jurisdiction and, on November 9, 1989, this Court granted leave to the' Dade County Bar Association to file an amicus curiae brief in this proceeding.

SUMMARY OF ARGUMENT

The Dade County Bar Association agrees that every litigant is entitled to "the cold neutrality of an impartial judge." Pistorino v. Ferguson, 386 So.2d 65, 67 (Fla. 3d DCA 1980). It is the considered position of the Bar Association, however, and a position which we believe is endorsed by the Florida Legislature and all Florida courts to have addressed the issue, that a litigant cannot reasonably fear that he has been deprived of that neutrality merely because an opposing party's attorney has made a legal contribution to the judge's campaign, or has engaged in other legal activity in support of the judge's candidacy.

The vast majority of the Dade County Bar Association's Board of Directors strongly supports The Florida Bar's current efforts to include the trial court judiciary in the merit selection/retention system that exists for our appellate courts. Until merit retention of trial judges is a fact, however, we must work within the current system. The Dade County Bar Association believes that lawyers have a duty to assist the public in selecting qualified judges for the trial courts. To assist its members in fulfilling that duty, the Dade County Bar Association sponsors an annual Judicial Poll regarding the qualifications of trial judges and candidates for the bench, and has organized a Judicial Campaign Practices Commission to encourage all those involved in judicial

campaigns to adhere to the guidelines set forth in the Code of Judicial Conduct.

In the view of the Dade County Ba Association, it is imperative that lawyers be unfettered in engaging in legal campaign activities, including the making of campaign contributions up to the legal maximum, in support of candidates for the trial bench. As the Supreme Court of Florida and all the other courts of this state that have addressed the issue have recognized, lawyer involvement in judicial campaigns is the only way for the public to make informed choices regarding candidates for the judiciary. In the absence of the Bar's active involvement in judicial campaigns, and the other programs of the Bar mentioned above, the public would be largely in the dark as to the qualifications of various candidates, because even the candidates themselves, for the most part, would be unable to raise the funds necessary to publicize information regarding their qualifications.

At the same time, the Dade County Bar Association is not blind to the perception of many members of the public that parties whose attorneys have contributed, financially or otherwise, to a judge's campaign may be treated differently than parties whose attorneys have not done so. Unfortunately, that mistaken perception is an unavoidable by-product of the decision to elect trial judges that is reflected in the Florida constitution. See Richman v. Shevin, 354 So.2d 1200, 1204 (Fla. 1977), cert. denied, 439 U.S. 953 (1978). Until trial

judges are chosen by a merit selection/retention process, [1/] the legally unfounded, but in fact existing "perception" that undue influence will be wielded by attorneys who have assisted in a judge's campaign is an unfortunate, but inevitable, part of making the system function effectively."'

In the instant cases, this Court must confront the most disturbing dilemma arising out of our Constitution's requirement of an elected trial court judiciary. This Court should resolve that dilemma by permitting lawyers to engage in

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1/ The Dade County Bar Association's most ambitious attempt to rid the trial courts of the perception of bias was its creation of the judicial trust fund. This Court, however, in Richman v. Shevin, **354** So.2d 1200 (Fla. **1977),** cert. denied, **439** U.S. **953 (1978),** held that the fund was a "political committee" and therefore could contribute no more than $1,000 to a judicial campaign. Pending the institution of a merit selection/retention system for trial judges, the Dade County Bar intends to continue to work to develop ideas such as the judicial trust fund to permit lawyers to continue to fulfill their responsibility to help the public select a quality judiciary, while decreasing the negative perceptions of the system that inevitably result from attorneys' financial and other support of judicial candidates.

2/ Respondents make too much of the Bar's acknowledgment that such a perception may exist; what Respondents have overlooked is that the controlling issue in deciding whether disqualification is necessary is the legitimacy of that perception. As is demonstrated infra, such a perception is completely at odds with our chosen system of electing trial judges. In other words, while a particular person may in fact fear that such a contribution would deprive him of a fair trial, that fear, as a matter of law, is not well-founded, and therefore disqualification is unnecessary. As the dissent put it below "we cannot operate a judicial system ... on the basis of the unsubstantiated perceptions of the cynical and distrustful.'*

any legal activity, including the making of campaign contributions, in order to fulfill their responsibility to aid the public in the identification and election to the bench of the most qualified persons available.

ARGUMENT

NO LEGAL INVOLVEMENT BY AN ATTORNEY IN THE CAMPAIGN OF A JUDGE SHOULD REQUIRE THAT JUDGE'S DISQUALIFICATION.

In the instant cases, the third district has held that a $500.00 campaign contribution to the judicial campaign of a sitting judge's spouse, without more, requires the disqualification of the sitting judge from any cases handled by the attorney who made the contribution."[3/] The Dade County Bar Association believes that result is incorrect for the following reasons:

a. All Florida cases to address the issue hold that past legal campaign activities do not taint the process with an aura of prejudice; additionally, the statutory permission of judicial campaign contributions up to $1,000.00, and the Code of Judicial Conduct provisions permitting fund raising and other campaign activities, implicitly recognize that no legal

3/ In the instant brief, the Dade County Bar Association will focus on contributions, or other activity, in support of the presiding judge. Obviously, there is even less reason for disqualification when the candidate who receives the support is a family member.

campaign contribution should result in the disqualification of a judge.

b. The lower trbunal's holding will discourage attorneys from fulfilling their duty to become involved in judicial election campaigns; alternatively, lawyers who fulfill that duty will be penalized for their having done *so.*

c. The holding of the lower court will create confusion among the Bar and judiciary because it will be impossible to determine with any reasonable degree of certainty whether various levels of financial support and other campaign conduct would constitute grounds for the disqualification of a judge.

It is the position of the Dade County Bar Association that, for the reasons set forth above, which are discussed in detail below, this Court should enter an opinion in the consolidated cases holding that legal activity in support of a judge's campaign will not subsequently require that judge to disqualify herself in cases involving the party or litigant who contributed the campaign support.[4/]

4/ As the parties have argued at great length, the question before this Court is not whether any negative public perception exists as a matter of fact, but whether, as a matter of law, the fact of a legal campaign contribution creates a "well-grounded fear that [a litigant] will not receive a fair trial at the hands of the judge." Draqovich v. State, 492 So. 2d 350, 352 (Fla. 1986) (quoting State ex rel. Brown v. Dewell, 131 Fla. 566, 179 So. 695, 697 (1938)). See also Livingston v. State, 441 *So.* 2d 1083 (Fla. 1983).

a. The Third District's Holding Will Discourage Attorneys From Fulfilling Their Duty to Become Involved in Judicial Election Campaigns; Alternatively, Lawyers Who do Fulfill that Duty Will be Penalized for Their Having Done So.

The constitution of the State of Florida provides that judges of the circuit and county courts:

> shall be elected by a vote of the qualified electors within the territorial jurisdiction of their respective courts.

Fla. Const. art. V, §10(b). Recognizing that this system of electing our trial court judiciary calls upon the public to make a reasoned judgment regarding candidates for judicial office, the courts of Florida have urged all members of The Florida Bar to actively participate in the judicial election process. Accordingly, both the Rules of Professional Conduct, and the decisions of Florida appellate courts, emphasize that duty. For instance, in Raybon v. Burnette, 135 So.2d 228 (Fla. 2d DCA 1961), the Court stated:

> "In order to make the existing state election systems work (whether the state elects or appoints its judiciary) the informed opinion of the members of the bar as to the qualifications of judicial candidates should be brought to the attention of the voters. This should be more than a mere poll of the relative popularity of the various candidates among the members of the bar.
>
> "The bar should not be content with the mere announcement of its recommendations. It should campaign actively in support of

> its position for or against judicial candidates. The public should be encouraged to look to the bar for guidance in choosing among candidates.
>
> "The bar should make the public aware of the need for qualified judges * * * ."
>
> This report lays to rest plaintiff's misconceived notion with respect to members of the bar actively supporting a judge in his election campaign.

135 So.2d at 230 (quoting Report of the National Conference on Judicial Selection and Court Administration). See also Marexcelso Compania Naviera, S.A. v. Florida Nat'l Bank, 533 So.2d 805, 807 (Fla. 4th DCA 1988) ("attorneys are generally encouraged to support candidates for judicial office and do so.") Accord Fla. Rules Prof. Conduct 4-8.2 (comment).

The instant decision of the Third District, far from encouraging lawyers to fulfill their obligation to actively engage in campaign activities in support of qualified judges, will have the opposite effect. Lawyers will face the Hobson's choice of contributing to the campaigns of judges who will serve with ability and integrity but can never hear their clients' cases or, alternatively, refraining from any campaign activity in order to avoid unreasonable limitations on their practice. In either case, qualified judges will be less likely to obtain the support needed to win elections.

Furthermore, the opinion below erroneously states that the disqualification required therein is not mandatory, and need

occur only on motion of a party. On the contrary, the Code of Judicial Conduct requires that:

> A Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.

Code of Judicial Conduct, Canon 3(C)(1). Because the instant opinion holds that a campaign contribution greater than $500.00 creates a "well-founded fear" of prejudice, the existence of such a contribution, which the judge should be aware of from the public records of the campaign, would mean that "his impartiality might reasonably be questioned." Therefore, disqualification would be mandatory. [5/]

Accordingly, this Court should enter an opinion in the consolidated cases that recognizes the importance to our current system of lawyers' contributions to judicial campaigns, and should refuse to hold that a judge should be disqualified

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5/ The opinion below states that the Bar "seriously underestimates the strength of character of Florida attorneys," and that the "suggestion that a candidate's friends and supporters will fail to assist at a substantial level through fear of possible disqualification of the judge ... defies both logic and experience." Of course, the Bar intends no such suggestion, nor does it doubt the "strength of character" of its members. Instead, the Bar suggests that a lawyer ought not be required to forgo the right to practice before a qualified judge because the lawyer has chosen to make an allegedly substantial $500.00 campaign contribution that will, because of the decision below make disqualification a certainty, not a mere possibility.

merely because the attorney for one of the parties has made a legal contribution to that judge's campaign."'

b. The Legislative Permission of Judicial Campaign Contributions Up to $1,000.00, and the Code of Judicial Conduct Provisions Permitting Fundraising in Judicial Campaigns, Implicitly Recognize that No Legal Campaign Activity Should Result in the Disqualification of a Judge.

In the early 1970's, Florida's legislature enacted laws restricting campaign contributions. The genesis of those restrictions was the presumption that campaign contributions in certain large amounts might result in the appearance, or the actuality, of undue influence on the part of the campaign contributor. See Chotas, Florida's Campaign Finance Law: A Restoration of the Public's Confidence?, 28 U. Fla. L. Rev. 458 (1976). In its wisdom, the Florida legislature limited contributions to candidates for the trial court to $1,000.00. Fla. Stat. §106.08(e). Presumably, then, it was the opinion of the legislature that a candidate for trial court receiving a contribution of less than $1,000.00 could not reasonably be

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6/ We have not argued this point in an attempt to have this Court "ignore an otherwise well-founded fear, based upon possible collateral consequences" (Slip Opinion at 13), but to demonstrate, through the description of those consequences, that the "fear" is not well-founded at all; the drafters could not have intended that the Code (adopted in 1973) or the statute (parts of which have been around since 1918) would, so many years later, yield such an unworkable result.

suspected of being unduly influenced by the contributor.[7/] Indeed, had the legislature felt otherwise, it would have included the receipt of campaign contributions from a party or its attorney as a ground for mandatory disqualification under Fla. Stat. §38.02; it is of some significance that the receipt of legal campaign contributions or other campaign assistance is nowhere mentioned in that chapter.

The opinion below states -- erroneously in our view -- that the campaign finance laws' "structure and function" is merely to disclose contributions *so* that the electorate "may draw their own conclusions --- about any potential or actual conflicts of interest." (Slip opinion at 12.) If disclosure really were the sole purpose of those laws, however, the maximum limit on contributions would be irrelevant; indeed, even those law review note cited in the third district's opinion makes it clear that disclosure alone was not the only purpose of those laws, and that contributions were limited because "reporting requirements alone would not be adequate protection against the undue influence of large contributions." Chotas, Florida's Campaign Finance Law: A Restoration of the

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7/ The Third District's opinion suggests that, if Florida "disclosure" laws were the source of a "bright-line" test for determining whether a campaign contribution creates a well-founded fear of bias, the court would have chosen the $25.00 statutory threshold for disclosure of gifts, or the $100.00 limit on gifts contained in the Code of Judicial Conduct. Because a campaign contribution is not a "gift", however, those limits would be irrelevant.

Public's Confidence, 284 Fla.L.Rev. 488, 490 (1976). And as the instant opinion points out, contribution limits have been upheld against a constitutional challenge precisely because they prevent "the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions ..." (Slip opinion at 7) (quoting Buckley v. Valeo, 424 U.S. 1, 22 (1976)).

The Code of Judicial Conduct also recognizes that judges must engage in campaign activities in order to retain their office, and permits a judge to establish a committee in order to solicit campaign funds. Code of Judicial Conduct, Canon 7(B)(2). Despite its specific recognition of the necessity of raising campaign funds, the Code of Judicial Conduct does not list any legal campaign activity in its enumeration of mandatory grounds for disqualification under Canon 3(C).

Quite obviously both the legislature and the Supreme Court of Florida having specifically recognized the inevitability, and indeed the desirability, of lawyers contributing campaign funds to judges, would have included the making of a campaign contribution as a mandatory ground for disqualification had they considered that fact, without more, sufficient to create a well-grounded fear of prejudice. Indeed, all the Florida cases to consider this point agree that past legal campaign activities by counsel for a party on behalf of a judge, or even

on behalf of the judge's opponent, are not grounds for disqualification.

In Raybon v. Burnette, supra, the plaintiff sought the disqualification of the trial judge on the ground that one of the attorneys in the law firm representing the plaintiff had been a candidate against the trial judge. The plaintiff, and all of the members of his attorney's firm, had actively supported counsel's campaign while the defendant's attorney and the members of his firm "publicly endorsed and supported the [trial] judge in the election and contributed money to his campaign." Raybon, 135 So.2d at 229. The trial judge, after reviewing the motion for disqualification, found that the motion was not legally sufficient and refused to disqualify himself.

On appeal, the second district affirmed and held that the motion for disqualification was legally insufficient to show any well-grounded fear of bias. The Court opined that:

> the facts and reasons with respect to the political campaign show nothing more than the bare facts of a political campaign in which the plaintiff and his attorneys campaigned for their candidate, one of the plaintiff's attorneys, and the attorneys for +the defendant campaigned for the judge with public endorsement and financial support.

Raybon, 135 So.2d at 230 (citation omitted) (emphasis added).

In Parsons v. Motor Homes of America, Inc., 465 So.2d 1285(Fla. 1st DCA 1985) the plaintiff, Parsons, alleged that

the trial judge committed error when he refused to recuse himself despite the fact that Parsons had announced his candidacy for the circuit court seat held by the trial judge. The trial judge held that the motion was legally insufficient to show a well grounded fear of prejudice; that decision was upheld on appeal.

In Marexcelso Compania Naviera, S.A. v. Florida Nat'l. Bank, 533 So.2d 805 (Fla. 4th DCA 1988), the trial judge entered a sua sponte order of recusal after a final judgment had been entered, and granted a new trial to Marexcelso. The disqualification order was based on the fact that counsel for the defendants had received a letter in the mail seeking an endorsement of, and a contribution to, the trial judge's reelection campaign. Defense counsel had signed the endorsement and sent it back to the judge. Subsequently, the judge's campaign treasurer called the defense counsel's office, although the call was never returned and defense counsel never made a contribution. After a final judgment was entered in favor of the defendants, the judge reconsidered her previous denial of the plaintiff's motion for disqualification and entered a sua sponte order disqualifying herself and ordering a new trial.

On appeal, the fourth district held that the plaintiff's allegations were legally insufficient to disqualify the trial judge, and merely exhibited:

> the type of endorsements and financial support that lawyers are generally encouraged to give judicial candidates.

Marexcel o, 533 So.2d at 807. The court went on to hold th t:

> standing alone, solicitation of an endorsement and campaign contribution from the lawyer for one of the parties in a lawsuit 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. If unsuccessful solicitation of campaign contributions does not require disqualification, it is illogical to conclude that a successful request for legitimate assistance creates a presumption of bias on the part of the judge.

Only two Florida cases involving campaign activities have resulted in a judge's disqualification, and neither turned solely on the issue of the attorney's involvement in the judge's campaign. Indeed, in both cases there were other substantial factors independently requiring disqualification that are not present in the instant consolidated cases.

In Caleffe v. Vitale, 488 So.2d 627 (Fla. 4th DCA 1986), a husband discovered, during post-dissolution proceedings, that his wife's attorney was actually running the trial judge's ongoing reelection campaign. The judge denied the husband's motion for disqualification. On appeal, however, the fourth district granted the hubsband's petition noting that there was other evidence in the record which created the ''appearance of a special relationship" that would have reasonably substantiated Caleffe's fear that he would not receive a fair trial; that

evidence consisted chiefly of a letter sent by the wife's lawyer, who was running the judge's campaign, to the trial judge:

> explaining why the lawyer had requested a hearing before the judge on a motion for contempt, as opposed to the apparent customary hearing before a general master. The letter states, "my client is inclined to want your judiciousness and wisdom as opposed to a General Master . . . and wishes to continue to place all disputed matters before you as opposed to anyone else."

Caleffe, 488 So.2d at 629.

The decision in Caleffe v. Vitale merely requires a trial judge to disqualify herself if it is alleged both that an adverse attorney is actually running the trial judge's ongoing reelection campaign, and that the evidence shows "the appearance of a special relationship" between that attorney and the judge.

In another "campaign activities" case, McDermott v. Grossman, 429 So.2d 393 (Fla. 3d DCA 1983), the petitioner's sought to disqualify the trial judge because, after learning that one of the plaintiff's attorneys had opposed the judge's selection to other judicial positions, the judge had delivered a "tirade" against the attorney concerning his lack of support for her. The district court noted that counsel's prior opposition to the judge, standing alone, would not merit disqualification because:

> Where a lawyer voices his opposition to the election of a judge, it is assumed that the judge will not thereafter harbor prejudice

> against the lawyer affecting the judge's ability to be impartial in cases in which the lawyer is involved.

McDermott, **429** So.2d at **393** (citation omitted). The judge's delivery of a "tirade", however, was a different matter, clearly evidencing prejudice against the plaintiff's lawyer. The district court accordingly found that the moving papers were legally sufficient and that the plaintiff had a well-grounded fear that he would not receive impartial treatment from the trial judge who had delivered a tirade against his lawyer.

The cases in Florida therefore hold that legitimate political activities, in support off or in opposition to a judge, without more, do not create a well-grounded fear of prejudice.

c. The Holding of the lower tribunal Will Create Confusion Among the Bar and Judiciary Because it is Now Impossible to Determine Whether Various Levels of Financial Support and Other Campaign Conduct Would Constitute Grounds For the Disqualification of a Judge.

In its opinion below, the third district held, in essence, that a "substantial contribution*' (although anything over $500 is defined as substantial, lesser amounts also) may be to the campaign of a judge's spouse requires a judge to disqualify herself in all cases handled by the lawyer making the

contribution. That result is unworkable because it leaves so many questions unanswered. Among the issues that concern the Bar and judiciary are the following:

a. What is a substantial contribution? Is substantiality determined by the amount, by the percentage of the total campaign funds raised, or by some other criterion?

b. From whose cases is the judge disqualified? Only cases in which the attorney appearing before the judge is the same attorney who made the contribution? Or is the judge also disqualified from hearing matters handled by partners or associates of the attorney who made the contribution? And what about an attorney who delivered checks written by others, or checks written by a law firm as an entity rather than an individual attorney?

c. For how long a time after the contribution is a judge disqualified from hearing the attorney's cases? Need we determine only what contributions were made in the most recent campaign of the judge or her spouse? Should we go back to the beginning of the judge's career? Should we include contributions made to the judge or her spouse in prior campaigns for non-judicial offices?

None of these questions is directly answered in the instant opinion. It is the position of the Dade County Bar Association that there is no acceptable answer to these questions because a rule requiring disqualification for legal campaign conduct will penalize lawyers for carrying out their responsibilities or deter them from assisting in judicial campaigns.

1. No reasonable standard can be devised to require disqualification as a result of a legal campaign contribution.

Obviously, for this Court to hold that an attorney's "substantial" campaign contribution should result in the disqualification of the judge to whom the lawyer contributed will cause disarray in judicial campaigns. Without any guidance as to the meaning of the word "substantial" it will be impossible for an attorney to determine, in advance, whether the line of substantiality has been crossed; reasonable persons might disagree with the statement in the opinion below that a "$000 contribution is a substantial one by any standard," and no guidance is given as to lesser contributions or other sorts of campaign support. Likewise, it will be impossible for judges to determine with any degree of uniformity whether future motions for disqualification are sufficient.

This problem cannot be resolved by defining "substantial" to mean a specified proportion of a judge's campaign funds. Obviously, there is no way an attorney can know in advance what portion of campaign funds his contribution will constitute; nor is it an easy task to make that determination accurately at any time. To determine "substantiality" by using a fixed amount, such as $500, as the divid ng line would be even worse. In that case, the attorney who contributed $500 could never handle

cases before the judge while another attorney, who has contributed $499, could.[8/]

It is the position of the Dade County Bar Association, therefore, that no legal campaign contribution, standing alone, should ever result in a presumption of prejudice that would require disqualification.[9/]

2. If legal campaign contributions can result in disqualification, no reasonable standard can be devised to determine which attorney's cases the judge cannot hear.

Regardless of what choice is made in defining "substantial", the rule announced in the opinion below mandating disqualification upon the occurrence of a legal campaign contribution creates another insoluble dilemma. From whose cases should the judge be disqualified? While that question may be answered easily in the case of a sole practitioner, it becomes extremely difficult to answer in the

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8/ The district court below eschewed a bright-line standard in favor of a "substantiality" test, which is, in reality, no test at all. The court said: "[t]he relevant benchmark, while imprecise, is determined on a case by case basis. A $500 contribution is a substantial one by any standard." (Slip opinion at 6).

9/ Of course, if the judge believes she cannot remain impartial, or if she is aware of additional facts which could lead to her impartiality reasonably being questioned, then it is incumbent upon the judge to disqualify herself sua sponte. See Code of Judicial Conduct, Canon 3(C)(1).

context of a law firm. Who should not appear before the judge? Only the attorney who made the contribution, or all attorneys who work in the same law firm? What about attorneys who are "of counsel" or have similar relationships? And what happens when an attorney who has made a substantial contribution moves from one firm to another?

This Court should also take notice of two other facts regarding judicial campaign contributions that further complicate this problem. First, a law firm's contribution of funds to a judge's campaign may take many forms. The partnership or professional association itself may contribute, only certain attorneys in the firm may make contributions, and in either case there may be numerous contributions that no one is aware of other than the attorney making the contribution.[10/] In any of those situations, from whose cases should the judge be disqualified? If a tax lawyer in a firm is a neighbor of a judge and contributes a "substantial" amount to the judge's campaign, are all the litigation

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10/ Although records of contributions theoretically are available to the public, when one considers that there are 99 elected trial judges in Dade County, who have filed thousands of pages of campaign treasurer's reports, obtaining those records, not to mention reviewing them frequently, would be a crushing burden to bear for most members of the Bar and judiciary. It will be necessary for each judge, as well as each lawyer, to make that effort if the instant decision remains unchanged, however, in order to know when disqualification is warranted. See Code of Judicial Conduct, Canon 3(C)(1).

attorneys in thefirm prohibited from appearing before that judge? Are any of them *so* prohibited?

Second, a judge's campaign finance committee often consists of attorneys who collect contributions from many sources and deliver them to the judge's campaign treasurer. If a finance committee member takes the simple expedient of not writing a check of his own, yet collects $5,000 in checks for the judge's campaign fund, would he be permitted to appear in front of the judge, while an attorney who had sent only his own $500 check would not?

Obviously, the problems in enforcing a disqualification rule relating to legal campaign contributions or other legal campaign activity become nightmarish when viewed in the context of all the possible legal campaign finance activities. Accordingly, this Court should not enact a rule requiring disqualification in those circumstances.

In dissent, the Chief Judge of the third district criticized the instant decision's presumption that a $500 contribution to a trial judge's campaign, without more, creates a "well-founded fear" in the mind of a reasonable observer that the trial judge will act corruptly; the Chief Judge said:

> [L]awyers should and -- believe it or not -- often do contribute to a judicial campaign simply because the recipient is regarded as the best candidate for the position, rather than in an attempt to curry favor. Indeed, the candidate may be the object of a contribution just because his character is such, that, as a sitting judge, he would simply not think to show favor to a lawyer just because he had contributed to a successful campaign.
>
> And there is no showing on this record -- which is based entirely on a binding presumption of bias -- that any such proper motivation was not the one which activated the particular contribution. Thus, the majority has taken the presumption of regularity and propriety, which is the foundation of our legal system, and which has heretofore applied even to lawyers, and turned it upside down and inside out into a conclusive presumption of impropriety. We cannot abide treating an act which is both permitted and encouraged to be *so* considered.
>
> We cannot operate a judicial system, or indeed a society, on the basis of the unsubstantiated perceptions of the cynical and distrustful.

(Slip Opinion at 27-28). (Chief Judge Schwartz, dissenting) (citations omitted).

For the foregoing reasons this Court should enter a decision in the consolidated cases holding that legal activity in support of a judge's campaign will not subsequently require that judge to disqualify herself in cases involving the party or litigant who contributed the campaign support.

Respectfully submitted,

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