



JOHN A. TOMASINO
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CLERK, SUPREME COURT

**State of Florida
Ninth Judicial Circuit of Florida**

JOHN MARSHALL KEST
CIRCUIT JUDGE

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November 8, 2013

Supreme Court of Florida
500 S. Duval Street
Tallahassee, FL 32399-1927

RE: In Re: Amendments to the Code of Judicial Conduct, *et. al.*
Senior Judges as Mediators, Case No. SC 13-1732

Dear Justices:

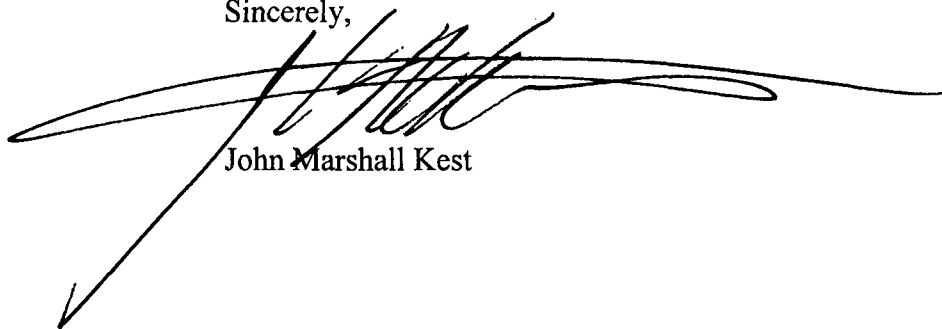
I write in opposition to the proposed rule that would prohibit senior judges from serving as mediators. It is presently extremely difficult to find judges to sit in senior status and thereby assist our existing overworked judiciary. This amendment would remove from our pool of senior judges many of the most competent and experienced judges.

If the impetus is that certain senior judges who are also serving as mediators are functioning in an unethical or unprofessional manner, those individuals should be either disciplined or removed from senior judge status or both. To prevent a large number of potential senior judges from serving as a senior judge because they also wish to serve as mediators is at best counter-productive and at worst extremely harmful to our ability to meet the demands placed on our present sitting judiciary.

With the present restraints and constraints (low judicial salary compared to private practice, one year wait for senior judge status, and extremely low remunerations for sitting as a senior judge) fewer judges are electing senior status. Many senior judges, who are mediating, are also offering their services as senior judges primarily to assist our sitting judges, and not necessarily for the financial gain. To prevent former judges from supplementing their retirement by having to choose between being a mediator and serving as a senior judge would all but eliminate a vast majority of the highly qualified judges from electing senior status.

The adoption of the rule would be a disservice to the judiciary, the Bar and the public. Judges are controlled by the judicial canons. If a judge violates a judicial canon, his or her status as a senior judge can be addressed just as it would for a sitting judge. I would strongly urge that the rule not be adopted.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Marshall Kest', is written over a horizontal line. A long, sweeping diagonal line extends from the bottom of the signature towards the bottom left of the page.

John Marshall Kest

JMK/di

