

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC07-1135**

**IN RE: REPORT OF THE JUDICIAL ETHICS ADVISORY  
COMMITTEE RE: LIMITATIONS ON JUDGES' PARTICIPATION  
IN FUND-RAISING ACTIVITIES**

**RESPONSE TO COMMENTS SUBMITTED ON  
BEHALF OF THE JUDICIAL ADMINISTRATION  
SECTION OF THE CONFERENCE OF CIRCUIT JUDGES**

Submitted on Behalf of the Judicial Ethics  
Advisory Committee by:

The Honorable Lisa Davidson  
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On behalf of the Judicial Ethics Advisory Committee (“JEAC”) and pursuant to rule 2.140, Florida Rules of Judicial Administration, the Honorable Lisa Davidson, Chairperson, submits this Response to the Comments filed on August 7, 2007, by the Honorable Kim A. Skievaski on behalf of the Judicial Administration Section of the Conference of Circuit Judges to the Petition to Amend Fund-raising Provisions of Canons 4 and 5 of the Code of Judicial Conduct (“Petition”). We respectfully request that the Judicial Administration Section’s proposal be rejected in its entirety and that no changes be made to the Florida Code of Judicial Conduct except for the following language to the Commentary to Canon 5C(3)(b) proposed by the JEAC in its Supplemental Report filed May 10, 2007:

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, sororal, fraternal, or civic organizations, so long as they do not entail direct or personal solicitation.

#### PROCEDURAL HISTORY

It is important to note that neither the Florida Conference of Circuit Judges as a body, nor its Executive Committee has approved the Judicial Administration Section’s proposed amendments. It is “the responsibility of

the conference to [c]onsider and make recommendations concerning the betterment of the judicial system of the state and its various parts.”

§ 26.55(3)(a)1., Fla. Stat. (2006).

The Judicial Administration Section (“JAS”) is one of several standing committees of the Florida Conference of Circuit Judges. While the JEAC acknowledges it is appropriate for the JAS, or any other interested party to comment on proposed changes to the Code of Judicial Conduct, it is important to note the JAS’s position should not be considered as representing all of Florida’s trial judges. This fact is especially relevant because it will be the judges at the trial level who will be most affected by the JAS’s proposed amendments, which if adopted would dramatically redefine the role every state judge would play in fund-raising events. Moreover, the Florida County, Circuit, and Appellate Judges Conferences have never opposed the JEAC’s Petition, nor has The Florida Bar.

The JEAC acknowledges that its proposal differs from the American Bar Association’s (“ABA”) proposal; however, Florida has consistently exercised discretion when contemplating changes proposed by the ABA, and without rubber-stamping the ABA’s proposal has remained on the forefront of judicial ethics. For the reasons expressed in its initial Petition and those stated below, the JEAC believes that the adoption of the ABA’s proposal or

the JAS's proposal comes with the potential to seriously erode public trust and confidence in Florida's judiciary and that the extraordinary proposed changes to Canons 4 and 5 are not in the best interests of the state's judiciary, The Florida Bar, or Florida's citizenry.

### ARGUMENT

I. A. The current Code allows many opportunities for judges to participate in activities to improve the law, the legal system, and the administration of justice.

The JAS acknowledges that it was pursuant to the JEAC's own petition that this Court first 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). The JAS however contends that the JEAC's interpretation of this language has resulted in judges' alleged inability to engage in any meaningful participation in quasi-judicial and extra-judicial activities. This position fails to recognize that under the Code in its present form, it is already ethically permissible for judges to participate meaningfully in a wide range of activities in the community and public

sphere.<sup>1</sup> These many options allow for in-depth volunteerism and community involvement by individual judges, while strengthening public

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<sup>1</sup> See, e.g., Fla. JEAC Op. 06-23 (Judge may serve as a board member of a county’s affordable housing advisory board and as a board member of county’s public policy institute, which appoints members to the affordable housing advisory board); Fla. JEAC Op. 85-05 (Judge may serve on the Progress 90 Board of Trustees, a non-profit community group representing a cross-section of the community and having as its sole mission to help citizens in setting and achieving community-wide goals); Fla. JEAC Op. 89-14 (Judge may serve as chair of task force designed to enhance community efforts to fight drugs and crime by evaluating governmental and private resources); Fla. JEAC Op. 93-22 (Judge may help organize and participate in a project designed to promote positive inter-group relations and understanding called, “Help Stamp Out Hate”); Fla. JEAC Op. 98-9 (Judge may participate in the establishment of a county community justice coalition); Fla. JEAC Op. 00-09 (Judge may serve on the Board of Directors for the Collins Center, an independent, non-partisan and non-profit organization which promotes, through thought and action, creative solutions to major private and public issues facing the people of Florida and the nation, such as, crime and prisons, constitutional review, public representation in the Legislature, greater participation by African-Americans in Dade County’s tourism industry, political campaign ethics, citizen participation in public decision, neighborhood community economic development, and hurricane catastrophic insurance); Fla. JEAC Op. 03-01 (Judge may serve in a leadership capacity to implement nonpartisan citizen-developed recommendations to improve the community’s quality of life by improving race relations); JEAC Op. 03-11 (Judge presiding over juvenile delinquency court may belong to criminal justice and delinquency council open to practitioners and interested citizens and designed to facilitate interchange of information between the disciplines of the criminal justice system, inform and educate the public about the criminal justice system, perform community service, promote high standards of professional practice in the criminal system, and provide training programs); Fla. JEAC Op. 03-17 (Judge may serve as member of the Board of Directors of a public policy institute that researches and establishes dialogue on community-wide issues, then recommends and helps to implement timely solutions); Fla. JEAC Op. 04-14 (Judge may participate in a local criminal advisory committee that would bring together representatives of various entities involved in the disposition of felony, misdemeanor, and traffic cases); Fla. JEAC Op. 05-09 (Judge may serve as member of the board of a local community children’s alliance, on a committee concerning family violence and its reduction, and on committees or organizations chaired by elected officials, even possibly in their election year, as long as these groups are not advocacy groups); Fla. JEAC Op. 92-6 (Judge may serve as a member of a development board for a parochial school in an effort to establish an endowment trust to help subsidize affordable tuition for all students as long as judge not soliciting personally); Fla. JEAC Op. 93-66 (Judge may serve as member of the Advisory Council of the Women’s Development Center at a university, that fosters interrelations with committee members and students involved in the study of business and develops ways to create new businesses particularly for women); Fla. JEAC Op. 94-15 (Judge may serve on the Board of Overseers of Stetson College of Law); Fla. JEAC Op. 04-17 (Judge may participate in an interview for a textbook publisher concerning insight into the challenges, rewards and realities of working in the criminal justice system); Fla. JEAC Op. 97-20 (Judge may serve on the governing board of county’s Children Services Council); Fla. JEAC Op. 88-30 (Judge may serve on Alcohol Drug Abuse and Mental Health District IV Planning Council); Fla. JEAC Op. 99-07 (Judge may serve on the County Commission on Substance Abuse); Fla. JEAC Op. 87-20 (Judge may serve as a member and chair of a county criminal justice advisory board to study and advise the Board of County Commissioners about a new jail facility); JEAC Op. 98-26 (Judge may serve in a leadership capacity on the Mayor’s Victims’ Assistance Advisory Council, whose mission is to ensure and enhance the rights of crime victims by providing a forum for the public and private community to work together for the development and implementation of effective programs and education, prevention, and intervention.); Fla. JEAC Op. 04-05 (Judge may accept appointment from a local legislative body to its advisory Commission on the Status of Women); Fla. JEAC Op. 94-04 (Judge may serve in an advisory capacity on the Leon Regional Juvenile Detention Center’s Community Advisory Board); Fla. JEAC Op. 94-31 (Judge may serve as a member of a District juvenile justice board and local councils); Fla. JEAC Op. 84-13 (Judge may

confidence in the courts without lending the prestige of judicial office to advance the private interests of others.

There are also opportunities under the current Code for judges to participate appropriately and meaningfully in fund-raising efforts, without direct solicitation of funds. Judges may plan, set-up, clean-up, and attend fund-raisers in addition to personally donating money and items to be auctioned (as long as the source of those items is not noted). See Fla. Code Jud. Conduct, Commentary to Canons 4 and 5; JEAC Op. 01-09 (Judge may decorate a hall where fund-raising event is to be held, assist in setting the value of the items to be auctioned at the fund-raising event, and donate items to be auctioned as long as the source of the donation is not noted). In addition, a judge may allow his or her name and position to be listed on a charitable organization's letterhead, along with the names and positions, if

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serve as chairman of the Family Law Section of The Florida Bar and may participate in some types of amicus activities); Fla. JEAC Op. 93-4 (Judge may serve as an honorary judicial member of a committee formed by a local medical association and trial lawyers association which was created for the purpose of fostering improved relations between the medical and legal professions); Fla. JEAC Op. 93-43 (Judge may participate as a member of the board of directors of a Family Day Care Home Association, an organization made up of individual home providers of day care for preschoolers); Fla. JEAC Op. 80-02 (Judge may serve on the Advisory Board of the Salvation Army); Fla. JEAC Op. 89-18 (Judge may serve as president of an advisory committee acting on behalf of a nonprofit organization dedicated to the placement of black children with adopting families); Fla. JEAC Op. 96-4 (Judge may serve on the executive board of a local Character Counts Coalition); Fla. JEAC Op. 02-17 (Judge may serve as the president of a non-profit organization which provides cultural events to citizens of the county and benefits the community through various outreach program); Fla. JEAC Op. 04-16 (Judge may serve as a trustee of a non-profit philanthropic trust); Fla. JEAC Op. 04-26 (Judge may serve on non-profit boards of directors for organizations that serve the needs of the blind, inspire excellence in leadership, and promote women in positions of leadership); Fla. JEAC Op. 75-26 (Judge may accept chairmanship of Anti-Defamation League's Florida Regional Board of B'Nai B'rith); Fla. JEAC Op. 94-33 (Judge may serve on the Governor's Task Force on Domestic Violence).

any, of all the other board members. The organization may then use this letterhead for all of the organization's correspondence, including the solicitation of charitable gifts. See Fla. Code Jud. Conduct, Commentary to Canon 5C(3)(b); Fla. JEAC Op. 06-5. Furthermore, judges may assist a non-profit organization in the management and investment of funds raised at these events. See Fla. Code Jud. Conduct, Canons 4D(2)(a), 5C(3)(b)(i).

In the context of contributing to the law, legal system, and the administration of justice, judges have countless opportunities to do so under the current provisions of the Code of Judicial Conduct. For example, judges may teach as a part of the Justice Teaching Initiative, mentor law school students for The Florida Bar's Center for Professionalism, organize and speak at local voluntary Bars' CLE programs for attorneys, and serve on local and statewide professionalism committees. See Fla. Code Jud. Conduct, Canon 4B ("A judge is encouraged to speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, the administration of justice, and the role of the judiciary as an independent branch within our system of government.") Judges may also serve on a variety of civic boards, task forces, and public policy commissions. Moreover, judges may make recommendations to public and private fund-granting organizations on programs concerning the

improvement of the law, the legal system, the judicial branch, or the administration of justice. See Fla. Code Jud. Conduct, Canon 4D(2)(b).

These volunteer efforts are much more meaningful because they require personal time commitment and personal financial sacrifice, rather than simply lending one's image or name to be used for mass solicitations or advertisements, an image or name that is only of value and interest because of the title and judicial position that person occupies. The common component central to the JAS's proposal involves identifying the person as a judge in the fund-raising efforts, and specifically using the judicial title in order to generate funds. Community involvement must be more than raising money.

The JAS asserts that allowing judges to take a more visible role in fund-raising will enhance the judiciary's reputation among the legal community and the public. The opposite will occur. When it becomes widely known that attorneys and litigants in pending, impending, and past cases are being solicited for and are contributing dollars to the pet projects and favored law school alma maters of judges, this will foster public perception that the judiciary is biased and influenced by money. Ultimately, the best way to enhance the judiciary's reputation is for judges to do a good job on the bench and to obey the law in their public and private lives.



The JAS's proposal also faults the JEAC's attempt to make ethical issues into bright line tests. However, bright lines are critical and appreciated by judges. If the ethical line is fluid or is uncertain, then judges actually have no guidance.

The JAS's proposal will ultimately result in an examination of every organization's fund-raiser, not by the JEAC, but by the Florida Supreme Court. Even with thoroughly vetted organizations, judges will still give up control of their name and office as soon as permission is given for use of the judge's name, title, and position to the organization. The JEAC's experience over the years has shown that even the most well-meaning organizations and their fund-raising committees have very little understanding of the sensitive nature of the judicial position when hosting a fund-raiser. This is similar to the problem seen in the past with judicial campaigns, when campaign managers and workers were not familiar with the special restrictions on judges. Many judicial campaigns were operated like any other political campaign. Not until the Supreme Court in In re Alley, 699 So. 2d 1369 (Fla. 1997), made it clear that judicial candidates could win their election but lose their job, did judicial candidates become focused on what they could and could not do in a contested election. Therefore, judicial candidates had to start exercising more control over their campaigns and become familiar with

the restrictions of Canon 7. However, unlike judicial campaigns, judges who engage in fund-raising will never have control over how an organization, its fund-raising committee, and its members use the judge's name and title to raise funds. Everything from an organization's ticket sales and advertisements to program content will be in the hands of those whose sole intent is to raise as much money as possible.

B. Mass solicitation by judges is implicitly coercive

The JAS proposes allowing judges to appear in advertisements, promotional brochures, and any other media directed to a wide audience. The JAS concludes that no individual is targeted, so there is no danger that the person receiving the solicitation will feel any obligation to respond. This conclusion fails to acknowledge that the goal of every solicitation effort is to prompt a personal response, that is, the desired result of the solicitation is that some individual will be moved by the particular promotion to grab for his or her wallet or checkbook to answer the call for funds. This conclusion also fails to recognize that there will be a close association with a particular judge with a specific school or project as a result of the public solicitation. If attorneys or litigants appear before the judge, many would perceive it beneficial to mention that a contribution was made to the judge's law school prompted by the judge's public advertisement, promotional brochure,

billboard, etc. The other side might feel compelled to similarly donate to the judge's pet project or alma mater, concerned that the judge might not consider their case as favorably. The public perception would be that judges may be bought by making donations to their schools, causes, and pet projects.

The JAS points out that many well-meaning judges have already undertaken mass solicitations by appearing in advertisements supporting their law schools, and that it would be unfortunate that a judge would be precluded from giving back to his or her law school by simply appearing in widely-distributed media when the judge owes so much to his or her legal education. Not all law schools in Florida are public schools; therefore, under the JAS's proposal, a judge could appear on a billboard for a private law school or a for-profit law school. If a judge desires to give back to his or her law school, the judge can simply write a personal check, an act which does not involve using the prestige of judicial office to raise funds for a law school.

## II. The JAS's proposal will not allow judges to participate more fully in the community while protecting against direct solicitation

The JAS states that its proposed amendment to Canon 5 will clarify that a judge may engage in nominal fund-raising 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. The JAS contends that in this way the danger of direct or indirect coercion would be removed and the judge would not have to worry if he or she is crossing the line when suddenly called upon to sell a hot dog or raffle ticket. This line of reasoning fails to recognize that judges, because of their positions, can truly never be like any other member of the community when it comes to fund-raising. Judges are held to a higher standard of conduct which in turn promotes public confidence. The Commentary to Canon 2A states in part: “A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” A judge does not lose his or her title of judge when selling raffle tickets. For example, when a lawyer or litigant sees an individual selling raffle tickets that he or she personally knows to be a judge, how often will the lawyer or litigant tell the judge, “I’ll take one hundred raffle tickets, your Honor”? When a judge is involved publicly in fund-raising, there is a significant likelihood of implicit coercion.

III. This Court should adopt the JEAC’s proposed amendment regarding the use of court resources if the Court accepts JAS’s proposal

The JEAC recommends no changes to Canon 4; however, if the Court accepts the JAS’s proposed amendments, the JEAC recommends that Canon

4 be amended to prohibit the 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. JAS opposes this. Because of current budgetary constraints, the use of publicly paid for judicial resources must be closely monitored. Taxpayers may not approve of judges using their taxes to support causes that the taxpayers may not necessarily support. Moreover, the judicial branch is presently under-funded and under-staffed, and to divert those precious judicial resources that currently do exist to support projects that do not concern the day-to-day operation of the judicial branch is problematic. Contrary to the JAS's contention, the JEAC's proposal does not prohibit a judge or judicial assistant from using a publicly funded computer to prepare a speech or using courthouse space for law-related activities. However, there must be limits on use of judicial resources for law-related activities. For example, without this restriction, a judge could use publicly paid for paper, envelopes, stamps, and staff time to develop, create, and distribute to the public a brochure advertising a private law school's fundraising event at which the judge is to speak.

The Attorney General opinions cited by the JAS are completely distinguishable from the subject facts. In those opinions, law enforcement

officers and municipal employees were using public vehicles off-duty. Irrespective of the incidental personal benefit derived by the law enforcement officers and municipal employees, the use of those public vehicles served a primary public purpose related to their positions, such as, increasing the appearance of more law enforcement in the community and having a quicker response time to work-related calls. See Ops. Att’y Gen. Fla. 90-61; 74-384; 74-295. However, use of courthouse office supplies and staff time for fund-raising purposes is not related to the primary purpose of a judge’s official duties. See Fla. Code Jud. Conduct, Canon 3A (“The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law.”)

The JAS also cites to the Final Order of Dismissal entered by the State of Florida Commission on Ethics in the Julianne Holt case. See In re Julianne Holt, Final Order No. 04-002 (Fla. Commission on Ethics, Jan. 22, 2004). Julianne Holt, as the Public Defender of the State’s Thirteenth Judicial Circuit, used public employees and public resources during public work hours to prepare materials for school courses that she had been teaching. She had been paid between \$2,500 and roughly \$7,500 annually to teach as an adjunct professor. Specifically, Ms. Holt used her secretary at

the Public Defender's Office to type lesson plans, type syllabi, type and edit examinations, deliver materials, and proctor make-up examinations for the course that Ms. Holt was teaching. In support of Ms. Holt's argument that her teaching served a public purpose, several active and retired judges testified that the *de minimis* use of public office resources to assist in teaching courses is not inconsistent with a judge's public duties. The JEAC agrees with this position.<sup>2</sup>

### CONCLUSION

The Code as currently drafted and interpreted provides a multitude of meaningful ways in which a judge may participate in the legal community and public sphere, without utilizing the judge's title and position in order to raise funds. Lending one's name, title, and position for fund-raising involves no real personal time or personal financial commitment on the part of the judge. Rather, it relies upon the prestige of judicial office and fosters public perception that contributing to a favored project, cause, or alma mater of the judge might positively influence the judge's opinion of a lawyer, litigant, or case. Hanging in the balance is continuing public trust and

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<sup>2</sup> The JEAC is not addressing the appropriateness of a public employee using public resources when that public employee is also receiving separate and additional compensation for teaching a course. That matter is not before this Court.

confidence in the courts and the risk that justice is to be had only by those who contribute to a judge's fund-raising efforts.

Therefore, the JEAC respectfully requests that the Florida Supreme Court reject the JAS's proposal in its entirety. The Judicial Ethics Advisory Committee also requests Oral Argument.

Respectfully submitted this \_\_\_\_ day of September 2007.

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The Honorable Lisa Davidson  
Chairperson  
Judicial Ethics Advisory  
Committee  
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Florida Bar No. 0246832

CERTIFICATE OF SERVICE

I do hereby certify that copies hereof have been furnished to **the Honorable Kim A. Skievaski**, Chairperson, Judicial Administration Section of the Florida Conference of Circuit Judges, M.C. Blanchard Judicial Building, 190 Governmental Center, Fifth Floor, Pensacola, Florida 32502 and **John F. Harkness, Jr.**, Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300 by U.S. Mail this \_\_\_\_\_ day of September 2007.

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Chris Trammell  
Judicial Assistant