

**Proposed Rule**

**Reasons for Change**

**Rules of Civil Procedure**

**Rule 1.720. Mediation Procedures**

(a) [no change]

(b) [no change]

(c) [no change]

(d) [no change]

(e) [no change]

**(f) Appointment of the Mediator.**

(1) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(A) a certified mediator; or

(B) a mediator, other than a senior judge, who ~~does not meet the certification requirements of these rules~~ is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(2) If the parties cannot agree upon a mediator within

This would clarify that a senior judge may not serve as a mediator unless certified, as would be required if the proposed amendment to Canon 5F(2), Code of Judicial Conduct, is adopted. Since most attorneys and parties would not necessarily be aware of the provisions of the Code, the committee believes that a specific reference to this restriction be placed in the civil rule relating to the appointment of a mediator.

10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

- (3) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

(g) [no change]

**Rules of Judicial Administration**  
**Rule 2.030 The Supreme Court**

**(a) Internal Government.**

(1) *Exercise of Powers and Jurisdiction.* The supreme court shall exercise its powers and jurisdiction en banc. Five justices shall constitute a quorum and the concurrence of 4 shall be necessary to a decision. In cases requiring only a panel of 5, if 4 of the 5 justices who consider the case do not concur, it shall be submitted to the other 2 justices.

(2) *Chief Justice.*

(A) The chief justice shall be chosen by majority vote of the justices for a term commencing on July 1 of even numbered years. If a vacancy occurs, a successor shall be chosen promptly to serve the balance of the unexpired term.

(B) The chief justice shall have the following administrative powers and duties. The chief justice shall:

(i) be the administrative officer of the court and shall be responsible for the dispatch of its business;

(ii) have the power to act on requests for stays during the pendency of proceedings, to order the consolidation of cases, to determine all procedural motions and petitions relating to the time for filing and size of briefs and other papers provided for under the rules of this court, to advance or continue cases, and to rule on other procedural matters relating to any proceeding or process in the court;

(iii) have the power to assign active or retired county, circuit, or appellate judges or justices to judicial

service in this state, in accordance with subdivisions (a)(3) and (a)(4) of this rule;

(iv) have the power, upon request of the chief judge of any circuit or district, or sua sponte, in the event of natural disaster, civil disobedience, or other emergency situation requiring the closure of courts or other circumstances inhibiting the ability of litigants to comply with deadlines imposed by rules of procedure applicable in the courts of this state, to enter such order or orders as may be appropriate to suspend, toll, or otherwise grant relief from time deadlines imposed by otherwise applicable statutes and rules of procedure for such period as may be appropriate, including, without limitation, those affecting speedy trial procedures in criminal and juvenile proceedings, all civil process and proceedings, and all appellate time limitations; and

(v) perform such other administrative duties as may be required and which are not otherwise provided for by law or rule.

(C) The chief justice shall be notified by all justices of any contemplated absences from the court and the reasons therefor.

(D) If the chief justice dies, retires, or is unable to perform the duties of the office, the justice longest in continuous service shall perform the duties during the period of incapacity or until a successor chief justice is elected.

(3) *Administration.*

(A) The chief justice may, either upon request or when otherwise necessary for the prompt dispatch of business in the courts of this state, temporarily assign justices of the supreme

court, judges of the district courts of appeal, circuit judges, and judges of county courts to any court for which they are qualified to serve. Any consenting retired justice or judge may be assigned to judicial service and receive compensation as provided by law.

(B) For the purpose of judicial administration, a “retired judge” is defined as a judge not engaged in the practice of law who has been a judicial officer of this state. A retired judge shall comply with all requirements that the supreme court deems necessary relating to the recall of retired judges.

(C) When a judge who is eligible to draw retirement compensation has entered the private practice of law, the judge may be eligible for recall to judicial service upon cessation of the private practice of law and approval of the judge’s application to the court. The application shall state the period of time the judge has not engaged in the practice of law, and must be approved by the court before the judge shall be eligible for recall to judicial service.

(D) A “senior judge” is a retired judge certified by the Supreme Court as eligible to serve ~~temporarily~~ on assignment to temporary judicial duty ~~may be referred to as a “senior judge.”~~. ~~This designation is honorary and has no effect on the responsibilities or conduct of the retired judge.~~

This amendment is consistent with the proposed amendment to the application section of the Code of Judicial Conduct and necessitated by the committee’s recommended revisions related to senior judges serving as mediators.

*(4) Assignments of Justices and Judges.*

(A) When a justice of the supreme court is unable to perform the duties of office, or when necessary for the prompt dispatch of the business of the court, the chief justice may assign to the court any judge who is qualified to serve, for such time as the chief justice may direct.

(B) When a judge of any district court of appeal is unable to perform the duties of office, or when necessary for the prompt dispatch of the business of the court, the chief judge shall advise

the chief justice and the chief justice may assign to the court any judge who is qualified to serve, for such time or such proceedings as the chief justice may direct.

(C) When any circuit or county judge is unable to perform the duties of office, or when necessary for the prompt dispatch of the business of the court, the chief judge of the circuit may assign any judge in the circuit to temporary service for which the judge is qualified, in accordance with rule 2.050. If the chief judge deems it necessary, the chief judge may request the chief justice to assign a judge to the court for such time or such proceedings as the chief justice may direct.

**(b)** [no change]

**(c)** [no change]

**(d)** [no change]

**(e)** [no change]

**(f)** [no change]

**(g)** [no change]

## **Rule 2.150 Continuing Judicial Education**

(a) [no change]

### **(b) Education Requirements.**

(1) *Applicability.* All Florida county, circuit, and appellate judges and Florida supreme court justices shall comply with these judicial education requirements. Retired judges who have been approved by the supreme court to be assigned to temporary active duty as authorized by section 25.073, Florida Statutes (1991), shall also comply with the judicial education requirement.

(2) *Minimum Requirements.* Each judge and justice shall complete a minimum of 30 credit hours of approved judicial education programs every 3 years. Two must be in the area of judicial ethics. In addition to the 30-hour requirement, every judge new to a level of trial court must complete the Florida Judicial College program in that judge's first year of judicial service following selection to that level of court; every new appellate court judge or justice must, within 2 years following selection to that level of court, complete an approved appellate-judge program. Credit for teaching a course for which mandatory judicial education credit is available will be allowed on the basis of 2 ½ hours' credit for each instructional hour taught, up to a maximum of 5 hours per year.

(3) *Mediation Training.* Prior to conducting any mediation, a senior judge shall have completed a minimum of one judicial education course offered by the Florida Court Education Council. The course shall specifically focus on the areas where the Code of

The Committee believes that any senior judge who opts to serve as a mediator could benefit from a judicial education course which covers the possible conflicts which could arise from serving as both a senior judge and a mediator. The length and format of such course should be determined by the appropriate judicial education committee. This course requirement will not be overly

Judicial Conduct or the Florida Rules for Certified and Court-Appointed Mediators could be violated.

*Note: Revision to rule 2.105(3) should have an effective date 2 years from the adoption of the rule.*

(c) [no change]

(d) [no change]

(e) [no change]

burdensome on the senior judge mediator because all certified mediators are required to complete four hours of mediator ethics during each renewal cycle. By definition, this course could be used to satisfy the ethics requirement. The requirements should be delayed for a period of two years after the substantive requirement goes into effect.

## Florida Rules of Juvenile Procedure

### Rule 8.290. Dependency Mediation

(a) [no change]

(b) [no change]

(c) [no change]

(d) [no change]

(e) **Appointment of the Mediator.**

(1) Court Appointment. The court, in the order of referral to mediation, shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(2) Party Stipulation. Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

(A) another certified mediator of dependency matters to replace the one selected by the judge; or

(B) a mediator, other than a senior judge, who ~~does not meet the certification requirements of these rules~~ is not certified as a mediator but who, in the opinion of the parties and upon review by the

This would clarify that a senior judge may not serve as a mediator unless certified, as would be required if the proposed amendment to Canon 5F(2), Code of Judicial Conduct, is adopted. Since most attorneys and parties would not necessarily be aware of the provisions of the

presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

Code, the committee believes that a specific restriction should be placed in the juvenile rule relating to the appointment of a mediator.

**(f)** [no change]

**(g)** [no change]

**(h)** [no change]

**(i)** [no change]

**(j)** [no change]

**(k)** [no change]

**(l)** [no change]

**(m)** [no change]

**(n)** [no change]

**(o)** [no change]

**(p)** [no change]

**(q)** [no change]

## Florida Rules for Certified and Court-Appointed Mediators

### Rule 10.100 General Qualifications

(a) [no change]

(b) [no change]

(c) [no change]

(d) [no change]

(e) Senior Judges Serving as Mediators. A senior judge may serve as a mediator in a court-ordered mediation only if certified by the Florida Supreme Court as a mediator for that type of mediation.

~~(e)~~(f) Referral for Discipline. If the certification of licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.

~~(f)~~(g) Special Conditions. Mediators who have been duly certified as circuit court or family mediators before July 1, 1990, shall be deemed qualified as circuit court or family mediators pursuant to these rules. Certified family mediators who have mediated a minimum of 4 dependency cases prior to July 1, 1997, shall be granted temporary certification and may continue to mediate dependency matters for no more than 1 year from the time that a training program pursuant to subdivision (d)(1)(B) is certified by

This amendment, which would require senior judges to be certified mediators, is also contained in the Code of Judicial Conduct and indirectly referenced in the civil, juvenile, and family rules. It embodies the most significant proposal made by the committee and is deemed necessary for the reasons outlined in the Report submitted in conjunction with these rule amendments. Briefly stated, the committee believed that the educational and ethical requirements inherent in obtaining certification would prove beneficial to both the judge and the field of mediation.

the supreme court. Such mediators shall be deemed qualified to apply for certification as dependency mediators upon successful completion of the requirements of subdivision (d)(1)(B) and (d)(5) of this rule.

**Rule 10.340 Conflicts of Interest**

(a) [no change]

(b) [no change]

(c) [no change]

(d) [no change]

(e) **Senior Judge.** If a mediator who is a senior judge has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in which he or she is currently presiding as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years.

This amendment contains the same requirements for mediators relating to disclosure and disqualification from service as would apply to a person serving as a senior judge, for the reasons outlined in the Report submitted in conjunction with these rule amendments. See proposed Canon 5F(2).

While the final sentence is more appropriately contained in the Code of Judicial Conduct, it was thought that it should also be contained for the same reasons that the certification requirement is contained in the civil, juvenile, and family rules, that is, to make the substance of the rule accessible to all to whom it is relevant.

## Family Law Rules of Procedure

### Rule 12.741

(a) [no change]

(b) **General Procedures.**

(1) **Interim or Emergency Relief.** A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court, or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods when mediation is interrupted pending resolution of such a motion.

(2) **Sanctions for Failure to Appear.** If a party fails to appear at a duly noticed mediation conference without good cause, the court shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party failing to appear.

(3) **Adjournments.** The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(4) **Counsel.** Counsel shall be permitted to communicate privately with their clients. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation.

(5) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel.

(6) Appointment of the Mediator.

(A) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(i) a certified mediator; or

(ii) a mediator, other than a senior judge, who does not meet the certification requirements of these rules is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the

This would clarify that a senior judge may not serve as a mediator unless certified, as would be required if the proposed amendment to Canon 5F(2), Code of Judicial Conduct, is adopted. Since most attorneys and parties would not necessarily be aware of the provisions of the Code, the committee believes that a specific reference to this restriction be placed in the family rule relating to the appointment of a mediator.

chief judge in the circuit in which the action is pending.

- (C) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

**Code of Judicial Conduct**

**Canon 5**

**A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties**

A. [no change]

B. [no change]

C. [no change]

D. [no change]

E. [no change]

**F. Service as Arbitrator or Mediator.**

(1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.

(2) A senior judge may serve as a mediator in any case in which the senior judge is not presiding, only if the senior judge is certified pursuant to rule 10.100, Florida Rules for

This amendment renumbers the section to allow for inclusion of a second subdivision.

This amendment creates a requirement that a senior judge who serves as a mediator must be certified as a mediator pursuant to the Florida Rules for Certified and Court-Appointed Mediators. The committee believes that this is

Certified and Court-Appointed Mediators. Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may in no other way advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge shall not serve as a mediator in any case in which the judge is currently presiding. A senior judge shall disclose any negotiations or agreements for the provision of mediation services between the senior judge and any of the parties or counsel to the case.

G. [no change]

#### COMMENTARY

Canon 5A [no change]

Canon 5B [no change]

Canon 5C [no change]

Canon 5D [no change]

Canon 5E [no change]

the single most important rule amendment emanating from the report. The second and third sentences are not new, but have been moved from the Application Section of the Code to this Canon, which would now include a reference to senior judges who serve as mediators. In recognition of the special power a judge possesses, the fourth sentence has been added to require disclosure of current or prior mediation service by a senior judge to any party, attorney, or law firm involved in the case pending before the senior judge. In addition to disclosure, the committee recommends, in the fifth sentence, the creation of a blanket prohibition against a senior judge adjudicating a case involving parties or attorneys with whom the judge has mediated within the preceding three years. The committee believes that the foregoing disclosure and disqualification requirements are necessary for the protection of parties and attorneys appearing before the court. The final two sentences, relating to a judge disclosing any negotiations or agreements between the judge and any attorney or party appearing before the judge, are carried over from the Application Section.

**Canon 5F(1).** Section 5F(1) does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties. An active judge may take the necessary education and training programs to be certified or qualified as a mediator or arbitrator, but this shall not be a part of the judge's judicial duties. While such a course will allow a judge to have a better understanding of the arbitration and mediation process, the certification and qualification of a judge as a mediator or arbitrator is primarily for the judge's personal benefit. While actually participating in the mediation and arbitration training activities, care must be taken in the selection of both cases and locations so as to guarantee that there is no interference or conflict between the training and the judge's judicial responsibilities. Indeed, the training should be conducted in such a manner as to avoid the involvement of persons likely to appear before the judge in legal proceedings.

Technical change to conform to renumbering of rule.

**Canon 5F(2)** The purpose of these admonitions is to ensure that the senior judge's impartiality is not subject to question. Although a senior judge may act as a mediator or arbitrator, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. These provisions are intended to prohibit a senior judge from soliciting lawyers to use his or her mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity.

The proposed language is to be added to the commentary for the new Canon 5F(2) and outlines the reasons for the addition to the canon.

## Application Section

This Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts.

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

If the hiring or appointing authority for persons who perform a judicial function is not a judge then that authority should adopt the applicable provisions of this Code.

A. [no change]

## B. Retired/Senior Judge

(1) A retired judge certified by the Supreme Court of Florida as eligible to serve on assignment to temporary judicial duty, hereinafter referred to as “senior judge,” shall ~~who has retired from judicial service and who has complied with the procedures established by the Supreme Court of Florida so as to be eligible for~~

The proposal would clarify that a senior judge is to be distinguished from a retired judge. This is crucial in relation to serving as a mediator, since a retired judge not subject to temporary assignments is not subject to the provisions applicable to senior judges as mediators. This amendment is consistent with the proposed amendment to rule 2.030, Rules of Judicial

~~recall to judicial service, should comply with all the provisions of this Code except Sections 5C(2), 5E, 5F(1), and 6A. A senior judge retired judge who is subject to recall shall not practice law and shall refrain from accepting any assignment in any cause in which the judge's present financial business dealings, investments, or other extra-judicial activities might be directly or indirectly affected. A retired judge who is subject to recall may serve as a mediator, may place his or her name on the mediator master list maintained by the chief judge, and may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such judge may in no other way advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation services. A retired judge assigned to adjudicate a case shall disclose any negotiations or agreements for the provision of mediation services between the judge and any of the parties or counsel to the case. The purpose of these admonitions is to ensure that the senior judge's impartiality is not subject to question.~~

(2) If a retired justice or judge does not desire to be assigned to judicial service, such justice or judge who is a member of The Florida Bar may engage in the practice of law and still be entitled to receive retirement compensation. The justice or judge shall then be entitled to all the rights of an attorney-at-law and no longer be subject to this Code.

Administration, and necessitated by the committee's recommended revisions related to senior judges serving as mediators.

The first portion of this sentence is deleted since there is no mediator master list maintained by the chief judge. The remainder of this sentence and the rest of the paragraph have been moved to a substantive canon (5F) since they seem to go beyond the purpose of the Application Section.

## Commentary

### **Section A.** [no change]

**Section B.** ~~Although a retired judge subject to recall may act as a mediator or arbitrator, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. See Canon 5D(1). This provision is intended to prohibit a senior judge from soliciting lawyers to use his or her mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity. If a senior judge is rendering mediation services for compensation in civil personal injury matters, he or she should not accept a judicial assignment for that type of case in the same court where the senior judge is mediating those cases. On the other hand, the senior judge could be assigned judicial duties in other jurisdictions of that same court, e.g., criminal, family law, or probate matters, or be assigned as a senior judge in other geographic areas in which the judge does not conduct mediation proceedings.~~

The Commentary was no longer thought to be relevant in light of the foregoing proposed changes.