

To Retain or Not to Retain – That Is the Question

In the March issue of *The Florida Bar Journal*, I published the column “Demystifying What Judges Do.” The column generally examined the role of judges in our democracy and urged lawyers to help others understand how judges are vital to preserving the “rule of law.”

So often we hear public discussion on the importance of the rule of law. Yet seldom is it acknowledged that the strength of the rule of law depends on the strength of those charged to uphold it: our judges.

Why does debate typically stop with the rule of law, yet fail to examine the qualities of a good judge? It is curious: The qualities of judicial merit are rarely treated in public debate.

Why Does this Matter?

In November 2012, Florida's voters will be asked to consider the qualities that mark a judge of merit. More particularly, Florida's citizens will vote on whether to retain 16 state court appellate judges and three state supreme court justices. Voters will decide whether particular judges and justices should continue on the bench. The central question: whether those on the ballot “merit” being retained.

Historical Perspective

In considering the retention vote, recall that the merit system was instituted in 1976. Florida's citizens amended the Florida Con-



stitution to implement the current system which emphasizes merit (over politics) in judicial appointments. Merit is emphasized when judicial candidates are nominated

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by nonpartisan judicial nominating commissions and is again emphasized when sitting judges are subject to a nonpartisan merit retention vote. Adopted by popular vote, this merit-based system has functioned uniformly under Governors Askew, Graham, Martinez, Chiles, Bush, Crist, and Scott.

Structural Considerations Relative to Assessing a Judge's Merit

Florida voters face a difficult challenge when deciding whether a judge merits retention. In part, this difficulty stems from campaign limitations and the nature of judicial office.

Unlike candidates for representative elective office, judicial candidates are prohibited from sharing views on policy or indicating how they might rule in certain cases. Such restrictions on judicial candidates do not burden candidates for representative office. In addition, unlike elected representatives, judges are nonpartisan. Judges, as neutrals, are to make decisions based on the facts and law of the case, not the politics of the time.

In contrast to conventional political campaigns, our system purposefully prohibits the dissemination of information on how judicial candidates might rule. Voters are, thus, left to consider a judge's reputation for fairness, preparedness, demeanor, ethics, scholarship, and integrity. In

short, the question before voters is whether a judge demonstrates qualities consistent with rendering to all fair and impartial justice.

These facts illustrate that voting for a judge differs considerably from other votes in our democracy.

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Counterintuitive

Because of limitations on what judicial candidates can communicate, judicial retention campaigns are unlike other campaigns and contrary to voters' expectations. Voters look for name recognition and to attribute policy positions with candidate names. Yet our system prohibits such campaigning.

I urge you as members of the Bar to help explain to others (colleagues, friends, neighbors, fellow members of your synagogue or church, the local PTA) the differences between a vote for a representative and a vote to retain a judge or justice. Given restrictions

on what judicial candidates can say, the opportunity for opposition groups (which have no such limitations) to generate information that is incomplete and incorrect is substantial. Therefore, your willingness to speak out on the role of judges and their individual reputations is vital. Your engagement matters. □

OATH OF ADMISSION TO THE FLORIDA BAR

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

"I do solemnly swear:

"I will support the Constitution of the United States and the Constitution of the State of Florida;

"I will maintain the respect due to courts of justice and judicial officers;

"I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ, for the purpose of maintaining the causes confided in me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

"To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

"I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."