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*MJI's Legal Update*  
*October 30, 2006*  
*Deborah Green*  
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*Synopses of Relevant Opinions*

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## *Disqualification*

### **Czuprinski v Bay Circuit Judge, 166 Mich App 126 (1988)**

2 /1 /1988

Pendency of an attorney's grievance against a circuit judge before the Judicial Tenure Commission did not preclude the grieved judge from presiding in any case in which attorney was counsel of record; order signed by chief circuit judge removing judge in question from all cases in which attorney appeared as counsel of record pending investigation and final order of Commission was an appropriate and sufficient remedy.

### **People v Bero, 168 Mich App 545 (1988)**

2 /29/1988

Mere filing of party's or attorney's complaint with Judicial Tenure Commission is insufficient to require automatic disqualification of judge in party's or attorney's cases; disqualification is not required until judge is privately censured or complaint is filed by Judicial Tenure Commission itself.

### **In re Fiftieth District Court Judge, 193 Mich App 209 (1992)**

3 /3 /1992

Trial judge's financial ties with law firm representing one of the defendants in narcotics prosecution created appearance of impropriety that required judge's disqualification without showing of actual bias or prejudice; judge had joint ownership interest in property on which main office of law firm was located, firm paid property taxes on that property, and paid mortgage for which judge was jointly liable.

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## *Synopses of Relevant Opinions*

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### **Adair v Michigan, 474 Mich 1027 (2006)**

1 /31/2006

Employment of spouses of state Supreme Court justices in non-supervisory capacities by office of state Attorney General did not give rise to “appearance of impropriety” requiring recusal of such justices pursuant to state Code of Judicial Conduct, absent any showing of actual bias or partiality, where such employment did not amount to grounds for recusal under applicable court rule, and specific rules and canons pertained to judicial disqualifications.

Assuming applicability of “appearance of impropriety” standard to motions for judicial recusal, standard applicable to assessment of appearance of impropriety was objective, with assessment to be made from perspective of reasonable observer who is informed of all surrounding facts and circumstances.

Pursuant to the federal courts’ “duty to sit” doctrine, there is an obligation to remain on any case absent good grounds for recusal.

Opinions of a state bar committee on judicial ethics are merely advisory, are not binding on any court, and are merely the opinions of volunteer lawyers of a state bar committee.

### **Grace v Leitman, 474 Mich 1081 (2006)**

3 /17/2006

“[I]t can never be the case, in our judgment, that a judge can be required to disqualify himself on the basis of hostile conduct directed toward him by the attorney or litigant, rather than on the basis of the judge's own conduct. To require recusal in these circumstances would be to incentivize hostile conduct by an attorney or litigant desirous of excluding disfavored judges from participation in their cases.”

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## *Synopses of Relevant Opinions*

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### **Grievance Administrator v Fieger, 475 Mich 1211 (2006)**

6 /1 /2006

On February 20, 2004, the Committee to Re-elect Justice Maura Corrigan sent out a fundraising letter from former Governor John Engler stating that We cannot lower our guard should the Fiegers of the trial bar raise and spend large amounts of money in hopes of altering the election by an 11th hour sneak attack. This statement was one of the grounds listed in the motion for disqualification filed against Justice Corrigan by the respondent, Geoffrey Fieger.

If campaign opposition constituted a basis for disqualification, there would rarely, if ever, be a full contingent of this Court hearing an appeal. Lawful campaign contributions, in support of and in opposition to a judge, have never before constituted a basis for disqualification. Respondent himself, for example, has made contributions in support of and in opposition to each of the Justices of this Court.

### **RI-001**

1 /28/1989

A lawyer who is a part-time referee may represent clients in connection with a matter in which the lawyer participated personally and substantially as referee, provided that all parties consent.

A part-time referee may not hear matters in which the referee participated personally and substantially as a lawyer.

A part-time referee is disqualified from hearing matters presented by the referee's law firm.

### **JI-006**

6 /1 /1989

A relationship between a landlord/judge and a tenant/lawyer creates the appearance of impropriety if the lawyer practices before the judge.

A full disclosure of the relationship must be made to all litigants, and the consent of all litigants obtained, in order to avoid a disqualification.

A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified, As soon as can be done without serious financial detriment, a judge should divest investments and other financial interests that require frequent disqualification.

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## *Synopses of Relevant Opinions*

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### **JI-008**

7 /19/1989

Ex parte communication between a judge and the Regulation Counsel for the Committee on Professional and Judicial Ethics concerning contemplated conduct of the inquiring judge is appropriate even though the inquiry involves a matter currently pending before that judge.

If the subject of an ethics inquiry relates to a pending matter which the judge must decide, the judge should notify the parties in the pending matter that the judge is seeking assistance and provide the parties an opportunity to review the question submitted.

### **JI-023**

5 /16/1990

A judge is automatically disqualified from presiding over a case or proceeding in which one of the lawyers is an announced candidate for that judge's position in a forthcoming election.

A judge is not automatically disqualified from hearing a case conducted by a lawyer simply because it is rumored the lawyer may be a candidate for that judge's position. The judge should raise the issue to the parties and proceed unless any of the parties reasonably and in good faith questions the judge's impartiality and formally requests that the judge be disqualified.

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## *Synopses of Relevant Opinions*

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### **JI-029**

10/30/1990

A judge may appoint a private practitioner in domestic relations law as part-time domestic relations referee. A lawyer who is a part-time referee may represent private clients in connection with a matter in which the lawyer participated as referee, provided that all parties consent; a part-time referee may not hear matters in which the referee participated as a lawyer; and a part-time referee is disqualified from hearing matters presented by the referee's law firm.

A private practitioner may contract to serve as liaison attorney under the Federal Cooperative Reimbursement Program as long as while acting as liaison attorney the lawyer does not participate in a matter in which the lawyer was personally and substantially involved in private practice, and while acting as private practitioner the lawyer does not undertake a matter in which the lawyer participated personally and substantially as liaison attorney. The law firm of the private practitioner may not undertake the representation in a matter in which the lawyer is disqualified unless the lawyer is screened and the contracting agency is notified.

A lawyer is not per se prohibited from serving as liaison attorney and as domestic relations referee, as long as the lawyer, the judge who appoints referees, and the board which contracts for the liaison attorney closely examine the practical consequences and potential conflicts of such dual service, and make provisions for those instances in which the lawyer may not serve one or another of the functions in a particular matter.

Absent circumstances which show bias a judge is not per se disqualified from presiding over matters presented by an appointee.

### **JI-031**

12/8 /1990

When a lawyer and the lawyer's spouse both serve as judicial officers, one spouse should not supervise the performance of or review judicial decisions of the other.

A judge's disqualification from reviewing decisions of the judge's spouse is not imputed to other members of the judge's court.

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## *Synopses of Relevant Opinions*

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### **JI-034**

12/21/1990

A judge is disqualified from presiding in a matter involving the state or county which was initiated or pending in the county prosecutor's office while the judge served as chief prosecutor.

A judge may preside in matters involving the county or state which were initiated after the judge resigned as chief prosecutor, even if the judge had acted as lawyer for the county or state within the prior two years.

A judge may preside in matters involving the county or state which were initiated after the judge resigned as chief prosecutor even if the charge was initiated under a policy set by the judge while chief prosecutor, or even if the case was under investigation while the judge was chief prosecutor, so long as the judge did not participate personally and substantially in the matter.

A criminal case is "initiated" for purposes of this professional obligation with the first formal prosecutorial pleading designed to bring the named alleged offender before the court.

"Personal and substantial participation" in a matter means being personally involved to an important, material degree. Determination of what constitutes "personal and substantial participation" depends on the context, and need not involve a determination on the merits of the matter, direct contact with witnesses, parties or their lawyers, or actual appearance before a tribunal.

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## *Synopses of Relevant Opinions*

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### **J-004**

3 / 8 / 1991

A. If within the preceding two years a judge has been a member of the law firm appearing in a matter, the judge is automatically disqualified from the matter, regardless of whether the advocate was a partner or associate of the judge, regardless of whether the advocate was a member of the firm when the judge was a member, and regardless of whether the judge was a member of the firm at the time the judge took judicial office.

When assigned to preside over a matter in which the advocate for a party was a member of a law firm of which the judge was a member within the preceding two years, but which advocate is no longer a member of that firm, the judge shall disclose the former relationship on the record, and recuse from the matter unless the parties and counsel request that the judge proceed to hear the matter. This disqualification is not imputed to other members of a law firm with which the judge has never been associated, and with whom the judge has never been associated.

B. Regular, periodic, or one-time disbursements to a judge from a lawyer or law firm appearing as an advocate in a matter before the judge do not require the judge's automatic disqualification, unless the matter over which the judge presides is a matter which affects the disbursement. The judge should disclose the relationship on the record, and recuse unless the parties ask the judge to proceed.

C. A judge is not automatically disqualified from hearing a case conducted by an unrelated lawyer simply because a relative of the judge within the third degree of consanguinity is a member or employee of the law firm appearing in the case. However, the judge should disclose the relationship on the record, the law firm should disclose whether the judge's relative has participated personally and substantially in the matter, and the judge is recused unless the parties ask the judge to proceed.

D. A judge who is a former city commissioner is disqualified in all matters which came before the city commissioners while the judge served as commissioner, and from matters which arise after the judge resigns as commissioner, if the judge participated personally and substantially in the matters.

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## *Synopses of Relevant Opinions*

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### **JI-035**

3 /12/1991

A judge shall not negotiate for employment with any person who is involved as a party or as a lawyer for a party in a matter in which the judge is participating personally and substantially.

Where negotiations for employment have begun and a matter involving the prospective employer or in which the negotiating entity appears is assigned to the judge, the judge should automatically recuse to avoid accusations that the judgment or the judge's position has been maneuvered for personal gain of the judge or the prospective employer.

If the judge does not join a prospective employer following employment negotiations, the judge should for a reasonable time disclose to all parties the proposed professional relationship, and recuse unless asked to proceed.

### **JI-039**

6 /26/1991

A judge who, along with the judge's former law firm, is a defendant in a malpractice action, may not preside over any matter in which a member of the former law firm, or a member of the law firm which represents the judge and the former law firm in the malpractice action, appears until the malpractice action is resolved.

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## *Synopses of Relevant Opinions*

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### **JI-042**

10/1 /1991

A part-time probate judge may continue to practice law with law partners; however, neither the part-time judge nor any of his/her partners may practice in the part-time probate judge's court.

A part-time probate judge is not prohibited from practicing law, including probate law, in courts other than his/her own, as long as the part-time judge does not represent anyone in connection with a matter in which the part-time judge participated personally and substantially as judge, unless all parties to the proceeding consent after consultation. In such matters in which the part-time judge is disqualified, the judge's law firm would also be disqualified unless the judge is screened from the matter and apportioned no part of the fee, and written notice is given the appropriate tribunal.

A part-time probate judge may serve as an officer, director, or trustee of a civic or charitable organization provided the organization is not likely to engage in litigation in the part-time probate judge's court, or be regularly engaged in adversary proceedings in any court; and, provided further, does not individually solicit funds for the organization.

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## *Synopses of Relevant Opinions*

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### **JI-043**

10/3 /1991

Absent actual bias or another clear reason, a Court of Appeals judge, sued in one case need not mandatorily recuse from another unrelated case where the lawyer for the judge or for the judge's opponent is engaged.

The Court of Appeals judge should consider voluntary recusal to avoid an untoward appearance while the judge's own case is pending. If the judge decides the possible attribution of bias or prejudice is too attenuated to warrant recusal, the judge should still advise all parties and their counsel of the relationship and seriously consider any subsequent request for recusal.

Absent actual bias, a judge is not per se disqualified from reviewing unrelated matters from a lower court in which the judge's own case is pending, but where the judge sits in a multi-judge court and reassignment is readily available, the judge should recuse. Where the reviewing judge is in a one-judge court and does not recuse, the judge should take special care not to unduly praise or criticize the lower court judge in opinions issued while the reviewing judge's own case is pending before the lower court.

When litigation is threatened against a judge but not yet filed, no general rule is possible, since the seriousness of the threat, the facial legitimacy of the potential suit and other case-specific factors must be assessed. Where those factors are present, a judge should seriously consider recusing from cases in which a lawyer for a party in the judge's own matter appears.

If the judge is disqualified from unrelated cases in which a lawyer for a party in the judge's own matter appears, the judge is also disqualified from cases in which other members of the lawyers' firms appear.

The judge's own case should have a finite life, and the ensuing disqualifications should be coterminous with it.

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## *Synopses of Relevant Opinions*

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### **JI-044**

11/1 /1991

A judge's "personal acquaintance" with an advocate or a party, without more information indicating the nature of the acquaintance which gives rise to a presumption of bias, is insufficient grounds for a judge's automatic recusal. Where a judge is concerned about the appearance of bias because of a personal acquaintance with a party or advocate, the judge should advise the parties and their lawyers of the judge's concerns and recuse unless asked to proceed.

A judge may not "perpetually recuse" from cases of a particular advocate or particular party because of derogatory comments made against the judge by the advocate or the party in a particular case, or because of the judge's personal dislike of a particular advocate.

A lawyer may not associate as co-counsel with a lawyer in another firm, or offer or accept a referral from a lawyer, when one of the reasons for associating with or referring to the particular lawyer is to instigate a judicial recusal.

### **JI-066**

3 /26/1992

A judge is not per se prohibited from serving on the board of a bona fide civic organization which accepts sentencing referrals from the judge or whose staff members testify in matters over which the judge presides.

A judge who serves on the board of an organization whose members appear as witnesses in proceedings before the judge must disclose the judge's membership on the board and recuse unless the parties ask the judge to proceed in the matter.

A judge whose affiliation with an organization results in frequent disqualification must resign from the organization.

A law clerk is not ethically prohibited from serving on the board of a bona fide civic organization which accepts sentencing referrals, and whose staff members testify in matters heard by the court which the law clerk serves.

### **JI-051**

4 /3 /1992

A judge serving on the board of directors of a nonprofit legal aid organization is required to disclose the relationship when one of the parties appearing before the judge is represented by a lawyer from the legal aid organization.

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## *Synopses of Relevant Opinions*

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### **JI-052**

4 /27/1992

A judge may not sign a resolution which requests specific action be taken by the mayor and county board of commissioners regarding business closings of a local employer and the union workers it employs.

### **J-005**

7 /24/1992

While litigation against the judges of a court for actions taken in an official judicial capacity is pending, and counsel for the judges appears before any of the judges in an unrelated matter, the judge must disclose the relationship to the parties and their counsel.

### **JI-061**

12/12/1992

Absent actual bias, a judge is not disqualified from presiding in a matter in which a part-time police officer who will be called as a witness is also a probation officer with the judge's court.

### **JI-062**

12/12/1992

Absent actual bias, a judge is not disqualified from presiding in a matter in which the employer of the judge's spouse is a witness or presents reports, when the work assignment of the judge's spouse does not involve participation in the preparation of the testimony or the reports.

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## *Synopses of Relevant Opinions*

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### **JI-079**

2 /7 /1994

An incumbent judge is not automatically disqualified from presiding in a matter in which a member of the judge's reelection campaign committee appears as an advocate for a party. The judge has an affirmative duty to disclose the relationship to opposing counsel and all parties. The lawyer has an affirmative duty to disclose the relationship to the client, and, if the judge fails to make timely disclosure, to the opposing counsel.

A lawyer who serves on an incumbent judge's reelection campaign committee shall not represent a party in a matter in which the judge presides if that representation could be materially limited by the lawyer's responsibilities to the judge and a disinterested lawyer would reasonably conclude that the representation would not be adversely affected.

The duty to disclose continues until the final campaign report for the candidacy has been filed.

### **JI-086**

3 /23/1994

It is not unethical for a circuit judge, district court magistrate and a deputy sheriff working in the same county to co-own recreational real estate property. The circuit judge and the district court magistrate should disclose the investment to parties and counsel when the deputy sheriff appears as a witness in a pending matter. When the circuit judge reviews decisions of the magistrate, the judge should disclose the investment to parties and counsel.

### **JI-096**

8 /12/1994

A judge is not automatically disqualified from presiding over uncontested proceedings in which one of the lawyers is an announced candidate for that judge's position in an upcoming judicial election.

### **JI-100**

4 /7 /1995

A new judge is not per se disqualified from presiding in a matter in which a party is a former or current client of a law firm in which the judge was a member within the past two years, provided that the party was not a client of the judge within the past two years, the judge rendered no legal services to the client on the pending matter, and the party is not represented in the pending matter by a law firm in which the judge was a member within the past two years.

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## *Synopses of Relevant Opinions*

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### **JI-102**

6 /6 /1995

If a lawyer appearing before an administrative hearing officer has previously represented the adjudicator or a member of the judge's household on legal matters, the adjudicator and the lawyer must disclose the prior representation to all other parties and their counsel.

Whether a judge should recuse in such matters is a question determined on the merits of any motion for disqualification which may be filed.

### **JI-106**

2 /22/1996

A judge may accept pro bono legal services from the judge's sibling in the pursuit of a public policy issue pending in a case before another judge.

### **RI-249**

3 /1 /1996

When lawyers who share office space, a receptionist, and secretaries, but maintain separate practices of law under their separate individual names and maintain separate telephone numbers and fax lines, this sharing relationship alone, without some additional factors, does not preclude one lawyer from representing private clients whose matters come before another office sharer serving as a public official.

When one office-sharer has a conflict of interest prohibiting representation of a private client, the conflict is not per se imputed to other office-sharers.

A part-time Friend of the Court referee is not per se disqualified from presiding in a matter in which the referee's office sharer appears. The referee may not allow the prestige of the public office to be used for the private interests of the office-sharer, and the office sharing arrangement may not be used to imply an ability to improperly influence the referee in the cases of the office sharer.

A public officer is not per se disqualified from participating in a matter in which the public officer's office-sharer represents a private client. The office sharing arrangement may not be used to imply an ability to improperly influence the public officer in the cases of the office sharer.

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## *Synopses of Relevant Opinions*

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### **J-006**

9 /20/1996

The validity of ethics opinions issued prior to September 1, 1995, must be reevaluated in light of amendments to the rules governing judicial disqualification.

A judge's disqualification under Michigan Rules of Court may be remitted by the parties in any circumstance except personal bias or prejudice concerning a party.

### **JI-112**

3 /26/1997

A lawyer who has served as mediator under MCR 2.403 may not thereafter preside as judge in a judicial proceeding between the same parties involving the same matter.

### **JI-118**

2 /11/1998

It is not unethical for a judge to accept reasonable compensation for the sale of the judge's former law practice after assuming the duties of judicial office provided the transaction complies with MRPC 1.17 dealing with the sale of a law practice.

A judge who has received payment in full for the sale of the former law practice from a lawyer or law firm which appears in a representative capacity before the judge must raise the issue of disqualification on the record and offer recusal unless all parties request the judge to proceed and the judge is willing to do so.

### **JI-119**

5 /12/1998

A judge may ethically participate in an "investment club" which has no lawyers as members. A judge may ethically participate in an "investment club" which has lawyers who may appear before the judge. However, a judge must refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality. If other members of the investment club are lawyers that are likely to frequently come before the judge, the judge should either decide not to seek membership in the club or terminate the current membership. If the judge can reasonably conclude that members of the investment club that are lawyers are not likely to appear before the court on which the judge servers, the judge may ethically participate even if it is possible that a lawyer member may appear. Should the situation arise where a fellow lawyer member of the club appears before the judge, the judge must clearly disclose relevant information regarding the membership either in writing or on the record and recuse unless asked to proceed.

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## *Synopses of Relevant Opinions*

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### **JI-126**

1 /25/2002

Part-time Family Court Referees may not represent private clients in domestic relations matters before the circuit judge who appointed the family court referee and before the family court judges who supervise the referee's performance and hear appeals from the part-time lawyer/referees decision in domestic relations matters as the judge is disqualified from hearing the matters presented by the family court referee. However, part-time family court referees may represent private clients in domestic relations' matters in the circuit in which they act as referee if the parties have waived the disqualification of the judge pursuant to MCR 2.003(D), or if there is a visiting judge presiding over their matters. Part-time family court referees may represent private clients in all other matters within the jurisdiction of the circuit court. Part-time family court lawyers referees may not represent private clients before other part-time family court referees presiding in the same circuit as the advocate lawyer referee. Lawyers who share office space, receptionist, and secretaries but who maintain entirely separate law practices under their individual names are not per se disqualified from representing private clients before another office sharer serving as a part-time family court lawyer/referee.

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## *Synopses of Relevant Opinions*

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### **JI-126**

1 /25/2002

Part-time Family Court Referees may not represent private clients in domestic relations matters before the circuit judge who appointed the family court referee and before the family court judges who supervise the referee's performance and hear appeals from the part-time lawyer/referees decision in domestic relations matters as the judge is disqualified from hearing the matters presented by the family court referee.

However, part-time family court referees may represent private clients in domestic relations' matters in the circuit in which they act as referee if the parties have waived the disqualification of the judge pursuant to MCR 2.003(D), or if there is a visiting judge presiding over their matters.

Part-time family court referees may represent private clients in all other matters within the jurisdiction of the circuit court.

Part-time family court lawyers referees may not represent private clients before other part-time family court referees presiding in the same circuit as the advocate lawyer referee.

Lawyers who share office space, receptionist, and secretaries but who maintain entirely separate law practices under their individual names are not per se disqualified from representing private clients before another office sharer serving as a part-time family court lawyer/referee.

### **JI-128**

12/15/2003

A full time employed circuit court attorney referee may not act in the dual capacity of referee and at other times as advocate of the Friend of the Court in contested matters.

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## *Synopses of Relevant Opinions*

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### **JI-129**

12/15/2003

Lawyer/referees who perform public agency functions in addition to their referee functions must measure the propriety of their conduct against the ethical considerations that are applicable to both adjudicative officers and lawyers serving as a public officer or employee.

A part-time FOC referee may not ethically participate personally and substantially in an extrajudicial role that is inconsistent with his or her judicial role.

A lawyer may communicate with the opposite party provided MRPC 4.2 and 4.3 are complied with.