

So You're Going to Be a Judge:

Ethical Issues for New Judges

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After being elected or appointed to the bench, a budding judge should immediately sit down and read the code of judicial conduct for her jurisdiction.¹ That review will alert the future judge to the ethical principles that will govern her time on the bench and begin a smooth, conflict-free transition from advocate to impartial arbiter.

Outlining the advice judicial-ethics committees have given about making that transition, this article highlights the provisions in the code of judicial conduct that will have the most immediate implications for a nascent judge even before taking the bench.² It begins by listing the inquiries a soon-to-be judge should make about charitable, business, and political activities to evaluate what changes are necessary to conform to the judicial-ethics rules. It also considers whether a new judge may accept gifts, including receptions, that are offered to mark the new position. Finally, the article discusses winding up a law practice, including duties to clients and payments for prior legal work.³

OFF THE BENCH

Rule 1.2 provides: “A judge shall act *at all times* in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety” (emphasis added). Thus, the code of judicial conduct applies to all of a judge’s activities, both judicial and personal and both on and off the bench. In general, as described by Rule 3.1, a judge must not participate in extrajudicial activities that will interfere with the proper performance of judicial duties, lead to frequent disqualification, or appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.

COMMUNITY ACTIVITIES

After election or appointment, a nascent judge may be surprised to learn that some civic and charitable activities that were an asset while a candidate may be prohibited after taking judicial office. Even laudable community activities may bias a

judge in favor of particular parties, causes, or issues, encourage individuals to curry the judge’s favor, pressure others to comply with the judge’s requests, or exploit the judicial office for the benefit of private organizations—or at least create the appearance of doing so. There is no exception in the model code that allows a new judge to continue prohibited involvement in civic and charitable activities after taking the bench. See *Arkansas Advisory Opinion 1996-10* (a new judge may not serve the rest of her term on the parks and tourism commission); *Florida Advisory Opinion 2006-28* (a newly elected judge should resign before taking office from any organizations in which his participation is inappropriate); *Texas Advisory Opinion 188* (1996) (a new judge may not attend the two meetings remaining in her term as a state representative on a national governmental association). But see *Canon 7C, Michigan Code of Judicial Conduct* (giving a newly elected judge until June 30th and a newly appointed judge six months to resign from organizations and activities).

Therefore, in the interim between being chosen and taking the bench, a new judge should ask the following questions and take any steps necessary to be in compliance with the new standards when she takes office:

- Am I a member of a governmental commission that does not concern the law, the legal system, or the administration of justice (Rule 3.4)?
- Am I a member of an organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation (Rule 3.6A)?
- Am I an officer of an organization or entity that is engaged in proceedings that would ordinarily come before me (Rule 3.7A(6)(a))?
- Am I an officer of an organization or entity that will frequently be engaged in adversary proceedings in the court on which I serve or in any court subject to the appellate jurisdiction of my court (Rule 3.7A(6)(b))?

Footnotes

1. The ethical standards for judges are established by the code of judicial conduct adopted in each jurisdiction. The basis for the state and federal codes is the *Model Code of Judicial Conduct*—adopted by the American Bar Association in 1972 and revised in 1990 and 2007—although jurisdictions modify the model before adopting it. Unless otherwise indicated, references to rules in this article are to the 2007 model code.
2. Over 40 states and the United States Judicial Conference have judicial-ethics advisory committees to which judges can submit inquiries regarding the propriety of contemplated future action. There are links to the websites of the committees at <http://www.ncsc.org/Topics/Judicial-Officers/Ethics/State-Links.aspx?cat=Ethics%20Advisory%20Committees>.

3. The application of the code of judicial conduct requires a determination of the exact point at which a person becomes a judge, which varies from state to state and may vary even within a state depending on the selection process. In some states, a judge becomes a judge on taking the oath of office. See, e.g., *New York Advisory Opinion 1998-92*; *Oklahoma Advisory Opinion 1999-2*; *South Carolina Advisory Opinion 5-2006*; *Texas Advisory Opinion 293* (2007). Other states, however, have created different starting points. See, e.g., *Arizona Advisory Opinion 2000-7* (pursuant to constitutional provision, an elected judge becomes a judge on “the first Monday in January next succeeding their election,” and, by statute, an appointed judge becomes a judge on the effective date of the appointment,” that is, when the commission of office is signed).

If a future judge has in the past participated in fundraising for charitable organizations, she should review the code to see if she can continue those activities and inform the organizations about any new restrictions to prevent inadvertent violations of the code. Under Rule 3.7A, a judge cannot:

- solicit charitable contributions except from members of the judge's family or judges over whom she does not exercise supervisory or appellate authority;
- solicit memberships except in an organization that is concerned with the law, the legal system, or the administration of justice; or
- be honored at, be featured on the program of, or permit her title to be used in connection with a fundraising event unless the event concerns the law, the legal system, or the administration of justice.

BUSINESS AND FINANCIAL ACTIVITIES

"Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families," but participation "is subject to the requirements of this Code." Comment 3, Rule 3.11. Rule 3.11B, for example, will require a judge-select "to resign as an officer, director, manager, general partner, advisor, or employee of any business entity" unless the business is "closely held by the judge or members of the judge's family" or "primarily engaged in investment of the financial resources of the judge or members of the judge's family."

Further, a judge-select must examine her financial, business, or remunerative activities and withdraw from any that will (Rule 3.11C):

- interfere with the proper performance of judicial duties;
- lead to frequent disqualification;
- involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- violate other provisions of the code.

A judge must divest financial interests that violate the code "as soon as practicable without serious financial detriment" (Comment 2, rule 3.11) but "in no event longer than one year" (Application § VI).

Finally, to ensure compliance with the disqualification provisions in the code, a new judge must begin:

- to keep informed about her personal and fiduciary economic interests (Rule 2.11B);
- to make a reasonable effort to keep informed about the personal economic interests of her spouse or domestic partner and minor children residing in her household (Rule 2.11B); and
- to conduct her business or financial affairs in a way that avoids frequent disqualification (Rule 3.1B).

FIDUCIARY POSITIONS

To comply with Rule 3.8A, a new judge has to withdraw from any "fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family . . ." ("Member of the judge's family" is defined as "a spouse, domestic partner, child, grandchild, parent, grand-

parent, or other relative or person with whom the judge maintains a close familial relationship.") Even if the fiduciary position is for a member of the judge's family, a judge must withdraw:

- if serving as a fiduciary will interfere with the proper performance of judicial duties (Rule 3.8A);
- if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before her (Rule 3.8B);
- if the estate, trust, or ward is or becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction (Rule 3.8B); or
- if serving as a fiduciary might require frequent disqualification (Comment 1, Rule 3.8).

A new judge must resign from an inappropriate fiduciary position "as soon as reasonably practicable, but in no event later than [one year] after becoming a judge."

A new judge must resign from an inappropriate fiduciary position "as soon as reasonably practicable, but in no event later than [one year] after becoming a judge." Rule 3.8D. The South Carolina committee advised that the rule does not authorize a new judge to remain a fiduciary for a year but only for the time necessary to avoid serious adverse consequences to the beneficiary, which can, in no event, be longer than one year. *South Carolina Advisory Opinion 21-2000*. See *Connecticut Emergency Staff Advisory Opinion 2014-21* (a nominee for judicial office may be sworn into office while he is still serving as the conservator of a person or estate in pending probate matters); *Massachusetts Advisory Opinion 2008-3* (a new judge should promptly take steps to remove herself as a trustee of a trust that is involved in litigation); *New York Advisory Opinion 2010-169* (a new judge may complete the tasks necessary to terminate conservatorships he held before taking the bench but should do so expeditiously and, in any event, within a year); *New York Advisory Opinion 2010-47* (a newly appointed judge may submit an application to be discharged from her duties as guardian for an incapacitated person and prepare a final accounting in a court proceeding); *New York Advisory Opinion 2009-103* (a new judge may complete fiduciary appointments made before the effective date of his appointment and receive compensation but should complete the work within one year, if possible); *New York Advisory Opinion 2002-37* (a new judge may not accept an appointment to serve as a fiduciary for compensation but may continue to serve in such capacity pursuant to an appointment made before assuming the bench); *New York Advisory Opinion 1995-39* (a recently elected judge who had been the conservator for an incompetent may, as a matter of necessity, continue to perform essential services but must move promptly for the appointment of a substitute); *Pennsylvania Informal Advisory Opinion 5/29/2012* (a new judge may not serve as executor of wills that he prepared while practicing law and should instruct his former law firm to inform the clients to replace him as fiduciary); *West Virginia Advisory Opinion* (March 21, 2011) (a new judge may continue to serve as executor of an estate that will be wrapped up in a couple of months).

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POLITICAL ACTIVITIES

The restrictions on political activity by judges vary considerably from state to state, may vary within a state depending on whether the judicial position is an appointed one or an elected one, and may even vary

from time to time depending on whether a judge is currently a candidate for re-election. A new judge should carefully examine the specific provisions of her state's code to see what rules to follow.

Under Rule 4 of the model code, a judge shall not:

- act as a leader in, or hold an office in, a political organization (Rule 4.1A(1));
- make speeches on behalf of a political organization (Rule 4.1A(2));
- publicly endorse or oppose a candidate for any public office (Rule 4.1A(3));
- solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate (Rule 4.1A(4));
- attend or purchase tickets for events sponsored by a political organization or a candidate (Rule 4.1A(5)); or
- become a candidate for a non-judicial elective office (Rule 4.5A).

The restrictions apply immediately to new judges. See *Arizona Advisory Opinion 1993-4* (an elected tribal official may not serve the balance of her term after appointment as a justice of the peace); *Illinois Advisory Opinion 1999-2* (a newly appointed judge may not continue to serve as an elected member of a public school board). Furthermore, some advisory opinions suggest that an individual who has been elected or appointed to a judgeship but not yet sworn into office is immediately bound by the same restrictions on political activity that will govern her conduct after taking office. *South Carolina Advisory Opinion 23-1994*. See also *Florida Advisory Opinion 2000-16* (a judge-elect may not actively participate in a non-judicial campaign before being sworn into office); *New York Advisory Opinion 1998-142* (a judge-elect who is vacating a seat in the local legislature should not engage in political activities in support of a candidate in the special election for the seat).

GIFTS AND RECEPTIONS FOR NEW JUDGES

A new judge will frequently be offered and can generally accept gifts from former law partners, close friends, colleagues, or bar associations to mark her investiture. A gift may necessitate the judge's recusal from matters involving the donor, but, in many instances, the donor is likely to be someone whose appearance in a case would necessitate the judge's recusal even without the gift, at least for some period, or a group where recusal may not be required for individual donors if each individual contribution is relatively small. *U.S. Advisory Opinion 98 (2009)*.

Advisory committees have allowed a new judge to accept:

- a gavel or judicial robe from members of her family (*New York Advisory Opinion 2012-177*);

- a robe from a bar association to which the judge belongs (*Arkansas Advisory Opinion 2000-10*);
- a clock from a bar association (*U.S. Advisory Opinion 98 (2009)*);
- a gavel from the state's attorney, who is a former employer (*Florida Advisory Opinion 1976-22*);
- gift certificates from her former law firm (*Pennsylvania Informal Advisory Opinion 2/28/2012*);
- a judicial robe from former law partners (*U.S. Advisory Opinion 98 (2009)*);
- a chair from former state judicial colleagues (*U.S. Advisory Opinion 98 (2009)*); and
- a gavel and \$500 from a former client (*U.S. Advisory Opinion 98 (2009)*).

The Connecticut advisory committee stated that a judge may accept a gift from her former state government office at a dinner celebrating her appointment, gifts given at a gathering of family and church members in honor of her appointment, or a gift from an attorney who had been opposing counsel in cases before her appointment and who is likely to appear before her if the nature or value of the gift is not so great that a reasonable person would believe that the gift would undermine the judge's independence, integrity, or impartiality. *Connecticut Informal Advisory Opinion 2013-10*; *Connecticut Informal Advisory Opinion 2013-9*; *Connecticut Advisory Opinion 2013-22*. But see *Maryland Advisory Opinion 2003-1* (a master should not accept a \$50 gift certificate from an attorney to whom the master referred numerous cases when closing his practice if the attorney might appear before the master); *New Jersey Advisory Opinion 4-2002* (a newly confirmed judge may not accept from his former law firm a trip worth approximately \$5,000).

Further, a new judge may allow her former law firm to sponsor and pay the expenses for a reception following her investiture. *Florida Advisory Opinion 1999-3*; *Illinois Advisory Opinion 2001-11*; *Minnesota Summary of Advisory Opinions*, at 20 (1995); *U.S. Advisory Opinion 98 (2009)*. See also *Washington Advisory Opinion 1995-5* (a new judge should report the expense of a reception hosted by her former firm if the value exceeds the limit for disclosure). The Illinois committee cautioned that a judge may be feted at a post-investiture party sponsored by her former law firm only if the party is not intended to advance the interests or status of the firm. *Illinois Advisory Opinion 2001-11*. The committee also warned the judge to exercise "selected control" over the magnitude or extravagance of the celebration and the number and nature of those invited.

Other groups may also sponsor a reception for a new judge. *Florida Advisory Opinion 1999-3* (attorneys in a new judge's community); *South Carolina Advisory Opinion 2003-16* (the chamber of commerce, local businesses, and area attorneys); *U.S. Advisory Opinion 98 (2009)* (a former corporate employer, a business client, a colleague, or a bar association). However, the advisory committee for federal judges warned that a new judge may not accept either a gift or a reception from a political organization; a for-profit company that has no pre-existing or long-standing relationship with the judge; or an organization that is publicly identified with controversial legal, social, or political positions or that regularly engages in adversary

proceedings in the federal courts. *U.S. Advisory Opinion 98* (2009). See *New Jersey Advisory Opinion 3-2001* (a new judge may not accept a check from the county bar association toward the cost of a swearing-in reception).

PRACTICE IN THE INTERIM

A lawyer may continue to actively practice law during any period after she is elected or appointed but before she takes judicial office. As the Georgia committee explained, “it would be unfair and unrealistic to require an active trial lawyer to immediately withdraw as counsel in pending cases simply because he or she has been elected to serve as a judge for a term to begin some several months after the election.” *Georgia Advisory Opinion 217* (1996). Similarly, the Florida advisory committee concluded that the risk of a judge-elect misusing judicial prestige while practicing law was outweighed by “the important consideration of allowing a lawyer to effectively and expeditiously conclude those legal matters that have been entrusted to the lawyer who has recently been elected to the bench.” *Florida Advisory Opinion 2000-39*.

In the interim, a newly chosen judge may appear as trial counsel (*Georgia Advisory Opinion 217* (1996); *Pennsylvania Informal Advisory Opinion 7/2/04*); practice before all courts, including the court to which he has been chosen (*Florida Advisory Opinion 1988-29*); handle both criminal and civil cases (*Florida Advisory Opinion 1988-29*); appear in jury and non-jury trials (*Florida Advisory Opinion 1988-29*); and be compensated according to a partnership or employment agreement (*Arkansas Advisory Opinion 1996-9*).

Several committees have suggested that, to avoid future disqualification issues, prosecutors should consider changing their duties when practicing after being chosen as a judge but before taking office. For example, the Florida committee approved a proposal by a circuit-judge-elect who was a chief assistant state attorney to appear only in misdemeanor cases or in felony cases in another geographic area of the circuit and to immediately relinquish administrative or supervisory control over felony attorneys who appear in the court in which she will sit as a judge, although the committee stated those measures were not required. *Florida Advisory Opinion 1984-21*. See also *Arkansas Advisory Opinion 1996-5* (a deputy prosecuting attorney who is running unopposed for a judicial seat may continue to prosecute cases in the same district until she takes office but should keep in mind future disqualification issues). The Kentucky committee even suggested that a judge-elect should resign as an assistant county attorney to minimize the problems of disqualification. *Kentucky Advisory Opinion JE-32* (1981).

WINDING UP A LAW PRACTICE

Rule 3.10 prohibits a full-time judge from practicing law. Therefore, attorneys must immediately begin to wind up their legal practices after learning they will become judges. For those in private practice, the winding up has two facets: terminating the representation of clients and terminating the relationships and financial arrangements that constitute the business of a legal practice.

Representation of Clients

After a judge takes office, there is no exception to the prohibition on practicing law that allows the new judge to complete pending matters for clients.⁴ *Arizona Advisory Opinion 2000-7*; *Oklahoma Advisory Opinion 1999-2*. The New York committee stated that, although a confirmed appointee may continue to practice law until taking the oath of office, he should keep in mind “the risk attendant upon the failure to do so within the prescribed period.” *New York Advisory Opinion 1998-92*. When the oath has been taken and filed, the committee emphasized, “the appointee has become a judge and may no longer practice law. At that point there can be no further ‘closing out’ to be done that requires the practice of law.” See also *South Carolina Code of Judicial Conduct, Canon 4G* (the prohibition on practicing law “becomes effective immediately upon taking the oath of office and applies to any case in the judge’s former practice that was not completed when judicial duties were assumed”).

Thus, judicial-ethics committees have advised:

- A new judge may not appear in a federal district court in another state to represent a defendant in a sentencing hearing shortly after he takes office. *Texas Advisory Opinion 293* (2007).
- A new judge may not represent a client in a mediation even if liability is not contested and the only remaining issue is the amount necessary to settle the case. *Texas Advisory Opinion 293* (2007).
- A new judge may not present the oral argument before an appellate court in a case he tried even if his client wants him to and opposing counsel does not object. *Florida Advisory Opinion 1977-2*.
- A new judge who briefed points raised in an appeal while an attorney may not be listed as an author on the brief. *New York Advisory Opinion 2013-8*.

After a judge takes office, there is no exception to the prohibition on practicing law that allows the new judge to complete pending matters for clients.

4. A few states have provisions that create a limited exception to the rule. See *Mississippi Code, § 9-1-25* (allowing a chancellor or circuit judge or a judge of the court of appeals to practice in any court for six months “so far as to enable them to bring to a conclusion cases actually pending when they were appointed or elected in which such chancellor or judge was then employed” and allowing a supreme court justice to appear “in the courts of the United States in any case in which he was engaged when he was appointed or elected judge”); *Compliance section, North Car-*

olina Code of Judicial Conduct (“[I]t shall be permissible for a newly installed judge to facilitate or assist in the transfer of his prior duties as legal counsel but he may not be compensated therefore”); *Rule 3.10 and comment 2, Tennessee Code of Judicial Conduct* (“A newly elected or appointed judge can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than 180 days after assuming office”; “no new matters may be accepted”).

Given the strictness of the rule against judges practicing law, “a newly elected judge should devote substantial attention to winding up the law practice”

- A new judge may not assist a former client seeking satisfaction of a judgment entered before he took the bench. *Florida Advisory Opinion 2009-9*.⁵

Of course, the practice of law “is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces all advice to clients and all actions taken for them in matters connected with the law,” including “the preparation of pleadings, and

other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of legal advice to clients.” *Florida Advisory Opinion 2005-19*. Thus, those types of acts are also prohibited for a new judge. See *Florida Advisory Opinion 2006-1* (a recently appointed judge may not sign a title-insurance policy after taking the bench even if the documents were recorded and the policy took effect before the judge took office); *Florida Advisory Opinion 1983-3* (a new judge may not complete a real-estate transaction by attending the closing or complete the probating of two estates); *New York Advisory Opinion 1989-38* (a new judge may not complete unfinished legal services for an estate even if no court appearances are necessary); *West Virginia Advisory Opinion* (December 19, 2012) (a new judge may not prepare a legal document related to his prior employment).

There is no exception that would allow a new judge to perform “ministerial” acts for clients. The New York Court of Appeals removed a judge for continuing to perform legal or business services for clients, continuing to act as a fiduciary in several estates, and maintaining a business and financial relationship with his former law firm, which had an active practice before his court. *In the Matter of Moynihán*, 604 N.E.2d 136 (N.Y. 1992). The judge had contended that the tasks he performed—for example, filling out tax returns, banking activities,

expediting stock transfers, and administering an estate—were purely “ministerial” acts that did not conflict with his judicial responsibilities. The Court held that, to the extent the acts were ministerial, there was no justification for his failure to turn them over to another attorney. The judge had also claimed that his actions were necessary to wind up a busy practice with long-standing responsibilities to clients. However, the Court found that the two years the judge had continued to provide services after assuming the bench was “an inexcusably long period,” noting that the work involved matters that came before the judge’s own court, albeit before different judges.

Rejecting a judge’s argument that he had interpreted the code in good faith to allow him to finish his law practice by performing clerical activities after he took office, the Arkansas Supreme Court concluded that the work the judge had performed was more than ministerial or clerical and constituted the active practice of law. *Judicial Discipline and Disability Commission v. Thompson*, 16 S.W.3d 212 (Ark. 2000). In one case, the judge had met with clients in his chambers to discuss a settlement, accompanied the clients when they negotiated the settlement check, faxed a letter to co-counsel confirming their fee arrangement, and sent co-counsel a cashier’s check with a letter, written on his judicial stationery, directing her to approve the order of dismissal and giving her directions on closing the case. In a second case, the judge had participated in several depositions and exchanged legal correspondence and documents with opposing counsel and the court clerk regarding settlement.⁶

Duties to Clients

Given the strictness of the rule against judges practicing law, “a newly elected judge should devote substantial attention to winding up the law practice, with due regard for the rights and expectations of existing clients.” *Florida Advisory Opinion 2000-39*. For example, before assuming judicial office, an attorney must withdraw from client representation and cease accepting new clients (*New York Advisory Opinion 2005-130(A)*) and arrange for new counsel to handle any outstanding motions scheduled to be heard after she assumes judicial office (*New York Advisory Opinion 2004-137*).

5. See also *In re Ramich*, Determination (New York State Commission on Judicial Conduct, December 27, 2002) (<http://www.cjc.ny.gov/Determinations/R/Ramich.Thomas.E.2002.12.27.DET.pdf>) (censure for, in addition to other misconduct, corresponding with attorneys in connection with the pay-off of a debt owed to the successor in interest to a client for whom the judge, as an attorney, had obtained a judgment, and signing a satisfaction of judgment as an attorney for the judgment creditor); *In re Slusher*, Stipulation and Agreement (Washington State Commission on Judicial Conduct, April 3, 1992) (<http://www.cjc.state.wa.us/Case%20Material/1992/1205%20Stipulation.pdf>) (public admonishment for attempting to secure funds for a former client by communicating with the attorney for the other party).

6. See also *In re Jefferson*, 753 So. 2d 181 (La. 2000) (removal of judge who, in addition to other misconduct, participated in a case as counsel for four years after becoming a judge, including writing a letter to opposing counsel seeking to close the file and signing a motion to dismiss that was filed during his second term of

office); *In re Ryman*, 232 N.W.2d 178 (Mich. 1975) (removal for, in addition to other misconduct, maintaining an office and furnishing legal services to former clients after assuming office); *Commission on Judicial Performance v. Osborne*, 876 So. 2d 324 (Miss. 2004) (public reprimand for filing six complaints and two bankruptcy petitions in the six months after he became a judge); *In re Intemann*, Determination (New York State Commission on Judicial Conduct, October 25, 1988) (<http://www.cjc.ny.gov/Determinations/I/Intemann.William.H.Jr.1988.10.25.DET.pdf>) (removal for, in addition to other misconduct, continuing to provide legal services for three estates); *Disciplinary Counsel v. Bender*, 11 N.E.3d 1168 (Ohio 2014) (two-year stayed suspension for (1) during his transition from private practice to the bench, neglecting a client’s personal-injury case and continuing to practice law after becoming a judge and (2) failing to timely withdraw his earned fees from his client trust account, commingling personal and client funds).

Except for the addition of the deadline imposed by taking office, the ethical responsibilities owed to clients when an attorney leaves the practice of law to become a judge are no different than those owed when an attorney ends representation for any other reason, and an attorney should consult state resources on that issue immediately after appointment or election. Rule 1.16(d) of the *ABA Model Rules of Professional Conduct* provides that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests” The rule specifically requires:

- giving reasonable notice to the client;
- allowing time for employment of other counsel;
- surrendering papers and property to which the client is entitled; and
- refunding any advance payment of fees or expenses that has not been earned or incurred.

Judicial-ethics committees have applied those rules to attorneys newly chosen to become judges. See *Arizona Advisory Opinion 2000-7*; *Illinois Advisory Opinion 1994-12*; *Michigan Advisory Opinion J-2* (1989).

Thus, a budding judge should discuss with her clients the options for obtaining counsel for pending matters, assist the client in locating counsel with the required expertise, and discuss pending cases with the client or the client’s new attorney. *Alabama Advisory Opinion 13-920*; *Arizona Advisory Opinion 2000-7*. See *Kansas Advisory Opinion JE-11* (1984) (an attorney who is becoming a judge may not suggest or recommend the services of any particular lawyer). A file can be transferred to another attorney only after full disclosure to the client and the client’s consent, not only to the transfer but to any fee arrangement between the transferor and transferee attorneys. *Michigan Advisory Opinion JI-89* (1994); *New Mexico Advisory Opinion 2012-14*; *South Carolina Advisory Opinion 21-1998*; *Texas Advisory Opinion 293* (2007).

Before taking the bench, a judge-elect should make clear to her clients that she can no longer represent them in any way after being sworn in, including providing advice or consulting about continuing cases and prior work. *South Carolina Advisory Opinion 21-1998*. Further, any necessary “discussion of pending cases with new counsel that would constitute the practice of law should take place during the process of closing the law practice, not after the judge takes office.” *Florida Advisory Opinion 2005-19*. The New York committee suggested that “the safe and ethical practice would be for the judge-elect to concentrate, during the closing of the law practice, on providing subsequent counsel with everything necessary to avoid the need for later discussions.” *New York Advisory Opinion 2000-77*.

However, advisory opinions do distinguish between giving legal advice, which is prohibited after taking the bench, and providing factual information, which may be permitted. For example, the Connecticut committee advised that a new judge may answer a successor attorney’s questions about “factual matters not readily apparent from the file” or “the nature and location of documents and other historical information” as long as she does not “answer questions involving legal advice or litigation strategy.” *Connecticut Informal Advisory Opinion 2013-12*. See also *Alabama Advisory Opinion 13-920.1*; *Nevada Advisory Opinion JE13-001*.

The exception has been applied to allow judges to file affidavits or unsworn statements or even testify about former representation. For example, the Massachusetts committee advised that a judge may testify pursuant to a subpoena in a civil suit about estate-planning documents he prepared for clients after obtaining the former client’s waiver of the attorney-client privilege (or obtaining legal advice from his own counsel about whether the privilege should be asserted) and after ascertaining whether the information may be obtained from another source. *Massachusetts Advisory Opinion 2009-5*. However, the committee reminded the judge not to give an opinion, strategize with her former client’s current counsel, or take steps to advance the client’s cause. See also *Connecticut Informal Opinion 2013-34*; *New York Advisory Opinion 1996-128*; *New York Advisory Opinion 2007-32*; *New York Advisory Opinion 2004-67*; *New York Advisory Opinion 1991-137*. But see *Florida Advisory Opinion 1979-12* (a judge may not, absent a subpoena, testify before a state administrative agency regarding the history and purpose of a statute she drafted while general counsel for a state administrative agency); *Kansas Advisory Opinion 161* (2008) (a judge should not provide an affidavit about his recollection of events related to a journal entry in a civil case in which he represented the plaintiff).

The issue of post-bench consultation arises frequently in criminal cases given the sometimes lengthy post-conviction relief proceedings. For example, the Nevada advisory committee stated that a judge could provide the current prosecutor a written verbatim transcription of her otherwise illegible notes about a case prepared when she was prosecutor as long as she did not discuss the notes, transcription, or any other matter or otherwise help the current prosecutor prepare for a new sentencing hearing. *Nevada Advisory Opinion JE1998-3*. See also *Florida Advisory Opinion 2006-12*; *Illinois Advisory Opinion 1994-19*; *New York Advisory Opinion 2011-96*; *New York Advisory Opinion 1996-128*; *New York Advisory Opinion 1995-20*; *Pennsylvania Informal Advisory Opinion 4/20/2009*.

Similar advice has been given to former defense counsel. For example, the Massachusetts committee gave a judge permission when subpoenaed to give factual testimony before the parole board about a former client’s decision to forgo a plea offer made by the prosecutor but advised the judge to ask counsel whether her testimony was truly necessary or whether information might be obtained from some other source. *Massachusetts Advisory Opinion 2006-2*. See also *Massachusetts Advisory Opinion 2001-2*; *New York Advisory Opinion 2013-53*; *New York Advisory Opinion 2007-153*; *New York Advisory Opinion 1995-116*. But see *Florida Advisory Opinion 1999-4* (a judge may not execute an affidavit explaining why he took certain steps while representing a former client and commenting on the former client’s good character to be submitted to a prosecutor to resolve criminal charges of workers’-compensation fraud).

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[T]he amount to be paid to the judge cannot be based on work performed or profits earned after the judge's departure from the firm.

PAYMENTS AFTER TAKING THE BENCH

Judicial-ethics committees have advised that a judge may, after taking the bench, accept various types of payments related to her pre-bench legal practice. A revised code of judicial conduct adopted in 2015 in Maine expressly allows that practice:

A judge, after leaving practice and becoming a judge, may continue to receive fees and payments entirely earned

while engaged in the practice of law before becoming a judge, including fees for services rendered, payments from structured settlements and judgments to be paid over time, deferred compensation plans, retirement plans, payments to the judge for sale of his or her practice, payments to the judge for his or her equity upon leaving a firm, and any other fees or payments entirely earned while engaged in the practice of law before becoming a judge.

Rule 3.11E. The majority rule is that a judge is disqualified from any matters involving a firm or attorney while the judge is receiving payments from the firm or attorney. See Cynthia Gray, "Disqualification Issues Faced by New Judges," *Judicial Conduct Reporter* (Fall 2010).

Addressing a common situation, the advisory committee for federal judges stated that a new judge may receive payments from her former firm after taking judicial office pursuant to an agreement providing for payment of an agreed amount representing a departing partner's interest in the firm. *U.S. Advisory Opinion 24* (2009). Other committees have approved receipt of similar payments. See *Alabama Advisory Opinion 1986-248* (a judge may share law-partnership profits earned but not paid before his assuming the bench for the approximately one year it would take to complete all financial settlements); *Alabama Advisory Opinion 1989-351* (a judge's former partner may execute a promissory note evidencing deferred compensation to come due in almost two years); *Arkansas Advisory Opinion 1996-9* (a new judge may accept a lump sum or installment payments from the law firm he left); *Connecticut Informal Advisory Opinion 2008-19* (a new judicial officer may accept a single payment for work done on a contingency-fee lawsuit); *Connecticut Informal Advisory Opinion 2008-19A* (a judge may accept payment from a former law firm for a case initiated on behalf of a client that the judge had brought to the firm as a "rainmaker" in lieu of any payments for his interest in the practice when the sole remaining case is settled approximately four years later than the firm and judicial official had contemplated); *Delaware Advisory Opinion 2004-2* (a new judge may receive a percentage interest in receivables collected for services performed before his departure for a year, and, after a year, a lump sum representing the judge's interest in a present-value calculation of accounts receivable, anticipated proceeds from contingent-fees cases, and payments under the firm's retirement plan); *Florida Advisory Opinion 1976-1* (a new judge may accept a fixed amount for his interest in his former law

firm and the proportionate share of the fees earned before his elevation to the bench); *Florida Advisory Opinion 1974-4* (a new judge may receive annual installment payments for his interest in a firm computed on a predetermined formula pursuant to a standard contract for all shareholders); *Florida Advisory Opinion 2003-2* (a new judge may receive periodic payments for his interest in his former firm or a note executed for the balance); *Georgia Advisory Opinion 12* (1977) (a new judge may receive his pro rata share of fees earned but not collected as of the time of his retirement from a firm); *Louisiana Advisory Opinion* (July 8, 2010) (a new judge may receive installment payments over 18 months from his former law firm representing approximately 10% of the fees the firm received from his clients during his tenure with the firm); *Maine Advisory Opinion 2005-2* (a new judge may over time be paid the amount of money due from his former law partners); *Massachusetts Advisory Opinion 2000-1* (a new judge's former firm may pay him a fixed amount at a reasonable rate of interest in installments over 10 years); *Minnesota Advisory Opinion 2014-1* (a lump-sum payment for a judge's interest in his former law firm is preferable, but, if immediate liquidation would cause serious financial detriment, an installment sale is permissible); *Nebraska Advisory Opinion 2007-2* (the remaining shareholders in a new judge's former law firm may purchase his interest if he holds the funds in a blind trust until a note of which he is a co-maker is expected to be paid off); *New York Advisory Opinion 2011-21* (a judge may receive a discretionary year-end bonus as a former partner from his former firm based only on work he performed before assuming the bench); *Ohio Advisory Opinion 2007-2* (a new judge may receive retirement benefits from his former law firm pursuant to an agreement only for a reasonable period to minimize the number of cases in which he will be disqualified); *Pennsylvania Informal Advisory Opinion 10/29/2010* (a judge may receive installments for the agreed-upon value of his interest in the law practice, including fees earned before he took the oath of office; the firm may sign a promissory note for the deferred payments); *West Virginia Advisory Opinion* (January 16, 2001) (a new judge may receive intermittent payments from his former law firm for an extended period).

However, the amount to be paid to the judge cannot be based on work performed or profits earned after the judge's departure from the firm. *Arkansas Advisory Opinion 1996-9*; *Nebraska Advisory Opinion 1989-1*; *U.S. Advisory Opinion 24* (2009). Some committees require that the amount to be paid must be fixed before the judge takes office (*Florida Advisory Opinion 1974-4*; *Maine Advisory Opinion 2005-2*; *Minnesota Advisory Opinion 2014-1*), although others simply indicate the amount should be set "if possible" (*Nebraska Advisory Opinion 1989-1*; *U.S. Advisory Opinion 24* (2009)). The duration of the installments should be short (*Minnesota Advisory Opinion 2014-1*; *Pennsylvania Informal Advisory Opinion 10/29/2010*) and "end at the earliest practicable date, ideally within a few months" (*Arkansas Advisory Opinion 1996-9*), although some committees have approved periods of 18 months (*Louisiana Advisory Opinion* (July 8, 2010)), several years (*U.S. Advisory Opinion 24* (2009)), and as long as 5 years (*West Virginia Advisory Opinion* (March 21, 2011)) or even 10 years (*Massachusetts Advisory Opinion 2000-1*).

For lawyers who leave a solo practice or small firm, judicial-ethics committees have approved a variety of arrangements that include payments after the judge takes office. See *Florida Advisory Opinion 2013-1* (a lawyer who has been appointed as a judge may sell his interest in a law practice and collect payments over time while sitting as a judge, but payments for goodwill may not take into account fees earned in pending matters transferred to the acquiring firm); *Florida Advisory Opinion 1996-26* (a lawyer recently elected to the bench may transfer his practice to a purchasing attorney for a lump sum if the practice is valued before the judge assumes the bench in an arms-length transaction based on the best reasonable estimates and may take a promissory note for a portion of the lump sum as long as the future payments remain irrevocably tied to the value of the practice at the time of the transfer); *New York Advisory Opinion 2000-3* (a newly elected judge may receive compensation for the equity value of the judge's share in a law partnership that is dissolving as a result of his election as determined in accordance with generally accepted accounting principles); *Pennsylvania Informal Advisory Opinion 12/7/2009* (a judge-elect may sell his law practice in accordance with the rules of professional conduct and receive payment after being sworn in).

Fees

With certain conditions, after taking office, a judge may receive payment of legal fees for prior work done as an attorney, including hourly fees, flat fees, and contingency fees, from former clients, former partners, former firms, successor lawyers, or successor firms. The Ohio committee explained:

Newly elected or appointed judges are not expected or required to forego compensation for legal services they provided before assuming judicial office. No rule in either the Code of Judicial Conduct or the Rules of Professional Conduct can be construed to require such forfeiture of legal fees earned prior to taking the bench.

Ohio Advisory Opinion 2007-2. The rule applies to a former solo practitioner, salaried associate of a firm, or a partner or shareholder who receives a percentage of the firm's fees. *Kentucky Advisory Opinion JE-41* (1982). See also *Alabama Advisory Opinion 2013-921*; *Alabama Advisory Opinion 1997-659*; *Alabama Advisory Opinion 1981-114*; *Arkansas Advisory Opinion 1996-9*; *Connecticut Informal Advisory Opinion 2008-19*; *Florida Advisory Opinion 2009-9*; *Florida Advisory Opinion 1993-38*; *Florida Advisory Opinion 1986-7*; *Florida Advisory Opinion 1981-11*; *Georgia Advisory Opinion 12* (1977); *Illinois Advisory Opinion 1994-12*; *Kansas Advisory Opinion JE-68* (1996); *Kentucky Advisory Opinion JE-41* (1982); *Maryland Advisory Opinion 2003-1*; *Maryland Advisory Opinion Request 1974-6*; *Massachusetts Advisory Opinion 2008-2*; *Minnesota Advisory Opinion 2014-1*; *Missouri Advisory Opinion 62* (1981); *New Mexico Advisory Opinion 2012-14*; *New York Advisory Opinion 1996-91*; *Oklahoma Advisory Opinion 2005-2*; *Pennsylvania Informal Advisory Opinion 2/11a/10*; *South Carolina Advisory Opinion 21-1998*; *West Virginia Advisory Opinion* (December 18, 2000); *West Virginia Advisory Opinion* (September 28, 1998).

The Ohio advisory committee noted:

Often the compensation due to the judge will be

straightforward, such as when the legal services were provided pursuant to an hourly fee or flat fee agreement. In hourly rate matters, the judge would be entitled to receive the accounts receivable reflecting the number of hours billed by the judge times the agreed upon hourly rate. In flat fee matters, the judge would be entitled to receive the accounts receivable for the agreed upon flat fee.

The [Ohio] committee advised: "The most prudent approach in a contingent fee matter . . . is for the judge to accept compensation, once the contingency occurs, based upon quantum meruit"

Ohio Advisory Opinion 2007-2. However, it continued, "sometimes, the compensation due to the judge is less clear, such as in contingent fee matters that are not completed before the judge assumes judicial office."

If the contingent fee matter is completed before the judge is sworn into office, the judge would be entitled to receive the accounts receivable for the agreed upon contingent fee rate in the fee agreement. But if the contingent fee matter is not completed before the judge is sworn into office, there is no clarity as to how the judge is to be compensated. Is the judge entitled to compensation based upon the agreed upon contingent fee rate or is the judge entitled to compensation based on quantum meruit? Is the judge entitled to compensation before the contingency occurs or must the contingency occur?

The committee advised:

The most prudent approach in a contingent fee matter that is not completed before the judge takes the bench is for the judge to accept compensation, once the contingency occurs, based upon quantum meruit for services performed prior to assuming judicial office. In some circumstances, such as when the contingency fee matter was nearly completed before taking judicial office, the quantum meruit compensation might equal the agreed upon percentage rate in the contingency fee contract. In other circumstances, such as when the contingency fee matter was undertaken shortly prior to taking the bench and little work was performed by the judge on the matter, the quantum meruit would most certainly not approach the agreed upon contingent fee. [Citation omitted.]

There is no time limit on a judge's ability to accept fees. See *Alabama Advisory Opinion 2013-921* (a judge may accept his share of legal fees for work he performed before taking office even nine years after becoming a judge); *Florida Advisory Opinion 1997-9* (a judge may accept fees based upon work performed from 1988 until she became a judge in 1990 in a personal-injury case that did not settle until 1997); *New York Advisory Opinion 1995-12* (a judge may accept fees previously earned that were not payable for one year or longer); *Oklahoma Advisory Opinion 2005-2* (a judge may accept payment of a fee

[A] new judge may take steps to collect fees if she avoids abusing the prestige of office to do so.

owed by a former client four years after going on the bench and after he had formally forgiven all accounts receivable).

There are several conditions imposed on a new judge's acceptance of fees:

- The amount, the percentage, or the method for calculating her share must be established before the judge takes office.
- The amount the judge receives must reasonably reflect only the amount of work she did on the case before assuming the bench.
- The judge must not receive any part of a fee that was collected in matters that were not pending with the firm at the time she left or that was generated by clients on matters that arose afterwards.
- The division of fees between the judge and the lawyer or firm who completes the work should be reasonable and in proportion.
- The fee must not be clearly excessive.
- The fees must be proper under the rules of professional conduct.
- The computation must be based on traditional standards.
- The judge should consider whether the decision to accept payment affects her disqualification from matters involving the client, opposing parties, and the law firm or lawyer.
- The fee arrangement must have been fully disclosed to the client.

Compare *West Virginia Advisory Opinion* (December 18, 2000) (a fee arrangement must be in writing), with *Alabama Advisory Opinion 13-921* (if the arrangement is traditional or standard in the legal profession and the judge's former law firm, the lack of a written agreement does not necessarily prevent the judge from receiving the compensation due for work performed), and *Connecticut Information Advisory Opinion 2008-19A* (although a pre-existing verbal separation agreement is acceptable, written agreements are preferable).

Further, a new judge may take steps to collect fees if she avoids abusing the prestige of office to do so. See *Maryland Advisory Opinion 2003-1* (if a newly appointed master was a sole practitioner, the master may collect previously earned fees from former clients); *Minnesota Advisory Opinion 2014-1* (a former solo practitioner may continue to collect accounts receivable for a reasonable period following his appointment as a judge); *New York Advisory Opinion 1995-12* (to collect fees, a new judge may forward bills to former clients for outstanding balances due for services rendered before becoming a judge); *West Virginia Advisory Opinion* (November 25, 2009) (a judge may prepare fee petitions for legal work he performed before taking office in a number of cases). *Contra Kentucky Advisory Opinion JE-32* (1981) (a judge must turn his accounts over to another lawyer for collection).

Relationship to Firm

"Upon assuming judicial office, a judge is required to sever all ties with the judge's former firm." *Michigan Advisory Opinion*

Jl-89 (1994). As an essential step in that process, a new judge must ensure that her name is deleted from a former firm's name. The name change is required by both the code of judicial conduct and the rules of professional responsibility. Rule 1.3 of the code prohibits a judge from abusing the prestige of office to advance private interests. Rule 7.5(C) of the *Model Rules of Professional Responsibility* states that the "name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm." See *Kentucky Advisory Opinion JE-41* (1982) (a new judge has a duty to see that his name is removed from a firm name, and the firm has a "like duty"); *Louisiana Advisory Opinion 155* (1999) (a judge may not permit his former law firm to use his name in the firm name); *Michigan Advisory Opinion Jl-89* (1994) (a judge may not allow his name to remain in the name of his former law firm); *New York Advisory Opinion 1989-136* (before assuming judicial office, a judge must remove his name from a firm's masthead). See also *Annual Report for Calendar Year 2015, Arizona Commission on Judicial Conduct*, at 9 (<http://www.azcourts.gov/Portals/137/2015%20CJC%20Annual%20Report.pdf>) (describing a private warning to a justice of the peace to ensure that his former law firm's website did not give the appearance or leave the impression that he still practiced law with the firm, including, but not limited to, removing his name from the firm name). Cf. *Massachusetts Advisory Opinion 2003-9* (a judge whose former firm has refused his requests to remove his surname from the firm name may file a complaint with the board of bar overseers but is not required to do so); *New York Advisory Opinion 2015-19* (a judge who asked his former law firm in writing to remove his name from the firm's signage, letterhead, and other materials need not take further action).

Further, a new judge must ensure that her name is not used in professional notices sent out by her former firm. *Michigan Advisory Opinion Jl-89* (1994). See also *Florida Advisory Opinion 2006-10* (a new judge may not allow his former firm to make a congratulatory announcement about his recent appointment in the *Florida Bar News* or a letter to the firm's clients); *Florida Advisory Opinion 1994-45* (a new judge may not assent to the publication of a congratulatory announcement by the judge's former law firm or the firm's mailing of a congratulatory announcement to its clients); *Massachusetts Advisory Opinion 1990-1* (a judge must notify members of his former law firm that he objects to the use of his name and title in a brochure the firm is preparing for distribution to clients and prospective clients).

Whether a judge may maintain retirement funds in a former firm's plan at least for a short period depends on whether that arrangement would require frequent disqualification and whether there is an alternative that will not result in a substantial loss to the new judge. For example, the Connecticut committee advised that a judge may leave accumulated funds in a retirement plan set up by her former law firm for a reasonable time but in no event longer than one year after taking the oath of office and should not hear any cases in which her former firm is involved. *Connecticut Informal Advisory 2015-13*. If she creates a self-directed sub-account for which she directs all investments and pays all fees and into which the

firm makes no further contributions, the committee advised, the judge may maintain the account for longer than a year but must disclose to counsel and to parties her participation in the firm's plan when members of the former law firm appear. See also *Alabama Advisory Opinion 91-417* (a judge may leave accumulated funds in the retirement plan set up by his old law firm if he sets up a sub-account for which he pays the management fee and into which the firm makes no further contributions on his behalf); *Delaware Advisory Opinion 2004-2* (if the terms of a former firm's retirement plan permit a new judge to withdraw assets, he should do so; if the terms do not permit withdrawal, the issues that could arise out of a judge's continued participation in a former firm's retirement plan will depend on the nature and terms of the plan); *Minnesota Summary of Advisory Opinions*, at 20 (2001) (unless the account can be transferred to another plan without substantial loss, a recently appointed judge may maintain a pension and profit-sharing account with his former law firm for a reasonable period not to exceed three years); *Pennsylvania Informal Advisory Opinion 10/29/2010* (a new judge may not keep his retirement account at his former law firm if lawyers from the former firm will regularly appear before him, if investment decisions are no longer made by the trustee, but by members of the former law firm, or if it is not possible for the judge to create a sub-account for which he pays the management fees and into which the firm makes no further contributions; the judge may maintain the account for a reasonable time to avoid serious financial detriment).

Several committees have advised that a new judge who was a solo practitioner or part of a small firm that is breaking up when she leaves may maintain the existence of the firm after taking the bench solely to wind up its financial affairs. For example, the Connecticut committee received an inquiry from a judicial nominee who was the sole shareholder in a small firm that would cease to practice law after the nominee was confirmed because the other attorneys were joining other firms. *Connecticut Informal Advisory Opinion 2014-4*. The committee advised that the former firm could remain in existence and retain its name (that of the new judicial officer) on a bank account solely for receiving payments of fees as long as the firm was not held out to the public as being in existence, there was a written agreement as to how the funds were to be distributed, clients were notified that the firm was dissolved but that payments should continue, and payments were received only for work done before the judge's confirmation. See also *Massachusetts Advisory Opinion 2008-2*; *Minnesota Advisory Opinion 2014-1*; *New York Advisory Opinion 2007-5*; *New York Advisory Opinion 2005-130(A)*; *South Carolina Advisory Opinion*

13-1996; *South Carolina Advisory Opinion 8-2003*; *West Virginia Advisory Opinion* (November 10, 2011).

While winding down, the firm can collect accounts receivable, send periodic bills to former clients, maintain an escrow account, pay debts, submit corporate-income-tax returns, file unemployment forms for employees, organize and store financial records, and retain client records. However, the firm should be dissolved as soon as practicable (*New York Advisory Opinion 2007-5*; *New York Advisory Opinion 2005-130(A)*) and remain in existence only until all accounts receivable are collected or until the end of the year, whichever is earlier (*South Carolina Advisory Opinion 13-1996*), or within a year after the judge assumes office, even if some receivables are still outstanding (*Minnesota Advisory Opinion 2014-1*). But see *Ohio Advisory Opinion 1995-3* (law-firm partners and a newly elected judge should not continue their law partnership even for the sole purpose of collecting accounts receivable).⁷

CONCLUSION

Attorneys are accustomed to being governed by a code of ethics, of course, but the rules in the code of judicial conduct will be new, touch on every part of a new judge's life, and, in some respects, require a reversal of practices the attorney has followed for years. Thus, an immediate, thorough review of the code may prevent a very public stumble by a new judge and begin the commitment to judicial independence, integrity, and impartiality the judge will be eager to maintain throughout a long career on the bench.



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7. Cf. *Florida Advisory Opinion 2005-8* (after assuming the bench, a new judge should close a trust account from his practice even though it is only being used for the distribution of funds when received, and future disbursements should be made through the trust account of a third party); *Florida Advisory Opinion 2006-1* (a recently appointed judge is required to change the status of his professional corporation or dissolve it before taking the bench even though it will be required to file an income-tax return, issue W-2 forms, and prepare other documents well after the date he

takes the bench; his former professional association's operating account may remain open but should reflect the status of the new legal entity established before the judge takes the bench); *Florida Advisory Opinion 2006-31* (a new judge and his former law partner may continue to maintain a partnership account solely to receive fees due the partnership for work done before his election as long as the partnership has been formally dissolved, the account is closed within a reasonable time, and the two former partners perform no professional services).