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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

CASE NO. SC13-1732

**SUPPLEMENTAL COMMENTS OF MANUEL MENENDEZ, JR.,
CHIEF JUDGE OF THE THIRTEENTH JUDICIAL CIRCUIT
IN OPPOSITION TO PROPOSED AMENDMENTS**

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SUPPLEMENTAL COMMENTS OF MANUEL MENENDEZ, JR.

In response to the Florida Supreme 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") filed comments in opposition to all proposed amendments.¹ Manuel Menendez, Jr., Chief Judge of the Thirteenth Judicial Circuit, concurs completely with and is an electronic signatory to the Circuit Chief Judges' comments; he files these supplemental comments to expound upon two arguments made in opposition to all proposed amendments.

I. **AS THIS COURT HAS RECOGNIZED, SENIOR JUDGES ARE IMPERATIVE TO THE EFFICIENT OPERATION OF THE TRIAL COURTS; REDUCING THE NUMBER OF SENIOR JUDGES WOULD SUBSTANTIALLY IMPAIR THE MANAGEMENT OF THE TRIAL COURTS' DOCKET.**

Over the last seven years, this court has certified the need for up to an additional 54 county court judges, 37 circuit court judges and two district court of appeal judges.² Unfortunately, the last time the Florida Legislature funded any new

¹ 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.

² In FY 2007/2008, the court certified the need for 13 county court judges, 22 circuit court judges and two district court of appeal judges. *In re: Certification of Need for Additional Judges*, 945 So. 2d 1155 (Fla. 2006); In FY 2008/2009, the court certified the need for 42 county court judges, 19 circuit court judges and zero district court of appeal judges. *In re: Certification of Need for Additional Judges*,

trial court judges was July 1, 2006.³ As a result, since 2007, the trial courts have been severely understaffed to handle the needs of the 20 judicial circuits and 67 county courts of this state.⁴

In its certification opinions, this court has repeatedly recognized how invaluable the services of our senior judges are to the effective disposition of trial court dockets.⁵ These opinions serve as an endorsement of senior judges being an

980 So. 2d 1045 (Fla. 2008); In FY 2009/2010, the court certified the need for 39 county court judges, 29 circuit court judges and zero district court of appeal judges. *In re: Certification of Need for Additional Judges*, 3 So. 3d 1177 (Fla. 2009); In FY 2010/2011, the court certified the need for 53 county court judges, 37 circuit court judges and zero district court of appeal judges. *In re: Certification of Need for Additional Judges*, 29 So. 3d 1110 (Fla. 2010); In FY 2011/2012, the court certified the need for 54 county court judges, 26 circuit court judges and zero district court of appeal judges. *In re: Certification of Need for Additional Judges*, 60 So. 3d 955 (Fla. 2011); In FY 2012/2013, the court certified the need for 48 county court judges, 23 circuit court judges and one district court of appeal judge. *In re: Certification of Need for Additional Judges*, 76 So. 3d 932 (Fla. 2011); and in FY 2013/2014, the court certified the need for 47 county court judges, 16 circuit court judges and one district court of appeal judge. *In re: Certification of Need for Additional Judges*, 105 So. 3d 1271 (Fla. 2012).

³ See Ch. 2006-166, §§1-2, at 1773, Laws of Fla.

⁴ The need for additional judges in the district courts of appeal is much less. In fact, in 2008, based upon a continued downward trend in caseload, this court certified a need to decrease one judicial position in the Third District Court of Appeal. *In re: Certification of Need for Additional Judges*, 980 So. 2d 1045 (Fla. 2008). The Florida Legislature followed this recommendation and reduced the number of judges in the Third District Court of Appeal from 11 to 10. Ch. 2008-111, §12, at 1179, Laws of Fla.

⁵ See, e.g., *In re: Certification of Need for Additional Judges*, 105 So. 3d 1271, 1273 (Fla. 2012) (mem.) (case managers and senior trial court 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 trial court judges

essential element of the state trial courts system.⁶ If senior judges are prohibited from serving as mediators, and the state legislature continues to not fund additional trial court judges, the judicial understaffing problem will be exacerbated.

II. THE PROPOSED AMENDMENTS WOULD HAVE A DISPROPORTIONATE EFFECT ON THE TRIAL COURTS; ANY CONCERN REGARDING THE CURRENT CODE'S APPLICABILITY IN THE APPELLATE COURTS COULD BE REMEDIED BY AMENDING THE CODE AS IT APPLIES TO SENIOR JUDGES SERVING IN AN APPELLATE CAPACITY, RATHER THAN PROHIBITING SENIOR JUDGES FROM MEDIATING.

As noted in the Chief Judges' comments, the problems that the proposed amendments would cause to the effective administration of justice are real, significant, and have a disproportionate effect on the trial courts. In Fiscal Year 2012-2013, the twenty judicial circuits used 9,545 senior judge days (4,655 for non-foreclosure cases and an additional 4,890 for the foreclosure initiative). By contrast, during this same period, the five district courts of appeal used only 86

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”); *In re Certification of Need for Additional Judges*, 780 So. 2d 906, 908 (Fla. 2001) (senior judges, among other supplemental resources, “are vital to the continued operating effectiveness of Florida’s trial courts.”)

⁶ Senior judges are an especially important element of the recent mortgage foreclosure initiative.

senior judge days.⁷ Thus, while the proposed change would only minimally effect the administration of justice in the appellate courts, the impact on the trial bench could be devastating.

Canon 5F(2) currently prohibits a senior judge who provides mediation services from presiding “over the same type of case the judge mediates in the circuit where the mediation services are provided; however, a senior judge may preside over other types of cases...in the same circuit and may preside over cases in the circuits in which the judge does not provide mediation services.” When applied to senior judges serving in the trial courts, the Canon clearly sets out the limitations as to the types of cases over which senior judges who mediate may preside.

However, in an appellate court context the Canon’s geographical and subject matter limitations may not appear as clear. For example, what geographical and case type limitations are applicable to senior judges serving in an appellate capacity? Should the geographical limitation which prohibits judges from presiding over the same type of case which the judge mediates within the circuit be applied, in an appellate capacity, only to cases from the circuit wherein the judge mediates? Or should that prohibition extend to all the circuits within the appellate court’s jurisdiction? Perhaps the Canon could use some clarification in this regard.

⁷ OSCA’s Senior Judge Activity Summary, report run date: October 23, 2013 04:10 p.m.

Any amendments should be limited to address senior judge service on the appellate courts.⁸ The Canon's applicability to senior judge service in the trial courts is crystal clear and has proven effective. There is no need for a blanket prohibition against senior trial court judges providing mediation services.

CONCLUSION

There is no valid need to force senior judges to choose between judicial service and mediation. The only change to the Code, if the court deems some change is needed, is to clarify the limits of senior judge-mediators in an appellate capacity, along the lines suggested in this comment. Otherwise, this court should not implement the proposed amendments, but rather leave the current Code and rules unchanged.

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⁸ For example, Canon 5F(2) could be amended in the following way:

...A senior trial court judge who provides mediation services shall not preside over the same type of case the judge mediates in the circuit where the mediation services are provided; however, a senior trial court judge may preside over other types of cases (e.g. criminal, juvenile, family law, probate) in the same circuit and may preside over cases in circuits in which the judge does not provide mediation services. A senior appellate court judge who provides mediation services shall not, as a member of an appellate panel, preside over an appeal from the circuit where the judge provides mediation services; however, a senior appellate court judge may preside over cases from other circuits in the same appellate district where the judge does not provide mediation services. ...

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Comments of Manuel Menendez, Jr., Chief Judge of the Thirteenth Judicial Circuit, 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; the Honorable J. Thomas McGrady, Chair, Judicial Administration Committee of the Conference of Circuit Court Judges of Florida, enew@jud6.org; Peter M. Dunbar and Ashley E. Gault, for the Conference of Circuit Judges of Florida, pete@penningtonlaw.com and adinunzio@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, riaras@coj.net; the Honorable Jon B.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY 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/ David A. Rowland
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