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October 15, 2013

FILED  
THOMAS D. HALL  
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CLERK, SUPREME COURT

To: The Florida Supreme Court

Re: SC13-1732--Senior Judge dual service as Mediator

As a Senior Judge mediator I am asking the Court *not* to change the existing dual service rules.

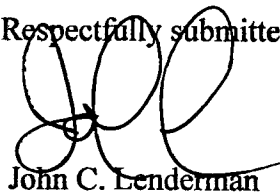
The 2005 rules for Senior Judges serving dually as mediators already strongly prohibit Senior Judges from using the judicial position for private gain. Senior Judges are prohibited from (a) advertising, (b) use of the word "judge" in any context of mediation and (c) sitting in divisions in the same circuits in which the Senior Judge mediates. These rules place a solid firewall between any allowable Senior Judge assignments and the lawyers and parties for whom we mediate.

The Florida Judiciary has a wonderful and effective educational system to teach public trust and confidence to our judges. In all our programs we teach and stress patience, respect, knowledge of the law, ethics and the importance of *being* a judge. It is these qualities that make our judiciary. It is also these qualities that make a good mediator. A judge can be an ethical judge one day and an ethical mediator the next. The roles are not inconsistent.

It is my firm observation, in my 33 months of dual service, that lawyers choose me as their mediator because they believe me to be ethical, trustworthy, knowledgeable, effective, patient and diligent to promote resolution. They know we see people at their worst and most vulnerable. They know we can help litigants through the process of resolution without the need of a trial. When the parties choose me as their mediator, they and their counsel know they can count on me to bring these qualities to the table to help them ethically resolve their disputes. They also know they will not see me in court, so they can be completely candid under our confidentiality rules.

In the event the Court sees this ethical issue differently, I attach some alternatives for the court to consider.

Respectfully submitted,



John C. Lenderman

Attachment

Alternative suggestions for Senior Judge dual service as mediators

- 1) If the Court prohibits Senior Judges from mediation and arbitration, I would request a one year grace period to allow the election of judging or mediation. I now have commitments for county criminal assignments through June, 2014, as well as a number of mediations scheduled in 2014. I would appreciate the time to chose what service I will follow into the future.
- 2) It is not well known, but Senior Judges are the only mediators that must be certified. Anyone can mediate in Florida without a college education, mediator training or Court certification, except for Senior Judges who must also take a four hour video judicial ethics class. To qualify as a certified family and civil mediator I had to take both \$1000 courses. To ethically follow the rules, I have spent about \$5000 in mediator education, certification and re-certification in the 33 months I have been retired. To address further ethical issues, I suggest requiring all Senior Judges serving as mediators to take/retake the ethics course that is now a DVD course. This course should be offered live in Orlando with members of the Court participating.