

**JUDGE DAVID L. TOBIN (Sr. Status)**  
7807 S.W. 88<sup>th</sup> Terrace  
Miami, Florida 33156

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October 4, 2013

To: Florida Supreme Court  
Re: Canon 5 - Code of Judicial Conduct - Proposed Amendment

Dear Justices:

Since my mandatory retirement in 2001, I have served as Senior Circuit Judge in various capacities. At no time did I sit in the civil Division. I served in criminal, as a Special Magistrate, as a Receiver, as an Arbitrator - both binding and non-binding- as well as a Mediator. I also sat as a County Court Judge in traffic Court as well as County Court criminal.

I entered our profession late in life. At retirement I only had 13-1/2 years on the bench. My pension is now only \$2,700.00 per month so I need additional income. I'm too old to start practicing law again - and I had enough of that after practicing for 26 years.

As a retired judge I am careful to conduct myself in mediations to live up to the highest standards of integrity. Keeping in mind that as a mediator I am not a judge - the parties are the judges. We empower them to make all of the decisions with the advice of their own attorneys. I will not do any of the following as a mediator: (1) discuss legal issues - I explain that is the function of their own competent attorneys (2) draft the settlement agreement - that is the function of the attorneys (3) review any settlement documents (4) witness or even read the settlement documents (5) participate in the settlement negotiations.

In my life as a lawyer I was usually the oldest attorney in the firm of 15 to 18 attorneys. When they asked me about an ethics issue my answer was always the same - if you are in doubt and have to ask the question, then you have already answered the question.

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THOMAS D. HALL  
2013 OCT -7 AM 9:19  
CLERK, SUPREME COURT  
BY

SC13-1732

**Last week I sat in county criminal court in Palm Beach County. There was not any attorney I recognized from Dade County. Many times I receive a request to mediate for lawyers from Broward County, Palm Beach County, as well as attorneys from out of state.**

**I presently charge \$400 per hour to mediate. Many mediators in Miami charge \$500 and more. My son in Atlanta, Georgia, charges \$500 per hour. This year I have averaged only 1 to 2 mediations per week. Many weeks are barren of any mediations. That is when I sit as a senior judge. If I have to choose between the two assignments, I will economically be squeezed out of serving as a senior judge.**

**When a case is settled via mediation it removes another case from what is an extraordinarily overloaded sitting judge. We have had not one new judicial seat created in Florida in many years. Our state has added 5 million more residents since the last new judgeship was created.**

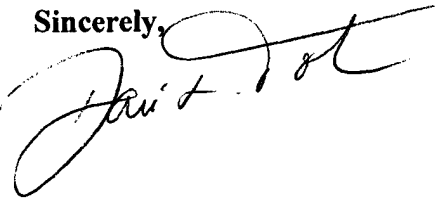
**Mediation and senior judgeships are an inexpensive alternative to trials - both jury and non-jury. By implementing a change to Canon 5 you will be losing an experienced cadre of people who love our profession and have even worked gratis on many occasions.**

**If the issue is one of integrity, I cannot help but remember when I was a full time circuit judge one of my former law partners tried a jury trial in my courtroom, I disclosed to his opposing counsel that we were in the same law firm 5 or 6 years previously. It was o.k. with him. During the trial I sanctioned my former partner with a \$250 fine. The next day he apologized to me for getting out of line. Neither one of us slept the night before.**

**I believe the proposed changes are not necessary unless your court has been besieged by complaints of ethical violations. There are currently 6,000 mediators licensed in Florida. In Miami there are only 20 or 21 senior judges, county and circuit. Knowing all of Miami's senior judges, I cannot believe that our value to the system representing thousands of years of experience at a cost which is negligible compared to its value is in jeopardy of being lost or limited.**

**I would be glad to serve on any committee which the court may create to investigate these issues.**

**Sincerely,**

A handwritten signature in black ink, appearing to read "John F. Stetson", written in a cursive style.

JUDGE DAVID L. TOBIN (RET.)  
7807 S.W. 88TH Terrace  
Miami, FL 33156

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CLEARED

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Florida Supreme Court

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