EXHIBIT E to Judge Miller's Motion for Summary Judgment filed 2/9/09, by Attorney Michael A. Catalano.

FLORIDA SUPREME COURT

Judicial Ethics Advisory Committee

Opinion Number: 2006-16 (Election)
Date of Issue: July 12, 2006

ISSUES

May a candidate for judicial office employ the title "magistrate" when describing prior service even though that term was not in use during a substantial portion of the candidate's term?

ANSWER: No.

May a candidate for judicial office publicize photos showing the candidate wearing a judicial robe, where this privilege was extended to magistrates in the candidate's circuit?

ANSWER: Yes, so long as the candidate takes adequate measures to emphasize that the photo is not intended to convey the impression the candidate has actual service as a judge.

May a candidate for judicial office use the word "preside" to describe the nature of the candidate's duties as a magistrate?

ANSWER: Yes.
May a candidate for judicial office who has served as an adjunct professor of law employ the term “part-time law professor?”

**ANSWER:** Yes, so long as the law school actually refers to such lecturers as “professors.”

**FACTS**
The inquiring candidate has served over three years as a general master, child support hearing officer, and magistrate. The candidate asks several questions relating to the propriety of advertising this experience in campaign materials. Specifically, the candidate wants to know if it is permissible (a) to use only the word “magistrate” when describing this prior experience even though the legislature and Supreme Court did not authorize such a title until several years after the candidate began hearing cases; (b) to reproduce pictures, from media sources, of the candidate wearing a black judicial robe while on the job, a practice that apparently is allowed in the candidate’s circuit; and (c) to use the word “preside” when describing the various hearings the candidate has handled.

The candidate has also served as a part-time “adjunct professor of law” at a local law school. The candidate, who is concerned that “adjunct” may be a rather obscure term, wants to advertise service as a “part-time law professor.”

**DISCUSSION**
None of the following discussion is intended to downplay the valuable and necessary work done by magistrates, general masters, or hearing officers. It is certainly no surprise that a judicial candidate would want to publicize such service. The fact remains, however, that such officials are not judges. In many instances their findings and conclusions must be approved by a Circuit Judge. Historically, ethics opinions have tended to dissuade candidates from falsely stating or implying that they have judicial experience when they do not. The leading case is *In re Alley*, 699 So. 2d 1369 (Fla. 1997), in which
the candidate (later elected) claimed "to have circuit judicial experience, when in fact her service was that of a general master." See also Fla. JEAC Op. 84-17. Instead, such service is better described as “quasi-judicial,” and the use of that terminology was approved by this Committee in Fla. JEAC Op. 00-24.

In fairness to this particular candidate, the letter of inquiry is quite detailed and clearly demonstrates that the candidate appreciates the difference and is willing to include detailed disclaimers in any campaign literature.\(^2\) Fla. JEAC Op. 02-07 contains this Committee’s most succinct statement about the proper use of language in campaign literature. We cautioned against the use of words which are “likely to lead others to draw an inaccurate conclusion, or will likely result in confusion.” In other words, a statement can sometimes be literally true yet unethical in context. On the other hand, it is impolitic for us to assume about the voting public and demean their ability to discern the subtleties of the judicial system. A good balance was struck by Fla. JEAC Op. 04-20, in which the candidate had participated in one of the "teen court" programs that are popular in the courts of this state. Although the presiding officer is referred to as a "judge," in many instances the role is played by a local attorney or other volunteer. This Committee approved the use of the term "teen court judge" so long as the candidate emphasized the voluntary, unofficial nature of the service. Otherwise, it is quite possible the term could lead voters to think the candidate had served in Juvenile - that is, Circuit - Court.

Turning to the inquiring candidate’s specific proposals, the difference between the job titles “master,” “hearing officer,” and “magistrate” may to some extent be a matter of semantics if all three performed much the same functions. The title change could simply be for appearances’ sake, or it could represent an expansion of the responsibilities that may be delegated to that official. Without knowing this, the Elections Subcommittee concludes that the candidate may not conflate the terms even for brevity’s sake. With
respect to utilizing photos of the candidate wearing a robe, the candidate acknowledges that this is not a statewide practice. However, if it is allowed in the candidate's circuit, and the pictures are not staged but taken during the course of actual proceedings, the Subcommittee sees no impediment to the candidate incorporating such pictures in campaign literature so long as the candidate takes pains to emphasize (prominently, and in close proximity to the photo, we suggest) that the photo is not intended to convey the impression the candidate has actual service as a judge. Finally, the Subcommittee sees no problem with the use of the word "preside" because "presiding" is not the exclusive province of judges. As our jury instructions note, one may "preside" over jury deliberations "like the chair of a meeting."

Regarding the desire to describe the candidate's teaching job as "part-time law professor," the Subcommittee does not find this phraseology misleading or confusing, assuming the law school indeed refers to such lecturers as "professors."

REFERENCES

In re Alley, 699 So. 2d 1369 (Fla. 1997)

Fla. R. Traf. Ct. 6.630(l)

Fla. JEAC Op. 84-17
Fla. JEAC Op. 00-21
Fla. JEAC Op. 00-24
Fla. JEAC Op. 02-07
Fla. JEAC Op. 04-20
The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting the judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. Petition of the Committee on Standards of Conduct Governing Judges, 698 So. 2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualifications Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. Id.

For further information, contact: Judge Robert Benton, Chair, Judicial Ethics Advisory Committee, 301 S. MLK Jr. Blvd., Tallahassee, FL 32399.

Participating Members:
Judge Robert Benton, Judge Michael Raiden, Judge McFerrin Smith, III, and Judge Dorothy Vaccaro.

Copies furnished to:
Inquiring judge (Name of the Inquiring Judge deleted)
Justice Peggy Quince
Thomas D. Hall, Clerk of Supreme Court
All Committee Members
Executive Director of the J.Q.C.
Office of the State Courts Administrator
The Judicial Ethics Advisory Committee has appointed an Election Practices Subcommittee. The purpose of this subcommittee is to give immediate responses to campaign questions in instances where the normal Committee procedure would not provide a response in time to be useful to the inquiring candidate or judge. Opinions designated with the "(Election)" notation are opinions of the Election Practices Subcommittee of the Judicial Ethics Advisory Committee, and have the same authority as an opinion of the whole Committee.

Of course, not every disclaimer is adequate. In Fla. JEAC Op. 00-21, the candidate used a web site with the address www.judge[name].com. This was disapproved even though the actual content of the site made no claim of judicial experience.

Rule 6.630(1), Florida Traffic Court Rules, expressly forbids traffic hearing officers from wearing robes.