

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE CODE  
OF JUDICIAL CONDUCT; THE  
FLORIDA RULES FOR CERTIFIED  
AND COURT-APPOINTED  
MEDIATORS; THE FLORIDA RULES  
OF CIVIL PROCEDURE; THE  
FLORIDA RULES OF JUDICIAL  
ADMINISTRATION; THE FLORIDA  
RULES OF JUVENILE PROCEDURE;  
AND THE FLORIDA FAMILY LAW  
RULES OF PROCEDURE —SENIOR  
JUDGES AS MEDIATORS

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CASE NO. SC13-1732

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**COMMENTS OF THE CIRCUIT CHIEF JUDGES OF FLORIDA  
IN OPPOSITION TO PROPOSED AMENDMENTS**

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**SUMMARY OF COMMENTS OF THE**  
**CIRCUIT CHIEF JUDGES OF FLORIDA**

In response to the Court’s invitation for comments on proposed amendments to prohibit senior judges from serving as mediators, the Circuit Chief Judges of the State of Florida (“Chief Judges”) file these comments in opposition to all proposed amendments.<sup>1</sup> Just eight years ago, this Court rejected the very same prohibition, noting that the Alternative Dispute Resolution Rules and Policy Committee had found “no published authority relating to complaints against senior judges serving as mediators” and “no evidence that the Code of Judicial Conduct is not working properly in relation to the practice of senior judges serving as mediators.” *In re: Report of the Alternative Dispute Resolution Rules and Policy Committee on Senior Judges as Mediators*, 915 So. 2d 145, 147 (2005) (mem.).

Nothing has occurred in the last eight years which would now justify enacting a prohibition. No Chief Judge has received any ethical complaints about a senior judge also serving as a mediator. The Judicial Ethics Advisory Committee (JEAC) has published very few opinions in this area, none of which speaks to any perceived need for such a prohibition. Moreover, the Chief Judges are not aware of any discipline by the Judicial Qualifications Commission (JQC), grievances

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<sup>1</sup> The proposed amendments would alter the Code of Judicial Conduct; The Florida Rules for Certified and Court-Appointed Mediators; the Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Juvenile Procedure; and the Florida Family Law Rules of Procedure.

filed with the Dispute Resolution Center, or published opinions of The Florida Bar concerning this area.

The dearth of ethics complaints is due in part to the significant ethics training senior judges must complete before they may mediate. Also, a strong firewall exists in the current Code of Judicial Conduct (Code) and court rules between senior judges' judicial service and their service as mediators. This firewall has successfully shielded senior judges from any appearances of impropriety, exploitation of judicial office, or the lending of prestige of the judicial office to advance the private interests of the judge or others. Further, current procedures are more than sufficient to address an alleged ethical violation by a senior judge who mediates.

Senior judges are analogous to part-time quasi-judicial officials, such as part-time hearing officers and magistrates, in that each provides only part-time service to the courts. If this Court adopts a complete ban on senior judge mediation, senior judges would be governed far more harshly than quasi-judicial officers, who can practice law in the same circuit in which they preside as long as they do not practice in the subject area in which they serve. It is inconsistent to create such a distinction, particularly since a senior judge has much greater training in judicial and mediator ethics.

If senior judges are prohibited from serving as mediators, the impact on the trial courts will be far more severe than any supposed ethical concerns the prohibition might address. This Court has repeatedly recognized the invaluable service our senior judges provide to the trial court system in particular. Unfortunately, senior judges are already in short supply. Further, the one-year restriction on senior judges receiving compensation for judicial assignments discourages recent retirees from becoming senior judges. If these proposed amendments are adopted, the shortage will become even more acute because senior trial court judges forced to choose between being a judge and a mediator are more than likely to choose mediation for its much greater compensation.

The harm from prohibiting mediation service by senior trial court judges outweighs any benefit this prohibition would confer, particularly since no specific instance of an ethical issue or specific benefit of the proposed amendments has been cited. We respectfully exhort the Court to reject these amendments and leave the current Code unchanged.

**I. NO EVIDENCE JUSTIFIES A PROHIBITION ON SENIOR JUDGES ALSO SERVING AS MEDIATORS**

In 2005, this Court voiced confidence that its implementation of the Alternative Dispute Resolution Rules and Policy Committee's recommendations "will allow senior judges to continue to serve effectively and ethically as mediators in a manner that best serves Florida's justice system and avoids potential conflicts and ethical concerns." *Senior Judges as Mediators*, 915 So. 2d at 153. Now, however, this Court appears ready to adopt an absolute ban on senior judges serving as mediators. No cogent reason has been offered for this ban, and no evidence exists that the dual service by senior judges has given rise to ethical concerns. The confidence expressed by this Court in 2005 remains well-founded.

At the outset, it is important to distinguish between a senior judge and a retired judge and how each is addressed under the Code. A senior judge is a retired judge eligible to serve on assignment to temporary judicial duty. Fla. R. Jud. Admin. 2.205(a)(3)(D). A senior judge may not practice law and is subject to all provisions of the Code except for Canons 5C(2), 5E, 5F(1), and 6A. Senior judges must be certified by the Supreme Court before they may mediate in any capacity. Fla. Code Jud. Conduct, Canon 5F(2). Also, there are strict limits on their ability to advertise their mediation services. *Id.*

In contrast, a "retired judge" is a former judge who does not desire to be assigned to judicial service and is not eligible for recall by the Florida Supreme



Court. *Id.* Application A(2).<sup>2</sup> Retired judges who are members of The Florida Bar may practice law with all the same rights of any other Florida attorney, and they are no longer subject to the Code. *Id.* They need not be certified to serve as private mediators, and they may advertise consistent with the Rules Regulating The Florida Bar.

In response to the proposed rule changes, the Chief Judges were polled to determine how many ethics complaints they had received about senior judges (not retired judges) also serving as mediators. Not a single Chief Judge reported any ethical complaints about senior judges also serving as mediators. If ethical concerns about dual service existed, the chief judges overseeing Florida's trial courts would logically be the most aware.

Further, in the last 15 years, the JEAC has issued only four opinions involving senior judges also serving as mediators, and these were readily resolved under the existing Code. *See* JEAC Op. 2011-11 (senior judge who has contracted with mediation group may permit group to display judge's image in advertising because senior judge may "in no *other* way advertise"); JEAC Op. 2009-10 (senior judge who mediates in civil cases may not preside over civil trial within circuit,

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<sup>2</sup> The Florida Rules of Judicial Administration define a retired judge as "a judge not engaged in the practice of law who has been a judicial officer of the state," and who shall comply with requirements for recall. Fla. R. Jud. Admin. 2.205(a)(3)(B). However, this definition does not take into account those judges who no longer wish to receive judicial assignments and who are permitted to practice law if duly licensed.

even with parties' consent); JEAC Op. 2007-12 (senior judge may not advertise private mediation services, even if judicial service is not mentioned); JEAC Op. 1999-16 (a retired judge who mediates in circuit court matters may be recalled to serve as a county judge in an outlying district). The Chief Judges also have no knowledge that the JQC has disciplined any senior judge-mediators; that the Dispute Resolution Center has received any grievances concerning senior judges serving as mediators; or that The Florida Bar has issued any published opinions regarding senior judges acting as mediators.

The overwhelming majority of states also permit dual service. According to informal information compiled by the National Center for State Courts, 46 jurisdictions allow mediation by senior judges.<sup>3</sup> If such service presented even a moderate possibility of ethical breaches, more jurisdictions would have adopted the sweeping rule changes proposed here.

The proposed ban on senior judges serving as mediators is a solution in search of a problem that does not actually exist. The Chief Judges have not received any ethics complaints about dual service, and the regulatory authorities have issued few opinions in this area. This is most likely because of the

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<sup>3</sup> In 2005, this Court observed that “the clear majority” of states allowed senior judges to serve as mediators. *See Senior Judges as Mediators*, 915 So. 2d at 146 (citing *Nat’l Ctr. For State Courts, Regulation of Retired Judges Serving as Arbitrators and Mediators* (1999)). The Chief Judges have no information indicating that the majority has decreased since then.

certification process senior judge-mediators must complete as well as the clear separation in the current rules between the senior judges' judicial and mediation services. There is no reason for dismantling the current system and much justification for keeping it intact.

**II. PROHIBITING SENIOR JUDGES FROM MEDIATING IS UNNECESSARY TO ENSURE COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT**

Senior judges are the only persons in Florida required to be Supreme Court-certified before they may engage in private mediation. During certification and mandated legal education, they receive considerable training in ethical issues they may face in their dual roles. Further, significant geographical, advertising, and court division limitations currently exist to guard against ethical violations by senior judges who mediate. The lack of ethics complaints indicates that senior judges are applying their training and respecting all limitations. Further, in the unlikely event of an alleged Code violation, adequate remedies are already in place. A blanket prohibition on all senior judges—particularly trial court senior judges—from serving as mediators is unnecessary, overbroad, and detrimental to the courts.

**A. Senior Judges Receive Mediation Training that Specifically Addresses Ethical Issues That Could Arise From Dual Service**

Although acknowledging that no significant ethical problems existed, in 2005 this Court adopted specific training and certification requirements for senior

judge-mediators. *Senior Judges as Mediators*, 915 So. 2d at 148-49. Canon 5F(2) was added to the Code, requiring senior judges to be certified by the Supreme Court before they may act as mediators. While many mediators choose to be certified, senior judges remain the only group that *must* be certified before they can mediate in any situation other than a case before them.<sup>4</sup>

Further, senior judges who wish to mediate must first attend an ethics course specifically addressing areas where the Code and the Florida Rules for Certified and Court-Appointed Mediators could be violated. Fla. R. Jud. Admin. 2.320(b)(3). Thus, in addition to the considerable ethics training they received as active judges, senior judges receive substantial additional training specifically targeted at their dual service—training instituted in an abundance of caution. Consequently, senior judges are particularly well-versed in ethical concerns and how to avoid questionable practices.

#### B. The Code Already Provides Sufficient Restrictions on a Senior Judge-Mediator's Ethical Conduct

In addition to the certification and ethics training senior judge-mediators receive, they are also currently subject to many provisions that prohibit the exploitation of judicial office or the lending of prestige of such office to advance

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<sup>4</sup> Under the Florida Rules of Civil Procedure and the Florida Family Law Rules, parties can stipulate to either a certified mediator or a “mediator, *other than a senior judge*, who is not certified . . . .” Fla. R. Civ. P. 1.720(j)(1)(B) (emphasis added); Fla. Fam. L.R.P. 12.741(b)(6)(A)(ii).

private interests.<sup>5</sup> While senior trial court judges may preside in cases different from the type in which they mediate, *see* JEAC Op. 1999-16, senior judges may not preside over cases in the same division in which they mediate, even if the parties consent. JEAC Op. 2009-10. Additionally, senior judges may not advertise as mediators except through a general advertisement of an alternative dispute resolution service with which they are affiliated. JEAC Op. 2011-11. Further, such advertisement may not use the title “judge,” disclose senior judge status, or use a photograph of the judge in a judicial robe. *Id.* Senior judges who have sole mediation practices may not advertise at all. JEAC Op. 2007-12.

Combined with the specific training senior judge-mediators receive, these limitations provide additional safeguards against a senior judge-mediator improperly combining judicial and mediation roles. Additionally, even if an ethics complaint were made about a senior judge who mediates, remedies are currently in place to adequately address such a complaint without the need for a complete ban on mediation.

#### C. Adequate Remedies Are Already in Place to Address Potential Ethics Complaints About Senior Judges who Mediate

The current Code and Rules Regulating The Florida Bar not only provide, but actually *mandate*, that judges and attorneys take action if they believe a judge has committed an ethical violation. A judge who “receives information or has

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<sup>5</sup> Again, these restrictions apply to senior judges only, not to retired judges.

actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.” Fla. Code Jud. Conduct, Canon 3D(1). Likewise, if a senior judge were ever to lend the prestige of judicial office to advance the private interests of the judge or a mediation firm, any attorney who becomes aware of such conduct is ethically required to “inform the appropriate authority.” R. Regulating Fla. Bar 4-8.3(b).

Therefore, the current Code imposes multiple requirements and limitations on senior judges who mediate to guard against merging their dual roles impermissibly. There is no indication that senior judges who mediate have committed any ethical lapses; further, if one were suspected by another judge or an attorney, the judge or attorney would be required to address it. Given such a wealth of protections that have been shown to work, a complete ban on mediation by senior judges is unfounded and unwise.

**III. IT WOULD BE INCONSISTENT FOR THE CODE TO ALLOW QUASI-JUDICIAL OFFICERS TO PRACTICE LAW IN THE SAME CIRCUIT IN WHICH THEY PRESIDE WHILE BARRING SENIOR JUDGES FROM SERVING AS MEDIATORS UNDER ANY CIRCUMSTANCES**

As a provider of both a court service and a private sector service, the senior judge who mediates is analogous to a part-time quasi-judicial court officer, such as a part-time hearing officer or magistrate,<sup>6</sup> who often combines court service with a private law practice. Hence, as part-time quasi-judicial officers may engage in dual service, senior judges should also be allowed to provide dual service.

No restrictions exist or have been proposed to bar a part-time hearing officer or magistrate from engaging in other law-related activity. Currently, quasi-judicial officers and senior judge-mediators have similar restrictions: just as part-time quasi-judicial officers may practice law in their circuit as long as they do not practice in the same subject area in which they preside, senior-judge mediators may mediate in their circuit as long as they do not mediate in the same types of cases in which they preside. Fla. Code Jud. Conduct, Canon 5F(2); Application.

It would be inconsistent for this Court to adopt a complete ban on senior judge mediation while allowing part-time quasi-judicial officers to practice law in the circuit in which they preside. By the time a judge assumes senior status, he or

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<sup>6</sup> Such officers include civil traffic infraction hearing officers and general magistrates in family law. *See* Fla. R. Traf. Ct. 6.630(i); Fla. Fam. L.R.P. 12.490. These officers often serve part-time only because of budget constraints or workload.

she has already received substantial ethics training and established a track record of ethical behavior. Senior judges should continue to be permitted to serve as mediators, not only because they have done so ethically, but also because if they are forced to choose between mediation and senior judge status, the negative consequences for the trial courts will be significant.

**IV. BARRING SENIOR JUDGES FROM MEDIATING WILL REDUCE THE NUMBER OF SENIOR JUDGES WHEN A SHORTAGE ALREADY EXISTS AND THEIR SERVICE IS CRUCIAL TO EFFECTIVE MANAGEMENT OF THE TRIAL COURT DOCKET**

Unlike the illusory ethical problems the proposed amendments are designed to address, the problems the proposed amendments would cause for the effective administration of justice in Florida's trial courts are real and significant. This Court has long recognized the invaluable role senior judges occupy in our judicial system. *See, e.g., In re: Certification of Need for Additional Judges*, 105 So. 3d 1271, 1273 (Fla. 2012) (mem.) (case managers and senior judges made available through the Foreclosure Backlog Reduction Initiative are in place to make a difference in reducing the backlog); *In re: Certification of Need for Additional Judges*, 76 So. 3d 932, 934 (Fla. 2011) (mem.) (senior judges used in the Foreclosure and Economic Recovery Initiative "made a significant difference in reducing backlog throughout the state"); *In re: Amended Certification of the Need for Additional Judges*, 980 So. 2d 1045, 1049 (Fla. 2008) (mem.) ("senior judges represent an additional resource that can and must be factored into the total



package of available judicial resources”). They should be encouraged rather than discouraged to serve the judiciary. *See In re: Report and Recommendations of the Committee on the Appointment and Assignment of Senior Judges*, 847 So. 2d 415, 417 (Fla. 2003) (mem.) (“The Committee recommends a significant increase in senior judge compensation . . .”).

Unfortunately, Florida already has a shortage of senior judges for a variety of reasons. First, not every retiring judge chooses to become a senior judge. According to information from 12 circuits, in the last five years approximately one-third of all retired judges did not become senior judges. For example, in both the First and Third Circuits, half of the retiring judges did not elect to become senior judges.

Second, since 2009, retiring judges have been unable to be re-employed by the courts for at least six months following retirement, and they may not receive both retirement benefits and senior judge pay until they have been retired for at least a year. *See* Ch. 2009-209, Laws of Fla. Faced with these limitations, the judiciary’s most recent retirees may embark on a mediation practice or other law-related activity that they are reluctant to leave when a year has expired.

Third, the senior judge’s current pay of \$350 *per day* provides little incentive. In contrast, mediators can earn anywhere from \$250 to as much as \$600 *per hour*.

If this Court adds yet another disincentive to senior judge service by barring senior judges from serving as mediators, the senior judge shortage is only going to get worse. Of those responding to a survey, 72 percent of the current senior judges who also mediate said they would retire as senior judges if forced to choose between judicial service and mediation.<sup>7</sup> Also, judges nearing retirement, who are already discouraged from becoming senior judges, will most likely choose to become mediators and stay mediators because of the much greater compensation. In two circuits, 10 of 11 judges nearing retirement said they would not become senior judges.

The negative impact of this proposed change would be especially hard felt in the trial courts. In fiscal year 2012-13, the twenty judicial circuits used 4,655 senior judge days for non-foreclosure cases. *OSCA's Senior Judge Activity Summary*, report run date: October 23, 2013 04:10 p.m. During the same period, an additional 4,890 senior judge days were utilized for the foreclosure initiative. *Id.* By contrast, during this same period, the five district courts of appeal used only 86 senior judge days. *Id.*<sup>8</sup>

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<sup>7</sup> According to OSCA, 45 senior judges also serve as mediators. Forty-four of these judges were sent surveys, and 25 responded. Eighteen said they would choose to mediate over serving as senior judges if they could not do both.

<sup>8</sup> Because most appellate courts do not have divisions, it is difficult for a senior judge who mediates to serve an appellate court without confronting Canon 5F(2)'s prohibition against hearing cases involving the same type of law in which the senior judge mediates.

Trial courts, some of which already must obtain senior judges from other circuits, will have to cast the net even wider and incur increased travel expenses.<sup>9</sup> In cases of illness or emergency, the likelihood of finding a senior judge to cover will diminish. Consequently, the judiciary's ability to serve the public will decline.

Additionally, in those circuits hit hardest by foreclosures, senior judges have proven invaluable in helping to address the backlog of cases. However, some of these senior judges also serve as mediators, and just as the recommendations of the Foreclosure Initiative Workgroup are being implemented, these judges may be forced to choose between senior status and their mediation work. The proposed amendments would work in direct cross-purposes to the foreclosure initiative.

If the proposed amendments are implemented, the judicial system will lose the benefit of the state's investment in our senior judges, who do not suddenly lose their considerable skills, talent and knowledge upon retirement. Further, some of the most vibrant and active senior judges are those who also mediate because they engage in regular legal analysis. The one-year judicial pay restriction on newly-retired judges has already significantly reduced this most valuable resource. We

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<sup>9</sup> While the proposed amendments being considered by this Court would require the chief circuit judges to cast a wide net to find available senior trial court judges, the Florida Legislature may try to limit the ability of chief circuit judges to cast the net outside of their own circuits to locate sufficient senior judges. *See* CS/CS/SB 1666 (Fla. 2013), which would have disallowed payment to senior judges unless they served in the same circuit in which they had previously served, with limited exceptions.

urge this Court not to further erode this resource by preventing senior judges from also serving our judicial system as mediators.

V. **THE CHIEF JUDGES ENDORSE THE COMMENTS OF THE  
CONFERENCE OF CIRCUIT JUDGES OF FLORIDA**

The Chief Judges endorse and adopt the Comments of the Conference of Circuit Judges of Florida in their entirety.

**CONCLUSION**

Eight years ago, this Court found no evidence even suggesting that the practice of senior judges also serving as mediators creates ethical concerns. If this Court conducted the same inquiry today, it would come up similarly empty-handed. The current system works to allow our senior judges to serve the courts as needed while using their still formidable skills and talents to mediate disputes. These roles are not inconsistent; instead, they are quite compatible and they have not resulted in ethical quandaries.

If senior judges must choose between judicial service and mediation, they are likely to choose mediation because of the greater compensation. The trial courts will lose a valuable resource, with circuits competing for senior judges, unable to find coverage in emergencies, and watching their foreclosure dockets expand.

There is simply no need to force senior judges to make this choice. There is no problem, ethical or otherwise, with the current rules and Code. As indicated by their electronic signatures below, the 20 chief circuit court judges of Florida unanimously ask this Court to reject the proposed amendments and leave the Code unchanged.

/s/ Terry D. Terrell  
Terry D. Terrell, Chief Judge  
First Judicial Circuit

/s/ Charles A. Francis  
Charles A. Francis, Chief Judge  
Second Judicial Circuit

/s/ Gregory S. Parker  
Gregory S. Parker, Chief Judge  
Third Judicial Circuit

/s/ Donald R. Moran, Jr.  
Donald R. Moran, Jr., Chief Judge  
Fourth Judicial Circuit

/s/ Don F. Briggs  
Don F. Briggs, Chief Judge  
Fifth Judicial Circuit

/s/ J. Thomas McGrady  
J. Thomas McGrady, Chief Judge  
Sixth Judicial Circuit

/s/ Terence R. Perkins  
Terence R. Perkins, Chief Judge  
Seventh Judicial Circuit

/s/ Robert Roundtree, Jr.  
Robert Roundtree, Jr., Chief Judge  
Eighth Judicial Circuit

/s/ Belvin Perry, Jr.  
Belvin Perry, Jr., Chief Judge  
Ninth Judicial Circuit

/s/ William Bruce Smith  
William Bruce Smith, Chief Judge  
Tenth Judicial Circuit

/s/ Bertila Soto  
Bertila Soto, Chief Judge  
Eleventh Judicial Circuit

/s/ Andrew D. Owens, Jr.  
Andrew D. Owens, Jr., Chief Judge  
Twelfth Judicial Circuit

/s/ Manuel Menendez, Jr.  
Manuel Menendez, Jr., Chief Judge  
Thirteenth Judicial Circuit

/s/ Hentz McClellan  
Hentz McClellan, Chief Judge  
Fourteenth Judicial Circuit

/s/ Jeffrey Colbath  
Jeffrey Colbath, Chief Judge  
Fifteenth Judicial Circuit

/s/ David J. Audlin, Jr.  
David J. Audlin, Jr., Chief Judge  
Sixteenth Judicial Circuit

/s/ Peter M. Weinstein  
Peter M. Weinstein, Chief Judge  
Seventeenth Judicial Circuit

/s/ John M. Harris  
John M. Harris, Chief Judge  
Eighteenth Judicial Circuit

/s/ Steven J. Levin  
Steven J. Levin, Chief Judge  
Nineteenth Judicial Circuit

/s/ Jay B. Rosman  
Jay B. Rosman, Chief Judge  
Twentieth Judicial Circuit

Respectfully submitted on this 13<sup>th</sup> day of November, 2013.

/s/ J. Thomas McGrady  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Comments of the Circuit Chief Judges in Opposition to Proposed Amendments was furnished by electronic mail to: the Honorable Olin W. Shinholser, Chair, Conference of Circuit Judges of Florida, oshinholser@jud10.flcourts.org; Peter M. Dunbar, for the Conference of Circuit Judges of Florida, pete@penningtonlaw.com; the Honorable R. James McCune, Pres., Conference of County Judges of Florida, jmccune@circuit5.org; the Honorable Stevan Northcutt, Chair, Conference of District Court of Appeal Judges of Florida, northcus@flcourts.org; the Honorable William D. Palmer, Chair, Supreme Court Alternative Dispute Resolution Rules and Policy Committee, palmerw@flcourts.org; the Honorable Margaret Steinbeck, Chair, Trial Court Budget Commission, msteinbeck@ca.cjis20.org; the Honorable Roberto Arias, Chair, Judicial Ethics Advisory Committee, rarias@coj.net; the Honorable Jon B. Morgan, Chair, Rules of Judicial Administration Committee, ctjujm2@ocnjcc.org; Whitney M. Untiedt, Chair, Juvenile Court Rules Committee, untiedtw@pdo8.org; Thomas H. Bateman, III, Chair, Civil Procedure Rules Committee, tbateman@lawfla.com; Mary L. Miller Wagstaff, Chair, Family Law Rules Committee, marylou@wagstafflawoffice.com; the Honorable David L. Tobin, Senior Judge, osomodevilla@jud11.flcourts.org; the Honorable John C. Lenderman, Senior Judge, judgejcl@hotmail.com; the Honorable John Marshall Kest, Circuit Judge Ninth Judicial Circuit, ctjujk1@ocnjcc.org; Mark P. Buell, Buell & Elligett, P. A., buell@belawtampa.com; and John F. Harkness, Jr., Exec. Dir., The Florida Bar, jharkness@flabar.org; and by U.S. Mail to: The Dennis P. Maloney, 104 Fox Den St., Auburndale, FL 33823; on November 13, 2013.

/s/ B. Elaine New

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## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Comment complies with the requirements of Florida Rule of Appellate Procedure 9.100 and is printed in Times New Roman 14-point font.

/s/ B. Elaine New