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Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399

FILED
JOHN A. TOMASINO
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FLA. SUPREME COURT

***RE: Proposed Rule Changes Regarding Mediation and Senior Judge Status
Case # SC13-1732***

Dear Chief Justice and Justices,

I am writing to comment on your proposed rule changes regarding mediation and Senior Judges. I am a retired Circuit Court Judge and Certified Family and Circuit Civil Mediator who currently has Senior Judge status and a moderate mediation business. I am disappointed to think that I will have to give up one or the other if these rule changes take place. I truly enjoy both and believe I am an asset to both. I present the following thoughts for your consideration.

I spent my almost twenty years as a Circuit Court Judge handling all types of cases, e.g. felony criminal, family law (including domestic violence cases), general civil (including foreclosure cases), probate, juvenile delinquency and dependency. I even helped out in handling some County Court cases when there was a special need. While I spent the great majority of my lawyer practice as a prosecutor, I have spent the majority of my judicial practice in dependency and the Unified Family Court system.

Though I am not sure what the specific motivation for the rule changes may be, I agree and believe the Court's appropriate and consistent concern about the strengthening of public trust and confidence in the courts and impartiality of the judiciary, are important factors. However, the proposed rule is not necessary, nor is it the best means, to achieve these ends. Our laws and ethical canons are replete with instances in which ultimately the members of the judiciary are charged with, and responsible to maintain, the impartiality and ethics that are the hallmarks of our profession. Should there truly be an outright ban on someone like myself in participating in helping the judicial system, the lawyers and public it serves, or in participating in the mediation process?

We, who have served as judges for decades, have had to follow the Code of Judicial Conduct for our entire active judicial life. To believe that the best solution

to achieving ethical conduct in our retirement is to remove our choice and decision making (other than our choice to mediate or be a Senior Judge), is to fail to recognize and trust the diligence and concern we have faithfully exercised for the rule of law. I point out that the role of a judge constantly challenges us - and the system trusts us! - to deal with situations that the general public may consider to be "compromising." We are allowed to have attorneys and firms appear before us that have contributed large amounts of dollars to our campaign accounts. The system trusts us to still make correct, fair and impartial decisions under such circumstances. The system trusts the judge that may have granted a motion to suppress ten kilos of cocaine in a criminal case, to try that case (if it continues to go to trial) with fair and impartial decision making. The system trusts the judge who recommends a dependency case move from the dependency tract to the termination of parental rights tract, to make the fair and impartial decisions necessary in the TPR adjudicatory hearing.

There are other rules or regulations for mediation firms and for retired judges that should be considered to achieve the intended goals. Perhaps the exclusion of the phrase "Senior Judge" from any marketing effort. Perhaps a mandatory "orientation" program for retired judges seeking to be mediators. If the mediation firms need more guidance as to their role in strengthening public trust when employing retired judges, then that should be a focus, and not the outright ban on allowing the wisdom and insight of a retired judge from being a part of mediation and Senior Judge work.

Further, over the last few years the judicial system has urged the legislative branch to do away with the one-year waiting period for retired judges to become Senior Judges because the need in our back-logged courts is so great. The current proposed rule changes would appear to take that perceived harm to an even higher level - ban for life the retired judge from ever aiding our circuits if that judge chooses to do any mediation. I suggest that eschewing Senior Judge status, if forced to choose, is a very viable and likely alternative for many who do this work.

Finally, I am concerned that the proposed rule may encourage the move of judges away from what I see as some of the most important divisions in our courthouse, e.g. dependency and juvenile delinquency. While many believe there is a seamless move from the role of a judge to the role of a mediator, I suggest that there is an inherent advantage for those that move from a division such as civil or family into retirement. The attorneys utilizing mediation predominantly practice in those fields and, just as in politics, familiarity and name recognition has its importance. Those

who spend significant time in divisions such as juvenile, dependency, domestic violence, drug or mental health court, for example, do not have the same visibility and perceived expertise for the attorneys who most often hire private mediators in their cases. Thus the opportunity to also serve as a Senior Judge is particularly important for judges from those divisions in transitioning off the bench full time. Without the option and flexibility of being both a Senior Judge and mediator available to them, judges who wish to pursue mediation (and I suggest there will be many) may migrate away from these divisions as they move closer to retirement, to better prepare to build a mediation practice immediately after. We should encourage, not discourage, commitment to divisions such as juvenile and dependency, as continuity and institutional knowledge are so valuable to those systems and to the most vulnerable in the community who appear in those courtrooms.

In short, there are currently rules and regulations in place to guide a retired judge working as a Senior Judge and also doing mediation. There could be additional rules and trainings to ensure that the ethics, impartiality and avoidance of conflicts of interest in our judiciary—all critical aims—are maintained and upheld to the highest standards. However, the proposed rule is unnecessary, and seriously risks unintended consequences that would further hurt our inundated court system.

Thank you for this opportunity, your time and consideration.

Respectfully yours,

A handwritten signature in black ink, appearing to read "John A. Frusciante". The signature is fluid and cursive, with a large, stylized initial "J" and "F".

John A. Frusciante