



**DISTRICT COURT OF APPEAL**  
**STATE OF FLORIDA**  
**FOURTH DISTRICT**  
 1525 PALM BEACH LAKES BOULEVARD  
 WEST PALM BEACH, FLORIDA 33401  
 561-242-2000

**GEORGE A. SHAHOOD**  
 CHIEF JUDGE  
**BARRY J. STONE**  
**MARTHA C. WARNER**  
**MARK E. POLEN**  
**GARY M. FARMER**  
**LARRY A. KLEIN**  
**W. MATTHEW STEVENSON**  
**ROBERT M. GROSS**  
**CAROLE Y. TAYLOR**  
**FRED A. HAZOURI**  
**MELANIE G. MAY**  
**DORIAN K. DAMOORGIAN**  
 JUDGES

**MARILYN**  
**BEUTTENMULLER** CLERK  
**PAT BARNDT**  
 CHIEF DEPUTY CLERK  
**GLEN G. RUBIN** MARSHAL  
**GINO DETRICK**  
 DEPUTY MARSHAL

July 28, 2008

Mr. John Stemberger  
 President and General Counsel  
 Florida Family Policy Council  
 4853 Orange Avenue, Suite C  
 Orlando, FL 32806

Dear Mr. Stemberger:

We recently received a copy of your Florida Family Policy Council's 2008 Statewide Judicial Candidate Questionnaire. After reviewing the Florida Code of Judicial Conduct (particularly Canon 7), *In re Kinsey*, 842 So. 2d 77 (Fla. 2003), and the Judicial Ethics Advisory Committee's Opinion 06-18, we submit this response explaining why we decline to answer.

All who appear in court have a right to have an impartial judge hear their cases. That is why judges decline to respond to questions about how they might rule on particular kinds of cases in the future. In Chief Justice Robert's confirmation hearing, he explained quite clearly this dilemma, when asked his opinion with respect to his position on abortion decisions:

It's because if these questions come before me either on the court on which I now sit or if I am confirmed on the Supreme Court, I need to decide those questions with an open mind, on the basis of the arguments presented, on the basis of the record presented in the case and on the basis of the rule of law, including the precedents of the court -- not on the basis of any commitments during the confirmation process. The litigants have a right to expect that of the judges or justices before whom they appear.

Justice Samuel Alito likewise declined to respond to similar questions for the same reason when he was appointed to the nation's highest court by the President.

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Judging in Florida is no different. Judges promise to uphold the law and to remain fair and impartial until they have heard all sides of an issue according to normal courtroom procedures.


Only then can a judge truly reach a fair and unbiased decision. Stating one's position before hearing the facts or thoroughly analyzing the law is the antithesis of the fairness and impartiality that the public expects of its judges. This strict standard of fairness is why we collectively believe it would be inappropriate to comment on the questions contained in the questionnaire.

In addition, JEAC 2006-18 notes that because of the single word answers which do not fit the complex questions being asked, each judicial candidate must decide whether such brevity is sufficient. We all deem that such simple answers are not sufficient when analyzing complex legal issues.

Finally, we three judges have been on this court for a number of years and each of us has authored hundreds of opinions, including many on statutory construction and constitutional interpretation. We think an analysis of our past opinions is the surest guide to our judicial thinking.

Very truly yours,

  
Martha C. Warner

  
Mark E. Polen

  
W. Matthew Stevenson

MCW/lrb  
Enclosures

## The Florida Family Policy Council's 2008 Statewide Judicial Candidate Questionnaire

**By answering and signing this Questionnaire, you warrant that you understand that, as a judge, your decisions will follow binding precedents and that your answers do not constitute a promise to rule in a certain way in a case. You are free to offer further explanations of your answers on this or in a separate document, and your comments will be made available. Any comments should be analytical, informed, respectful, and dignified. See Florida Supreme Court Judicial Ethics Advisory Committee Opinion, No. 06-18 (August 7, 2006).**

Full Name (please print) Martha C. Warner

1. What is your current marital status? Married

2. If you have children, how many? 3

3. Do you have any military experience?  No  Yes If yes, what branch? \_\_\_\_\_

4. Of what charitable, community, civic, fraternal, or religious organizations are you a member?  
See attached.

5. To what charitable, community, civic, fraternal or religious organizations have you made contributions in the past three (3) years?  
See attached.

6. Which of the current Justices of the U.S. Supreme Court most reflects your judicial philosophy?  
\_\_\_\_\_  Decline to respond\*  Refuse to respond

7. Which of the current Justices of the Florida Supreme Court most reflects your judicial philosophy?  
\_\_\_\_\_  Decline to respond\*  Refuse to respond

8. Do you agree with the following statement? "The Florida Constitution recognizes a right to same-sex marriage."  
 Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

9. *In re: TW*, 551 So. 2d 1186 (Fla. 1989), held that a Florida law requiring parental consent before a minor child can undergo an abortion surgery was unconstitutional under Art. I, Sec. 23 of the Florida Constitution. The Florida Supreme Court held that the challenged statute fails because it intrudes upon the privacy of the pregnant minor from conception to birth". The *TW* court also ruled that "where parental rights over a minor child are concerned," neither the state's interest in protecting a minor child nor the preservation of the family unit is sufficiently compelling under Florida law to override Florida's privacy amendment. Do you agree with the Court's ruling *In re: TW*?  
 Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

- This response indicates that I would answer this question, but believe that if I did so, then I would be required to recuse myself as a judge in any proceeding concerning this answer because of Florida Canons 3E(1) and 3E(1)(f), which require a judge to disqualify himself or herself when "the judge's impartiality might reasonably be questioned ..." or when he or she "has made a public statement that commits, or appears to commit, the judge with respect to: (i) parties or classes of parties in the proceeding; (ii) an issue in the proceeding; or (iii) the controversy in the proceeding." In this regard, my opinion is informed by Florida Supreme Court Judicial Ethics Advisory Committee Opinion No. 06-18 (Aug. 7, 2006), which states that "it must be remembered that when considering motions for disqualification, the 'eye of the beholder' is the primary focus. . . . [T]he dispositive question is . . . whether the individual 'beholder's' fear of partiality is reasonable, reasonableness being determined by a neutral and objective standard. . . . The [judicial] candidate must not furnish answers that appear to bind the candidate if such issues arise once the candidate has assumed judicial office." (Emphasis in original.)

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10. In *Krischer v. McIver*, 697 So. 2d 97 (Fla. 1997), the Florida Supreme Court held that a statute prohibiting assisted suicide did not violate Art. I, Sec. 23 (the Privacy Clause) of the Florida Constitution, because any asserted privacy interest in assisted suicide was outweighed by State's compelling interests in preserving life, preventing suicide, and maintaining integrity of medical profession. Do you agree with the court's decision in *Krischer*?

Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

11. *Lofton v. Kearney*, 157 F. Supp. 2d 1372 (Fla. 2001), held that a Florida law prohibiting homosexual adoption does not violate the Equal Protection Clause of the U.S. Constitution. Do you agree with this holding?

Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

12. *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), held that Florida's educational voucher program (the "Florida Opportunity Scholarship Program") violated the Florida Constitution because it "diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Florida Constitution for the State to provide for the education of Florida's children." Do you agree with the reasoning of *Bush v. Holmes*?

Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

13. In *Delgado v. State*, 776 So. 2d 233 (Fla. 2000), the Florida Supreme Court relied upon legal precedent in New York and other states and added the new element of "surreptitiously" to Florida's statutory definition of burglary. The text of the Florida's Statute on burglary, Fla. Stat. § 810.02(1) (1989), does not contain the term "surreptitiously" in its definition: "Entering or remaining in a structure or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain." Do you agree with the court's addition of the required element of "surreptitiously" to Florida's burglary statute?

Agree  Disagree  Undecided  Decline to respond\*  Refuse to respond

(Questionnaire must have a signature to be valid)

Signature Marsha C Warren Date 7/30/08

Please return this questionnaire before Friday, August 8, 2008 by one of three ways:

1. PDF this questionnaire with your original signature and e-mail it to [Info@FLfamily.org](mailto:Info@FLfamily.org)
2. Send via Facsimile to (407) 251-0023
3. Send by Overnight Mail to: [Florida Family Policy Council](#) 4853 South Orange Avenue Suite C, Orlando FL, 32806

This response indicates that I would answer this question, but believe that if I did so, then I would be required to recuse myself as a judge in any proceeding concerning this answer because of Florida Canons 3E(1) and 3E(1)(f), which require a judge to disqualify himself or herself when "the judge's impartiality might reasonably be questioned ..." or when he or she "has made a public statement that commits, or appears to commit, the judge with respect to: (i) parties or classes of parties in the proceeding; (ii) an issue in the proceeding; or (iii) the controversy in the proceeding." In this regard, my opinion is informed by Florida Supreme Court Judicial Ethics Advisory Committee Opinion No. 06-18 (Aug. 7, 2006), which states that "it must be remembered that when considering motions for disqualification, the 'eye of the beholder' is the primary focus. . . . [T]he dispositive question is . . . whether the individual 'beholder's' fear of partiality is reasonable, reasonableness being determined by a neutral and objective standard. . . . The [judicial] candidate must not furnish answers that appear to bind the candidate if such issues arise once the candidate has assumed judicial office." (Emphasis in original.)

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The Florida Family Policy Council's  
2008 Statewide Judicial Candidate Questionnaire  
(continuation of answers to questionnaire)

4. Of what charitable, community, civic, fraternal, or religious organizations are you a member?

I attach the brochure which is printed by the Florida Bar for candidates for retention. This lists most of my activities both law-related and personal. I attend First United Methodist Church and sing in the choir.

5. To what charitable, community, civic, fraternal or religious organizations have you made contributions in the past three (3) years?

This list contains the more significant contributions: (1) Religious organizations: First United Methodist Church; Union Congregational Church, Crested Butte, Colorado; Reign Ministries (2) Organizations helping the disadvantaged: YMCA Healthy Families; Jesus House of Hope; CARE; (3) Colleges and Universities that I attended: University of Florida; Colorado College; University of Virginia. (4) Other Organizations: Florida Museum of Natural History, Gainesville; Martin County Council of the Arts, Ronald L. Corbin Musical Scholarship Fund; Crested Butte Land Trust (land preservation)

**MARTHA C. WARNER**



**BIRTH DATE:** October 10, 1950

**BIRTH PLACE:** St. Louis, MO

**SPOUSE:** Thomas E. Warner

**CHILDREN:** Three

**DEGREES:** Masters of Law in the Judicial Process, University of Virginia, 1995; J.D. with high honors, University of Florida Law School, 1974; B.A., magna cum laude, The Colorado College, 1971.

**LEGAL OFFICES & POSITIONS:** Chief judge, Fourth District Court of Appeal, 1999-01; judge, Fourth District Court of Appeal, 1989-present; circuit court judge, Nineteenth Judicial Circuit, 1986-88; private practice, 1974-85; admitted to The Florida Bar, 1974; admitted to practice in The United States Eleventh Circuit Court of Appeal, 1982; admitted to practice before the United States Supreme Court, 1985.

**JUDICIAL and BAR OFFICES & ACTIVITIES:** State Judicial: Supreme Court Committee on District Court of Appeal Performance and Accountability, chair, 1998-present; President-elect, Conference of District Court of Appeal Judges, 2007-08; Supreme Court Electronic Filing Committee, 2003-present; Publications Committee of the FCEC, 2001-present (chair 2001); Co-Chair, Florida Court Education Council, 2002-2006, member 1992-95; The Florida Legislature Committee on Legislative Reform of Judicial Administration, chair, 1998; FCEC Special Committee on Evaluation and Administration of Florida's Judicial Education Programs, chair, 1998; Committee on Trial Court Performance and Accountability, member, 1999-2002; Florida College of Advanced Judicial Studies faculty member, 1992-2002; Florida Supreme Court Standard Jury Instructions Committee, member, 1987-98; Appellate Judges Conference Education Committee, member, 1992-99; Florida Bar: Florida Bar Commission on the Legal Needs of Children, member, 2000-2006; Appellate Rules Committee, The Florida Bar, member, 1990-93; National: ABA Appellate Judges Conference, Vice Chair, 2007-08, executive committee member 2004-2007; Chair, 2007 Appellate Judges Education Institute's National Education Conference; Editor, Appellate Judges Section, ABA Judicial Division Record, 2003-05; ABA Standing Committee on Continuing Education, member, 2000-03; Planning Committee for ABA "Complete Appellate Judge" Seminar, member, 2000-02; ABA Oversight Committee for University of Virginia Masters in the Judicial Process Program, chair, 1999-00.

**OTHER CIVIC ACTIVITIES:** Executive Committee, Martin County Arts Foundation, 2007-08; Director, Martin County Council of the Arts, 1996-1998; American Heart Association, Board of Directors, Martin County Unit, 1982-89; general co-chair, Martin County Heart Ball, 1983; First United Methodist Church of Stuart Choir member.

**HONORS & AWARDS:** Chief Justice's Award of Judicial Excellence, 2005; Outstanding Jurist of 1992, Young Lawyers Division of The Florida Bar; Phi Beta Kappa, The Colorado College, 1971; Order of the Coif, University of Florida Law School, 1974; member of the Editorial Board, University of Florida Law Review, 1974; Phi Kappa Phi, Honorary Social Science Fraternity, 1974.

**PUBLICATIONS:** "Is Big Bad? Timeliness and Consistency on Large State Appellate Courts," 44 ABA Judges' Journal 36 (Fall 2005); "A Quality Improvement Project in Florida's Fourth District Court of Appeal," 41 ABA Judges' Journal 16 (2002); "Anders in the Fifty States: Some Appellants' Equal Protection is More Equal than Others," 23 Florida State University Law Review 625 (1996); Case Comment, "Conflict of Laws: Florida Fails to Adopt Modern Approach," 25 University Of Florida Law Review 629 (1973).