

**FILED**

SID J. WHITE

JUN 29 1993

CLERK, SUPREME COURT

By \_\_\_\_\_

Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE: PETITION ON THE PROPOSED  
AMENDMENTS TO THE CODE OF  
JUDICIAL CONDUCT.

S. CT.  
CASE NO. 81,685

**RESPONSE OF ANTONIO CAPESTANY, A CITIZEN**

The Respondent, ANTONIO CAPESTANY, a citizen, files this response pursuant to the provisions of Rule 2.130, Rules of Judicial Administration and Article I, Section 21 of the Florida Constitution, hereby respectfully submits this response to amendments to the Code of Judicial Conduct proposed by the Florida Bar's Committee on Standards of Conduct Governing Judges to wit:

1. The undersigned, ANTONIO CAPESTANY, responds in support of the Petition submitted by the Bar's Committee on Standards of Conduct Governing Judges. The proposed changes to the Canons appear to neutralize the existing gender oriented Code and replace the discretionary verbiage with mandatory duties. In addition, the proposed changes mirrors the previous proposal to amend the Rules Regulating the Florida Bar, insofar as the Anti-Discriminative context.

2. The undersigned fully supports the proposed changes to further the administration of justice and to restore the faith in our legal system. However, the physical text changes presupposes a cooperative application and enforcement of the intent of the amendment. It's application must be non-discriminative and mandatory to achieve its purpose.

3. The undersigned respectfully states that the public will benefit from these changes and the following exceptions and modifications were incorporated in the proposed amendments.

a) Canon 3B, (4) Adjudicative Responsibilities as proposed by the amendment:

(4) "A judge ~~should~~ **shall** be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom ~~he~~ **the judge** deals in ~~his~~ **an** official capacity, and ~~should~~ **shall** require similar conduct of lawyers and ~~of his staff~~, court officials, and others subject to ~~his~~ **the judges** direction and control.

Exceptions and modifications to Canon 3B(4) text:

As a preface to 'litigants', insert "pro se" as to read "pro se litigants."

b) Canon 3 (7) Commentary as proposed:

(7) "A judge ~~should~~ **shall** accord to every person who ~~is~~ **has** a legally interest<sup>4</sup> in a proceeding, or ~~his~~ that persons lawyer, ~~full~~ **the** right to be heard according to law." . . .

Exception and modifications to the commentary text:

As a preface to 'according to law.' insert "before a fair and impartial judge" and replace 'according to law' with "in accordance to due process of law."

c) Canon 3 (8) Commentary as proposed:

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

Commentary notes as proposed:

*"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 interest of witnesses and the general public."*

Emphasis on fundamental (parent and child relationships).

The undersigned is in support of expediting matters and/or issues of "fundamental rights". Their can be no more fundamental right than the right of association inherited by the parents of a child and the reciprocal for the child to maintain a tight bond. These rights are deemed essential and fundamental which prepare our children for society and democracy. The free exercise of these rights should not <sup>be</sup> delayed, bought or sold, infringed, or even interfered with, absent some compelling state interest and where these fundamental rights are subject to infringement, the court must utilized the least restrictive means to achieve the legitimate state purpose. Delays due to continuances, unavailability or even attorney incompetence should not be tolerated by our elected public officials. Furthermore, in support of preserving the fundamental rights of the parties, the judge should expedite the matter or issue before the court. (i.e. In cases of dissolution of marriage, the judge should determine only whether or not the marriage is irretrievably broken.) The other matters are fundamental rights, responsibilities and status of the parents. The judge should act diligently and unbiasedly to preserve the rights of the parties and child. (i.e. Familial assets, integrity of the familial relationship and to preserve the familial assets for the child's future.)

Too many courts are permitting "Rambo lawyers" to steal the financial assets from the families under the guise of advocating for the client and the undefinable "best interest of the child", The recent. decision in Katz v. Katz, 4DCA, explained the unnecessary financial hardships of the parents just to dissolve the marriage. It was needless and pointless to argue over the fundamental rights of parenting.

d) Canon 3D, (2) Disciplinary Responsibilities as proposed:

*(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 should take **appropriate action**.*

Exception and modifications to Canon 3D (3) text:

The text use of 'should' in this amendment gives a judge the discretionary duty to blow the whistle on an attorney breaking the Rules Regulating the Florida Bar. Moreover, this presents the judge an opportunity for the carefree duty to exercise discriminatively at the judge's discretion. It would serve and further the administration of justice if the judge was given the non-discretionary duties to promote justice, fairness and avoid foul play. It would be detrimental to the administration of justice if a judge was not supported by the Code of Judicial Conduct to report attorneys breaking the Rules Regulating the Florida Bar. The undersigned respectfully states that the proposed amendment in it's entirety contains the text imposing a mandatory and non-discretionary duty to compel a judge to act

Furthermore, the weasel word 'should' contained in Canon 3D (2), must be replaced with the consistent flavor of the proposed amendment. It is the undersigned's suggestion that **'SHALL'** must replace 'should' in this amendment.

e) Canon 3E (1) Disqualification as proposed:

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

Exception and modifications to Canon 3E (1) text:

The text use of 'should' in this amendment gives a judge the discretionary duty to rule on the legal sufficiency of the movant's request for disqualification. Regardless of the content, the movant provides the court the basis and/or the true reasons for a disqualification. The judge on the receiving end could take the request personal and rule in favor of the adverse party regardless. The movant is exposed and loses psychologically and tactically upon a judge's refusal to disqualify themselves. The converse could have the opposite effect by moving the judge to rule in favor of the movant therefore giving the adverse party a basis for appeal or doubt. It is the undersigned's opinion that a judges' of competent jurisdiction are fair, just and non-prejudicial while acting in the administration of justice. However, from time to time it may be necessary to disqualify a judge to preserve the definitions of fairness, truth and justice. The undersigned is under the belief that the Federal Court judge's disqualify themselves upon application by the movant.

The practice in the state court. require a motion under Rule 2.160, Florida Rules of Civil Procedure, an affidavit under Section 38.10, of the Florida Statutes and an affidavit of good faith. This process is still challenged by the state court judge causing further delay, expenses and damages to both parties. The movant must then invoke the jurisdiction of an Appellate Court to consume more judicial labor in determining the test for a Writ of Prohibition. This cycle must be short circuited by changing the text discretionary text 'should' to a mandatory text of "SHALL".

4. The undersigned is a family advocate with a compelling interest to protect our families from injustices, corruption and rape. The legal system<sup>is</sup> our only hope to save the integrity of our families and society. The fundamental rights and responsibilities of parents and citizens must be protected and preserved for their co-existence. The Federal Courts protect those asserting damages for infringement of secured and protected rights under the Fourteenth amendment of the United States Constitution. The state courts must adopt the same principal of law to safeguard all of our fundamental rights. (i.e. The Bill of Rights). The adoption of this proposed amendment by this Honorable Supreme Court will further the administration of justice. The undersigned states that his belief and personal knowledge of the courts prompted this response. Even if this Honorable Supreme Court does not accept or implement the modifications proposed herein, the undersigned prays this Court accept the proposed amendments to the Judicial Code in it's entirety.

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Comes now the Undersigned, ANTONIO CAPESTANY, pursuant to Rule 9.320, Rules of Appellate Procedure, Article I, Section 21, of the Florida Constitution; respectfully requests that this Honorable Court grant oral argument in support of the proposed petition to amend the Code of Judicial Conduct proposed by the Florida Bar's Committee on Standard Governing Judges in this case.

**I HEREBY CERTIFY** that a true and correct copy of the above and forgoing request for oral argument in support of the Petition of the Proposed Amendments to the Code of Judicial Conduct. was mailed by regular U.S. Mail to the Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, on this 28th Day of June, 1993.

RESPECTFULLY SUBMITTED

  
Antonio Capestany  
1647 NE 185th Street # 124  
N.M.B., Florida 33179  
305-772-0079 office

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SID J. WHITE

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