

IN THE SUPREME COURT OF FLORIDA

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RESPONSE TO *In Re: Report of the Judicial Ethics Advisory Committee  
Regarding Code of Judicial Conduct: Limitations on Judges'  
Participation in Fund-Raising Activities*, No. SC 07-1135

And

PETITION TO AMEND FUNDRAISING  
PROVISIONS OF CANONS 4 AND 5  
OF THE CODE OF JUDICIAL CONDUCT

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Submitted on Behalf of the Judicial  
Administration Section of the Conference of  
Circuit Court Judges by:

The Honorable Kim A. Skievaski  
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On behalf of the Judicial Administration Section of the Conference of Circuit Court Judges and pursuant to Rule 2.140 of the Florida Rules of Judicial Administration, the Honorable Kim A. Skievaski, Chairman, submits this Petition to Amend the Fundraising Provisions of Canons 4 and 5 of the Code of Judicial Conduct. The Chief Judges respectfully request that this Court also treat this Petition as a Comment on *In re: Report of the Judicial Ethics Advisory Committee Regarding Code of Judicial Conduct: Limitations on Judges' Participation in Fund-Raising Activities*, No. SC 07-1135. While the JEAC appears slightly more amenable to positive Code changes regarding fundraising, the Chief Judges remain concerned that the JEAC still advocates that no amendments be adopted. Further, as outlined below, the JEAC's proposed changes are still too narrow. They also add an unnecessary prohibition on judges that unduly restricts the judiciary from using public resources for public benefit. Therefore, the Chief Judges urge this Court to adopt the Chief Judges' proposed amendments to the fundraising provisions of Canons 4 and 5.

#### PROCEDURAL HISTORY

In 2003, upon a petition of the JEAC, this Court adopted amendments to Canons 4 and 5 of the Code of Judicial Conduct to specifically encourage judges'

participation in (1) activities concerning the law, the legal system, the administration of justice, and the role of the judicial branch; and (2) extrajudicial activities. *Code of Judicial Conduct—Amendments to the Code of Judicial Conduct and Rules Regulating the Florida Bar Re Pro Bono Activities by Judges and Judicial Staff*, 840 So. 2d 1023 (Fla. 2003). Believing that these amendments authorized limited fundraising activities, the Chief Judge of the Sixth Judicial Circuit, with the support of the administrative judges, formally asked the JEAC whether judges could ethically participate in a voluntary bar association’s fundraising event by providing goods for sale or auction (including goods personally crafted by the judges), performing a skit, displaying a talent, being a model, or otherwise performing at the event.

The inquiry emphasized that membership in the bar association was strictly voluntary and that no specific judge would be advertised as a participant. Also, no judge would engage in any direct solicitation, such as selling tickets or obtaining sponsors. Nonetheless, the JEAC determined that such participation would run afoul of Canon 4. JEAC Op. 2003-16. According to the JEAC, any participation the public could actually observe would still constitute the solicitation of funds and the use of the prestige of judicial office for fundraising.

Thus, although this Court had specifically encouraged judges' participation in law-related activities involving no advocacy, the JEAC declined to implement any practical change to encourage this participation. Surprisingly, however, the JEAC took a more practical approach to Canon 5 in JEAC Op. 2005-07, which determined that judges may temporarily fill in for cashiers at charitable fundraisers as long as they sell modestly priced items only and do not solicit donations.

Further, the JEAC noted:

[A] minority of the Committee suggests that there should be a comprehensive discussion regarding the Code and its Commentary as they relate to fundraising. Although this opinion is consistent with the Code, there is a perception that the Code itself is out of touch with the reality of community perception and judicial politics, especially in light of recent amendments to the Code which encourage participation in extrajudicial activities. It is strongly recommended that this issue be widely debated when the final ABA Revision of the Model Code of Judicial Conduct is disseminated for comment.

JEAC Op. 2005-07.

Encouraged by this opinion and provisions of the proposed ABA Model Code allowing judges to publicly participate in fundraisers for law-related organizations, several Chief Judges began informally discussing whether the time was right to propose amendments to Canons 4 and 5. In June of 2005, the Chief Judges appointed a subcommittee to consider amendments in depth. This

subcommittee consisted of Chief Judge Joseph P. Farina of the Eleventh Circuit; Chief Judge Manuel Menendez, Jr., of the Thirteenth Circuit; Chief Judge William L. Roby of the Nineteenth Circuit; and Judge Sandra Taylor of the Sixteenth Circuit, with Sixth Circuit Chief Judge David A. Demers serving as chair.

From June until December of 2005, the subcommittee worked extensively on the amendments, which were approved by the Chief Judges in December of 2005. However, the Chief Judges did not move forward with their Proposal because then-Chief Justice Barbara Pariente—noting that the JEAC was already examining changes to the Code and wishing to avoid multiple proposals—directed the Chief Judges and the JEAC to work together to submit a joint fundraising proposal.

Given that the Chief Judges had already spent considerable time and effort developing a fundraising proposal that was ready to be submitted to this Court, the Chief Judges requested that the JEAC endorse their Proposal and offered to explain the significant and involved process behind its development. However, the JEAC declined to issue this endorsement, citing the pending comprehensive revision and the desire to avoid piecemeal changes. Although the Model Code revisions would not be put to a final vote until August of 2006 at the earliest and the JEAC wished

to hold public hearings on its proposed changes, the JEAC stated that it expected to have a comprehensive revision by the end of 2006.

The Chief Judges then returned to Chief Justice Pariente for guidance. They explained that it was more likely that the JEAC would not be able to submit comprehensive revisions until at least the Spring of 2007 and that this delay would unnecessarily prolong resolution of the very narrow fundraising issue. Chief Justice Pariente then directed the Chief Judges and the JEAC to work together on reaching a mutually agreeable proposal. She also directed the JEAC to consider Canons 4 and 5 independently and to file a report on these canons by September 30, 2006.

In an effort to reach a consensus, Judge Demers attended a JEAC meeting in April of 2006 to discuss the Chief Judges' Proposal. The Proposal was not well-received, however, and there did not appear to be any common ground.

On September 27, 2006, the JEAC filed its initial report on the fundraising provisions of Canons 4 and 5 with this Court, recommending that no changes be adopted for either Canon. *In re: Report of the Judicial Ethics Advisory Committee Regarding Code of Judicial Conduct: Limitations on Judges' Participation in*

*Fundraising Activities (JEAC Report)*. However, the Chief Judges did not obtain a copy of the report until November 13, 2006.

As it was already November and ABA Model Code was to be voted upon in February, 2007, the Chief Judges elected to wait until after the ABA vote to take further action on their Proposal. As anticipated, the ABA approved the revisions to the Model Code, including the fundraising provisions.

Just as the Chief Judges were preparing to file this Petition, Judge Demers received a copy of *Supplemental Report of the Judicial Ethics Advisory Committee Regarding Code of Judicial Conduct: Limitations on Judges' Participation in Fund-Raising Activities* (filed May 10, 2007) (*Supplemental JEAC Report*). In light of this supplement, the Chief Judges' subcommittee met on May 25, 2007, to determine whether to move forward with the Chief Judges' proposal, endorse the JEAC's proposed language, or endorse the amended Model Code.

The subcommittee unanimously agreed to submit the Chief Judges' proposal to this Court. Subsequently, the Chief Judges addressed the issue at the Circuit Judges' Conference in late May, 2007 and voted to support the proposal and the instant petition.

## SUMMARY OF ARGUMENT

In 2003, the JEAC appeared to embrace the concept of greater participation of judges in the legal community and public sphere by advocating that such conduct be explicitly encouraged in the Code. However, in practice, the JEAC has not fostered such participation, instead taking a very narrow interpretation of the current Code language. This interpretation has barred judges from engaging in many meaningful activities related to the law, the legal system, the administration of justice, and the role of the judicial branch.

Therefore, amendments to Canons 4 and 5 are needed to encourage judges' practical participation in law-related activities and to foster a better relationship between the judiciary and the community. Regarding Canon 4, the Chief Judges propose adding the following underscored language to Canon 4D(2)(d):

(2) A judge as an officer, director, trustee, or non-legal advisor, or as a member or otherwise:

....

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may appear at, participate in, and permit the judge's title to be used in connection with an event or mass solicitation on behalf of an organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice even when the event or mass solicitation may serve a fundraising purpose. However, such participation is prohibited

if it would 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. Further, a judge is prohibited from engaging in direct solicitation.

This would allow judges to take a more public role in law-related activities even though they may have a fundraising component. However, the Chief Judges' language also guards against improper activity by retaining prohibitions on participation casting doubt on impartiality, demeaning the judicial office, or interfering with the performance of judicial duties. It also clearly prohibits direct solicitation.

Regarding Canon 5, the Chief Judges propose adding the following underscored language to Canon 5C(3)(b)(i):

(b) A judge as an officer, director, trustee or non-legal advisor or as a member or otherwise [of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit]:

(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. A judge may also participate in nominal fundraising activities provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member.

This language merely codifies the JEAC's opinion that under certain circumstances such as charitable concession duty, judges may sell widely-distributed items at a reasonable price. JEAC Op. 2005-07. Again, though, this language retains safeguards against inappropriate activity by providing that the judge must not be identified as such and must participate in the same manner as any other participant.

These amendments will not make sweeping changes to either Canon 4 or Canon 5. Instead, they will merely allow for practical implementation of the language of these Canons, which encourages judicial participation within a limited sphere of activities involving no advocacy. Such participation will permit judges to engage in meaningful activities and enhance the relationship between the judiciary and both the legal and general communities.

## ARGUMENT

I. THE PROPOSED CHANGES TO CANON 4 WILL IMPLEMENT THIS COURT'S GOAL OF ENCOURAGING JUDICIAL PARTICIPATION IN LAW-RELATED ACTIVITIES NOT INVOLVING ADVOCACY WHILE STILL MAINTAINING IMPARTIALITY, DECORUM AND THE PROMPT AND PROPER PERFORMANCE OF JUDICIAL DUTIES.

A. Increased judicial participation in fundraisers for non-advocacy organizations will foster improvements to the law, the legal system, the administration of justice, and the judicial branch and thereby enhance the reputation of the judiciary among the legal community and the public.

Canon 4 of the Code of Judicial Conduct is entitled: *A Judge is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice*. Yet, the current limitations on fundraising activities actually discourage any participation of significance. If this Court desires greater participation of the judiciary in law-related activities and the improvements this participation will bring, it is imperative that Canon 4 be amended.

The Chief Judges' proposed amendment to Canon 4, specifically Canon 4D(2)(d), provides:

(2) A judge as an officer, director, trustee, or non-legal advisor, or as a member or otherwise:

.....

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may appear at, participate in, and permit the judge's title to be used in connection with an event or mass solicitation on behalf of an organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice even when the event or mass solicitation may serve a fundraising purpose. However, such participation is prohibited if it would 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. Further, a judge is prohibited from engaging in direct solicitation.<sup>1</sup>

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<sup>1</sup> The Chief Judges also propose adding the following language to the end of the Commentary to Canon 4D(2):

~~A judge must not be a speaker or a 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.~~

Judges are an integral part of the legal community, and their mere attendance at fundraising events of an organization devoted to improving the law, the legal system, the judicial branch, or the administration of justice is permissible if otherwise consistent with the Code. Further, subject to the limitations set forth in Section 4A, judges may appear at, participate in, or allow their title to be used in connection with the activities or mass solicitation on behalf of such an organization even if the event or solicitation serves a fundraising purpose. Therefore, a judge may generally accept an invitation to speak at or be recognized or honored by an event hosted by such an organization even if the event is a fundraiser for that organization.

However, judges may not participate in or allow their title to be used in connection with fundraising activities on behalf of an organization engaging in advocacy if such participation would cast doubt on the judge's capacity to act impartially as a judge. Further, regardless of the nature of the organization, a judge shall not participate in any activity that demeans the judicial profession, including but not limited to activities exposing the judiciary to ridicule.

Finally, judges may participate in mass solicitation on behalf of organizations devoted to improving the law, the legal system, the judicial branch, or the administration of justice so long as such participation does not cast reasonable doubt upon the judge's ability to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties. For example, a judge could appear in promotional materials for a law school or in an advertisement encouraging financial support for law school scholarships.

Such mass solicitation is permissible because it does not involve the danger that any person receiving the solicitation will feel obligated to respond favorably because the solicitor is in a position of influence or control. "Mass solicitation" includes advertising, films, brochures, and other similar materials disseminated to a broad audience and not directed to any particular individual.

This amendment is substantially similar to that submitted by the JEAC with the exception of the mass solicitation provision discussed below. However, the JEAC continues to maintain first and foremost that this Court should not adopt any amendment to Canon 4. *JEAC Supplemental Report* pp. 6-7.

Contrary to the JEAC’s position, this amendment is necessary because the judiciary is currently constrained from providing any significant service to non-advocacy organizations devoted to improving the law, the legal system, the administration of justice, or the judicial branch. A judge can do behind-the-scenes work such as cooking or cleaning for an event. However, as the Code is currently written, if an event hosted by such an organization has more than an incidental fundraising component, a judge cannot take *any* public role in the event—even when it would not involve any solicitation whatsoever. Thus, the law-related organization cannot benefit from the judge’s “unique position to contribute to the improvement of the law, the legal system, and the administration of justice . . . .”<sup>2</sup>

The *only change* the Chief Judges’ Proposal makes regarding fundraisers for law-related organizations is to allow judges to take a limited and neutral public role in these fundraisers. This will encourage greater involvement of the judiciary in

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<sup>2</sup> Florida Code of Judicial Conduct Commentary to Canon 4B.

law-related activities and consequently enhance the judiciary's reputation in the community. The Chief Judges' Proposal *does not change* the limitations currently in place on such activity—i.e., a judge still could not take this public role if it would cast reasonable doubt on the judge's impartiality; demean the judicial office; or interfere with the proper performance of judicial duties.

Thus, a judge would be allowed to take a public role, such as speaking or entertaining, at a fundraising event on behalf of a non-advocacy organization such as a content-neutral bar association or a law school. However, a judge still could not participate in a fundraiser for any advocacy group because this would cast doubt upon impartiality. Likewise, a judge could not participate in any skit or performance that would be demeaning to the judicial office, and his or her involvement could not interfere with the performance of judicial duties.

The JEAC has raised three arguments against the adoption of the amended language. First, the JEAC maintains that if judges can participate in fundraisers for legal aid societies—ironically, a group this Court has specifically encouraged judges to assist<sup>3</sup>—disqualifications and dereliction of judicial duties will increase.

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<sup>3</sup> See *Amendments to Rules Regulating the Florida Bar—1.3.1(a) & Rules of Judicial Administration—2.065 (Legal Aid)*, 630 So. 2d 501, 504 (Fla. 1993).

However, a judge may agree to speak at a fundraiser for a legal aid organization because he or she believes that all people are entitled to legal representation regardless of their financial situation. The JEAC maintains that it automatically follows that if an attorney with that organization comes before the judge, the judge will be biased toward the attorney or his or her client. Such logic is flawed; instead, the JEAC has made a leap of logic confusing support of adequate representation for the poor with support for a particular cause. Therefore, contrary to the JEAC's fears, participation in fundraisers for legal aid in general would not lead to frequent disqualification or interfere with judicial duties.

Second, the JEAC complains that if the Chief Judges' Proposal is adopted, the Committee might well be put "into the principal business of vetting organizations to determine whether judges can engage in fundraising activities on their behalf that are now proscribed." *JEAC Report* p.3. Yet what is the JEAC's function if it is not to make the sometimes difficult decisions about what is ethically permissible under the Code? The JEAC appears to want to default to a simple bright line when ethical issues are rarely so black and white.<sup>4</sup>

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<sup>4</sup> The Joint Commission revising the ABA Model Code declined to address specific instances where judges might handle money because "[w]hether such activities are appropriate depends upon analysis of the overall event, and the significance of the judge's participation." Reporter's Explanation of Comments to Rule 3.7 Explanation 3.

Unfortunately, this “bright line” has not cast any brightness on encouraging meaningful participation by the judiciary in law-related activities.

Third, the JEAC fears that the Chief Judges’ proposal will open the floodgates to requests for judicial participation, and that all such requests are, “at bottom, [claims] upon the prestige of judicial office designed to advance private interests.” *Id.* pp.2-3. However, local bar associations and many other organizations devoted to the law serve the public interest.

As a result of the JEAC’s current stance, circuit court judges in particular often find themselves in the embarrassing position of having to decline very modest requests to participate in law-related, viewpoint-neutral fundraisers. This apparent aloofness does nothing to enhance the perception of the judicial system in the eyes of the legal community or the public.

Further, far from being encouraged by the current Code language and interpretation, some judges are so concerned about running afoul of the Code that they avoid involvement in the legal community altogether. Other well-meaning judges may be inadvertently engaging in conduct that the JEAC would deem to violate the Code.

Therefore, to truly encourage judges to participate in the legal community and to foster a better relationship between the judiciary and the community, Canon 4 must be amended. The Chief Judges' proposal strikes the proper balance between encouraging participation in non-advocacy activities while still maintaining prohibitions against the appearance of impartiality, demeaning conduct, and activities interfering with the proper performance of judicial duties. Hence, it will not lead to an increase in perceived or actual coercion of the legal community, neglect of judicial duties, or disqualification.

B. Mass solicitation by judges will not be coercive because no specific person will be targeted.

In addition to retaining restrictions on activities that could cast doubt on impartiality, demean the judicial office, or interfere with performing judicial duties, the Chief Judges' Proposal also retains restrictions on direct solicitation. Under the Proposal, no judge could solicit funds from any particular individual.

The only change the Chief Judges have proposed is to allow *mass, or indirect*, solicitation. The JEAC proposal does not contain this provision.

The JEAC has seized upon the term "solicitation" and jumped to the conclusion that it would be direct and hence forbidden. *JEAC Report* pp.7-8. However, mass solicitation would merely allow a judge to appear in an

advertisement, promotional brochure, or other medium directed to a *wide audience*. Since no individual is targeted, there is no danger that the person receiving the solicitation will feel any obligation to respond.

The Chief Judges included this provision because well-meaning judges of this state have already performed mass solicitation by appearing in advertisements supporting the law schools from which they graduated. No one can reasonably suggest that such activity involved any coercion or pressure upon people viewing these advertisements. It is unfortunate that a judge would be precluded from giving back to his or her law school by simply appearing in a widely-distributed medium when the judge owes so much to his or her legal education.

**II. THE CHIEF JUDGES' PROPOSED CHANGES TO CANON 5 WILL ALLOW JUDGES TO MORE FULLY PARTICIPATE IN THE COMMUNITY WHILE STILL MAINTAINING PROHIBITIONS AGAINST DIRECT SOLICITATION.**

The Chief Judges' proposed amendment to Canon 5, specifically Canon 5C(3)(b)(i), underscored below, provides:

(b) A judge as an officer, director, trustee or non-legal advisor or as a member or otherwise [of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit]:

(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. A judge may also participate in nominal fundraising activities provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member.<sup>5</sup>

This amendment is necessary because, just as judges are encouraged to participate in activities on behalf of law-related organizations, they are also encouraged to engage in extrajudicial activities consistent with the Code. The proposed language will clarify that a judge may engage in nominal fundraising as long as he or she is not identified as a judge and participates in the same manner as any other member of the community. In this way, the danger of any coercion—whether direct or indirect—would be removed, and a judge would not have to worry if he or she is crossing the line when suddenly called upon to sell the hot dog or raffle ticket.

The JEAC advocates adding language to the Commentary to Canon 5C(b)(3) permitting judges to pass a collection plate at their place of worship or to act as

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<sup>5</sup> The Chief Judges also propose adding the following language to the end of the Commentary to Canon 5C(3)(b):

Further, a judge may participate in nominal fundraising activity on behalf of an organization provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member. For example, a judge may sell modestly-priced concessions at his or her child's sporting event in the same manner as any other parent, or collect the weekly donation at his or her house of worship in the same manner as any other person.

ushers, food servers or preparers at community fundraisers. However, the JEAC still resists any changes to the Code language itself that would clarify when a judge may engage in fundraising activities on behalf of community organizations. This resistance indicates a rather lukewarm acceptance of the realities of volunteer work and does not set a clear standard for what level of involvement in civic fundraisers will be acceptable. Clear standards may be achieved only through an amendment to the language of Canon 5 itself.

The JEAC also maintains that the Chief Judges' proposal should have used the term "de minimis" rather than "nominal" in relation to the value of goods because "de minimis" is already defined in the Code. However, the definition of de minimis as "an insignificant *interest* that could not raise reasonable question as to a judge's impartiality" does not apply here. The concern with Canon 5 fundraisers is not whether a judge's impartiality might be questioned, but instead whether there is perceived or actual coercion by the judge, particularly in relation to the value of the goods or services involved. The Chief Judges discussed various terms and determined that the common sense definition of nominal—insignificantly small—fit this situation much better than *de minimis*.

Since the Chief Judges' Proposal would allow judges to participate in extrajudicial fundraisers only where they are not identified as judges and their participation does not differ from that of any other participant, no danger of coercion or improper use of the prestige of judicial office would occur. These dangers are even further reduced by limiting judicial participation to nominal fundraising activities for charitable groups.

**III. THIS COURT SHOULD NOT ADOPT THE JEAC'S PROPOSED AMENDMENT REGARDING THE USE OF COURT RESOURCES BECAUSE IT WILL UNDULY RESTRICT THE JUDICIARY FROM THE LEGITIMATE USE OF PUBLIC RESOURCES FOR THE PUBLIC BENEFIT OF THE LAW, THE LEGAL SYSTEM, THE ROLE OF THE JUDICIARY, AND THE ADMINISTRATION OF JUSTICE.**

The JEAC proposes adding language to Canon 4 that prohibits judges from making

use of court premises, staff, stationary, equipment, or other resources for fund-raising purposes, except for incidental use for activities that concern the law, the legal system, or the administration of justice, subject to the requirements of this Code.

*Supplemental JEAC Report Attachment C, Canon 4D(2)(e).* However, the JEAC has not offered any rationale for this proposal or cited any problems giving rise to the need for this language. Instead, the JEAC has essentially lifted this language

from the ABA Model Code.<sup>6</sup> There is a significant reason this language should not be adopted. It will unduly restrict many legitimate uses of public resources for the public's benefit.

This provision would unduly restrict judges from using public resources for law-related activities designed to benefit the public. The Reporter's Commentary to the Model Code indicates that this provision is designed primarily to govern the use of court facilities by outside groups.<sup>7</sup> However, in practice, this provision would have far broader application than the use of court facilities by outside groups, extending to many legitimate uses of public resources by judges for law-related activities for the public's benefit. This will actually discourage judges from participation in such activities.

Both the Florida Attorney General and the Florida Commission on Ethics have recognized that public resources may legitimately be used for activities that serve a public purpose. For example, the Attorney General has specifically authorized assistant attorneys general to use the agency's equipment for pro bono

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<sup>6</sup> Model Code Rule 3.1(E) states that a judge shall not "make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law." It is not surprising that the JEAC elected to remove the exception for uses as permitted by law, as that exception could be quite significant.

<sup>7</sup> The Commentary states: "The rationale for the general restriction is that favoring a particular charity or other extrajudicial event by providing access to facilities that are closed to others is an abuse of the prestige of judicial office; see Rule 1.3. The rationale for the exception, however, is that certain activities, such as opening a real courtroom for use in a moot court competition or using the court's conference room for a meeting of a bar association task force that includes the judge, are not abuses of judicial office."

activities for the poor. *See* “Pro Bono or Other Uncompensated Service,” Policy Manual of the Office of the Florida Attorney General. This policy is consistent with opinions of the Attorney General determining that off-duty law enforcement personnel and municipal employees may use their public vehicles and equipment so long as such use primarily serves a public purpose. See Ops. Att’y Gen. Fla. 90-61; 74-384; and 74-295.

Likewise, the Florida Commission on Ethics determined that a public defender’s use of her publicly-funded staff and computer to prepare university course materials was not a misuse of public property. *See In re Julianne Holt*, Final Order No. 04-002 (Fla. Commission on Ethics Jan. 22, 2004). Instead, the public defender’s teaching was seen as an extension of her public duties, which served a public purpose. Christopher Goffard, Last Charges Against Holt Thrown Out, *St. Petersburg Times*, at 1B (Jan. 24, 2004).

Law-related activities serve a public purpose and are part of a judge’s broad scope of public responsibilities. Accordingly, judges should be able to use public resources for law-related functions, and the fact that those functions might have a fundraising component should not be determinative.

For example, a judge might well be asked to speak at a fundraising event for the law school from which he or she graduated. It is simply not practical for that judge to compartmentalize his or her time so that the speech will be prepared outside of chambers only. On the contrary, being a judge is not a 9-5 job. If the judge cannot use his or her public computer to write a speech or public internet access to conduct research for a speech, where will the judge go? Under the proposed language, the judge is less likely to agree to speak.

Thus, rather than encouraging judicial participation in law-related activities, which indisputably benefit the public, the JEAC's proposed language would actually discourage judges from such participation. The judges currently use public resources for law-related activities and they should continue to be able to do so, whether it is for speech at a Law Day luncheon or at a fundraiser for a law-related organization.

In focusing on Canon 4 organizations, the JEAC may not have fully considered the broad sweep of this proposal. It would preclude even minimal fundraising efforts in courthouses for well-established organizations such as the United Way and the American Red Cross that perform essential quasi-public functions. The Code already prohibits a judge from asking those he or she

supervises for any financial contribution to charity. The JEAC's language would extend this prohibition, barring judges, judicial assistants, and staff from asking any colleague to donate to one of these worthy causes—even when the Chief Judge approves of such cause. It would be particularly detrimental to the judiciary's reputation if courts had to turn away requests to assist with relief efforts if a hurricane affected their jurisdiction.

A judge's use of public resources for law-related activities is consistent with the long-standing principle that use of public resources for activities primarily benefiting the public is permissible. The JEAC's proposed language is contrary to this principle and will actually discourage judges from undertaking law-related activities. Therefore, this Court should reject the proposed language.

### CONCLUSION

To encourage judges to engage in practical activities under Canons 4 and 5 and foster a better relationship between the judiciary and the community, Canons 4 and 5 must be amended. Two years have passed since the Chief Judges began considering such amendments, and they unanimously approved the current Proposal over year ago. Further, after reviewing the JEAC proposal, the Chief

Judges' subcommittee on fundraising amendments unanimously agreed to go forward with this Petition.

Although the JEAC's proposal adopts some language from the Chief Judges' proposal, the Chief Judges' Proposal better strikes the proper balance between encouraging participation while still maintaining prohibitions against the appearance of impartiality, demeaning conduct, and activities interfering with the proper performance of judicial duties. Also, adoption of the JEAC's proposed language regarding the use of court resources will unduly restrict judges and actually lead to less participation by the judiciary in law-related activities. Therefore, the Chief Judges urge this Court to adopt their proposed amendments to Canons 4 and 5. The Judicial Administration Section does not request oral argument on this Petition.

Respectfully submitted this 5<sup>th</sup> day of August, 2007.

**/s/ KIM A. SKIEVASKI**

The Honorable Kim A. Skievaski  
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850-595-4456

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of August, 2007, I served a copy of this Response and Petition to Amend Canons 4D(2)(d) and 5C(3)(b)(i) of the Florida Code of Judicial Conduct by U.S. Mail, postage prepaid, upon: The Honorable Robert T. Benton, II, Chair, Judicial Ethics Advisory Committee, 301S. MLK Jr. Blvd., Tallahassee, Florida 32399; and John F. Harkness, Jr., Executive Director, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.

**/s/ KIM A. SKIEVASKI**

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APPENDIX A TO PETITION TO AMEND CANONS 4 AND 5

PROPOSED AMENDMENT TO CANON 4D(2)(d) OF THE CODE OF JUDICIAL CONDUCT WITH EXPLANATION OF PROPOSAL

Proposed Amendment

4D(2) A judge as an officer, director, trustee, or non-legal advisor, or as a member or otherwise:

....

(d) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may appear at, participate in, and permit the judge's title to be used in connection with an event or mass solicitation on behalf of an organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice even when the event or mass solicitation may serve a fundraising purpose. However, such participation is prohibited if it would 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. Further, a judge is prohibited from engaging in direct solicitation.

Explanation of Proposed Amendment

Under this amendment, judges could engage in limited but meaningful participation in activities for law-related organizations even when such activities might serve a fundraising purpose. However, judges could still not participate in a fundraiser if it would reasonably cast doubt on impartiality, demean the judicial office, or interfere with the performance of judicial duties. Thus, a judge could speak at or be honored at a fundraising event hosted by a non-advocacy legal group such as a law school. However, the judge still could not accept such an invitation from an advocacy group because of the doubts this could cast upon impartiality.

The mass solicitation provision would allow judges to appear in materials such as advertising and brochures directed to broad audiences rather than to any particular individual. Under such circumstances, there is no danger of coercion or perceived obligation. This amendment would not allow a judge to engage in direct solicitation under *any* circumstances.

APPENDIX B TO PETITION TO AMEND CANONS 4 AND 5

PROPOSED AMENDMENT TO CANON 5C(3)(b)(i) OF THE CODE OF JUDICIAL CONDUCT WITH EXPLANATION OF PROPOSAL

Proposed Amendment

5C(3)(b) A judge as an officer, director, trustee or non-legal advisor or as a member or otherwise [of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit]:

(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. A judge may also participate in nominal fundraising activities provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member.

Explanation of Proposed Amendment

This amendment would allow a judge to participate in nominal fundraising activities on behalf of schools and civic organizations as long as the judge is not identified as a judge and participates in the same fashion as any other person. Thus, for example, a judge could sell modestly-priced food items at a concession stand at his or her child's sporting or school event. Since the judge would be unidentified and indistinguishable from other persons participating, there would be no danger of coercion or perceived obligation.

**APPENDIX C TO PETITION TO AMEND CANONS 4 AND 5**

**SIDE-BY-SIDE COMPARISON OF CHIEF JUDGES' PROPOSAL WITH PROPOSAL OF JUDICIAL ETHICS ADVISORY COMMITTEE**

CHIEF JUDGES' PROPOSAL	JEAC PROPOSAL
<p>1. No proposed amendments to Canon 4A.</p>	<p>1. Proposes amending Canon 4A as follows (amendments underscored):</p> <p><b>4A.</b> A judge shall conduct all of the judge's quasi-judicial activities so that they do not:</p> <ul style="list-style-type: none"> <li>(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;</li> <li>(2) <u>undermine the judge's independence, integrity, or impartiality;</u></li> <li>(3) demean the judicial office;</li> <li>(4) interfere with the proper performance of judicial duties;</li> <li>(5) <u>lead to frequent disqualification of the judge; or</u>  <u>appear to a reasonable person to be coercive.</u></li> </ul>
<p>2. No proposed amendments to Canon 4D(2)(a).</p>	<p>2. Proposes amending Canon 4D(2)(a) as follows:</p> <p>[While a judge] may assist [a law-related] organization in planning fund-raising and may participate in the management and investment of the organization's funds, [a judge] shall not personally <u>or directly</u> participate in the solicitation of funds <del>or other fund-raising activities</del>, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.</p>

<p>3. No proposed amendments to Canon 4D(2)(c).</p>	<p>3. Proposes amending Canon 4D(2)(c) as follows:</p> <p>[A judge] shall not personally <u>or directly</u> participate in membership solicitation if the solicitation might reasonably be perceived as coercive <del>or</del>, <del>except as permitted in Section 4D(2)(a), if the membership solicitation is essentially a fund raising mechanism.</del></p>
<p>4. Proposes amending Canon 4D(2)(d) as follows:</p> <p><u>(d) [A judge] shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, provided that a judge may appear at, participate in, and permit the judge’s title to be used in connection with an event or mass solicitation on behalf of an organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice even when the event or mass solicitation may serve a fundraising purpose. However, such participation is prohibited if it would 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. Further, a judge is prohibited from engaging in direct solicitation.</u></p>	<p>4. Proposes eliminating Canon 4D(2)(d) <i>but adding a new Canon 4D(2)(b)</i> as follows:</p> <p>(b) [A judge] may appear or speak at, receive an award or other recognition at, be featured on the program of, and permit the judge’s title to be used in conjunction with an event of [a law-related] organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.</p> <ul style="list-style-type: none"> <li>• does not provide for mass solicitation</li> <li>• does not provide for organizations devoted to the improvement of the legal branch</li> </ul>
<p>5. No proposed amendment to Canon 4 regarding use of court resources.</p>	<p>5. Proposes adding a new Canon 4D(2)(e) as follows:</p> <p>[A judge] may not make use of court premises, staff, stationery, equipment, or other resources for fund-raising purposes, except for incidental use for activities that concern the law, the legal system, or the administration of justice, subject to the requirements of this Code.</p>

6. Proposes adding the following language to the Commentary to Canon 4D(2):

Judges are an integral part of the legal community, and their mere attendance at fundraising events of an organization devoted to improving the law, the legal system, the judicial branch, or the administration of justice is permissible if otherwise consistent with the Code. Further, subject to the limitations set forth in Section 4A, judges may appear at, participate in, or allow their title to be used in connection with the activities or mass solicitation on behalf of such an organization even if the event or solicitation serves a fundraising purpose. Therefore, a judge may generally accept an invitation to speak at or be recognized or honored by an event hosted by such an organization even if the event is a fundraiser for that organization.

However, judges may not participate in or allow their title to be used in connection with fundraising activities on behalf of an organization engaging in advocacy if such participation would cast doubt on the judge's capacity to act impartially as a judge. Further, regardless of the nature of the organization, a judge shall not participate in any activity that demeans the judicial profession, including but not limited to activities exposing the judiciary to ridicule.

Finally, judges may participate in mass solicitation on behalf of organizations devoted to improving the law, the legal system, the judicial branch, or the administration of justice so long as such participation does not cast reasonable doubt upon the judge's ability to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties. For example, a judge could appear in promotional materials for a law school or in an advertisement encouraging financial support for law school scholarships.

Such mass solicitation is permissible because it does not involve the danger

6. Proposes adding the following language to the Commentary to Canon 4D(2):

A judge may be a speaker or guest of honor at an organization's fund-raising event if the event concerns the law, the legal system, or the administration of justice, and the judge does not engage in the direct solicitation of funds. However, judges may not participate in or allow their titles to be used in connection with fund-raising activities on behalf of an organization engaging in advocacy if such participation would cast doubt on the judge's capacity to act impartially as a judge.

<p><u>that any person receiving the solicitation will feel obligated to respond favorably because the solicitor is in a position of influence or control. “Mass solicitation” includes advertising, films, brochures, and other similar materials disseminated to a broad audience and not directed to any particular individual.</u></p>	
<p>7. No proposed amendment to Canon 5A.</p>	<p>7. Proposes amending Canon 5A consistent with proposed amendment to Canon 4A.</p>
<p>8. Proposes amending Canon 5C(3)(b)(i) by adding the following:</p> <p><u>A judge may also participate in nominal fundraising activities provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member;</u></p>	<p>8. No proposed amendment to Canon 5C(3)(b)(i).</p>
<p>9. Proposes adding language to Commentary to Canon 5C(3)(b) as follows:</p> <p><u>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. Further, a judge may participate in nominal fundraising activity on behalf of an organization provided that the judge is not identified as a judge and participates in a manner indistinguishable from that of any other member. For example, a judge may sell modestly-priced concession goods at his or her child’s sporting event in the same manner as any other parent, or collect the weekly donation at his or her house of worship in the same manner as any other person.</u></p>	<p>Proposes amending the Commentary to Canon 5C(3)(b) as follows:</p> <p>Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of Canon 5C(3)(b). It is also generally permissible for a judge to pass a collection plate at a place of worship or for a judge to serve as an usher or food server or preparer, or to perform similar subsidiary and unadvertised functions at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations so long as they do not entail direct or personal solicitation. However, a judge may not be a speaker, guest of honor, or otherwise be featured at an organization’s fund-raising event, unless the event concerns the law, the legal system, or the administration of justice as authorized by Canon 4D(2)(d).</p>