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Florida's Judicial Ethics Rules: History, Text, and Use

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A handy summary of Florida's federal and state judicial ethics codes does not exist. As a result, Florida attorneys and judges often must invest considerable time and effort when a question of judicial ethics arises. To assist such queries, this article provides a comprehensive description of both the Florida Code of Judicial Conduct and the Code of Conduct for United States Judges.

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INTRODUCTION

Florida has a long history of judges who have stepped over the line.[1] To deal with them, the Florida Supreme Court has promulgated the Florida Code of Judicial Conduct ("FCJC").[2] Similarly, Florida's federal judges are subject to the Code of Conduct for United States Judges ("CCUSJ").[3] Although both codes have been

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[1] *See, e.g.*, MARTIN A. DYCKMAN, A MOST DISORDERLY COURT: SCANDAL AND REFORM IN THE JUDICIARY xiii–xvi (Raymond Arsenault & Gary R. Mormino eds., 2008) (describing the various ethical abuses that rocked the Florida Supreme Court in the 1970s and led to the resignation of three justices, including Chief Justice Vassar B. Carlton); JIM BISHOP, THE MURDER TRIAL OF JUDGE PEEL (1962) (first-hand account of the trial of Palm Beach Municipal Court Judge Joseph A. Peel, Jr., who was sentenced to life in prison for arranging the 1955 killings of fellow South Florida judge Curtis E. Chillingworth and his wife); William G. Crawford, Jr., *Judge Vincent C. Giblin: Broward's First Circuit Judge was Capone's Lawyer, Dade Judge in the '50s*, 18 BROWARD LEGACY 2, 2 (1995) (tracing the life of notorious South Florida judge Vincent Giblin, who was involved in multiple ethical controversies but is chiefly remembered for having been gangster Al Capone's lawyer). The plot of the 2016 John Grisham novel, *The Whistler*, revolves around Lacy Stoltz, a lawyer working for the Florida Board on Judicial Conduct (a stand-in for the real-life Florida Judicial Qualifications Commission—*see infra* Section III.A.2 of this article) who finds herself in mortal danger after she begins an investigation into the shady dealings of Claudia McDover, a long-time judge in the Florida Panhandle who is in the mob's pocket. *See generally* JOHN GRISHAM, THE WHISTLER (2016).

[2] *See Code of Judicial Conduct for the State of Florida*, FLA. SUP. CT., https://www.floridasupremecourt.org/Opinions/Judicial-Ethics-Advisory-Committee/Code-of-Judicial-Conduct (last updated Aug. 18, 2021). Florida currently has seven supreme court justices, FLA. CONST. art. V, § 3(a); sixty-four district court of appeal judges, FLA. STAT. § 35.06 (2021); 605 circuit court judges, FLA. STAT. § 26.031 (2021); and 330 county court judges, FLA. STAT. § 34.022 (2021). Florida also has a fluctuating number of "senior judges" who are retired and serve on an as-needed basis. *See generally* FLA. STAT. § 25.073 (2021).

[3] *See Code of Judicial Conduct for United States Judges*, U.S. CTS., https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges (last updated Mar. 12, 2019). Florida is one of the three states (along with Alabama and Georgia) that make up the U.S. Court of Appeals for the Eleventh Circuit, which has twelve judges. 28 U.S.C. §§ 41, 44(a). Since the court's founding in 1981, five of its seats have been reserved for Florida nominees. As of June 2021, these positions are occupied by Adalberto J. Jordan (Miami), Barbara Lagoa (Miami), Robert J. Luck (Tallahassee), Robin S. Rosenbaum (Fort Lauderdale), and Charles R. Wilson (Tampa). *See Judges*, U.S. CT. OF APPEALS FOR ELEVENTH CIR., https://www.ca11.uscourts.gov/judges (last visited Mar. 14, 2022). Florida also has thirty-seven district judges, 28 U.S.C. § 133(a) (allotting four to the

in force for decades, a handy single source that compares their provisions and summarizes their workings does not exist. Accordingly, Parts I–III of this article describe the FCJC, while Part IV discusses the CCUSJ.

I. FCJC BASICS

A. *History*

In 1924, the American Bar Association ("ABA") promulgated the Canons of Judicial Ethics ("CJE"), the country's first attempt to

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Northern District, fifteen to the Middle District, and seventeen to the Southern District); *see also* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, § 312(c), 116 Stat. 1758, 1788 (2002) (assigning an additional temporary judge to the Southern District); fourteen bankruptcy judges, 28 U.S.C. § 152(a)(2) (allotting one to the Northern District, eight to the Middle District, and five to the Southern District); and 37.5 magistrate judges. *See* Email from Shari A. Bedker, Exec. Dir., Fed. Mag. JJ. Assoc., to Author (June 15, 2021, 2:38 PM) (on file with author) (advising that the Conference has allocated 4.5 for the Northern District, 17 for the Middle District, and 16 for the Southern District); *see generally* 28 U.S.C. § 633(c) (authorizing the Judicial Conference of the United States to make the allocations). Additionally, Florida has a fluctuating number of retired circuit and district judges (known as "senior judges"). *See* 28 U.S.C. § 371. Florida also has a fluctuating number of retired bankruptcy and magistrate judges (known as "recalled judges") who continue to hear cases. *See* 28 U.S.C. § 375(a)(1). Under the U.S. Constitution, circuit and district judges are Article III judges who have lifetime tenure. *See* U.S. CONST. art. III, § 1. In contrast, bankruptcy and magistrate judges are Article I judges who serve for fixed terms. *See generally* U.S. Const. art. I, § 8, cl. 9. Bankruptcy judges serve for fourteen years. 28 U.S.C. § 152(a)(1). Magistrate judges serve for eight years. 28 U.S.C. § 631(e). There also are Article II judges who are hired and fired like other federal employees. S*ee, e.g.*, Lucia v. SEC, 138 S. Ct. 2044, 2051–54 (2018); Kent H. Barnett, *Some Kind of Hearing Officer*, 94 WASH. L. REV. 515, 517 (2019). *See generally* U.S. CONST. art. II, § 2, cl. 2. As of 2019, there are 12,762 Article II judges nationwide. *See id.* Currently, for example, Florida has thirty-nine immigration judges. *See EOIR Immigration Court Listing*, U.S. DEP'T OF JUST., https://www.justice.gov/eoir/eoir-immigration-court-listing (last updated Feb. 9, 2022). This represents seven percent of the nation's 559 immigration judges. *See Executive Office for Immigration Review Adjudication Statistics: Immigration Judge (IJ) Hiring*, U.S. DEP'T OF JUST., https://www.justice.gov/eoir/page/file/1242156/download (Oct. 2021).

formally prescribe appropriate judicial behavior.[4] In 1936, the Florida Supreme Court adopted the CJE.[5]

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[4] In 1920, U.S. District Judge Kenesaw Mountain Landis from the Northern District of Illinois agreed to become Major League Baseball's first commissioner. In accepting the appointment, Landis made it clear he had no plans to give up his judicial seat. *See Baseball Peace Declared; Landis Named Dictator*, N.Y. TIMES, Nov. 13, 1920, at 1. Although no law or rule prevented Landis from holding both positions, the ABA immediately began a determined effort to force him off the bench. *See Bar Meeting Votes Censure of Landis,* N.Y. TIMES, Sept. 2, 1921, at 1. Following Landis's resignation in 1922, the ABA started working on the CJE. *See Landis Quits Bench for Baseball Job; Boomed for Mayor*, N.Y. TIMES, Feb. 19, 1922, at 1; *see generally Canons of Judicial Ethics*, A.B.A., https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/pic_migrated/1924_canons.pdf (last visited Mar. 14, 2022). The CJE was first proposed in 1908 and subsequently re-proposed in 1917. *See* Walter P. Armstrong Jr., *The Code of Judicial Conduct*, 26 SMU L. REV. 708, 708 (1972). The CJE's drafters included a lightly veiled reference to the fight to oust Landis in their final report:

> The situation ran along until three years ago, when a very forceful illustration occurred in the action of this Association itself at Cincinnati, when it proceeded to pass a resolution in disapproval of the conduct of an individual judge. It was then suggested that it would be much fairer and much better if the Association, instead of picking out individual cases for condemnation, should express its opinion of what the members of the American Bar Association expect from those who sit upon the Bench, to the end that its Canons of Professional Ethics should be as specific with respect to the conduct of judges as with respect to the conduct of members of the Bar.

Proceedings of 47th Annual Meeting: 5th Session, *in* REPORT OF THE FORTY-SEVENTH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION HELD AT PHILADELPHIA, PENNSYLVANIA JULY 8, 9, AND 10, 1924, at 68 (1924).

[5] *In re* Canons of Pro. Ethics, 125 Fla. 501, 501 (1936). The Court re-adopted the CJE twice. *See* Rules of Sup. Ct. Relating to Ethics Governing Bench & Bar of Fla., 145 Fla. 763, 764 (1941); *In re* Integration Rule of the Fla. Bar, 106 So. 2d 558, 558 (Fla. 1958); for later amendments, *see In re* Canons of Jud. Ethics Governing Judges & Lawyers, 114 So. 2d 783, 783–84; *In re* Proposed Amends. to Canons of Ethics Governing Judges & Att'ys, 162 So. 2d 265, 266 (Fla. 1964); Petition of the Comm. on Standards of Jud. Conduct, 242 So. 2d 711, 712–14 (Fla. 1970); *In re* Ethics Governing Judges, 254 So. 2d 788, 788 (Fla. 1971). In *In re* Fla. Bar—Petition for Advisory Op. Concerning Applicability of Ch. 74-177, the Court ruled that because of the separation of powers doctrine, "[t]he legislature has no power under [the] Florida Constitution[] to adopt an ethical code of conduct which would govern the judiciary . . . ." *In re* Fla. Bar—Petition for Advisory Op. Concerning Applicability of Ch. 74-177, 316 So. 2d 45, 47 (Fla. 1975).

In 1972, the ABA replaced the CJE with the Code of Judicial Conduct ("CJC").[6] In 1973, the Florida Supreme Court adopted the CJC.[7] In 1990, the ABA replaced the CJC with the Model Code of Judicial Conduct ("MCJC").[8] In 1994, the Florida Supreme Court

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[6] Two months after the CJC was formally ratified by the ABA, William Reece Smith, Jr., the president of The Florida Bar, publicly urged the Florida Supreme Court to adopt it:

> Lastly, attention is invited to the new Code of Judicial Conduct. Adopted in August 1972 by the American Bar Association, it replaces the Judicial Canons which long have been outmoded. The code is the product of a distinguished ABA committee composed of judges and lawyers and its adoption by federal and state courts is now being urged. It deals with many difficult problems including press coverage of trials and disclosure of the financial interests of a judge. Compromise is evident in some provisions which disappoint many of us. For example, judges are required only to disclose and report income. Otherwise, they need not routinely reveal financial interests or holdings. One would have hoped for a stronger provision.
>
> The new Code of Judicial Conduct, however, generally is an excellent document. It resolves many matters which deserved modern treatment. Your president presently intends to urge and support its prompt adoption in Florida.

William Reece Smith, Jr., *President's Page*, 46 FLA. BAR J. 506, 507 (1972).

[7] *See In re* Fla. Bar—Code of Jud. Conduct, 281 So. 2d 21, 22 (Fla. 1973); for later amendments, *see* Fla. Bar *In re* Code of Jud. Conduct Status of Judges' Spouses, 336 So. 2d 584, 585–86 (Fla. 1976); *In re* Canon 7C, Code of Jud. Conduct, 347 So. 2d 420, 420–21 (Fla. 1977); *In re* Code of Jud. Conduct (Fin. Disclosure), 348 So. 2d 891, 891–94 (Fla. 1977); *In re* Code of Jud. Conduct, 367 So. 2d 221 (Fla. 1979); *In re* Petition of Post-Newsweek Stations, Fla., Inc., for Change in Code of Jud. Conduct, 370 So. 2d 764, 781–82 (Fla. 1979); *In re* Code of Jud. Conduct (Canon 5C(2) and Canon 7B(2)), 409 So. 2d 484, 485 (Fla. 1982); Fla. Bar *In re* Petition to Amend Code of Jud. Conduct (Merit Retention Election), 414 So. 2d 508, 508–09 (Fla. 1982); *In re* Code of Jud. Conduct Amend. to Canon 5C(2) (Investments), 463 So. 2d 1132, 1133 (Fla. 1985); *In re* Code of Jud. Conduct, Canon 6C(1), 506 So. 2d 1039, 1039 (Fla. 1987); *In re* Code of Jud. Conduct (Canons 1, 2, and 7A(1)(b)), 603 So. 2d 494, 496 (Fla. 1992).

[8] *See* Jeffrey M. Shaman et al., *The 1990 Code of Judicial Conduct: An Overview*, 74 JUDICATURE 21, 21 (1990).

adopted the MCJC.[9] In 2007, the ABA approved a new MCJC.[10] In 2008, the Florida Supreme Court opted not to adopt the 2007 MCJC.[11]

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[9] *See In re* Code of Jud. Conduct, 643 So. 2d 1037, 1037 (Fla. 1994). For later amendments, *see In re* Code of Jud. Conduct, 656 So. 2d 926, 926 (Fla. 1995); *In re* Code of Jud. Conduct, 659 So. 2d 692, 692–93 (Fla. 1995); *In re* Code of Jud. Conduct, 662 So. 2d 930, 930 (Fla. 1995); *In re* Code of Jud. Conduct, 675 So. 2d 111, 111 (Fla. 1996); *In re* Code of Jud. Conduct, Canon 5F, 695 So. 2d 352, 352–53 (Fla. 1997); Amend. to Code of Jud. Conduct–Canon 7, 720 So. 2d 1079, 1079–80 (Fla. 1998); Code of Jud. Conduct, 816 So. 2d 1084, 1084 (Fla. 2002); Code of Jud. Conduct, 838 So. 2d 521, 521–22 (Fla. 2003); Amends. to Code of Jud. Conduct & Rules Regulating Fla. Bar Re Pro Bono Activities, 840 So. 2d 1023, 1030–31 (Fla. 2003); Amend. to Code of Jud. Conduct, Canon 7 (Political Activity), 897 So. 2d 1262,1262–63 (Fla. 2005); *In re* Rep. of Alt. Disp. Resol. Rules & Pol'y Comm. on Senior Judges as Mediators, 915 So. 2d 145, 153, 155–57 (Fla. 2005); *In re* Amend. to Code of Jud. Conduct–Am. B. Ass'n's Model Code of Jud. Conduct, 918 So. 2d 949, 949–65 (Fla. 2006); *In re* Amends. to Code of Jud. Conduct–Limitations on Judges' Participation in Fundraising Activities, 983 So. 2d 550, 552–53 (Fla. 2008); *In re* Amend. to Code of Jud. Conduct–Amends. to Canon 7, 985 So. 2d 1073,1073–74,1076–77 (Fla. 2008); *In re* Amends. to Code of Jud. Conduct, 141 So. 3d 1172, 1174–76 (Fla. 2014); *In re* Amends. to Code of Jud. Conduct–Canon 7, 167 So. 3d 399, 409–11 (Fla. 2015); *In re* Amends. to Code of Jud. Conduct–Senior Judges Serving as Voluntary Trial Resol. Judges & Arbs., 194 So. 3d 1015, 1016–17 (Fla. 2016); *In re* Amends. to Code of Jud. Conduct, 218 So. 3d 432, 434–40 (Fla. 2017); *In re* Amends. to Canon 6 of the Code of Jud. Conduct, 242 So. 3d 319, 320–24 (Fla. 2018); *In re* Amends. to Code of Jud. Conduct, 317 So. 3d 1090, 1091–93 (Fla. 2021).

[10] For the current version of the 2007 MCJC, which was last amended in 2010, *see Model Code of Jud. Conduct*, AM. BAR ASS'N (2020), https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/. For the differences between the 1990 MCJC and the 2007 MCJC, *see Reporter's Explanation of Changes ABA Model Code of Jud. Ethics, 2007*, AM. BAR ASS'N (2007), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/judicialethics/mcjc_2007.pdf

[11] *See In re Amends. to Code of Jud. Conduct–Limitations on Judges' Participation in Fundraising Activities*, 983 So. 2d at 551. To date, 36 states and the District of Columbia have adopted the 2007 MCJC. *See Jurisdictional Adoption of Revised Model Code of Jud. Conduct*, AM. BAR ASS'N (last visited Feb. 12, 2022), https://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/map/.

B. *Format*

The FCJC begins with a preamble[12] and a list of definitions.[13] Following these introductory provisions, the FCJC is arranged into seven canons.[14] Except for Canon 1, each canon is divided into lettered paragraphs.[15] To help users, every canon includes an explanatory "commentary" section.[16] The Canons are examined further in Part II of this article.[17]

C. *Applicability*

As part of its implementation of the FCJC, the Florida Supreme Court has issued an application statement.[18] In pertinent part, it reads as follows:

> [The FCJC] applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.
>
> Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A,

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[12] As the preamble explains:

> The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

FLA. CODE JUD. CONDUCT Preamble.

[13] Definitions are provided for 22 words and phrases (*e.g.*, "de minimis," "economic interest," "impartiality," and "knowingly"). FLA. CODE JUD. CONDUCT Definitions.

[14] *Code of Judicial Conduct for the State of Florida*, *supra* note 2.

[15] FLA. CODE JUD. CONDUCT Canon 1.

[16] *Code of Judicial Conduct for the State of Florida*, *supra* note 2.

[17] *See* discussion *infra* Part II.

[18] *Code of Judicial Conduct for the State of Florida*, *supra* note 2.

> and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.
>
> Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.
>
> If the hiring or appointing authority for persons who perform a judicial function is not a judge then that authority should adopt the applicable provisions of this Code.[19]

D. *Advisory Opinions*

In response to requests from individual judges or judicial candidates, the Judicial Ethics Advisory Committee ("JEAC") issues

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[19] FLA. CODE JUD. CONDUCT Application of the Code of Judicial Conduct. The state's labor code separately makes judges of compensation claims, who hear worker injury claims, subject to the FCJC:

> The Deputy Chief Judge and judges of compensation claims shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court. Any material violation of a provision of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of the Deputy Chief Judge or judge of compensation claims by the Governor.

FLA. STAT. § 440.442 (2021). Although civil traffic hearing officers are included in the Florida Supreme Court's application statement, the Florida Legislature instead has made them subject to the ethics rules governing lawyers:

> Hearing officers shall be subject to The Florida Bar Code of Professional Responsibility and not the Judicial Code of Ethics, except that they shall avoid practices or occupations that would constitute a conflict of interest or give the appearance of impropriety. Whether serving full time or part time, hearing officers shall be prohibited from representing clients or practicing before any other hearing officer of a civil traffic court or from representing any client appealing the decision of any other hearing officer. A civil traffic infractions hearing officer appointed under s. 318.30 shall have judicial immunity in the same manner and to the same extent as judges.

FLA. STAT. § 318.36 (2021). For the ethical duties of judicial staff members, *see* Scott D. Makar, *Judicial Staff and Ethical Conduct*, 66 FLA. B.J. 10, 10 (Nov. 1992).

written advisory opinions regarding the FCJC.[20] The JEAC was established by the Florida Supreme Court in 1976 as the Committee on Standards of Conduct Governing Judges.[21] In 1997, its name was changed to the JEAC.[22]

The JEAC consists of three district court of appeals judges, four circuit court judges, three county court judges, and two practicing attorneys.[23] A recent advertisement soliciting volunteers described the JEAC's operations as follows:

> This is a 12-member committee that renders 20 to 25 written advisory opinions a year to inquiring judges and judicial candidates regarding application of the Code of Judicial Conduct to specific instances of contemplated judicial and non-judicial conduct. The committee meets once a year at The Florida Bar's Annual Convention[.] The majority of the committee's work, however, is undertaken via e-mail and phone conferencing. The committee is also

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[20] *See* Sands Pointe Ocean Beach Resort Condo. Ass'n, Inc. v. Aelion, 251 So. 3d 950, 957 (Fla. 3d Dist. Ct. App. 2018) ("JEAC's salutary work has produced a body of several hundred opinions in the intervening years."). Although JEAC opinions are not binding, compliance with the committee's advice is admissible as evidence of good faith in judicial discipline cases.

[21] *See* Petition of Comm. on Stds. of Conduct for Judges, 327 So. 2d 5, 5 (Fla. 1976); *see also* Petition of Comm. on Stds. of Conduct for Judges, 367 So. 2d 625, 626 (Fla. 1979) (clarifying the Committee's authority). The Committee originally was formed by The Florida Bar in 1972. In its enacting resolution, the bar's board of governors explained:

> [I]t has become increasingly important for an autonomous committee representing a broad spectrum of the Florida judiciary to be created and charged with the responsibility of rendering opinions interpreting and construing all laws and standards relating to the conduct of judges in our state and defining the obligations, duties, and responsibilities of judges arising thereunder[.]

New Standards of Judicial Conduct, 46 FLA. B.J. 268, 268 (1972).

[22] *See* Petition of Comm. on Stds. of Conduct Governing Judges, 698 So. 2d 834, 834 (Fla. 1997). The current order authorizing the JEAC (known as its "Enabling Authority") can be found at Code of Jud. Conduct, 816 So. 2d 1084, 1094–95 (Fla. 2002).

[23] *Code of Jud. Conduct*, 816 So. 2d at 1084.

> responsible for judicial campaign conduct forums scheduled in election years.[24]

The JEAC's opinions can be found on the web site of the Sixth Judicial Circuit.[25] The JEAC is prohibited from including "[t]he names [or] any identifying information of [any] judges mentioned" in its opinions.[26]

In addition to the JEAC's opinions, since 2005 the Florida Court Education Council ("FCEC") has published a helpful desk book about the FCJC.[27] It is available, free of charge, on the FCEC's web site.[28]

E. *Other Constraints on Judicial Behavior*

While running for state judicial office, Florida lawyers are subject to both the Florida Rules of Professional Conduct ("FRPC")—codified as Chapter 4 of the Rules Regulating The Florida Bar

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[24] *Florida Bar Seeking Applicants for Supreme Court's Judicial Ethics Advisory Committee*, JACKSONVILLE BAR ASS'N (Dec. 5, 2019), https://www.jaxbar.org/news/482182/Florida-Bar-Seeking-Applicants-for-Supreme-Courts-Judicial-Ethics-Advisory-Committee.html.

[25] *See Opinions of the Judicial Ethics Advisory Committee*, SIXTH JUDICIAL CIRCUIT, http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/jeac.html (last visited Mar. 14, 2022).

[26] *See* FLA. R. GEN. PRAC. & JUD. ADMIN. R. 2.420(c)(10).

[27] *See* BLAN L. TEAGLE, JUDICIAL ETHICS BENCHGUIDE: ANSWERS TO FREQUENTLY ASKED QUESTIONS iii (9th ed. 2020), https://www.flcourts.org/content/download/640498/file/200616-judicial-ethics.pdf.

[28] *See id.*

("RRTFB")—and the FCJC.[29] Once in office, the FRPC is inapplicable.[30] Upon leaving office, the FRPC again becomes operative.[31]

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[29] *See* R. REGULATING FLA. B. 4–8.2(b) (2022) ("A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Florida's Code of Judicial Conduct."). *See also* Fla. Bar v. Aven, 317 So. 3d 1095, 1096 (Fla. 2021) (attorney reprimanded for statements made during unsuccessful campaign for county court judgeship). Both the FRPC and the RRTFB can be found on the Florida Bar's web site. *Rules Regulating the Florida Bar*, THE FLA. BAR (Jan. 27, 2022), https://www.floridabar.org/rules/rrtfb/.

[30] A judge can be punished under the FRPC for his or her pre-judicial conduct. *See*, *e.g., In re* Decker, 212 So. 3d 291, 293 (Fla. 2017) (judge given public reprimand and suspended for six months without pay for violating multiple ethics rules while in private practice); *In re* Watson, 174 So. 3d 364, 366, 371 (Fla. 2015) (judge removed from bench because, while in private practice, she entered into an unethical aggregate settlement agreement); *In re* Henson, 913 So. 2d 579, 582 (Fla. 2005) (judge removed from bench because, while in private practice, he counseled a criminal client to flee the country to avoid prosecution); *In re* Ford-Kaus, 730 So. 2d 269 , 273, 277 (Fla. 1999) (judge removed from bench because, while in private practice, she lied to client about client's appeal); *In re* Meyerson, 581 So. 2d 581, 582 (Fla. 1991) (judge given public reprimand for improperly closing up his practice prior to assuming bench); *In re* Carnesoltas, 563 So. 2d 83, 83–84 (Fla. 1990) (judge given public reprimand for disruptive conduct while in private practice); *In re* Capua, 561 So. 2d 574, 575 (Fla. 1990) (judge given public reprimand for commingling attorney funds and client funds while in private practice); *In re* Block, 496 So. 2d 133, 134–35 (Fla. 1986) (judge given public reprimand for placing bets and sharing legal fees with non-attorneys while in private practice); *In re* Speiser, 445 So. 2d 343, 343–44 (Fla. 1984) (judge given public reprimand for breaching his duty of loyalty to his employer while in private practice). The Florida Bar, however, has no power to discipline a sitting judge. *See In re* Proposed Disciplinary Action by Fla. Bar Against a Cir. Judge, 103 So. 2d 632, 635 (Fla. 1958) (bar's discipline process cannot be used to punish a judge); *In re* Investigation of a Cir. Judge, 93 So. 2d 601 (Fla. 1957) (en banc) (same). For a further discussion, *see* James T. Carlisle, *When a Lawyer Becomes a Judge*, 55 FLA. BAR J. 526, 526–33 (July/Aug. 1981). For an unusual application of the FRPC, *see* Florida Bar v. Mogil, 763 So. 2d 303, 305, 314 (Fla. 2000). In *Mogil*, a New York judge was removed from office and had his New York law license revoked. *Id.* at 305. Based on these facts, the Florida Supreme Court revoked his Florida law license. *Id.* at 314.

[31] *See, e.g.*, Fla. Bar v. Gardiner, 183 So. 3d 240, 243–45 (Fla. 2014) (lawyer disbarred for having sent and received inappropriate texts with a prosecutor in a murder case she was presiding over, even though texting occurred in 2007 and lawyer resigned from the bench in 2010); Fla. Bar v. Davis, 657 So. 2d 1135, 1137 (Fla. 1995) (lawyer disbarred for taking a bribe while a judge). *But see* Fla. Bar v. Graham, 662 So. 2d 1242, 1243 (Fla. 1995) (lawyer cannot be sanctioned through the bar's disciplinary mechanism for acts committed while a judge unless acts

Florida state judges also must be mindful of Article V, Section 13 of the Florida Constitution.[32] Currently, it reads as follows: "All justices and judges shall devote full time to their judicial duties. They shall not engage in the practice of law or hold office in any political party."[33] Due to changes adopted by Florida's voters in 2018, the wording of § 13 will be revised on December 31, 2022 to read:

> (a) All justices and judges shall devote full time to their judicial duties. A justice or judge shall not engage in the practice of law or hold office in any political party.
>
> (b) A former justice or former judge shall not lobby for compensation on issues of policy, appropriations, or procurement before the legislative or executive branches of state government for a period of six years after he or she vacates his or her judicial position. The legislature may enact legislation to implement this subsection, including, but not limited to, defining terms and providing penalties for violations. Any such law shall not contain provisions on any other subject.[34]

Lastly, Florida state judges must be certain to comply with all applicable laws and court rules.[35]

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constitute a crime or involve dishonesty, deceit, immorality, or moral turpitude). A judge remains subject to sanction under the FCJC for up to one year after he or she leaves the bench. *See In re* Hapner, 718 So. 2d 785, 787–88 (Fla. 1998) (citing FLA. CONST. art. V, § 12(a)(1)). Although the entire FRPC again becomes applicable when a judge leaves office, Rule 4–1.12 specifically addresses former judges. R. REGULATING FLA. B. 4–1.12 (2022). This rule places limits on what a former judge may ethically do with respect to seeking employment and accepting clients. R. 4–1.12.

[32] FLA. CONST. art. V, § 13.

[33] *Id.*

[34] *Id*. at n.1.

[35] *See*, *e.g.*, Castro v. United States, 248 F. Supp. 2d 1170, 1172–73 (S.D. Fla. 2003) (one of many cases arising from "Operation Court Broom," a 1989–91 joint federal-state investigation into a kickback scheme operating out of the Miami-Dade County main courthouse that resulted in nine people, including three judges, going to jail for, among other things, violating the Racketeer-Influenced

F. *Florida Bar Exam*

The Florida Bar Examination ("FBE") no longer tests applicants on the FCJC.[36] Nevertheless, fact patterns involving judicial conduct do sometimes still appear on the FBE.[37]

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and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968); Peel v. State, 150 So. 2d 281, 282–83 (Fla. 2d Dist. Ct. App. 1963), *appeal dismissed*, 168 So. 2d 147 (Fla. 1964), *cert. denied*, 380 U.S. 986 (1965), and Peel v. State, 154 So. 2d 910 (Fla. 2d Dist. Ct. App. 1963), *appeal dismissed*, 168 So. 2d 148 (Fla. 1964), *cert. denied*, 380 U.S. 986 (1965) (in separate proceedings, judge given life sentences for arranging for the murders of another judge and the judge's wife); *In re* Amendments to Fla. R. Jud. Admin.—New R. 2.340, 174 So. 3d 991, 992 (Fla. 2015) (court rule prohibiting state judges from wearing other than plain black robes); FLA. R. JUD. ADMIN. 2.320 (court rule requiring all state judges to complete 30 hours of continuing judicial education every three years). The FRPC prohibits lawyers from helping judges violate the FCJC or the law. *See* R. REGULATING FLA. B. 8–4(f) (2022) ("A lawyer shall not . . . knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law[.]").

[36] *See* R. SUP. CT. RELATING TO ADMISSIONS TO B. 4–22 (listing the FBE's 15 current subjects), https://www.floridabarexam.org/web/website.nsf/rule.xsp#4-22. Since 1981, FBE applicants have had to pass the National Conference of Bar Examiners' Multistate Professional Responsibility Exam ("MPRE"). *See In re* Amendments to R. Sup. Ct. Relating to Admissions to B., 397 So. 2d 627, 628–29 (Fla. 1981). Of the MPRE's 60 questions, three or four normally ask about the MCJC. *See* DRU STEVENSON, THE GLANNON GUIDE TO PROFESSIONAL RESPONSIBILITY: LEARNING PROFESSIONAL RESPONSIBILITY THROUGH MULTIPLE-CHOICE QUESTIONS AND ANALYSIS 343 (2d ed. 2019). Prior to the adoption of the MPRE, the FBE did test on judicial ethics. *See In re* Florida Bd. B. Exam'rs for Amend. to R., 323 So. 2d 553, 553–54 (Fla. 1975) ("Part III of the examination shall be of one hour's duration and shall consist of not more than forty multiple-choice questions. These questions shall be designed to permit the applicant to demonstrate knowledge of the Code of Judicial Conduct and the Code of Professional Responsibility, including the Canons, Disciplinary Rules and Ethical Considerations as applicable in the State of Florida. Part III of the examination shall be clearly labeled as to subject matter.").

[37] Essay Question 3 of the February 2020 FBE, for example, asked applicants whether a lawyer could contact a judge ("County Judge Jeff Juris") and engage in an *ex parte* conversation on behalf of a client ("John"). The question, along with a model answer, can be viewed at Florida Board of Bar Examiners, *Florida Bar Examination Study Guide and Selected Answers: July 2019 [and] February 2020*, at 33–39 (2021), https://www.floridabarexam.org/__85257bfe0055eb2c.nsf/52286ae9ad5d845185257c07005c3fe1/a0cd6edd1155f3138525866800745584.

II. THE FCJC CANONS

As explained earlier in this article, the FCJC consists of seven canons.[38] A description of each canon appears below.

A. *Canon 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary*

Canon 1 requires judges to uphold "the integrity and independence of the judiciary."[39] Given the vagueness of these commands, it is rare for a judge in Florida to be disciplined solely for a violation of Canon 1.[40] Instead, Canon 1 normally is cited as an additional justification for discipline, because any conduct that brings disrepute to the judiciary constitutes a violation of Canon 1.[41] This is made clear in the commentary to Canon 1, which states in part: "[V]iolation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law."[42]

B. *Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities*

Canon 2 contains three lettered paragraphs. Canon 2A requires a judge to "respect and comply with the law" and "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[43] Canon 2B requires a judge to avoid: 1) letting "family, social, political or other relationships" influence his or her "conduct or judgment"; 2) lending the prestige of his or her

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[38] *See generally* FLA. CODE JUD. CONDUCT.

[39] *See* FLA. CODE JUD. CONDUCT Canon 1.

[40] For an example of a judge being punished solely for violating Canon 1, see *In re* Vitale, 630 So. 2d 1065 (Fla. 1994). In *Vitale*, the judge agreed to accept a public reprimand for failing to vacate an order both sides agreed was mistakenly entered. As a result, "The attorneys spent unnecessary time at the expense of their clients and the appellate court was required to spend time on an appeal that was unnecessary." *Id*. at 1066.

[41] *See*, *e.g.*, *In re* Steinhardt, 663 So. 2d 616 (Fla. 1995) (judge given public reprimand for violating Canons 1 and 2 by trying to intimidate the Miami Beach police department after he was given a parking ticket); *In re* Fowler, 602 So. 2d 510 (Fla. 1992) (judge given public reprimand for violating Canons 1 and 2 by furnishing a false accident report to the police).

[42] FLA. CODE JUD. CONDUCT Canon 1.

[43] FLA. CODE JUD. CONDUCT Canon 2A.

office "to advance the private interests" of the judge or another person; 3) conveying, or permitting others to convey, "the impression that they are in a special position to influence the judge"; and, 4) voluntarily serving as a character witness for another person.[44] Canon 2C, added in 1995, prohibits a judge from being a member of "an organization that practices invidious discrimination on the basis of race, sex, religion, or national origin," although it expressly exempts "fraternal, sororal, religious, [and] ethnic heritage organization[s]."[45]

Canon 2A typically is used to reprimand judges who have shown poor judgment off the bench, such as by being publicly intoxicated,[46] participating in illegal gambling,[47] shoplifting,[48] taking the law into their own hands,[49] making intemperate comments,[50] abusing their authority,[51] or having inappropriate personal relationships.[52] It also has been used to discipline judges who engage in

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[44] FLA. CODE JUD. CONDUCT Canon 2B.

[45] FLA. CODE JUD. CONDUCT Canon 2C.

[46] *See*, *e.g.*, *In re* Sheehan, 139 So. 3d 290 (Fla. 2014); *In re* Nelson, 95 So. 3d 122 (Fla. 2012); *In re* Cope, 848 So. 2d 301 (Fla. 2003); *In re* Fletcher, 666 So. 2d 137 (Fla. 1996); *In re* Esquiroz, 654 So. 2d 558 (Fla. 1995); *In re* Gloeckner, 626 So. 2d 188 (Fla. 1993); *In re* Norris, 581 So. 2d 578 (Fla. 1991); *In re* Lee, 336 So. 2d 1175 (Fla. 1976).

[47] *See*, *e.g.*, *In re* McIver, 638 So. 2d 45 (Fla. 1994); *In re* Byrd, 460 So. 2d 377 (Fla. 1984).

[48] *See In re* Garrett, 613 So. 2d 463 (Fla. 1993).

[49] *See In re* Tye, 544 So. 2d 1024 (Fla. 1989) (while off-duty, judge stopped at a building he owned and, after taking out a pistol, confronted four men he believed were conducting a drug deal, leading the men to file aggravated assault charges against the judge).

[50] *See, e.g., In re* Santora, 602 So. 2d 1269 (Fla. 1992); *In re* Removal of a Chief Judge, 592 So. 2d 671 (Fla. 1992). Both cases involved the same judge, who, in a freewheeling newspaper interview, embraced racial stereotypes. After first stripping him of his chief judgeship, the Florida Supreme Court gave him a public reprimand. *See* In re *Santora*, 602 So. 2d at 1270.

[51] *See In re* Muszynski, 471 So. 2d 1284 (Fla. 1985) (judge given public reprimand for berating police officer having lunch at the same restaurant as the judge).

[52] *See*, *e.g.*, *In re* Flood, 150 So. 3d 1097 (Fla. 2014) (judge given public reprimand for engaging in excessive fraternization with her bailiff); *In re* Henderson, 22 So. 3d 58 (Fla. 2009) (judge given public reprimand for associating with a convicted felon); *In re* Adams, 932 So. 2d 1025 (Fla. 2006) (judge given public reprimand for having romantic relationship with a lawyer who practiced in front of him).

personal attacks against other judges.[53] Canon 2B typically is used to reprimand judges who have done favors for friends or acquaintances,[54] or have sought preferential treatment for themselves,[55] their

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[53] *See*, *e.g.*, *In re* Barnes, 2 So. 3d 166 (Fla. 2009); *In re* Allen, 998 So. 2d 557 (Fla. 2008); *In re* Diaz, 908 So. 2d 334 (Fla. 2005); *In re* Miller, 644 So. 2d 75 (Fla. 1994); *In re* Graham, 620 So. 2d 1273 (Fla. 1993), *cert*. *denied*, 510 U.S. 1163, *reh'g denied*, 511 U.S. 1047 (1994). For a case in which a former county judge was given a 45-day suspension for a blog post in which he threatened the life of a sitting circuit judge, *see* Florida B. v. Spechler, No. SC20-189, 2020 WL 948752 (Fla. 2020). For the underlying facts, which are omitted from the court's opinion, *see* Rafael Olmeda, *Former Judge's License Suspended Over Post*, S. FLA. SUN-SENTINEL, Feb. 28, 2020, at 3B.

[54] *See*, *e.g.*, *In re* White-Labora, 257 So. 3d 367 (Fla. 2018) (judge given public reprimand for writing character reference on behalf of a federal criminal defendant awaiting sentencing); *In re* Holder, 195 So. 3d 1133 (Fla. 2016) (judge given public reprimand for advocating with state attorney and university president on behalf of a criminal defendant); *In re* Kautz, 149 So. 3d 681 (Fla. 2014) (judge given public reprimand for representing her sister at first appearance hearing); *In re* Maxwell, 994 So. 2d 974 (Fla. 2008) (judge given public reprimand for helping secure release of his former law partner's sister after she was arrested for domestic battery); *In re* Maloney, 916 So. 2d 786 (Fla. 2005) (judge given public reprimand for ordering police to release a family friend who had been arrested for drunk driving); *In re* Holloway, 832 So. 2d 716 (Fla. 2002) (judge given public reprimand for providing inappropriate help to a friend in a disputed child custody battle); *In re* Ward, 654 So. 2d 549 (Fla. 1995) (judge given public reprimand for writing character reference on behalf of a federal criminal defendant awaiting sentencing); *In re* Fogan, 646 So. 2d 191 (Fla. 1995) (same); *In re* Stafford, 643 So. 2d 1067 (Fla. 1994) (judge given public reprimand for writing character reference on behalf of a convicted federal felon); *In re* Abel, 632 So. 2d 600 (Fla. 1994) (judge given public reprimand for writing character reference on behalf of a federal criminal defendant awaiting sentencing).

[55] *See, e.g., In re* Richardson, 760 So. 2d 932 (Fla. 2000) (discussing a judge's attempt to convince police to drop his case after being arrested for soliciting a prostitute); *In re* Wilson, 750 So. 2d 631 (Fla. 1999) (judge denied knowing anything about a crime committed by third person, even though she had witnessed it, in effort to protect her reputation).

family,[56] or others.[57] To date, no judge in Florida has been disciplined for violating Canon 2C.

C. *Canon 3: A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently*

Canon 3 contains six lettered paragraphs.

Canon 3A requires a judge to give his or her judicial duties "precedence over all the judge's other activities."[58]

Canon 3B(1) requires a judge to hear and decide all assigned matters "except those in which disqualification is required."[59] Canon 3B(2) requires a judge to "be faithful to the law," "maintain professional competence," and "not be swayed by partisan interests, public clamor, or fear of criticism."[60] Canon 3B(3) requires a judge to maintain "order and decorum" in his or her courtroom.[61] Canon 3B(4) requires a judge to be "patient, dignified, and courteous" and require similar conduct "of lawyers, and of staff, court officials, and others subject to the judge's direction and control."[62] Canon 3(B)(5) requires a judge to perform his or her duties "without bias or prejudice."[63] Canon 3(B)(6) requires a judge to prohibit lawyers appearing before him or her from "manifesting . . . bias or prejudice."[64] Canon 3B(7) prohibits a judge from initiating, permitting, or considering "ex parte communications" except when authorized by law

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[56] *See In re* Frank, 753 So. 2d 1228, 1242 (Fla. 2000). In a case that remains pending, a judge has been accused of seeking preferential treatment for her son following his arrest for attempted murder. *See* Notice of Formal Charges at 1–2, *In re* Hobbs, SC20-605 (Fla. filed Apr. 28, 2020). *See also* James L. Rosica, *Judicial Ethics Panel Recommends 60-day Unpaid Suspension for Tallahassee Judge*, TALLAHASSEE DEMOCRAT (June 13, 2021, 8:24 PM), https://www.tallahassee.com/story/news/local/state/2021/06/11/tallahassee-judge-should-get-unpaid-suspension-panel-recommends-in-judicial-ethics-case/7655194002/.

[57] *See In re* Lederman, 292 So. 3d 425, 426 (Fla. 2020) (public reprimand given to five judges who signed letter encouraging the Florida Department of Children and Families to award a competitive contract to a specific vendor).

[58] FLA. CODE JUD. CONDUCT Canon 3A.

[59] *Id.* at Canon 3B(1).

[60] *Id.* at Canon 3B(2).

[61] *Id.* at Canon 3B(3).

[62] *Id.* at Canon 3B(4).

[63] *Id.* at Canon 3B(5).

[64] *Id.* at Canon 3B(6).

or court rule.[65] Canon 3B(8) requires a judge to dispose of all matters "promptly, efficiently, and fairly."[66] Canon 3B(9) prohibits a judge from making "any public comment that might reasonably be expected to affect [the] outcome [of a matter] or impair its fairness or make any non[-]public comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control."[67] Canon 3B(10) prohibits a judge from making "pledges, promises or commitments that are inconsistent with the [judge's] impartial performance."[68] Canon 3B(11) prohibits a judge from "commend[ing] or critciz[ing] jurors for their verdict."[69] Canon 3B(12) prohibits a judge from disclosing or using, "for any purpose unrelated to judicial duties, non[-]public information acquired in a judicial capacity."[70]

Canon 3C(1) requires a judge to "diligently discharge the judge's administrative responsibilities without bias or prejudice."[71] Canon 3C(2) requires a judge to require those serving at his or her direction "to observe the [same] standards of fidelity and diligence."[72] Canon 3C(3) requires a judge with "supervisory authority" over other judges to take reasonable measures to assure their proper performance.[73] Canon 3C(4) prohibits a judge from making "unnecessary appointments."[74]

Canon 3D(1) requires a judge who knows, or receives information, that another judge has committed a violation of the FCJC to "take appropriate action."[75] Canon 3D(2) requires a judge who knows, or receives information, that a lawyer has violated the RRTFB, to "take appropriate action."[76] Canon 3D(3) makes actions taken by a judge pursuant to either Canon 3D(1) or Canon 3D(2)

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65 *Id.* at Canon 3B(7).
66 *Id.* at Canon 3B(8).
67 *Id.* at Canon 3B(9).
68 *Id.* at Canon 3B(10).
69 *Id.* at Canon 3B(11).
70 *Id.* at Canon 3B(12).
71 *Id.* at Canon 3C(1).
72 *Id.* at Canon 3C(2).
73 *Id.* at Canon 3C(3).
74 *Id.* at Canon 3C(4).
75 *Id.* at Canon 3D(1).
76 *Id.* at Canon 3D(2).

"absolutely privileged" and prohibits civil actions from being "predicated thereon."[77]

Canon 3E(1) requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."[78] Canon 3E(2) requires a judge to "keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the economic interests of the judge's spouse and minor children residing in the judge's household."[79]

Canon 3F permits a judge disqualified by Canon 3E to "disclose on the record the basis of the judge's disqualification and . . . ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification."[80]

Although most Canon 3 cases have involved inappropriate courtroom behavior,[81] judges also have been punished for trading

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[77] *Id.* at Canon 3D(3).

[78] *Id.* at Canon 3E(1).

[79] *Id.* at Canon 3E(2).

[80] *Id.* at Canon 3F.

[81] *See*, *e.g.*, *In re* Miller, 304 So. 3d 1214, 1217 (Fla. 2020) (public reprimand for yelling at a crowd gathered in lobby outside judge's courtroom—the crowd was celebrating another judge's investiture); *In re* Lemonidis, 283 So. 3d 799, 802 (Fla. 2019) (public reprimand for intemperate remarks during two separate proceedings); *In re* Bailey, 267 So. 3d 992, 995 (Fla. 2019) (public reprimand for mistreating defendant's attorney); *In re* Collins, 195 So. 3d 1129, 1132 (Fla. 2016) (public reprimand and behavioral courses for belittling domestic violence victim); *In re* Murphy, 181 So. 3d 1169, 1176, 1179 (Fla. 2015) (removal from bench for physical altercation with public defender); *In re* Shea, 110 So. 3d 414, 418–19 (Fla. 2013) (public reprimand for pattern of inappropriate conduct); *In re* Eriksson, 36 So. 3d 580, 595–96 (Fla. 2010) (public reprimand for mistreating litigants); *In re* Aleman, 995 So. 2d 395, 399–401 (Fla. 2008) (public reprimand for mistreating public defender); *In re* Sloop, 946 So. 2d 1046, 1057–59 (Fla. 2006) (removal from bench for jailing eleven citizens who were late to traffic court because they had been directed to the wrong courtroom); *In re* Albritton, 940 So. 2d 1083, 1089 (Fla. 2006) (public reprimand, thirty-day unpaid suspension, and $5,000 fine for long history of improper conduct toward litigants, attorneys, and staff); *In re* Schapiro, 845 So. 2d 170, 173–74 (Fla. 2003) (public reprimand for long pattern of rude and intemperate behavior); *In re* Haymans, 767 So. 2d 1173, 1174 (Fla. 2000) (public reprimand for long pattern of rudeness and disrespect toward lawyers, parties, witnesses, victims, and court personnel); *In re* Shea, 759 So. 2d 631, 638–39 (Fla. 2000*), stay denied,* 530 U.S. 1286 (2000), *cert. denied*, 531 U.S. 826 (2000) (removal from bench for long pattern of hostile conduct toward attorneys, court personnel, and judges); *In re* Newton, 758 So. 2d 107, 109

judicial acts for political favors,[82] practicing law while on the bench,[83] using their judicial office to promote their private business

(Fla. 2000) (public reprimand for multiple rude and abusive comments); *In re* Schwartz, 755 So. 2d 110, 114–15 (Fla. 2000) (public reprimand for rude and discourteous remarks during oral argument); *In re* Wood, 720 So. 2d 506, 509 (Fla. 1998) (public reprimand for rude and intemperate behavior); *In re* Wright, 694 So. 2d 734, 735–36 (Fla. 1997) (public reprimand for addressing assistant state attorneys and crime victim in rude and abusive manner); *In re* Graziano, 661 So. 2d 819, 820 (Fla. 1995) (public reprimand for failing to be patient, dignified, and courteous to litigants, lawyers, and others); *In re* Golden, 645 So. 2d 970, 972 (Fla. 1994) (public reprimand for using profane, racist, and sexist language while presiding over cases); *In re* Perry, 641 So. 2d 366, 367, 369 (Fla. 1994) (public reprimand for rebuking army recruiter for appearing in court in uniform); *In re* Colby, 629 So. 2d 120, 120–21 (Fla. 1993) (public reprimand for summarily convicting several defendants who missed traffic court); *In re* Fleet, 610 So. 2d 1282, 1282 (Fla. 1992) (public reprimand for displaying a loaded handgun from the bench); *In re* Marko, 595 So. 2d 46, 46 (Fla. 1992) (public reprimand for making rude, improper, and inappropriate remarks to wife at dissolution of marriage hearing); *In re* Carr, 593 So. 2d 1044, 1045 (Fla. 1992) (public reprimand for using a slur in describing complaining witness's nationality); *In re* Perry, 586 So. 2d 1054, 1054–55 (Fla. 1991) (public reprimand for verbally abusing and intimidating attorneys, parties, and witnesses); *In re* Trettis, 577 So. 2d 1312, 1313–14 (Fla. 1991) (public reprimand for rude and overbearing conduct); *In re* Zack, 570 So. 2d 938, 939 (Fla. 1990) (public reprimand for using profane language to describe county sheriff); *In re* Eastmoore, 504 So. 2d 756, 758 (Fla. 1987) (public reprimand for acting in a dictatorial and overbearing manner); *In re* Turner, 421 So. 2d 1077, 1080–81 (Fla. 1982) (public reprimand for numerous arrogant acts); *In re* Lantz, 402 So. 2d 1144, 1146–47 (Fla. 1981) (public reprimand for numerous improper acts, including refusing to release court reporter's notes to counsel); *In re* Crowell, 379 So. 2d 107, 110 (Fla. 1979) (removal from bench for long pattern of abusive behavior toward attorneys, litigants, and others). In *In re* Cohen, the Court issued a public reprimand but provided no facts. *In re* Cohen, No. 12-285, 2014 WL 259079, at *1 (Fla. 2014). According to a local newspaper story, while hearing cases the defendant repeatedly criticized the local state attorney's office for the way it was going about its work and injected himself into the 2012 election for state attorney. *See* Marc Freeman, *Florida Supreme Court Reprimands Palm Beach County Judge Barry Cohen*, S. FLA. SUN-SENTINEL (Apr. 29, 2014, 12:00 AM), https://www.sun-sentinel.com/news/fl-xpm-2014-04-29-fl-judge-barry-cohen-public-reprimand-20140429-story.html.

[82] *See In re* Damron, 487 So. 2d 1, 1 (Fla. 1986).

[83] *See*, *e.g.*, *In re* Sturgis, 529 So. 2d 281, 281 (Fla. 1988) (judge given public reprimand); *In re* Berkowitz, 522 So. 2d 843, 844 (Fla. 1988) (judge removed from bench).

affairs,[84] habitually looking at pornography on their work computer,[85] failing to be impartial,[86] engaging in *ex parte* communications,[87] repeatedly being late to court,[88] not issuing rulings expeditiously,[89] falsifying court records,[90] making comments to the press about a pending case,[91] allowing a hostile work environment,[92] and refusing to disqualify themselves in cases in which they could not

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[84] *See*, *e.g.*, *In re* Hawkins, 151 So. 3d 1200, 1207 (Fla. 2014) (judge reprimanded, fined, and suspended for three months without pay for promoting her book during working hours); *In re* DeFoor, 494 So. 2d 1121, 1123 (Fla. 1986) (judge reprimanded for, among other things, using his judicial office to develop and promote a device in which he held a financial interest).

[85] *See In re* Downey, 937 So. 2d 643, 645 (Fla. 2006).

[86] *See*, *e.g.*, *In re* Yacucci, 228 So. 3d 523, 526 (Fla. 2017); *In re* Bell, 23 So. 3d 81, 83–84 (Fla. 2009).

[87] *See*, *e.g.*, *In re* Scaff, No. SC20-461, 2020 WL 2768993, at *1 (Fla. May 28, 2020); *In re* Contini, 205 So. 3d 1281, 1282 (Fla. 2016); *In re* Baker, 813 So. 2d 36, 37 (Fla. 2002); *In re* Clayton, 504 So. 2d 394, 395 (Fla. 1987); *In re* Boyd, 308 So. 2d 13, 14 (Fla. 1975); *In re* Dekle, 308 So. 2d 5, 6–7 (Fla. 1975).

[88] *See In re* Singbush, 93 So. 3d 188, 190 (Fla. 2012).

[89] *See In re* Allawas, 906 So. 2d 1052, 1053 (Fla. 2005).

[90] *See In re* Johnson, 692 So. 2d 168, 170 (Fla. 1997).

[91] *See*, *e.g.*, *In re* Andrews, 875 So. 2d 441, 441 (Fla. 2004); *In re* Hayes, 541 So. 2d 105, 105–06 (Fla. 1989).

[92] *See In re* McAllister, 646 So. 2d 173, 174–75 (Fla. 1994).

be objective.[93] In yet another case, a judge was sanctioned for taking too much time off.[94]

D. *Canon 4: A Judge Is Encouraged to Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice*

Canon 4 consists of four lettered paragraphs.

Canon 4A requires a judge to conduct his or her "quasi-judicial activities" in a manner that is compatible with his or her FCJC obligations.[95] Canons 4A(1)-4A(6) then list various problems that might be caused by such activities, such as casting doubt on the judge's capacity to act impartially; undermining the judge's independence, integrity, or impartiality; demeaning the judge's office; interfering with the judge's judicial duties; causing the judge to have to frequently step down from cases; and requiring the judge to undertake

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[93] *See*, *e.g.*, *In re* Cohen, 99 So. 3d 926, 931 (Fla. 2012); *In re* Brown, 748 So. 2d 960, 962 (Fla. 1999). Being social media friends with a lawyer does not require a judge to disqualify themselves. *See* Law Offices of Herssein & Herssein, P.A. v. United Servs. Auto. Ass'n, 271 So. 3d 889, 891–92 (Fla. 2018). In *5-H Corp. v. Padovano*, a lawyer filed a complaint with the Judicial Qualifications Commission claiming that a three-judge panel of the First District Court of Appeal had exhibited bias against his client. 5-H Corp. v. Padovano, 708 So. 2d 244, 245–46 (Fla. 1997). In a subsequent case, the lawyer, now representing a different client, moved to disqualify all fifteen of the district's judges. In affirming the district's refusal to grant the lawyer's request, the Florida Supreme Court wrote:

> [D]isqualification remains available where it can be shown that "the judge has a *personal* bias or prejudice concerning a party or a party's lawyer[.]" Fla. Code Jud. Conduct Canon 3E(1)(a) (emphasis added). No such showing has been made here. [Attorney] Arslanian's argument that the district court judges may have been "embarrassed, humiliated and *even outraged*" by the subject course of events, and might therefore be personally biased against Arslanian and retaliate against him and his clients, is speculative, attenuated, and too fanciful to warrant relief.

Id. at 248.

[94] *See In re* Bryson, 329 So. 3d 731, 733 (Fla. 2021) (public reprimand, a 10-day suspension without pay, and a $37,5000 fine); *see also* Rafael Olmeda, *Judge is Accused of Taking Too Much Time Off*, S. FLA. SUN-SENTINEL ON MSN, Apr. 15, 2021, https://www.msn.com/en-us/news/crime/judge-is-accused-of-taking-too-much-time-off-she-says-she-was-working-remotely/ar-BB1fEVG5.

[95] FLA. CODE JUD. CONDUCT Canon 4A.

tasks that coerce others into doing things they would not do if asked by someone other than a judge.[96]

Canon 4B permits a judge to participate in quasi-judicial activities "concerning the law, the legal system, the administration of justice, and the role of the judiciary," including lecturing, speaking, teaching, and writing.[97]

Canon 4C prohibits a judge from appearing "at a public hearing before, or otherwise consult[ing] with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests."[98]

Canon 4D permits a judge "to serve as a member, officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice."[99] Canons 4D(1) and 4D(2) qualify this statement by permitting such behavior only if it does not interfere with the judge's judicial obligations or trade on his or her office.[100]

"Quasi-judicial activities" are activities indirectly related to a judge's position as a judge.[101] In contrast, "extra-judicial activities," which are regulated by Canon 5, are activities that have no connection to a judge's office.[102]

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96 *Id.*
97 *Id.* at Canon 4B.
98 *Id.* at Canon 4C.
99 *Id.* at Canon 4D.
100 *Id.* at Canons 4D(1)-4D(2).
101 *Id.* at Canon 4.
102 *Id.* at Canon 5.

Although several judges have been found guilty of violating Canon 4A, all also were held to have violated other canons.[103] There are no Florida cases on Canons 4B, 4C, or 4D.[104]

E. *Canon 5: A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties*

Canon 5 consists of seven lettered paragraphs.

Canon 5A requires a judge to conduct his or her extrajudicial activities in a manner compatible with his or her judicial duties.[105] Canons 5A(1)-5A(6) list various problems that might be caused by such activities, such as casting doubt on the judge's capacity to act impartially; undermining the judge's independence, integrity, or impartiality; demeaning the judge's office; interfering with the judge's judicial duties; causing the judge to have to frequently step down from cases; and requiring the judge to undertake tasks that coerce others into doing things they would not do if asked by someone other than a judge.[106]

Canon 5B permits a judge "to speak, write, lecture, teach and participate in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code."[107]

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[103] *See*, *e.g.*, *In re* Schwartz, 174 So. 3d 987, 988 (Fla. 2015) (judge found guilty of two separate offenses, including threatening to sue convenience store owner who would not display her campaign poster, and punished under Canons 1, 2A, 3B, 4A, and 7A); *In re* Recksiedler, 161 So. 3d 398, 399 (Fla. 2015) (judge found guilty of giving misleading answers to the Judicial Nominating Commission and punished under Canons 1, 2A, and 4A); *In re* Albritton, 940 So. 2d 1083, 1083 (Fla. 2006) (judge found guilty of committing multiple offenses and punished under various provisions of Canons 1-5). *See also In re* Contini, 205 So. 3d 1281, 1282 (Fla. 2016) (judge accused of violating Canon 4A but charge dropped for lack of factual support).

[104] There are numerous JEAC opinions dealing with these provisions. Most involve Canon 4(D) and the extent to which a judge can participate in fundraising projects. *See*, *e.g.*, Fla. JEAC Op. 18-29 (judge can accept law school alumni award at ceremony intended to raise money for law student scholarships); Fla. JEAC Op. 18-05 (judge can allow his or her name to be listed on legal aid organization's fundraiser invitation); Fla. JEAC Op. 16-20 (judge can play in golf tournament to raise funds for guardian *ad litem* program but cannot help solicit contributions).

[105] FLA. CODE JUD. CONDUCT Canon 5A.

[106] *Id*.

[107] *Id*. at Canon 5B.

Canon 5C regulates a judge's charitable, civic, and governmental activities. Canon 5C(1) prohibits a judge from appearing before public bodies "except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests."[108] Canon 5C(2) prohibits a judge from serving on government bodies except those concerned with "the improvement of the law, the legal system, the judicial branch, or the administration of justice."[109] Canon 5C(3) permits a judge to "serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, sororal or civic organization not conducted for profit, subject to the . . . requirements of [the] Code."[110]

Canon 5D regulates the financial activities of judges.[111] Canon 5D(1) prohibits a judge from engaging in such activities if they "may reasonably be perceived to exploit the judge's judicial position, or . . . involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves."[112] Canon 5D(2) permits a judge to "hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity."[113] Canon 5D(3) prohibits a judge from serving "as an officer, director, manager, general partner, advisor or employee of any business entity" except "a business closely held by the judge or members of the judge's family."[114] Canon 5D(4) requires the judge to "manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified."[115] Canon 5D(5) limits the types of bequests, favors, gifts, and loans a judge can accept and requires the judge to "urge members of the judge's family residing in the judge's household" to be equally circumspect.[116]

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[108] *Id*. at Canon 5C(1).
[109] *Id*. at Canon 5C(2).
[110] *Id*. at Canon 5C(3).
[111] *Id*. at Canon 5D.
[112] *Id.* at Canon 5D(1).
[113] *Id*. at Canon 5D(2).
[114] *Id*. at Canon 5D(3).
[115] *Id*. at Canon 5D(4).
[116] *Id*. at Canon 5D(5).

Canon 5E(1) prohibits a judge from "serv[ing] as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties."[117] Canons 5E(2) and 5E(3) further limit the ability of a judge to serve as a fiduciary.[118]

Canon 5F(1) prohibits a judge from acting "as an arbitrator or mediator or otherwise perform[ing] judicial functions in a private capacity unless expressly authorized by law or Court rule."[119] Canon 5F(2) permits a senior judge to serve as a mediator if the judge "is certified pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators" and the "case [is] in a circuit in which the senior judge is not presiding as a judge."[120]

Canon 5G prohibits a judge from practicing law but permits a judge to "act pro se and [also], without compensation, give legal advice to and draft or review documents for a member of the judge's family."[121]

To date, only one Florida judge has been disciplined solely because of a breach of Canon 5. In *In re Luzzo*,[122] a judge on multiple occasions accepted Florida Marlins baseball tickets from lawyers who regularly appeared in his court. In ordering a public reprimand, the Florida Supreme Court wrote:

> [C]anon 5D(5)(h) . . . prohibits a judge from accepting a gift of any value from a "person who has come or is likely to come" before the judge. The commentary to canon 5D(5)(h) specifically provides that this canon "prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge." The importance of this Canon was emphasized in a recent ethics advisory opinion. *See* Fla. Supreme Ct.

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117 *Id*. at Canon 5E(1).
118 *Id.* at Canon 5E(2-3).
119 *Id*. at Canon 5F(1).
120 *Id*. at Canon 5F(2).
121 *Id*. at Canon 5G.
122 *In re* Luzzo, 756 So. 2d 76, 77-78 (Fla. 2000).

> Judicial Ethics Adv. Comm. Op. No. 2000-08, *Judges and Court Employees Accepting Gifts from Lawyers, Vendors, and Other Third Parties* (March 1, 2000). As found by the Judicial Qualifications Commission, "During the period of time that Judge Luzzo received these tickets, lawyers from the Law Firm were not only likely to appear before Judge Luzzo, but actually were before him as defense counsel in at least two cases." Thus, Judge Luzzo's conduct comes squarely within Canon 5D(5)(h).[123]

F. *Canon 6: Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; A Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts, Expense Reimbursements and Payments, and Waivers of Fees or Charges; Additional Financial Information Shall be Filed with the Judicial Qualifications Commission to Ensure Full Financial Disclosure*

Canon 6 consists of four lettered paragraphs.

Canon 6A permits a judge to "accept compensation, reimbursement, or direct payment of expenses, and a waiver or partial waiver of fees or charges for registration, tuition, and similar items associated with the judge's participation in quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments, or waiver does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety."[124] Canons 6A(1)-6A(3) limits all such payments to a "reasonable amount."[125]

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[123] *Id.* at 78–79. In a similar case, a lawyer was suspended for two years because, while serving as a judge, he accepted Tampa Bay Rays baseball tickets from attorneys appearing in front of him. *See* Fla. B. v. Lakin, No. SC17-542, 2019 WL 1894416 (Fla. 2019); Dale White, *Former Judge Suspended, But Florida Supreme Court Spares John Lakin Disbarment in Baseball Tickets Case*, SARASOTA HERALD-TRIB., https://www.heraldtribune.com/story/news/local/manatee/2019/05/01/florida-supreme-court-suspends-former-judge-in-baseball-tickets-case/5266141007/ (last updated May 3, 2019, 2:05 P.M.).

[124] FLA. CODE JUD. CONDUCT Canon 6A.

[125] *Id*.

Canons 6B(1)-6B(3) require a judge to comply with the annual public financial reporting requirements specified in Article II, § 8 of the Florida Constitution.[126]

Canon 6C requires a judge to annually report his or her financial information to the Judicial Qualifications Commission.[127]

Canon 6D makes it clear that "[d]isclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law."[128]

To date, only one judge has been punished for violating Canon 6.[129]

G. *Canon 7: A Judge or Candidate for Judicial Office Shall Refrain from Inappropriate Political Activity*

Canon 7 consists of six lettered paragraphs.

Canon 7A(1) prohibits judges and judicial candidates from acting as leaders in political organizations, endorsing or opposing other candidates, making speeches on behalf of political organizations, attending political gatherings, or asking for or making political contributions.[130] Canon 7A(2) requires a judge to resign from judicial office "upon becoming a candidate for a non-judicial office."[131] Canon 7A(3) repeats the various provisions found in Canon 3B.[132]

Canon 7B(1) prohibits a candidate for appointment to judicial office from soliciting or accepting funds to support his or her candidacy. Canon 7B(2) prohibits such candidates from engaging "in any political activity to secure the appointment."[133]

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[126] *Id.* at Canon 6B(1-3); Fla. Const. art. II, § 8.

[127] FLA. CODE JUD. CONDUCT Canon 6C.

[128] *Id*. at Canon 6D.

[129] *See In re* Ortiz, 2019 WL 364277 (Fla. 2019) (judge suspended for 90 days without pay, fined $5,000, and publicly reprimanded for failing to properly fill out her financial disclosure forms).

[130] FLA. CODE JUD. CONDUCT Canon 7A(1).

[131] *Id.* at Canon 7A(2).

[132] *Id*. at Canon 3B, 7A(3).

[133] *Id*. at Canon 7B(2). Candidates for such offices are permitted to engage in "non-political" activities, such as "seek[ing] support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals." *Id.* at Canon 7B(2)(a)(ii).

Canon 7C(1) prohibits candidates for judicial offices that are filled by election from personally soliciting funds or attorneys for support. Such candidates are permitted to establish campaign committees that can engage in these activities. Canon 7C(2) permits judicial candidates for merit retention offices to "conduct only limited campaign activities until such time as [they] certif[y] [that they have] drawn active opposition."[134] Canon 7C(3) allows judicial candidates running for election or re-election, as well as judicial candidates in merit retention races who have drawn active opposition, to "attend a political party function to speak in behalf of his or her candidacy."[135]

Canon 7D prohibits a judge from engaging "in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law."[136]

Canon 7E makes Canon 7 applicable to all incumbent judges and judicial candidates and reminds lawyers running for judicial office that they also are "subject to Rule 4-8.2(b) of the Rules Regulating The Florida Bar."[137]

Canon 7F requires judicial candidates to file a statement saying they have read, and understand, the FCJC. The form is due "within 10 days after filing the appointment of campaign treasurer and designation of campaign depository."[138]

To help candidates for judicial office, the JEAC has prepared a comprehensive guide to Canon 7.[139] As it explains, Canon 7 has been amended repeatedly:

> Canon 7 of the Code of Judicial Conduct and chapter 105, Florida Statutes, govern political conduct by judges and judicial candidates. In 1982, the supreme

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134 *Id.* at Canon 7C(2).

135 *Id*. at Canon 7C(3).

136 *Id*. at Canon 7D.

137 *Id*. at Canon 7E.

138 *Id*. at Canon 7F.

139 *See* Jud. Ethics Adv. Comm., *An Aid to Understanding Canon 7: Guidelines to Assist Judicial Candidates in Campaign and Political Activities* (Apr. 2021), https://www.flcourts.org/content/download/218065/1974336/canon-7.pdf.

court modified former Canon 7B(3) and the commentary to Canon 7B [now 7C]. The purpose of the revisions was "to resolve the practical problems in our merit retention election system for appellate judges as well as for the election process of trial judges who have no known opposition." *The Fla. Bar, In re Petition to Amend Code of Judicial Conduct (Merit Retention Election)*, 414 So. 2d 508, 509 (Fla. 1982). The supreme court stated that the 1982 amendments to Canon 7 and their commentary were essential to remove the prohibition barring a judicial officer from "any type of travel or appearances before media boards or other groups or entities who would endorse or oppose judicial candidates." *Id*. The supreme court concluded that the pre-amendment restrictions impaired the public's awareness of merit retention candidates and the judicial election process . . . .

When first adopted in 1994 (effective January 1, 1995), the new Canon 7C(1) prohibited a candidate from establishing a campaign committee or expending funds earlier than one year before the general election. *In re Code of Judicial Conduct*, 643 So. 2d 1037 (Fla. 1994). This restriction was enjoined by the United States District Court for the Northern District of Florida. *Zeller v. The Florida Bar*, 909 F. Supp. 1518 (N.D. Fla. 1995). Subsequently, in *In re Code of Judicial Conduct*, 659 So. 2d 692 (Fla. 1995), the court deleted the one-year rule from Canon 7C(1).

In 1996, the Florida Supreme Court on its own motion modified Canon 7A(1)(d) by changing "shall not . . . attend political gatherings" to "shall not . . . attend political party functions." It also deleted the following prefatory language in Canon 7C(3): "After qualifying for judicial office with the appropriate qualifying officer." *In re Code of Judicial Conduct*, 675 So. 2d 111 (Fla. 1996).

In 1998, the supreme court approved a JEAC petition to amend Canon 7 by adding a section F . . . .*Amendment to Code of Judicial Conduct*, 720 So. 2d 1079 (Fla. 1998).

In 2005, the court amended Canon 7A(3)(d) by adding a provision that states that a judicial candidate shall not, "while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non[-]public comment that might substantially interfere with a fair trial or hearing. This section does not apply to proceedings in which the judicial candidate is a litigant in a personal capacity." *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005).

In *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), the court expressed concern over the propriety of a judicial candidate publicly commenting on pending cases where such comments could affect their future outcomes. The court referred the matter to the JEAC, which then proposed the above amendment. The court also adopted the JEAC's proposed modification of the Commentary on Canon 7A(3)(d) to delete a reference to Canon 3B(9). *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005).

In 2006, the JEAC petitioned the court to consider amendments to the Florida Code of Judicial Conduct. *In re Amendment to Code of Judicial Conduct*, 918 So. 2d 949 (Fla. 2006). The primary purpose of the amendments was to conform certain provisions of Florida's Code with corresponding provisions of the American Bar Association's Model Code of Judicial Conduct. *Id*.

> In *In re Amendment to the Code of Judicial Conduct—Amendments to Canon 7*, 985 So. 2d 1073 (Fla. 2008), the court added two new subdivisions to Canon 7A. The two new subdivisions had been proposed by the JEAC. The court had asked the JEAC whether there were other Canon 3 provisions in addition to Canon 3B(9) (earlier added to Canon 7) that should apply to all judicial candidates. *Amendment to Code of Judicial Conduct, Canon 7 (Political Activity)*, 897 So. 2d 1262 (Fla. 2005). The two new subdivisions added in 2008 were Canon 7A(3)(a) and Canon 7A(3)(e)(iv).
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> Canon 7C(2) and the Commentary of Canon 7 were amended in *In re Amendments to Code of Judicial Conduct – Canon 7*, 167 So. 3d 399 (Fla. 2015), to 'expressly authorize judges facing active opposition in a merit retention election for the same judicial office to campaign together, including to pool campaign resources, in order to conduct a joint campaign designed to refute the allegations made in opposition to their continued judicial service, educate the public about merit retention, and express each judge's views as to why he or she should be retained in office.'[140]

In addition to its guide, the JEAC biennially

> presents campaign conduct forums for judicial candidates in all circuits with contested judicial elections. These forums teach the candidates about Canon 7 of the Code of Judicial Conduct, provide candidates with sources of guidance for campaign conduct, and inform them of possible sanctions for violating Canon 7. These forums aid in maintaining a high level of integrity and professionalism among

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[140] *Id*. at 1–3.

candidates for judicial office and in increasing public trust and confidence in the judicial system.[141]

[141] *Id*. at 4. In 2020, the JEAC staged forums in ten cities around the state, although because of COVID-19, the sessions had to be hosted over Zoom. *See Judicial Campaign Conduct Forums Scheduled May 7-8*, THE FLA. BAR (Apr. 1, 2020), https://www.floridabar.org/the-florida-bar-news/judicial-campaign-conduct-forums-scheduled-may-7-and-8/; *Judicial Campaign Conduct Forums Now to be Held via Zoom May 7-8*, THE FLA. BAR (Apr. 8, 2020), https://www.floridabar.org/the-florida-bar-news/judicial-campaign-conduct-forums-to-be-held-via-zoom-may-7-8/.

To date, Canon 7 cases have fallen into one of five categories: "dirty tricks";[142] improper advertising;[143] prohibited promises;[144] campaign finance violations;[145] and politicking for others.[146]

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[142] *See*, *e.g.*, *In re* DuPont, 252 So. 3d 1130, 1134, 1143 (Fla. 2018) (judge removed from office for disseminating false information about his campaign opponent and the opponent's family); *In re* Woodard, 919 So. 2d 389, 389–90 (Fla. 2006) (public reprimand and order to undergo anger management counseling imposed on judge who committed multiple campaign violations, including trying to intimidate his opponent's family). In *In re* Baker, the Court imposed a public reprimand and a $25,000 fine but did not provide any facts. *In re* Baker, No. SC09–1922, 2009 WL 3817943, at *1 (Fla. Nov. 5, 2009). According to a local newspaper story, the defendant "include[d] language in her campaign material . . . that suggested her opponent and his contributors were corrupt." Keyonna Summers, *Judge Says She Will Accept Fine, Reprimand*, ORLANDO SENTINEL (Oct. 20, 2009), https://www.orlandosentinel.com/news/os-xpm-2009-10-20-0910190149-story.html.

[143] *See*, *e.g.*, *In re* Shepard, 217 So. 3d 71, 74–75 (Fla. 2017) (public reprimand and 90-day suspension without pay given to judge for misleading campaign ads); *In re* Dempsey, 29 So. 3d 1030, 1031–32, 34 (Fla. 2010) (public reprimand given to judge who misrepresented her qualifications in her campaign ads); *In re* Alley, 699 So. 2d 1369, 1369–70 (Fla. 1997) (public reprimand given to judge for misleading campaign ads).

[144] *See*, *e.g.*, *In re* Kinsey, 842 So. 2d 77, 89–93 (Fla. 2003) (judge ordered to pay $50,000 fine for pledging to help police put criminals in jail); *In re* McMillan, 797 So. 2d 560, 562 (Fla. 2001) (judge removed from office for, among other things, promising to favor the government in criminal cases); *see also In re* Santino, 257 So. 3d 25, 26–27 (Fla. 2018) (judge removed from office because her campaign statements made it clear she would biased against criminal defendants).

[145] *See*, *e.g.*, *In re* Griffin, 167 So. 3d 450, 450 (Fla. 2015) (judge given public reprimand for violating campaign finance laws); *In re* Krause, 141 So. 3d 1197, 1199–200 (Fla. 2014) (judge given public reprimand and ordered to pay $25,000 fine for violating campaign advertising and finance laws); *In re* Turner, 76 So. 3d 898, 901–02, 910 (Fla. 2011) (judge removed from office for various offenses, including violating campaign finance laws); *In re* Colodny, 51 So. 3d 430, 431, 433–34 (Fla. 2010) (judge given public reprimand and $5,000 fine for violating campaign finance laws); *In re* Renke, 933 So. 2d 482, 495–96 (Fla. 2006) (judge removed from office for violating campaign finance laws); *In re* Gooding, 905 So. 2d 121, 122–23 (Fla. 2005) (judge given public reprimand for violating campaign finance laws); *In re* Pando, 903 So. 2d 902, 902–05 (Fla. 2005) (judge given public reprimand and ordered to pay $25,000 fine for violating campaign finance laws); *In re* Angel, 867 So. 2d 379, 380–83 (Fla. 2004) (judge given public reprimand for violating campaign advertising laws); *In re* Rodriguez, 829 So. 2d 857, 860–61 (Fla. 2002) (judge given public reprimand, 120-day suspension without pay, and $40,000 fine for violating campaign finance laws).

In *The Florida Bar v. Williams-Yulee*,[147] the bar brought a disciplinary action against an unsuccessful judicial candidate for signing a campaign fundraising letter. In response, she claimed that Canon 7C(1)'s ban on personal solicitations violated her First Amendment rights.[148] The Florida Supreme Court disagreed: "[T]he Canon is constitutional because it promotes the State's compelling interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary, and . . . is narrowly tailored to effectuate those interests."[149] On appeal, the U.S. Supreme Court affirmed.[150]

At one time, it was common for judicial conduct codes to prohibit judicial candidates from "announcing" their views on disputed legal or political issues.[151] In *Republican Party of Minnesota v. White*,[152] the U.S. Supreme Court held that these restrictions violated the First Amendment. Following *White*, the Florida Supreme Court reformulated Canon 7.[153] Even with these changes, it remains

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[146] *See, e.g., In re* Howard, 317 So. 3d 1072, 1072 (Fla. 2021) (judge given public reprimand for trying to convince judicial candidate not to run against a particular judge and instead run against a different judge); *In re* Cupp, 316 So. 3d 675, 675 (Fla. 2021) (judge given public reprimand for endorsing judicial candidate and making disparaging remarks about incumbent); *In re* Krause, 166 So. 3d 176, 177 (Fla. 2015) (judge given 30-day suspension without pay for using social media to request help for her husband's judicial campaign); *In re* Glickstein, 620 So. 2d 1000, 1001–03 (Fla. 1993) (judge given public reprimand for writing letter endorsing retention of fellow judge); *In re* McGregor, 614 So. 2d 1089, 1090 (Fla. 1993) (judge given public reprimand for endorsing his wife's campaign for clerk of court); *In re* Turner, 573 So. 2d 1, 1–2 (Fla. 1990) (public reprimand given to judge who sought to help his son win his judicial campaign by putting pressure on attorneys and judges).

[147] Fla. Bar v. Williams-Yulee, 138 So. 3d 379, 381–82 (Fla. 2014), *cert. granted*, 573 U.S. 990 (2014), *aff'd*, 575 U.S. 433 (2015).

[148] *Id.* at 381.

[149] *Id.*

[150] *See* Williams-Yulee v. Fla. Bar, 575 U.S. 433, 457 (2015).

[151] *See* ACLU v. Fla. Bar, 999 F.2d 1486, 1488 (11th Cir. 1993).

[152] Republican Party of Minn. v. White, 536 U.S. 765, 774 (2002). The case arose after Gregory Wersal, a candidate for associate justice of the Minnesota Supreme Court, was prevented from giving his views on various topics, including abortion, crime, and welfare. *Id.*

[153] *See In re* Kinsey, 842 So. 2d 77, 85 (Fla. 2003); Amendment to Code of Jud. Conduct, Canon 7 (Political Activity), 897 So. 2d 1262, 1262–63 (Fla. 2005).

illegal for Florida judicial candidates to identify their political party affiliations.[154]

III. DISCIPLINARY PROCESS FOR FLORIDA STATE JUDGES[155]

A. *Constitutionally Prescribed Processes*

The Florida Constitution provides two different methods by which state judges (*i.e.*, supreme court justices and district, circuit,

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[154] *See* FLA. STAT. § 105.071(3) (2021). For cases in which judicial candidates have been disciplined for revealing their political affiliations, *see In re* Kollra, 268 So. 3d 677, 678–79 (Fla. 2019); *In re* Decker, 212 So. 3d 291, 293–94 (Fla. 2017); *In re* Kay, 508 So. 2d 329, 329–30 (Fla. 1987); *In re* Pratt, 508 So. 2d 8, 9–10 (Fla. 1987). In *Kollra*, the candidate revealed that he was a Republican during a newspaper interview. *See* Rosemary O'Hara, *My Apologies to Broward Judge Ernest Kollra, Slapped for Answering My Question*, S. FLA. SUN-SENTINEL (Aug. 29, 2019, 6:21 A.M.), https://www.sun-sentinel.com/opinion/commentary/fl-op-com-ernest-kollra-20190829-wz2p4oqtvzaltmzn52nfvfjrze-story.html. The reporter later admitted that her question had been inappropriate. *Id.*

[155] In addition to the formal processes discussed in Part III of this article, the conduct of Florida's state judges is policed in at least three informal ways. First, although they have no power to fire them or dock their pay, Florida's chief judges have a variety of tools at their disposal when a subordinate judge fails to act properly. *See*, *e.g.*, Spechler v. Tobin, 591 F. Supp. 2d 1350, 1353 (S.D. Fla. 2008), *aff'd*, 327 F. App'x 870 (11th Cir. 2009) (circuit's chief judge could transfer county judge to the satellite courthouse, bar him from the main courthouse, and assign him to traffic and parking ticket cases). Second, many organizations regularly ask attorneys to "rate" the judges in their area on their courtesy, promptness, and knowledge of the law. *See*, *e.g.*, Emily Mavrakis, *Bar Association Releases Annual Judges' Ratings*, GAINESVILLE SUN (June 4, 2019, 12:58 PM), https://www.gainesville.com/news/20190604/bar-association-releases-annual-judges-ratings (reporting the results of the Eighth Judicial Circuit Bar Association's 2019 survey). In 2021, Alvin W. Barlow, a Jacksonville attorney, conducted his own poll to determine the "fairest judge" in each of Florida's 20 judicial circuits. *See* Marc Freeman, *Florida's Judges Just Received New 'Fairest of Them All' Awards. Are These Honors Even for Real?,* S. FLA. SUN-SENTINEL (May 24, 2021, 8:00 AM), https://www.sun-sentinel.com/local/palm-beach/fl-ne-judicial-awards-ss-prem-20210524-c6kxwz2vzbdxdfnyeqjca5fqai-story.html. Third, a higher court can reverse a ruling that is the product of improper judicial behavior. *See*, *e.g.*, Perlow v. Berg-Perlow, 875 So. 2d 383, 390–91 (Fla. 2004) ("We do not know whether a miscarriage of justice occurred in this case, but the appearance of unfairness is certainly present. Canon 3B(7) of the Code of Judicial Conduct was clearly violated when the trial court entered the wife's proposed final judgment

and county judges) can be disciplined: by the state legislature or by the state supreme court.[156] Specifically, the first involves impeachment by the Florida House of Representatives and removal (after a trial) by the Florida Senate.[157] The second involves an investigation by the Judicial Qualifications Commission and the imposition of punishment (if warranted) by the Florida Supreme Court.[158]

1. IMPEACHMENT

Every one of Florida's constitutions has made the state's judges subject to impeachment.[159] To date, however, there have been only four such proceedings:

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without first giving the unrepresented husband an opportunity to either respond or submit his own proposed final judgment.").

[156] Nearly all states utilize these same two methods. In addition, however, ten states permit voters to "recall" judges before the end of their terms. *See Laws Governing Recall*, BALLOTPEDIA (last visited Apr. 30, 2022), https://ballotpedia.org/Laws_governing_recall.

[157] Prior to the current constitution, some judges were subject to suspension but not impeachment. *See*, *e.g.*, Montgomery v. State, 45 So. 813, 815 (Fla. 1907, Div. A) (criminal defendant's failure to file authenticated bill of exceptions excused because Duval County's only criminal court of record judge was suspended and no other judge was available).

[158] *See* FLA. CONST. art. V, § 12.

[159] *See* FLA. CONST. of 1838, art. VI, §§ 20–22; FLA. CONST. of 1861, art. VI, §§ 16–18; FLA. CONST. of 1865, art. VI, §§ 16–18; FLA. CONST. of 1868, art. IV, § 29; FLA. CONST. of 1885, art. III, § 29; FLA. CONST. of 1968, art. III, § 17. The first three constitutions also authorized the governor, with the approval of two-thirds of the legislature, to remove judges for offenses that did not warrant impeachment. *See* FLA. CONST. of 1838, art. V, § 12; FLA. CONST. of 1861, art. V, § 10; FLA. CONST. of 1865, art. V, § 10.

Year	Judge	Reason for Impeachment & Result[160]
1870	Circuit Judge James T. Magbee	Abuse of power; resigned during senate trial.
1957	Circuit Judge George E. Holt	Corruption; acquitted.
1963	Circuit Judge Richard A. Kelly	Abuse of power; acquitted.
1978	Circuit Judge Samuel S. Smith	Drug trafficking; convicted.

As the constitution explains, a judge can be impeached for "misdemeanor in office."[161] This phrase has no precise meaning, and the Florida Supreme Court has held that "[t]he determination of what is an impeachable offense is the responsibility of the legislature."[162] It also has made it clear that the word "misdemeanor" is not to be

[160] For a further look at these four cases, *see* Frederick B. Karl & Marguerite Davis, *Impeachment in Florida*, 6 FLA. ST. U. L. REV. 1, 4, 11 n.47, 22, 24 (1978). After his acquittal, Kelly remained on the bench and later was elected presiding judge of the Sixth Judicial Circuit. After repeated clashes with the circuit's other judges, he was reprimanded by the Florida Supreme Court. *See In re* Kelly, 238 So. 2d 565, 574 (Fla. 1970), *cert. denied*, 401 U.S. 962, 962 (1971), *reh'g denied*, 403 U.S. 940, 940 (1971). In 1974, Kelly was elected to the U.S. House of Representatives. In 1981, as part of the FBI's "Abscam" sting operation, Kelly was convicted of taking a $25,000 bribe and ended up serving thirteen months in prison. *See* United States v. Kelly, 790 F.2d 130, 132 (D.C. Cir. 1986). Following his conviction, Smith challenged the Florida Senate's right to try him because he had resigned from the bench prior to being impeached. The Florida Supreme Court rejected this argument. *See* Smith v. Brantley, 400 So. 2d 443, 445 (Fla. 1981). In four other instances, however, the legislature dropped its impeachment plans once the judge resigned: Supreme Court Justices Hal P. Dekle and David L. McCain (1975) (corruption); Circuit Judge Charles W. Cope (2003) (drunkenness); and Circuit Judge Mark Hulsey III (2017) (racist and sexist remarks). *See* Martin Dyckman, *Judicial Ethics Watchdog Could Suffer in Fight for Independent Florida Courts*, FLA. POL. (Feb. 22, 2017), https://floridapolitics.com/archives/232536-judicial-ethics-watchdog-suffer-fight-independent-florida-courts/ [hereinafter *Watchdog*].

[161] *See* FLA. CONST. art. III, § 17(a). This language first appeared in the 1838 constitution and has remained unchanged.

[162] Forbes v. Earle, 298 So. 2d 1, 5 (Fla. 1974) (footnote omitted).

interpreted in its ordinary criminal law sense, but rather as including any act of malfeasance, misfeasance, or nonfeasance.[163]

Two-thirds of the Florida House of Representatives must vote to impeach.[164] Once impeached, a defendant is temporarily "disqualified from performing any official duties"[165] and the governor "may by appointment fill the office until completion of the trial."[166]

The Florida Senate must hold a trial within six months.[167] Two-thirds of the senators are needed for conviction; a lesser number results in an acquittal.[168] In the event of a conviction, a defendant is removed from office.[169] The senate also has the discretion to disqualify the defendant from holding any future "office of honor, trust or profit."[170]

Neither a conviction nor an acquittal affects the defendant's civil or criminal liability.[171]

2. JUDICIAL QUALIFICATIONS COMMISSION ("JQC")

In 1966, the Florida Constitution was amended to provide a second method of judicial discipline.[172] At the heart of this process is the JQC.[173] Since the general overhaul of Article V of the

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[163] *See In re* Investigation of Cir. Judge of the Eleventh Jud. Cir. of Fla., 93 So. 2d 601, 605–06 (Fla. 1957) (en banc).

[164] *See* FLA. CONST. art. III, § 17(a).

[165] *Id.* art. III, § 17(b).

[166] *Id*.

[167] *See id.* art III, § 17(c) (waiving rule that the senate can only meet when the house also is in session). During the trial, senators are on "their oath," meaning they can be criminally charged with perjury. *See id.* art. III, § 17(b). Trials are presided over by the chief justice, or another justice designated by the chief justice, unless the chief justice is the defendant, in which event the trial is presided over by the governor. *See id.* art. III, § 17(c).

[168] *See id*. art III, § 17(c). It also typically results in the defendant receiving back pay. *See* ROBERT M. JARVIS, FLORIDA CONSTITUTIONAL LAW IN A NUTSHELL 351 (2020).

[169] *See* FLA. CONST. art. III, § 17(c).

[170] *Id*.

[171] *See id*. Adverse administrative action (*e.g.*, revocation of the defendant's professional licenses) also remains a possibility.

[172] *See* FLA. CONST. art. V, § 12. *See also* Forbes v. Earle, 298 So. 2d 1, 2 (Fla. 1974) ; Richard T. Earle, *Judicial Disciplinary Proceedings: A Constitutional and Sensible Alternative to the Impeachment Process*, 62 FLA. B.J. 13, 13 (1988).

[173] *See* FLA. CONST. art. V, § 12. This section of the constitution is implemented by FLA. STAT. § 43.20 (2021). The JQC's web site can be found at FLA.

constitution in 1972, the provisions affecting the JQC have undergone mostly technical changes (in 1974, 1976, 1996, and 1998).[174]

The JQC has

> jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge. [It also has] jurisdiction regarding allegations of incapacity during service as a justice or judge.[175]

JUD. QUALIFICATIONS COMM'N, https://floridajqc.com/ (last visited Mar. 14, 2022). Much of the information on the JQC's web site also appears on the Florida Supreme Court's web site at *Judicial Qualifications Commission Cases Pending in the Florida Supreme Court*, FLA. SUP. CT, https://www.floridasupremecourt.org/News-Media/Judicial-Discipline-JQC-Case (last visited Mar. 14, 2022). For a harsh critique of the JQC system, *see* Joseph P. Baker, *What Looks Like a Court, Talks Like a Court, Acts Like a Court, But Isn't?*, 62 FLA B. J. 12, 12 (1988).

[174] The 1976 change, however, dropped the rule that a judge could only be removed from office for *mala fides*, moral turpitude, or scienter. *See In re* Inquiry Concerning a Judge, 357 So. 2d 172, 180 (Fla. 1978).

[175] *See* FLA. CONST. art. V, § 12(a)(1). For cases in which a judge was involuntarily retired due to a finding of incapacity by the JQC, see, e.g., Inquiry Concerning a Judge, No. 20-154 Re: Roddenbery, 2020 WL 2096160, at *1 (Fla. 2020); Inquiry Concerning a Judge No. 15-503 re Burger, 182 So. 3d 633 (Fla. 2015); Inquiry Concerning a Judge No. 14-179 Re: Fulford, 177 So. 3d 1267 (Fla. 2015); Inquiry Concerning a Judge No. 14–663 v. Re: Coker, 157 So. 3d 1045 (Fla. 2014); Inquiry Concerning a Judge, No. 13-264 v. Re Glant, 118 So. 3d 220, 220 (Fla. 2013); Inquiry Concerning a Judge, No. 12-524 Re Simpson, 114 So. 3d 180, 180 (Fla. 2013); Inquiry Concerning a Judge, No. 08–146 v. Re: Harley, 982 So. 2d 1178, 1178 (Fla. 2008); Inquiry Concerning a Judge, No. 02-358 re Schwartz, 838 So. 2d 558, 558 (Fla. 2003); Inquiry Concerning a Judge, No. 02-176, Re Foster, 821 So. 2d 296, 296 (Fla. 2002); Inquiry Concerning a Judge, No. 01-133, Mitcham, 804 So. 2d 329, 329 (Fla. 2001); Inquiry Concerning a Judge, No. 98-126, Re Parsons, 727 So. 2d 906, 906 (Fla. 1998); *In re* Inquiry Concerning a Judge Lehan No. 93-224, 624 So. 2d 241, 241 (Fla. 1993); Inquiry Concerning a Judge; Re Wigginton (J. Klein) 93-104, 621 So. 2d 433, 433 (Fla. 1993); *In re* Inquiry Concerning a Judge Perry, 592 So. 2d 681, 681 (Fla. 1991); *In re* Inquiry Concerning a Judge, Kerr, 521 So. 2d 1092, 1093 (Fla. 1988); *In re* Inquiry Concerning a Judge re Sanderlin, 513 So. 2d 134, 135 (Fla. 1987); *In re* Inquiry Concerning a Judge Gobbie, 437 So. 2d 1109, 1109 (Fla. 1983); *In re* Involuntary Ret. of Cnty. Court Judge Courtney, 391 So. 2d 202, 203 (Fla. 1980); *In re* Involuntary Ret. of Cir. Judge Falk, 323 So. 2d 571, 572 (Fla. 1974); *In re* Involuntary Ret. of Judge Nelson, 288 So. 2d 218, 219 (Fla. 1974). For an unusual case in

The JQC consists of six judges (two each from the district courts, circuit courts, and county courts); four lawyers; and five public members.[176] The judges are selected by their fellow judges.[177] The attorneys are selected by the board of governors of The Florida Bar.[178] The public members are selected by the governor.[179] JQC members serve staggered terms and must step down after six years.[180]

The JQC chooses its chair[181] and sets its rules.[182] The rules can "be repealed by general law enacted by a majority vote of the membership of each house of the legislature, or by the supreme court, five justices concurring."[183]

To ensure that the JQC can perform its duties, the constitution requires "all executive, legislative and judicial agencies, including grand juries," to turn over any information requested by the JQC.[184] The constitution also provides: "At any time, on request of the speaker of the house of representatives or the governor, the

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which the JQC tried to remove a judge because it believed he had reached the state's mandatory retirement age, see State *ex rel.* Jud. Qualifications Comm'n v. Rose, 286 So. 2d 562, 563 (Fla. 1973).

176 A list of the JQC's current members can be found at *Commission Members*, FLA. JUD. QUALIFICATIONS COMM'N https://floridajqc.com/commission-members/ (last visited Mar. 14, 2022).

177 *See* FLA. CONST. art. V, § 12(a)(1)a.

178 *See id.* at art. V, § 12(a)(1)b.

179 *See id.* at art. V, § 12(a)(1)c.

180 *See id.* at art. V, § 12(a)(2). The process for removing errant JQC members is spelled out in FLA. CONST. art. V, § 12(a)(3).

181 *See id.* at art. V, § 12(a)(2).

182 *See id.* at art. V, § 12(a)(4). The JQC's current rules can be found at *Florida Judicial Qualifications Rules*, FLA. JUD. QUALIFICATIONS COMM'N https://floridajqc.com/florida-judicial-qualifications-commission-rules/ (last visited Feb 22, 2022). For earlier versions, see *In re* Rules of Fla. Jud. Qualifications Comm'n, 207 So. 2d 443, 443 (Fla. 1968); *In re* Rules of Fla. Jud. Qualifications Comm'n, 240 So. 2d 465, 465 (Fla. 1970); *In re* Rules of Fla. Jud. Qualifications Comm'n, 276 So. 2d 10, 10 (Fla. 1973); *In re* Rules of Fla. Jud. Qualifications Comm'n, 346 So. 2d 70, 71 (Fla. 1977); *In re* Rules of Fla. Jud. Qualifications Comm'n, 364 So. 2d 471, 472 (Fla. 1978); Jud. Qualifications Comm'n R. P., 458 So. 2d 1116, 1116 (Fla. 1984); Jud. Qualifications Comm'n R. P., 719 So. 2d 858, 858 (Fla. 1998); *In re* Amendments to Fla. Jud. Qualifications Comm'n R., 252 So. 3d 733, 737 (Fla. 2018).

183 FLA. CONST. art. V, § 12(a)(4).

184 *See id.* at art. V, § 12(a)(5).

commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively."[185] In carrying out its duties, the JQC has absolute immunity.[186]

Annually, the JQC receives approximately 650 complaints.[187] Of these, most are quickly dismissed for lack of cause.[188] Those that

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[185] *Id.* at art. V, § 12(a)(5).

[186] *See* Watson v. Fla. Jud. Qualifications Comm'n, 746 Fed. Appx. 821, 825 (11th Cir. 2018).

[187] *See* STATE OF FLORIDA JUDICIAL QUALIFICATIONS COMMISSION, 2017 ANNUAL REPORT 1–2 (2018) [hereinafter *2017 JQC Annual Report*] (reviewing data from 2013 to 2017 and explaining that "[t]his figure does not include complaints about officials outside of the Commission's jurisdiction, such as magistrates, federal judges, or attorneys."). At present, this is the most recent available report. *See* E-mail from Alexander J. Williams, General Counsel—Florida Judicial Qualifications Commission, to Author (June 10, 2021, 8:13 AM) (on file with author).

[188] *See 2017 JQC Annual Report*, *supra* note 187, at 2 ("The Investigative Panel reviews all complaints to the Commission. Most complaints are dismissed because the concerns they raise involve dissatisfaction with rulings and decisions or raise perceived legal or procedural errors. Absent more, those matters generally do not demonstrate any ethical dimension."). Examples of recent dismissals include Inquiry Concerning a Judge No. 20-377 re Zilber, 2021 WL 2065919, at *1 (Fla. 2021); Inquiry Concerning a Judge No. 19-377 Kelly, 2021 WL 816108, at *1 (Fla. 2021); Inquiry Concerning a Judge No. 19-351 Hawkins, 2020 WL 7391139, at *1 (Fla. 2020); Inquiry Concerning a Judge No. 18-195 Re: John Patrick Contini, 2018 WL 4293372, at *1 (Fla. 2018); Inquiry Concerning a Judge No. 17-570 Re: Stephen Thomas Millan, 2018 WL 4179591, at *1 (Fla. 2018). A decision by the JQC *not* to move forward on a complaint is not subject to challenge. *See* Grimsley v. Fla. Jud. Qualifications Comm'n, 2018 WL 7824484, at *3 (S.D. Fla. 2018); Montgomery Blair Sibley v. Fla. Jud. Qualifications Comm'n, 973 So. 2d 425, 426 (Fla. 2006), *cert. denied*, 549 U.S. 1031 (2006). The Florida Supreme Court routinely receives and dismisses cases brought by *pro se* litigants who claim that the JQC failed to act on their complaints. *See, e.g.,* Marr v. Jud. Qualifications Comm'n, 2020 WL 2498250, at *1 (Fla. 2020); Torres v. Jud. Qualifications Comm'n, 2018 WL 6703725, at *1 (Fla. 2018), *reh'g denied*, Torres v. Jud. Qualifications Comm'n, 2019 WL 354566, at *1 (Fla. 2019); Ho v. Jud. Qualifications Comm'n, 2017 WL 5898403, at *1 (Fla. 2017), *later proceedings at* Ho v. Jud. Qualifications Comm'n, 239 So. 3d 7, at *1 (Fla. 1st Dist. Ct. App. 2018); Shores v. Jud. Qualifications Comm'n, 2017 WL 1882513, at *1 (Fla. 2017), *later proceedings at* Shores v. Jud. Qualifications Comm'n, 2017 WL 3033178, at *1 (Fla. 2017), and Shores v. Jud. Qualifications Comm'n, 2017 WL 3033190, at *1 (Fla. 2017).

are not summarily disposed of proceed to investigation and, if need be, to a hearing.[189]

Administratively, the JQC is split into an investigation panel and a hearing panel.[190] The former is authorized "to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel."[191] The latter is authorized

> to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the supreme court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties. Upon a simple majority vote of the membership of the hearing panel, the panel may recommend to the supreme court that the justice or judge be subject to appropriate discipline.[192]

Upon receiving a recommendation from the JQC's hearing panel,[193] the Florida Supreme Court

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[189] There is no statute of limitations on JQC proceedings, so long as the judge is still in office. *See In re* Davey, 645 So. 2d 398, 403 (Fla. 1994) (judge could be reprimanded for behavior that occurred immediately after becoming a judge, even though conduct occurred nine years earlier).

[190] FLA. CONST. art. V, § 12(b).

[191] *Id.*

[192] *Id*. The JQC's complaint process is further detailed in *Complaint Process*, FLA. JUD. QUALIFICATIONS COMM'N., https://floridajqc.com/complaint-process/ (last visited May 19, 2022); *see also In re* Shepard, 217 So. 3d 71 (Fla. 2017), *cert*. *denied*, 138 S. Ct. 737 (2018) (rejecting fairness challenge to the JQC's procedures); *In re* Graziano, 696 So. 2d 744, 752 (Fla. 1997) (same); *In re* Shenberg, 632 So. 2d 42, 48 (Fla. 1992) (same); *In re* Leon, 440 So. 2d 1267, 1270 (Fla. 1983) (same); *In re* Gridley, 417 So. 2d 950, 955 (Fla. 1982) (same); State *ex rel*. Turner v. Earle, 295 So. 2d 609, 619 (Fla. 1974) (same); Mark Hulsey, *Unfit to Hold Office? The JQC Investigation*, 55 FLA. B.J. 534 (1981). In Florida Bar v. Graham, 662 So. 2d 1242, 1245 (Fla. 1996), a former judge was given a public reprimand for engaging in obstreperous conduct while appearing before the JQC's hearing panel.

[193] For a list of the Court's currently pending JQC cases, *see Judicial Qualifications Commission Cases Pending in the Florida Supreme Court*, FLA. SUP. CT.,

> may accept, reject, or modify in whole or in part the findings, conclusions, and recommendations of the commission and it may order that the justice or judge be subjected to appropriate discipline, or be removed from office . . . . After the filing of a formal proceeding and upon request of the investigative panel, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.[194]

A defendant who is cleared (either by the JQC or the Florida Supreme Court) remains subject to impeachment.[195]

Until charges are filed at the Florida Supreme Court, the JQC process is confidential.[196] If the JQC recommends that action be

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https://www.floridasupremecourt.org/News-Media/Judicial-Discipline-JQC-Cases (last modified Apr. 5, 2022).

[194] FLA. CONST. art. V, § 12(c)(1). In *In re* LaMotte, 341 So. 2d 513, 516 (Fla. 1977), the Court explained: "The findings and recommendations of the Judicial Qualifications Commission are of persuasive force and should be given great weight. *See In re Kelly*, 238 So.2d 565 (Fla.1970). However, the ultimate power and responsibility in making a determination rests with this Court." For a case in which the Court rejected the JQC's initial recommendation, *see* Inquiry Concerning a Judge, No. 10–265 v. Shea, 2011 WL 5357562, at *1 (Fla. 2011), *later proceedings at In re* Shea, 110 So. 3d 414, 419 (Fla. 2013). For a case in which the Court ordered the JQC to more fully develop the record, *see In re* Fletcher, 664 So. 2d 934, 937 (Fla. 1995), *later proceedings at In re* Fletcher, 666 So. 2d 137, 138 (Fla. 1996). If a judge resigns from the bench while his or her case is pending, the Court normally declines to take further action and instead issues an order of dismissal. *See*, *e.g.*, *In re* Robinson, 2018 WL 936882, at *1 (Fla. 2018); *In re* Imperato, 2016 WL 1359945, at *1 (Fla. 2016); *In re* Schoonover, 2015 WL 3617773, at *1 (Fla. 2015); *In re* Pollack, 2015 WL 710624, at *1 (Fla. 2015); *In re* Judge Cycmanick, 718 So. 2d 756, 757 (Fla. 1998). As part of its final decision, the Court can award court costs to the prevailing party. *See* FLA. CONST. art. V, § 12(c)(2). It cannot, however, grant attorneys' fees or travel costs. *See In re* Holder, 945 So. 2d 1130, 1136 (Fla. 2006); *In re* Hapner, 737 So. 2d 1075, 1077 (Fla. 1999).

[195] *See* FLA. CONST. art. V, § 12(d) ("The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment.").

[196] *See id.* at art. V, § 12(a)(4). *See also Confidentiality*, FLA. JUD. QUALIFICATIONS COMM'N, https://floridajqc.com/confidentiality/ (last visited Feb. 15, 2022). The Florida Supreme Court has held, however, that there are times when confidentiality should not be maintained:

taken against a supreme court justice, the entire court is disqualified and the matter is heard by the seven most senior circuit court judges.[197]

A 2017 analysis of the JQC's work found that

> Since [its] inception [in 1966], the JQC has . . . filed formal charges against more than 200 judges.
>
> When it gets to that point, it rarely ends well for the judge. Of the 206 known cases . . . 77—more than a third—ended with the judge off the bench: 19 removed for violations of the Code of Judicial Conduct, 25 resignations, 4 election defeats, 4 forsaken re-election campaigns, 21 enforced retirements for

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> Confidentiality, however, should not be absolute in these types of proceedings when the reasons for the confidentiality doctrine no longer exist. This is particularly so when there is public knowledge of the incident, and confidence in the administration of justice is threatened due to the lack of information concerning disciplinary proceedings.

In re Inquiry Concerning a Judge No. 76-14, 333 So. 2d 22, 23 (Fla. 1976) (footnote omitted). In another case, the Court wrote:

> There is public knowledge of the formal charges made by the Judicial Qualifications Commission against Judge Lee. The Commission and Judge Lee, by his actions and response, concur that his effectiveness as a judge has been adversely affected by the public knowledge of the charges, and we agree that he should be temporarily suspended with pay pending an early disposition by the Judicial Qualifications Commission of the charges against him.

In re Inquiry Concerning a Judge No. 76-13, 333 So. 2d 22, 22 (Fla. 1976). Complainants have been held to have the right to publicize the fact that they have filed a complaint. *See* Doe v. State of Fla. Jud. Qualifications Comm'n, 748 F. Supp. 1520, 1529 (S.D. Fla. 1990). In Media Gen. Convergence, Inc. v. Chief Judge of the Thirteenth Jud. Cir., the Florida Supreme Court ruled that complaints made about a judge to a circuit chief judge, as opposed to the JQC, are public records and therefore discoverable. Media Gen. Convergence, Inc. v. Chief Judge of the Thirteenth Jud. Cir., 840 So. 2d 1008, 1021 (Fla. 2003); *see also In re* Amendments to R. Jud. Admin. (Two-Year Cycle), 915 So. 2d 157, 159 n.2 (Fla. 2005). Today, however, such complaints are exempt from disclosure "until probable cause is established." FLA. R. JUD. ADMIN. 2.420(c)(3)(A).

[197] *See* FLA. CONST. art. V, § 12(e).

> various disabilities, and 4 under threatened or actual impeachment.
>
> Most of the rest were publicly reprimanded by the court, some also with fines and suspensions. The reprimands, almost always administered in person in public sessions of the court, are meant to be humbling, even humiliating, and the cases become everlasting records. Only seven cases have ever been formally dismissed.[198]

To date, a total of 23 judges have been removed from office through the JQC process.[199]

B. *Processes Outside the Constitution*

Florida state judges who are not subject to the constitutionally prescribed processes described above are disciplined in the first instance by the authority that employs them. This includes

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[198] *See Watchdog*, *supra* note 160. For a list of JQC cases going back to 2000, see *Judicial Qualifications Commission*, FLA. SUP. CT., https://www.floridasupremecourt.org/News-Media/Judicial-Discipline-JQC-Cases/JQC-Case-Archive (last modified Apr. 14, 2021). As of 2018, Broward County had the greatest number of public JQC cases. *See Restore Public Trust in Picking Judges*, S. FLA. SUN-SENTINEL, Aug. 15, 2018, at 12A ("[The case against Circuit Court Judge John P. Contini] was the commission's 30th public case against a circuit or county court judge in Broward, the most of any jurisdiction in Florida."). *See also* Randy Schultz, *Florida Supreme Court Comes Down Hard on Broward Judges*, S. FLA. SUN-SENTINEL, Sept. 19, 2015, at 13A.

[199] For a listing of these cases, see TEAGLE, *supra* note 27, at xxii. It should be noted that the RRTFB provides:

> Whenever a judge is removed from office by the Supreme Court of Florida on the basis of a Judicial Qualifications Commission proceeding, the removal order, when the record in such proceedings discloses the appropriate basis, may also order the suspension of the judge as an attorney pending further proceedings hereunder.
>
> When the Judicial Qualifications Commission files a recommendation that a judge be removed from office, The Florida Bar may seek leave to intervene in the proceedings before the Supreme Court of Florida. If intervention is granted, The Florida Bar may seek disciplinary action in the event the judge is removed by the court.

R. REGULATING FLA. B. 3-4.5.

administrative law judges,[200] child support hearing officers,[201] civil traffic hearing officers,[202] judges of compensation claims,[203] and magistrates.[204] Except for child support hearing officers, these positions must be filled by attorneys.[205] As such, further discipline is administered according to the RRTFB.[206]

IV. ETHICS OF FLORIDA'S FEDERAL JUDGES

The system for disciplining federal judges is quite different from that used to discipline state judges.[207] The underlying ethical precepts, however, are the same.

A. *Code of Conduct for United States Judges*

As noted at the outset of this article, federal judges are subject to the Code of Conduct for United States Judges.[208] The CCUSJ was

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[200] Administrative law judges are hired by the director of the Division of Administrative Hearings (part of the Florida Department of Management Services). *See* FLA. STAT. § 120.65(4) (2021). *See also* STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS, https://www.doah.state.fl.us/ALJ/ (last visited Mar. 4, 2022).

[201] Child support hearing officers are appointed by each circuit's chief judge. *See* FLA. FAM. L. R. P. r. 12.491(c).

[202] Civil traffic hearing officers are appointed by each circuit's chief judge. *See* FLA. STAT. § 318.35 (2021). *See also* FLA. R. TRAFFIC CT. r. 6.630(b).

[203] Judges of compensation claims are appointed by the governor. *See* FLA. STAT. § 440.45(2) (2021). *See also* STATE OF FLORIDA, DIVISION OF ADMINISTRATIVE HEARINGS, OFFICE OF THE JUDGES OF COMPENSATION CLAIMS, https://www.fljcc.org/JCC/ (last visited Mar. 4, 2022).

[204] Until 2004, magistrates were known as "masters" (they also were called "commissioners"). General magistrates are appointed by the judges of a circuit court to serve over a class of cases, often on a venue-wide basis. *See* FLA. R. CIV. P. r. 1.490(a). In contrast, special magistrates are appointed by individual judges to handle specific tasks in an individual case. *See* FLA. R. CIV. P. 1.490(b).

[205] FLA. FAM. L. R. P. 12.491(c).

[206] R. REGULATING FLA. B. 3-1.2.

[207] In addition to the discussion contained herein, see Report of the National Commission on Judicial Discipline and Removal, 152 F.R.D. 265 (1993); Russell R. Wheeler, *A Primer on Regulating Federal Judicial Ethics*, 56 ARIZ. L. REV. 479 (2014); Emily C. Barbour, *Judicial Discipline Process: An Overview*, CONG. RES. SERV. (Apr. 7, 2011), https://fas.org/sgp/crs/misc/R41758.pdf/.

[208] A separate code of conduct applies to federal judicial employees. *See Code of Conduct for Judicial Employees,* U.S. COURTS, § 310.10(a), https://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct/code-conduct-judicial-

adopted in 1973 as the Code of Judicial Conduct for United States Judges and was modelled after the ABA's 1972 Code of Judicial Conduct.[209]

In 1987, the word "Judicial" was dropped from the CCUSJ's title.[210] Since then, various other revisions have been made.[211] The current version, adopted in 2019, can be found on the web site of the federal courts.[212] Federal judges who have questions about the CCUSJ are able to request advisory opinions from the Judicial Conference of the United States' Committee on Codes of Conduct ("CCC").[213]

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employees (last visited Feb. 16, 2022). *See also* JUDICIAL CONFERENCE OF THE UNITED STATES, MAINTAINING THE PUBLIC TRUST: ETHICS FOR FEDERAL JUDICIAL LAW CLERKS (rev. 4th ed. 2019), https://www.fjc.gov/sites/default/files/materials/24/Maintaining_the_Public_Trust_Revised_4th_Edition_2019.pdf. Federal judicial employees who believe they have been the victims of workplace harassment or abusive conduct now can file confidential complaints with the federal government's Office of Judicial Integrity ("OJI"). For a description of the OJI, which was created in 2019, *see Workplace Conduct in the Federal Judiciary*, U.S. COURTS, https://www.uscourts.gov/about-federal-courts/workplace-conduct-federal-judiciary (last visited Mar. 4, 2022).

209 *See* Code of Jud. Conduct, 69 F.R.D. 273 (1973).

210 Andrew J. Lievense & Avern Cohn, *The Federal Judiciary and the ABA Model Code: The Parting of the Ways*, 28 JUST. SYS. J. 271, 276 (2007).

211 *See, e.g.,* Code of Conduct for United States Judges, 150 F.R.D. 307 (1993); Code of Conduct for United States Judges, 175 F.R.D. 363 (1998). For a complete list of revisions, *see Code of Conduct for United States Judges,* U.S. COURTS, https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges (last visited Mar. 4, 2022).

212 *See supra* note 3, at 2. Portions of the CCUSJ have been codified at 28 U.S.C. § 455 ("Disqualification of justice, judge, or magistrate judge"). For a further discussion, *see* CHARLES GARDNER GEYH, JUDICIAL DISQUALIFICATION: AN ANALYSIS OF FEDERAL LAW (3d ed. 2020), https://www.fjc.gov/sites/default/files/materials/52/Judicial%20Disqualification_An%20Analysis%20of%20Federal%20Law_Third%20Edition.pdf.

213 As has been explained elsewhere:

> The Code of Conduct for United States Judges was adopted by the Judicial Conference of the United States in 1973. It prescribes ethical norms for federal judges as a means to preserve the actual and apparent integrity of the federal judiciary. Every federal judge receives a copy of the Code, the Commentary to the Code, the Advisory Opinions of the Judicial Conference's Committee on Codes of Conduct, and digests of the Committee's informal, unpublished opinions. See II Guide to Judiciary Policies and Procedures (1973). The material is periodically

The CCUSJ consists of five canons:

> Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary
>
> Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
>
> Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently
>
> Canon 4: A Judge May Engage in Extrajudicial Activities that are Consistent with the Obligations of Judicial Office
>
> Canon 5: A Judge Should Refrain from Political Activity[214]

As can be seen, these canons largely mirror those contained in the FCJC (due to the fact both are based on the ABA's handiwork).[215] Like the FCJC's canons, the CCUSJ's canons are divided into lettered paragraphs (except for Canon 1) and each canon is followed by a "commentary" section.[216]

> updated. Judges who have questions about whether their conduct would be consistent with the Code may write to the Codes of Conduct Committee for a written, confidential opinion. See Introduction, Code of Conduct. The Committee traditionally responds promptly. A judge may also seek informal advice from the Committee's circuit representative.

United States v. Microsoft Corp., 253 F.3d 34, 111–12 (D.C. Cir. 2001), *stay denied*, 2001 WL 931170, at *1 (D.C. Cir. 2001), *cert. denied*, 534 U.S. 952 (2001). The CCC's published advisory opinions can be found at https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies/published-advisory-opinions.

[214] *Code of Conduct for United States Judges*, https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges; *see generally Ch. 2: Code of Conduct for United States Judges,* GUIDE TO JUDICIARY POLICY (Mar. 19, 2019), https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf.

[215] *See Code of Judicial Conduct for the State of Florida*, *supra* note 2.

[216] The CCUSJ is bolstered by various policies that have been adopted by the Judicial Conference of the United States. Copies of the more significant policies (dealing with gifts and outside income) can be found at https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies.

B. *Judicial Conduct and Disability Act of 1980*

Although the CCUSJ is important because it establishes behavioral norms, the primary tool used to discipline federal judges is the Judicial Conduct and Disability Act of 1980 ("JCDA").[217] This is made clear by the commentary to Rule 4 of the rules governing JCDA cases, which states: "While the Code's Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules, as interpreted and applied by judicial councils, subject to review and limitations prescribed by the Act and these Rules."[218]

Each circuit court of appeals has a judicial council consisting of an equal number of circuit and district judges.[219] Pursuant to Rule 11 of the JCDA's rules, complaints of judicial misconduct go first to the circuit's chief judge.[220] If the chief judge finds the complaint to be meritorious, Rule 12 requires formation of a special investigating committee chaired by the chief judge.[221] Depending on what the committee finds, a number of different sanctions can be imposed by the judicial council.[222] In recent years, however, nearly all the JCDA complaints filed with the Eleventh Circuit have been dismissed after review by the chief judge.[223]

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[217] 28 U.S.C. §§ 351-364 (detailing the JCDA's current provisions); *see also Judicial Conduct & Disability*, U.S. Courts, 1, https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability (last visited Mar. 14, 2022); *Ch. 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings,* GUIDE TO JUDICIARY POLICY, 2–63 (Mar. 12, 2019), https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf (discussing the rules governing JCDA cases).

[218] *See Ch. 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings*, *supra* note 217, at 9; *see also* Church of Scientology Int'l v. Kolts, 846 F. Supp. 873, 878, 881 n.4 (C.D. Cal. 1994) (noting that "while the Code may have the force of law," it "is technically neither a 'statute' nor an agency 'regulation[.]'").

[219] *See* 28 U.S.C. § 332(a)(1). The council is chaired by the circuit's chief judge. *Id*.

[220] *See Ch. 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings*, *supra* note 217, at 20.

[221] *Id*. at 28.

[222] *See id*. at 41–42.

[223] *See Judicial Conduct & Disability*, U.S. Court of Appeals for the Eleventh Circuit, 1, http://www.ca11.uscourts.gov/judicial-conduct-disability (last visited Mar. 14, 2022). This web page includes copies of all final JCDA orders issued by

C. *Impeachment and Removal*

1. CIRCUIT AND DISTRICT JUDGES

Because federal circuit and district judges are appointed for life, they cannot be removed by means of a JCDA proceeding.[224] Instead, only Congress, using its impeachment powers, can unseat them.[225]

To date, two Florida federal judges have been stripped of their offices: Halsted L. Ritter (Southern District—impeached 1936 for favoritism and practicing law while on the bench, convicted 1936)[226] and Alcee L. Hastings (Southern District—impeached 1988 for perjury and conspiring to solicit a bribe, convicted 1989).[227] A third Florida federal judge (Charles H. Swayne of the Northern District) was impeached for abusing his office (1904) but was acquitted (1905).[228]

During Florida's territorial period (1821-45), Florida did not have district courts.[229] Instead, it had superior courts that functioned as district courts. The judges of these courts were appointed by the president to renewable four-year terms.[230]

In 1825, Richard K. Call, Florida's congressional delegate, introduced a resolution asking the House Judiciary Committee to investigate whether Joseph L. Smith, East Florida's superior court

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the Eleventh Circuit since 2015. *See id*. (under "Final Orders on Complaints of Judicial Misconduct or Disability").

[224] *See See Ch. 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings*, *supra* note 217, at 7–9.

[225] *See* U.S. CONST. art. III, § 1. The same is true for U.S. Supreme Court justices. *Id*.

[226] The details surrounding Ritter's impeachment and removal are recounted in Ritter v. United States, 84 Ct. Cl. 293 (1936), *cert. denied*, 300 U.S. 668 (1937).

[227] Alan I. Baron, *The Curious Case of Alcee Hastings*, 19 NOVA L. REV. 873 (1995) (detailing Hastings' impeachment and removal). *See also In re* Certain Complaints Under Investigation by an Investigating Comm. of the Jud. Council of the Eleventh Cir., 783 F.2d 1488 (11th Cir.), *motion to vacate denied sub nom.* Hastings v. Godbold, 476 U.S. 1112, *cert. denied*, 477 U.S. 904 (1986).

[228] E. Hilton Jackson, *The Swayne Impeachment Proceedings*, 10 VA. L. REG. 1071 (1905) (detailing Swayne's impeachment and acquittal).

[229] *Territorial Period*, FLA. DEP'T OF STATE, 1, https://dos.myflorida.com/florida-facts/florida-history/a-brief-history/territorial-period/ (last visited Mar. 14, 2022).

[230] For a further discussion, *see* American Ins. Co. v. 356 Bales of Cotton, 26 U.S. (1 Pet.) 511, 544–46 (1828).

judge since 1822, had charged improper fees for his judicial services.[231] Although the resolution was adopted,[232] Smith was acquitted in 1826 following a short investigation.[233]

2. BANKRUPTCY AND MAGISTRATE JUDGES

Although they do not enjoy life tenure, bankruptcy and magistrate judges also cannot be removed by means of a JCDA proceeding.[234] As federal officers, however, they are subject to impeachment.[235]

Bankruptcy judges can be removed by a majority vote of their circuit's council.[236] Similarly, magistrate judges can be removed by a majority vote of the district judges in their district.[237] Among the sanctions authorized by the JCDA's rules are the initiation of such votes.[238]

To date, no Florida bankruptcy or magistrate judge has lost their seat through any of these processes.

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231 *See* REG. OF DEBATES, 18th Cong., 2d Sess. 438–40 (Feb. 3, 1825).

232 *Id.*

233 *See* Jonathan B. Crider, *Printing Politics: The Emergence of Political Parties in Florida, 1821-1861*, at 56-57 (2017) (Ph.D. dissertation, Temple University), https://scholarshare.temple.edu/bitstream/handle/20.500.12613/1025/Crider_temple_0225E_12772.pdf?sequence=1&isAllowed=y.

234 Appointment of Bankruptcy Judges, 28 U.S.C. § 152(e); Appointment of Magistrate Judges, 28 U.S.C. § 631(i).

235 *See* U.S. CONST. art. II, § 4.

236 *See* 28 U.S.C. § 152(e).

237 *See* 28 U.S.C. § 631(i).

238 *See Ch. 3: Rules for Judicial-Conduct and Judicial-Disability Proceedings*, *supra* note 217, at 41–42.

CONCLUSION

Getting one's hands around Florida's judicial ethics rules is no easy task.[239] Hopefully, however, this article will be of assistance to those who find themselves needing to do so.[240]

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[239] In a scandal that broke after this article's closing date, the *Wall Street Journal* in September 2021 reported that 131 federal judges had violated the CCUSJ by failing to recuse themselves in cases in which they or their families owned stock in one of the parties. When confronted by reporters, the judges claimed either ignorance or misunderstanding of the CCUSJ's requirements. *See* James V. Grimaldi et al., *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, WALL ST. J. ONLINE (Sept. 28, 2021) https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421. Eight of the judges were from Florida. *See* Noreen Marcus, *8 Florida Federal Judges Had Illegal Stock Ownership Conflicts*, FLA. BULLDOG (Oct. 21, 2021), https://www.floridabulldog.org/2021/10/8-florida-federal-judges-had-illegal-stock-ownership-conflicts/. In a second scandal that broke after this article's closing date, in January 2022 e-mails were discovered in which Virginia "Ginni" Thomas, the wife of U.S. Supreme Court Justice Clarence Thomas, wrote: "[M]y husband has been in contact with [Florida Governor Ron DeSantis] too on various things of late." Elie Mystal, *Clarence and Ginni Thomas, the Supreme Court's Unethical "It" Couple*, NATION, Feb. 9, 2022, https://www.thenation.com/article/politics/ginni-clarence-thomas/. When even more information about Ginni Thomas's political activities came to light, Congressional Democrats in March 2022 demanded that Justice Thomas recuse himself from any Jan. 6 insurrection cases that come before the Court. *See* Jacqueline Alemany, *Democrats in Congress Ask Clarence Thomas to Recuse Himself from Jan. 6 Cases*, WASH. POST, Mar. 29, 2022, https://www.washingtonpost.com/politics/2022/03/29/democrats-clarence-thomas-recuse-jan6-letter/ ("[L]awmakers also called on Chief Justice John G. Roberts Jr. by April 28 to commit to creating a binding Code of Conduct for the Supreme Court—the only court in the country not currently subject to a judicial code of ethics[.]") (internal quotation marks omitted).

[240] Because Florida's state and federal judicial ethics rules are modelled on the ABA's rules, general works on judicial ethics often can be helpful when a clear answer does not exist in Florida. The leading national text is CHARLES GARDNER GEYH ET AL., JUDICIAL CONDUCT AND ETHICS (6th ed. 2020). A comprehensive list of other useful works can be found in JOEL FISHMAN, JUDICIAL ETHICS AND DISCIPLINE: A LEGAL RESEARCH GUIDE (2020).