

Appendix D
Senior Judges Serving as Mediators Survey

33 responses/46 mailed; 72% response rate

Question 1. How many days a year do you estimate you served as a senior judge over the last two years:

- June 2001 - May 2002
 - 9 - 0 days
 - 11 - between 3 and 30 days
 - 6 - between 31 and 60 days
 - 4 - between 61 and 120 days
 - 3 - between 121 and 150 days
- June 2002 - May 2003
 - 7 - 0 days
 - 9 - between 5 and 30 days
 - 10 - between 31 and 60 days
 - 4 - between 61 and 120 days
 - 3 - between 121 and 150 days

Question 2. In what division(s) have you served as a senior judge:

Circuit Civil - 20 County Civil - 19 County Criminal - 14 Circuit Criminal - 20
Probate - 6 Family - 15 Other - Juvenile - 4, Federal - 1, Traffic - 1
Child Support and Domestic Violence - 1
DCA - 1 Appellate - 1

Question 3. In how many mediations have you served as a mediator over the last two years (excluding any mediations used to fulfill your certification requirements):

- June 2001 - May 2002
 - 7 - 0 mediations
 - 14 - between 1 and 25 mediations
 - 5 - between 26 and 50 mediations
 - 2 - between 51 and 100 mediations
 - 2 - between 101 and 130 mediations
 - 2 - 200 mediations

*one respondent noted that he counts **days** not mediations*

June 2002 - May 2003

- 10 - 0 mediations
- 20 - between 1 and 25 mediations
- 5 - between 26 and 50 mediations
- 0 - between 51 and 100 mediations
- 3 - between 101 and 150 mediations
- 1 - between 151 and 200 mediations

Question 4. Indicate in which areas you have mediated in the past two years:

Circuit Civil - 29	County Civil - 11	Family - 9
Dependency	Appellate	Workers' Comp
Federal - 8	Other: Commercial, Probate, Labor/ Emp. - 2	
	Chapter 164 proceedings - 1	
	NASD, AAA 1	

Question 5. In which circuit(s) have you served as a senior judge in the past two years?

Question 6. In which circuit(s) have you served as a mediator in the past two years?

Senior Judges who have served as both judges and mediators in the past 2 years:

- 1 Sr. Judge served in 1st Circuit and Mediator in the 1st Circuit.
- 1 Sr. Judge served in 2nd Circuit and Mediator in 2nd Circuit
- 1 Sr. Judge served in 4th Circuit and Mediator in the 4th Circuit.
- 2 Sr. Judges served in 7th Circuit and Mediators in the 7th Circuit.
- 1 Sr. Judge served in 6th Circuit and Mediator in the 6th Circuit.
- 1 Sr. Judge served in 3rd, 4th, 5th & 8th and Mediator in 3rd, 4th, 5th, 7th, & 8th.
- 1 Sr. Judge served in 11th Circuit (Criminal) and Mediator in the 11th Civil
- 7 Sr. Judges served in 11th Circuit and Mediators in the 11th Circuit.
- 1 Sr. Judge served in 12th Circuit and Mediator in the 12th Circuit.
- 1 Sr. Judge served in 13th Circuit and Mediator in the 13th Circuit.
- 2 Sr. Judges served in 15th Circuit and Mediators in the 15th
- 1 Sr. Judge served in 16th Circuit and Mediator in the 16th Circuit.
- 1 Sr. Judge served in 17th Circuit and Mediator in the 17th Circuit.
- 1 Sr. Judge served in 18th Circuit and Mediator in the 18th Circuit.
- 1 Sr. Judge served in 20th Circuit and Mediator in the 20th Circuit.
- 1 Sr. Judge served in 2nd DCA and Mediator in the 2nd DCA.

Sr. Judges who did not serve as Senior Judge in any Circuit in past two years.

- 1 Sr. Judge served as a mediator in Circuits 2, 6, 9, 11, 13, 15, 16, 17, & 19.
- 1 Sr. Judge served as a mediator in Circuits 4 and 7.
- 1 Sr. Judge served as a mediator in Circuit 8.
- 1 Sr. Judge served as a mediator in Circuits 9, 16, & 18.
- 1 Sr. Judge served as a mediator in Circuits 11, 15, 17, & 19.
- 2 Sr. Judges served as mediators in Circuit 13.
- 1 Sr. Judge served as a mediator in Circuits 17, 15, 11, & 19.

Sr. Judges who did not serve as Mediators in the past two years.

1 Sr. Judge served as Sr. Judge in Circuits 6, 10, 12, & 20.

1 Sr. Judge served as Sr. Judge in Circuits 6, 12, 2nd DCA

1 Sr. Judge served as Sr. Judge in Circuits 9 and 16.

1 Sr. Judge served as Sr. Judge in Circuits 16 and 17.

Question 7. Are you associated with a mediation practice/group?

10 - Sr. Judges are associated with a mediation practice/group.

23 - Sr. Judges are not associated with a mediation practice/group.

Question 8. Have you had the same attorneys appear before you as a senior judge and mediator during the past two years? If so, in how many mediations?

22 - Sr. Judges have not had the same attorneys appear before them as a senior judge and mediator.

6 - Sr. Judges have had the same attorneys appear before them as a senior judge and as a mediator.

4 - Sr. Judges had the same attorneys appear before them less than 4 times in mediations.

2 - Sr Judges had the same attorneys appear before them more than 10 times in mediations.

3 - Sr. Judges did not serve as mediators during the past two years.

Comments: When I submitted my consent to be assigned to Judicial Service, I specified criminal cases only. That was my plan but an acute need arose in the Family/Civil Division and I was asked by our Chief Judge to cover that need - which I did, and was happy to do. I covered pre-set schedules and simply addressed what came before me. Any matter that involved an attorney for whom I had done a mediation involved a disclosure and there were no problems. That situation has not repeated and our local Court Administration knows to call on me for criminal cases only. But, I would still go in to cover an emergency situation in any division of our court if called upon.

Question 9. Would you object to being required to report on an ongoing basis the amount of senior judge time and mediator service you perform?

24 - Sr. Judges would not object to being required to report.

7 - Sr. Judges would object to being required to report

2 - Sr. Judges did not answer this question.

Comments:

Mediator service may be for 1 hour or 8 hours. About 50% cancel. If service is based on cases, no problem. If time, burdens me to keep records.

It's silly.

I don't ever get appointed a mediator in the county list and never get called.

Unnecessary record keeping; but would like to know the purpose; already am inundated with forms such as reports to judges and other reports.

OSCA already keeps senior judge time.

I would never hear a case in which I had mediated nor mediate a case in which I had prior judicial involvement.

If it becomes too burdensome, I will resign my senior status. (3 Sr. Judges gave this comment.)

Senior Judge time is easy to report. Mediation time would be difficult depending on how much information you wanted about each mediation.

I should note that I have been receiving more and more requests for arbitration.

**Question 10. Do you believe there should be a limit on the number of mediations performed by a senior judge on active status? Yes or No
If so, what should be the limitation?**

Limit on number of mediations performed by a Senior Judge on active status?

No 26

Yes 5

No Answer 2

Comments:

3 Sr. Judges stated should not mediate with lawyers who might participate in hearings before the Sr. Judge/Mediator.

The senior Judge “on active service” implies the judge is regularly sitting as judge.

I have an active mediation practice and because of my reading of the commentary and the express wording of Amended Section B, I go it alone. I cannot figure out how not to be available for mediation work because of other demands on my time and still expect attorneys to regularly call on me for mediation services. I desire to continue some judicial service but it’s hard to strike a balance. I would be interested in learning how others make it work! Perhaps instead of limiting one number of mediations, there could be a requirement of a minimum number of days of judicial service; then at least there would be an explanation of why certain blocks of time are simply unavailable to handle mediation requests.

If you do you will eliminate some good senior judges.

Question 11. Do you believe that any additional procedures would be required to ensure that senior judges do not use their judicial status to gain mediation referrals? Yes or No If so what should be the limitations:

- 21 - Sr. Judges answered No.
- 7 - Sr. Judges answered Yes
- 5 - Sr. Judges did not answer this question.

Comments:

Cannot answer yes or no because not familiar with the extent of your present procedures.

Unless there have been complaints, the current procedures are sufficient.

A senior judge should give up his or her mediation practice unless his or her call to duty is extremely infrequent, i.e. less than a week per year.

Remind senior judges they must not serve as mediators in the same area of the Judicial Court that they are acting as Senior Judges.

Attorneys in criminal court rarely, if ever, do civil cases. Most are prosecutors and public defenders.

Is this a problem?

If existing rules are followed there should be no problem.

I have not experienced this or seen this in our geographic area but as with anything else, if it is being abused it should be addressed. I am puzzled by some of the ads I see in the Bar News in light of revised JEAC Opinion 95 - 26.

Report attempts to coerce business to Chief Judge. Require senior judge to inform litigants of any mediation involvement with the parties or their attorneys.

No mediation in circuit when senior judging occurs. No mediation for at least six months for a lawyer appearing before a senior judge.

If further restriction is appropriate because there is presently occurring use of the senior judge as obtaining business through their sitting as a senior judge then I would support a rule prohibiting a senior judge from hearing a mediation in which lawyers for one of the parties appeared before him as a senior judge within the last 6 months or 12 months. From discussions I heard at last year's Circuit Judges Conference in a program conducted by Judge Bateman, all the Senior Judges were complying with the rule.

Question 12. Please provide any additional comments:

I have not sought out cases to mediate in circuit, except Federal, since I am trying only lengthy civil jury trials as a senior judge.

I feel that if reporting procedures become overly burdensome there may be a mass exodus of Sr. Judges.

Senior judges, whether mediators or not, should always have the option to accept or decline assignment setting a limit for the number of times to serve as a senior judge or as a mediator is counter productive and will act as an infringement upon individual rights. Senior judges have paid their dues out not to be regulated except as to competence to serve. Also the notion of compelling or requiring senior judges to serve is completely contrary to the notion that lawyers ought to have their cases heard by "regular" sitting judges. If there are not enough duly elected judges, the answer is get more judges and not worry about someone who may not be competent, may not care because he/she is retired.

The penultimate paragraph in Thomas Hall's letter to Judge Ferris says, "This is not to imply that it (S. Ct.) Has been made aware of any problems" – Why then as need to change for change sake. Instead send out questionnaires asking lawyers if they have identified any problem.

Mediations are an absolute requirement in all Circuit and County Civil cases so the Judge/Mediator has an advantage of a captive audience in getting future work. The competition for mediations is intense so a judge mediator has a leg up on the non-judge mediator, no active solicitation is necessary. It is all implied.

I sit as senior judge only in criminal court. Based upon the \$300, I consider it more of a duty and obligation to our great system. It is not nearly as remunerative as mediation. If I have to limit my mediation work because of 28 days of recall service, I would have to consider withdrawing from

senior judge service. My name is not on any mediator list in the 11th Circuit, to my knowledge. In my opinion, I am in compliance with Section (B).

If I had to choose between mediation and senior judge service, I would not act as a senior judge. (Two senior judges gave this comment.)

I recognize that the twain should never meet. Ethical considerations must control each situation.

I have not solicited any mediation nor have I performed any.

If a judge follows the rules i.e., no soliciting, no mediating in areas in which the judge sits. No problems should arise. Sr. Judges should be able to obtain mediation business as non-senior judge mediators.

The use of judicial status to gain mediation referrals is unethical, so no “procedure” is required to prevent this from occurring. I have never, and would never, solicit mediation business while on judicial assignment. I never advertise. I would not mediate a case in which I had acted in a judicial capacity without disclosure (But sometimes memory might fade on some cases.) Nor, would I adjudicate a case in which I had acted as a mediator (even with disclosure). I have had to make disclosure in court a few times about attorneys who have used me as a mediator, but no opposing counsel seems to care. At the present time, I am getting \$200 per hour as a mediator and I would like to continue to do mediations. However, a limit on the number of mediations I could do might persuade me to cease serving as a senior judge, which I enjoy doing. The rate of pay for senior judges should be much higher.

I do not advertise as a mediator and I do not solicit mediations.

In my case, I sit as senior judge in the 5th Circuit and have never mediated in the 5th Circuit.

Possible conflict of interest and bad image from senior judges mediating cases with lawyers who might appear before them.

I think it is very inappropriate for a sitting judge to mediate.

If mediation, arbitration etc., is disallowed, pay senior judges the same daily pay given to the slot in which he or she is substituting.