

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.: SC 13-1732

COMMENTS OF FAMILY LAW RULES COMMITTEE

At the Court's request, the Family Law Rules Committee files this response to the Court's proposed amendments to the Code of Judicial Conduct, the 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. The proposed amendments would no longer allow senior judges to serve as mediators. The Family Law Rules Committee ("Committee") believes that the proposed amendments are unnecessary at this time.

The Supreme Court has expressed concern about the potential appearance of impropriety that may exist when a senior judge also serves in a dual role as a private mediator (See Canon 2(A), Code of Judicial Conduct.) The Committee is mindful of these concerns, and also of the concern that a senior judge serving as a paid mediator could be seen as exploiting the judge's position or the lending of the prestige of his or her judicial role to advance his or her private interests as a mediator (See Canon 2(B), Code of Judicial Conduct.)

The Committee is unaware of any cases in which a senior judge has utilized the prestige of his or her judicial office to advance that particular senior judge's mediation practice. The Committee believes that to the extent that these concerns have been an impetus for the creation of a blanket prohibition preventing all senior

judges from serving as mediators, these concerns are adequately and sufficiently protected by the current state of the Code of Judicial Conduct and the Rules. It should be noted that the Committee submits this comment without the benefit of any specific information from the Supreme Court supporting the proposed amendments and that it would have benefitted from that information.

The Committee believes that the due process rights of the litigants appearing before a senior judge serving on temporary assignment when that senior judge also serves as a paid mediator are sufficiently and adequately protected by the current Code of Judicial Conduct (specifically, Canon 5F(2)) and the Rules and that the proposed amendments are unnecessary at this time. The Committee further shares the opinion of the Judicial Ethics Advisory Committee's Comments in Response to Proposed Amendments dated October 31, 2013 and concurs with the JEAC's responsive position.

Respectfully submitted November 15, 2013.

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I certify that this document was prepared in accordance with the font requirements of *Fla. R. App. P.* 9.100(*I*).

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