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In re: Report of the Alternative Dispute Resolution Rules & Policy Committee on Senior Judges as Mediators

PLEASE RISE .

PLEASE BE SEATED .

GOOD MORNING AGAIN. WELCOME . WE HAVE A S O U R L A S T C A S E O N T H I S M O R N I N G ' S C A L E N D A R I N R E : R E P O R T O F T H E A L T E R N A T I V E D I S P U T E R U L E S A N D P O L I C Y C O M M I T T E E O N S E N I O R J U D G E S . A N D I U N D E R S T A N D J U D G E B R I E S E W I L L B E P R E S E N T I N G . J U D G E M C N E A L A R E Y O U G O I N G T O B E P R E S E N T I N G A S W E L L ?

I'M ON THE OTHER SIDE .

OKAY. WAS THERE A COMMENT FILED ?

YES, MA'AM. I FILED A RESPONSE ON BEHALF OF THE FAMILY LAW RULES COMMITTEE.

ALL RIGHT. AND SO HOW MANY MINUTES HAVE YOU BEEN ALLOCATED ?

EACH SIDE WAS ALLOCATED 20 MINUTES.

ALL RIGHT. I THINK THAT THE XEROX LOOKED LIKE YOU HAD 0-0 . OKAY. IF YOU ARE READY , YOU MAY PROCEED.

GOOD MORNING, MAY IT PLEASE THE COURT. I AM SHAWN BRIESE AND I CHAIR THE ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY COMMITTEE, AND I AM HERE TO ARGUE FOR THE ADOPTION OF THE RECOMMENDATION CONTAINED IN THE COMMITTEE'S SENIOR JUDGES AS MEDIATORS AMENDED FINAL REPORT FILED WITH THE COURT ON MARCH 24.

I HAVE AN INITIAL QUESTION. I JUST WANT TO MAKE SURE THAT I UNDERSTAND THIS . PRIOR TO THESE RECENT AMENDMENTS , THE COMMENTARY TO SECTION B HAD ESSENTIALLY , THE WAY I READ IT , A T L E A S T P R O H I B I T E D , A J U D G E F R O M A C C E P T I N G A J U D I C I A L A S S I G N M E N T F O R T H A T T Y P E O F C A S E I N T H E S A M E C O U R T W H E R E T H E J U D G E W A S M E D I A T I N G T H E S E C A S E S S O I F A J U D G E , F O R E X A M P L E , W A S M E D I A T I N G P E R S O N A L I N J U R Y C A S E S , T H A T J U D G E C O U L D N O T S I T I N T H E C I V I L P O S I T I O N O F T H A T C O U R T . I S I T T H E I N T E N T O F T H E C O M M I T T E E T O A C T U A L L Y D O A W A Y W I T H T H A T C O M M E N T A R Y ?

IT IS.

SO IN OTHER WORDS IT WILL ACTUALLY, MY CONCERN IS BECAUSE I THINK WE WERE LOOKING TO ACTUALLY STRENGTHEN THESE PROHIBITIONS AND IT LOOKS LIKE THEY HAVE BEEN WEAKENED .

ALL IN ALL I THINK THEY HAVE BEEN STRENGTHENED.

WHEN YOU SAY STRENGTHENED , I'VE GOT REAL CONCERNS , JUDGE BRIESE, AND IN YOUR OWN SURVEY , FOR EXAMPLE , I TALKED ABOUT QUESTIONS WITH REGARD TO THE USE OF JUDICIAL STATUS TO GAIN MEDIATION S. THE COMMENTS WERE SENIOR JUDGES SHOULD

GIVE UP HIS OR HER PRACTICE UNLESS THAT IT IS LESS THAN ONE PER WEEK. THEY TALK ABOUT, WE DON'T HAVE A PROBLEM BUT I HAVE ADS IN THE BAR THAT I AM CONCERNED ABOUT. ADDITIONAL COMMENTS THAT TALK ABOUT THAT SAY, WELL, SENIOR JUDGES HAVE PAID THEIR DUES SO THEY CAN DO WHATEVER THEY WANT. MEDIATIONS ARE A REQUIREMENT AND ALTHOUGH THEY ARE REQUIRED, A JUDGE MEDIA TOR ALWAYS HAS AN ADVANTAGE BECAUSE IT IS IMPLIED THAT HE IS GOING TO GET THAT BUSINESS. COMMENTS, I RECOGNIZE THAT MEDIATION AND JUDGING SHOULD NEVER MIX. THE USE OF JUDICIAL STATUS TO GAIN MEDIA TION REFERRALS IS UNETHICAL AFTER HAVING RECEIVED THE COMMENT THAT IT IS IMPLIED. IN MY CASE, IS IT AS A SENIOR JUDGE IN THE 5TH CIRCUIT BUT I WOULD NEVER MEDIATE IN THE 5TH CIRCUIT ANY POSSIBLE CONFLICT OF INTEREST IS A BAD IMAGE FOR SENIOR JUDGES AND I THINK IT IS VERY INAPPROPRIATE FOR SITTING JUDGES TO MEDIATE AND I SEE THOSE COMMENTS AND I'M SAYING MY GOODNESS, AND I LOOK AND I UNDERSTAND THAT IT IS BEING -- THISSSEEMS TOTALLY INCONSISTENT WITH THE COMMENTS FROM YOUR OWN SURVEY.

THEY ARE CURRENTLY IN NO PROHIBITION TO MEDIATING AND BEING A SENIOR JUDGE IN THE SAME GEOGRAPHICAL LOCATION. THE RULE DOESN'T REQUIRE THAT OR DOESN'T PROHIBIT THAT. THAT IS ONLY IN THE COMMENTARY AND OF COURSE COMMENTARIES DO NOT HAVE THE FORCE OF RULES.

BUT JUSTICE OVERTON WHO WAS THE AUTHOR OF THIS, ACTUALLY HAD ASSUMED THERE WAS AN OUTRIGHT GEOGRAPHICAL LIMITATION BECAUSE YOU REMEMBER AND MAYBE YOU DON'T, BUT GOING BACK IN THE COURT'S FILE THAT IT WAS ACTUALLY THE RECOMMENDATION OF THE ORIGINAL COMMITTEE THAT THERE BE AN OUTRIGHT BAN ON IT, AND SO THE COMPROMISE WAS THIS COMPROMISE THAT AT THE VERY LEAST AT LEAST THAT'S THE WAY IT WAS READ IS THAT THERE SHOULD BE A LIMIT ON THE TYPE OF -- AT THE VERY LEAST THE TYPE OF CASES.

WELL, INTERESTINGLY ENOUGH, THE WHOLE ISSUE HERE IT SEEMS TO ME IS A EARANCE, A EARANCE OF WHETHER OR NOT THERE IS AN IMPROPRIETY AND MAINTENANCE OF THE PUBLIC TRUST IN THE JUDICIARY AS A PUBLIC OFFICE AND ALSO TO INSTILL PUBLIC TRUST IN THE MEDIATION PROCESS. IN THE 13 YEARS THAT THE FLORIDA RULES FOR CERTIFYING A COURT APPOINTED MEDIATORS HAVE BEEN IN PLACE THERE HAS BEEN NO PUBLISHED COMPLAINT AGAINST A SENIOR JUDGE ACTING AS A MEDIATOR OR VICE VERSA. THEY DO NOT EXIST.

YOU DON'T BELIEVE THAT IF A SENIOR JUDGE IS APPOINTED TO DO A PERSONAL INJURY CASE THAT THEY OR WRONGFUL DEATH CASE OR SOMETHING, AND HANDLES THAT CASE AND THEN TWO WEEKS FROM NOW, IN FACT, MEDIATE A PERSONAL INJURY CASE OR A WRONGFUL DEATH CASE THAT YOU DON'T THINK THERE IS ANY EARANCE IN THAT KIND OF SITUATION WHERE HE IS ADJUDICATING AND MEDIATING THE SAME KIND OF CASES?

A EARANCES ARE BEST DEALT WITH AS THE COMMITTEE HAS WITH TRAINING, WITH THE NOTICE PROVISION AND WITH THE EDUCATIONAL REQUIREMENTS. THE NOTICE PROVISION REQUIRES A MEDIATOR WHO HAS SAT AS A SENIOR JUDGE, AND HAS HAD A PARTY, AN ATTORNEY OR A LAW FIRM A EAR IN FRONT OF THAT SENIOR JUDGE TO NOTIFY THE PARTIES TO THE MEDIATION OF THAT BEFORE MEDIATION STARTS. >> EVEN YOUR EDUCATIONAL REQUIREMENT, AS I UNDERSTAND IT, IS ONE COURSE IN EITHER MEDIATION OR JUDICIAL -- ON THE JUDICIAL CODE. IS THAT WHAT YOU ARE RECOMMENDING?

THAT IS A SINGLE COURSE FOR SENIOR JUDGES WHO INTEND TO MEDIATE SO THE SENIOR JUDGE CAN BE TUNED INTO THE ETHICAL ISSUES INVOLVING DUAL SERVICE. THE OTHER EDUCATION PORTION OF THIS IS THE TRAINING PROVIDED IN THE CERTIFICATION. THE COMMITTEE IS PROPOSING THAT ANY SENIOR JUDGE WHO INTENDS TO MEDIATE SHOULD BE REQUIRED TO BE CERTIFIED BY THE SUPREME COURT UNDER THE RULES OF CERTIFIED AND

COURT -ORDERED MEDIATION.

WELL , E VEN I F I N T H I S S A M E S I T U A T I O N I F A S E N I O R J U D G E I S G O I N G T O D O P E R S O N A L I N J U R Y C A S E S A N D M E D I A T E T H O S E K I N D O F C A S E S , S H O U L D N ' T T H E R E A T L E A S T B E S O M E K I N D O F G E O G R A P H I C A L T H E N R E S T R I C T I O N P L A C E D O N T H A T , T H A T Y O U W O U L D N O T D O T H O S E I N T H E S A M E G E O G R A P H I C A R E A ?

T H E C O M M I T T E E H A S T A K E N T H E P O S I T I O N , A N D I T H I N K A W E L L - F O U N D E D P O S I T I O N T H A T T H E R E D O E S N ' T N E E D T O B E A N Y G E O G R A P H I C A L O R S U B J E C T M A T T E R L I M I T A T I O N S .

B U T Y O U D O A D M I T A N D N O T A D M I T , Y O U A R E N O T U N D E R C R O S S E X A M I N A T I O N , T H A T T H A T W A S , W H E T H E R I T W A S M A N D A T O R Y I N T H E R U L E , I T W A S I N T H E C O M M E N T A R Y T H A T T H E R E B E T H A T C A S E T Y P E L I M I T A T I O N ?

I T I S C U R R E N T L Y I N A C O M M E N T A R Y O F S E C T I O N B .

D I D Y O U , I N Y O U R C O M M I T T E E S L O O K I N G A T T H I S , L O O K A T T H E I S S U E O F A B O U T R E A L L Y H O W M A N Y J U D G E S A R E A C T I V E L Y I N V O L V E D I N M E D I A T I O N A N D A C T I V E L Y I N V O L V E D I N S E N I O R J U D G I N G ? A N D T H E R E A S O N I A S K T H A T I S I P U L L E D T H I S U P T H I S M O R N I N G F R O M A N O O S I T E W A Y . S O M E O N E L I K E J U D G E M A J O R W H O F I L E D A C O M M E N T A B O U T H O W C O N C E R N E D H E W A S T H A T T H I S N O T B E A L I E D T O A E L L A T E J U D G E S , H E H A D - - H E I S U P F O R S E N I O R J U D G E R E N E W A L A N D H E S A I D H I S M E D I A T I O N C A S E L I S T I S T O O N U M E R O U S T O P R O V I D E A T T H A T T I M E , B U T H E D I D N ' T S I T A S A J U N I O R J U D G E E I T H E R I N 2 0 0 4 O R 2 0 0 5 . J U D G E M C C A U L E Y F R O M T H E 4 T H D I S T R I C T , H E M E D I A T E D M O R E T H A N 5 0 0 C A S E S , B U T H E D I D N ' T S E R V E A N Y O F T H E A S A S E N I O R J U D G E , J U D G E C A R L Y L E L I S T E D 1 2 9 A N D H E D I D N ' T . S O M Y C O N C E R N I S W E ' V E G O T S I T U A T I O N S A N D M A Y B E W E N E E D T O L O O K A T I T T H E O T H E R W A Y O F P E O P L E U S I N G T H E S T A T U S O F S A Y I N G T H E Y A R E A S E N I O R J U D G E E V E N T H O U G H T H E Y A R E N O T R E A L L Y D O I N G S E N I O R J U D G E W O R K , A N D T H A T T H A T ' S E N H A N C I N G T H E I R M E D I A T I O N P R A C T I C E , A N D T H A T W O U L D B E A N O T H E R C O N C E R N . O F C O U R S E , I T W O U L D N ' T E V E N B E -- W O U L D N ' T B E D E A L T W I T H I N A N Y O F T H E C U R R E N T R U L E O R T H E N E W R U L E S , W H I C H I S T H A T J U D G E S A R E U S I N G T H E I R S T A T U S A N D S A Y I N G T H E Y A R E S E N I O R J U D G E S B U T A R E N ' T R E A L L Y I N T E N D I N G T O F I T O R F O R W H A T O T H E R R E A S O N T H E Y A R E N O T B E I N G C A L L E D . S O W A S T H A T L O O K E D A T A T A L L ?

I T W A S . T H E O N E - - O N E O F T H E I S S U E S , O N E O F T H E C O N C E R N S T H A T T H E C O M M I T T E E W A S S E E K I N G T O A D D R E S S I S H O W A J U D G E W H O I S A M E D I A T O R C A N A F F E C T A P A R T Y ' S S E L F D E T E R M I N A T I O N B Y S I M P L Y B E I N G A S E N I O R J U D G E , A N D W E F E E L T H A T T H E R E Q U I R E M E N T F O R C E R T I F I C A T I O N F O R N O T I C E A N D I F T H E R E I S A C O N F L I C T , I F T H E N O T I C E I S P U T O U T T H E R E A N D T H E P A R T I E S S A Y , W E L L , W E D O N ' T W A N T Y O U O N A C A S E T H E N T H E M E D I A T O R N E E D S T O B A C K A W A Y F R O M T H E C A S E .

B U T O N E O F T H E C H A R G E S F O R T H E C O M M I T T E E W A S T O S E E W H E T H E R T H E R E S H O U L D B E A L I M I T A T I O N O N T H E N U M B E R O F M E D I A T I O N S T H A T I S D O N E A N D I T H I N K T H A T M Y C O N C E R N , O F C O U R S E , I N T H A T , W A S T H A T W E D O N ' T W A N T T H E S E N I O R J U D G E S T A T U S T O B E U S E D T O G E T B U S I N E S S , A N D O F C O U R S E W E ' R E G O I N G T O B E L O O K I N G A T T H E I S S U E O F W H E T H E R S E N I O R J U D G E P A Y I S J U S T R I G H T N O W S O O U T O F W H A C K T H A T I T R E A L L Y N E E D S T O B E R A I S E D S O G I V E J U D G E S M O R E O F A N I N C E N T I V E T O S E R V E A S S E N I O R J U D G E S B U T W H E N Y O U R E A C H A P O I N T W H E R E S O M E B O D Y I S M E D I A T I N G 1 0 0 , 2 0 0 , 3 0 0 C A S E S A Y E A R , S H O U L D T H A T P E R S O N , I N D I V I D U A L B E A B L E T O S I T A S A S E N I O R J U D G E O R S A Y T H A T T H A T P E R S O N I S C E R T I F I E D A S A S E N I O R J U D G E O R D O Y O U T H I N K T H A T I S S O M E T H I N G T H A T T H E C O U R T S H O U L D L O O K A T A S F A R A S T H E I R S E N I O R J U D G E C E R T I F I C A T I O N ?

T H E Q U E S T I O N W O U L D T H E N B E H O W D O Y O U M E A S U R E M E D I A T I O N S ? D O Y O U M E A S U R E T H E M B Y M E D I A T I O N S E S S I O N S ? D O Y O U M E A S U R E T H E M B Y S H E E R N U M B E R S O F M E D I A T I O N S ? D O Y O U M E A S U R E T H E M B Y D O L L A R V A L U E ? D O Y O U M E A S U R E T H E M B Y C O M P L E X I T Y ? T H E R E

COULD BE 50 MEDIATIONS THAT ARE VERY STRAIGHT-FORWARD MEDIATIONS THAT DON'T PRESENT CONFLICTS OF INTEREST. THERE CAN BE ONE THAT DOES. SO SHEER NUMBERS DOESN'T NECESSARILY MEAN THAT THERE ARE CONFLICT ISSUES. IT SEEMS TO ME THAT THE ISSUE HERE IS A MATTER OF FACT, AND THE HISTORY HAS BEEN THAT THERE HAVE BEEN NO PUBLISHED COMPLAINTS, AND THE COMMITTEE TAKES THE POSITION THAT IF SENIOR JUDGES ARE GOING TO MEDIATE THEY NEED TO BE CERTIFIED. THE WHOLE CODE OF JUDICIAL CONDUCT SETS FORTH CONSTRAINTS ON JUDGES, AND IF A JUDGE IS GOING TO ENGAGE IN THIS DUAL ROLE, THE JUDGE SHOULD HAVE TO BE FAMILIAR WITH ALL OF THE EDUCATIONAL REQUIREMENTS, MEET ALL OF THE STANDARDS THAT THE RULES REQUIRE. >> YOU THINK THAT WOULD BE A SIGNIFICANT ADVANCEMENT AS FAR AS HAVING THAT COURT ORDER, THE SUPREME COURT CERTIFICATION?

SECONDLY --

WHAT ABOUT IF YOU ARE ARBITRATING, IS THAT EXEMPT FROM ANY OF THIS? IN OTHER WORDS, CAN A SENIOR JUDGE ENGAGE IN ARBITRATION?

ARBITRATORS ARE COVERED, I BELIEVE, IN THE CANON IN SECTION 5 IF MY MEMORY SERVES ME CORRECTLY. THERE IS NO CURRENT STATEWIDE CERTIFICATION FOR ARBITRATORS. FOR WHATEVER REASON, FLORIDA YEARS AGO WENT TO THE MEDIATION ROUTE AND NOT THE ARBITRATION ROUTE. CERTAINLY THAT IS SOMETHING THAT THE COMMITTEE NEEDS TO LOOK AT IN THE FUTURE BUT THERE IS NO STATEWIDE CERTIFICATION FOR ARBITRATORS AND THE RULE CURRENTLY PERMITS SENIOR JUDGES TO ACT AS MEDIATORS AND ARBITRATORS.

SO IN OTHER WORDS THAT WOULD NOT BE SUBJECT TO RIGHT NOW TO THE CODE -- WOULD IT BE SUBJECT TO THE CODE OF JUDICIAL CONDUCT?

IT IS. IT IS IN THE CODE OF JUDICIAL CONDUCT. MY MEMORY CURRENTLY LIES IN THE COMMENTARY SECTION. WE ARE PROPOSING ON DOING AWAY WITH THAT COMMENTARY SECTION AND PLACING IT IN CANON 5 F.

I HAVE ANOTHER CONCERN IS YOUR PROPOSAL ABOUT DISCLOSURE. AND IT SEEMS TO ME THAT UNDER THESE DISCLOSURE PROVISIONS THE BURDEN IS REALLY, WELL, NOT REALLY A BURDEN, BUT THE PARTY WHO THEN HAS TO SAY WHETHER THE JUDGE SHOULD NOT HEAR THE MEDIATION OR IS ALLOWED TO HEAR THE MEDIATION, BUT WHY SHOULD THAT BE ON THE PARTY BECAUSE I MEAN IF A JUDGE IS MEDIATING AND SITTING AS A SENIOR JUDGE IN THE SAME CIRCUIT AND THEY ARE IN THE SAME CIRCUIT, IT JUST SEEMS TO ME THAT THE LIKELIHOOD OF THE PARTIES SAYING NO IS NOT AS GREAT AS IF THE JUDGE WAS REQUIRED TO JUST NOT TAKE THAT MEDIATION BECAUSE AT SOME POINT HE HAD HAD A CASE WITH ONE OF THE PARTIES?

I THINK JUDGES GO THROUGH THAT PROCESS EVERY DAY. WHEN A JUDGE PUTS ON THE RECORD A POTENTIAL CONFLICT, WHETHER IT'S SOCIAL ACTIVITIES OR BEING A MEMBER OF A CLUB OR GROUP, PUTS IT OUT ON THE RECORD, IT IS ASSUMED THAT THE JUDGE HAS GONE THROUGH THE PROCESS AND IF THE JUDGE CANNOT IMPARTIALLY HEAR THE CASE THE JUDGE WILL RESUME HIMSELF OR HERSELF. IF THE JUDGE DOESN'T REACH THAT LEVEL, PUTS IT ON THE RECORD THAT'S AN OFFER TO GET OFF OF THE CASE TO EITHER PARTY. AND IT IS NO DIFFERENT IN THE MEDIATION CONTEXT. IF THE JUDGE HAS SERVED ON THE CASE IN WHICH A PARTY, COUNSEL OR LAW FIRM WAS INVOLVED, HE OR SHE HAS THE OBLIGATION UNDER THE PROPOSAL TO MAKE THAT KNOWN.

HOW DOES IT WORK PRACTICALLY? AT WHAT POINT WOULD THE JUDGE -- WOULD THE JUDGE MEDIATOR MAKE THE DISCLOSURE?

IT WOULD SEEM TO ME AT THE BEGINNING OF THE MEDIATION AS PART OF THE OPENING ORIENTATION AND AS SOON AS THE JUDGE GETS A CASE THAT THERE IS A POTENTIAL CONFLICT THAT THE JUDGE RECOGNIZES. NOW, CERTAINLY JUDGES WHO HAVE BEEN ON THE BENCH FOR MANY YEARS WON'T RECALL ALL OF THE CASES THAT THEY HAVE DEALT WITH AND A BLANKET STATEMENT THAT THE JUDGE HAS BEEN ON THE BENCH FOR MANY YEARS AND THERE IS A POSSIBILITY THAT THE JUDGE HAS HEARD A CASE INVOLVING A PARTY SHOULD COVER THE BASE AND THE JUDGE SHOULD INVITE THE PARTIES THROUGH COUNSEL TO REVEAL ANY TIME THAT THE JUDGE HAS SERVED AS A MEDIATOR OR VICE VERSA. >> LET ME BACK UP A LITTLE BIT. FROM YOUR PRACTICAL EXPERIENCE AND UNDERSTANDING, MOST JUDGES WHO SERVE AS MEDIATORS ARE THE Y NOT SELECTED BY BOTH SIDES? WHAT'S THE COMMON EXPERIENCE ACROSS THE STATE?

GENERALLY THAT'S THE CASE. GENERALLY THAT'S THE CASE. IT IS A RARE OCCASION WHERE A JUDGE ON THE CASE IS PICKING A MEDIATOR, BECAUSE THERE IS A DISPUTE BETWEEN THE PARTIES. WHETHER IT IS A JUDGE OR NONJUDGE MEDIATOR. THE SENIOR JUDGE, WHO IS A MEDIATOR WHEN SITTING AS A JUDGE SHOULD BE REQUIRED TO DISCLOSE IF THE JUDGE IS BEING UTILIZED OR HAS BEEN UTILIZED AS A MEDIATOR BY ANY OF THE PARTIES WHICH INCLUDE COUNSEL OR THE LAW FIRM. ABSENT EXPRESS CONSENT OF ALL OF THE PARTIES AND THIS IS WHERE SELF DETERMINATION COMES IN A SENIOR JUDGE SHOULD BE PROHIBITED FROM SITTING ON A CASE IN WHICH A SENIOR JUDGE OR PRESIDING OVER A CASE INVOLVING A PARTY, ATTORNEY OR LAW FIRM WHEN THE SENIOR JUDGE IS BEING UTILIZED AS A MEDIATOR OR HAS BEEN UTILIZED IN THE PREVIOUS THREE YEARS.

THAT'S SORT OF SELF - - I MEAN, THAT WOULD BE SELF-EVIDENT? I MEAN, THAT WOULD BE AN ABSOLUTE APPEARANCE OF IMPROPRIETY, CORRECT?

TO ANSWER THE QUESTION YES AND WE CHOSE THREE YEARS AS BEING AN APPROPRIATE AMOUNT OF TIME FOR THE ABSOLUTE BAN, BUT THERE IS AN EXPRESS WAIVER PROVISION BECAUSE MEDIATION IS ALL ABOUT PARTY SELF DETERMINATION, AND IF THE PARTIES SAY WE DON'T CARE, WHY SHOULDN'T THE JUDGE BE ABLE TO MEDIATE THE CASE? I'M SORRY, WHY SHOULDN'T THE JUDGE BE ABLE TO SIT ON THE CASE IF THE PARTIES DON'T CARE? AND WE'VE ALREADY TALKED ABOUT IT.

I GUESS IT IS A QUESTION OF WHETHER -- HOW IT LOOKS TO THE SYSTEM, YOU KNOW, IN OTHER WORDS WE'VE GOT AN OBLIGATION TO LOOK AT IT FROM THE OVERALL QUESTION OF WHAT THE PUBLIC WOULD THINK ABOUT IT, NOT JUST THE TWO PARTIES NOT CARING AT THAT MOMENT. ABOUT IT.

AND THE COMMITTEE WOULD SUGGEST THAT THE CERTIFICATION PROCESS FOR ALL SENIOR JUDGES, THE DISCLOSURE REQUIREMENTS AND THE EDUCATIONAL COURSE WOULD MEET THOSE CONSTRAINTS. AS I SAID, IT REALLY IS NO DIFFERENT THAN A JUDGE WHO WAS PRESIDING ON THE CASE WHO HAS SOME RELATIONSHIP WITH SOMEONE ON THE CASE THAT DOESN'T CAUSE THE JUDGE TO AUTOMATICALLY RECUSE, PUT IT OUT THERE AND LET THE PARTIES DETERMINE WHETHER OR NOT THEY WANT THE JUDGE TO REMAIN ON THE CASE.

REMINDEME WHAT OTHER STATES ARE DOING IN THIS REGARD.

RIGHT NOW FLORIDA IS A MONG 31 STATES IN THE MAJORITY THAT ALLOW SENIOR JUDGES TO MEDIATE. AND IN THAT VAIN, I GUESS IT IS APPROPRIATE TO POINT OUT, THAT THE CURRENT CODE OF JUDICIAL CONDUCT, WHICH WAS PASSED IN 1994, PROVIDES THAT SENIOR JUDGES CAN ACT AS MEDIATORS WITH -- UNDER CERTAIN CONDITIONS.

AND WOULD THE SENIOR JUDGES WHO ARE PRESENTLY MEDIATING THE GRANDFATHERED IN AND NOT HAVE TO DO THE CERTIFICATION REQUIREMENT OR AT SOME POINT WOULD THEY BE REQUIRED TO GO THROUGH THAT?

MY MEMORY IS THAT THAT WAS NOT DISCUSSED BY THE COMMITTEE, BUT THEY SHOULD AT SOME POINT BE REQUIRED TO MEET THE CURRENT STANDARDS.

WELL, THE CONTEMPORATION WAS THAT ALL --

CORRECT.

OF THE REQUIREMENTS. LET ME ASK YOU A BROADER QUESTION. I REALIZE YOU ARE INTO YOUR REBUTTAL TIME BUT I WANT TO GIVE YOU A CHANCE TO SORT OF COMMENT ON ONE OF THE CONCERNS OF THE COURT, AND IT GOES BACK TO YOUR STATEMENTS ABOUT A EARANCE. THAT IS, THAT WE ALL KNOW, OF COURSE, THAT A SITTING JUDGE CANNOT BE A PRIVATE MEDIATOR OR ARBITRATOR AND THAT THAT HAS LONG BEEN THE RULE. WHAT HAS HAPPENED IS WE HAVE BEEN SO SUCCESSFUL IN THE STATE OF FLORIDA THAT WE HAVE NOW EXTENSIVE NUMBERS OF LAWYERS AND RETIRED JUDGES AND OTHERS WHO NOW HAVE MEDIATION FIRMS, IF YOU WILL, AND SO ONE OF THE CONCERNS OF THE COURT IS THIS IDEA THAT A RETIRED JUDGE JOINS THE LAW FIRM. NOT A MEDIATION FIRM BUT BY A SLIP OF THE TONGUE YOU CAN SORT OF SEE OUR CONCERN ABOUT A EARANCE, AND FOR MOST OF THE YEARS IN THE BUSINESS OF BEING A MEDIATOR, AND AS PART OF A FIRM THAT HAS A NAME, YOU KNOW, JUST LIKE A LAW FIRM OR WHATEVER, AND THEN FROM TIME TO TIME IT TAKES THAT THAT MEMBER OF THAT FIRM, WHICH IS IN THE BUSINESS TO MAKE MONEY, AND THEN TO DO BUSINESS, THEN GOES BACK ON THE PUBLIC SERVICE AND PUTS ON THE ROPE, AND THAT THERE IS A BACK AND FORTH TO THIS THING THAT THE COURT IS VERY CONCERNED ABOUT THE A EARANCE OF THAT. THAT IS, THAT, YOU KNOW, HEY, WAIT A MINUTE. DO WE HAVE SOMEBODY THAT IS PUTTING ON THE ROBES?. WE CERTAINLY DON'T PICK LAWYERS OUT FROM TIME TO TIME THAT COME TO SIT ON THE BENCH WHILE THEY ARE -- THEIR MAIN PURPOSE IS THE PRACTICE OF LAW. CAN YOU JUST GIVE US SOME GENERAL OBSERVATIONS OF HOW SERIOUS A CONCERN YOU BELIEVE THAT IS WITH SENIOR JUDGES?

A EARANCE IS ALWAYS A CONCERN, MAINTAINING PUBLIC TRUST IN THE JUDICIARY AND MEDIATION PROCESS IS ALWAYS A CONCERN. I BELIEVE THE TCB CDETERMINED THAT MEDIATION IS A CORE FUNCTION OF THE COURTS AND WHETHER IT IS COURT ANNEXED OR NOT I THINK THERE IS A GENERAL PERCEPTION OUT THERE THAT IT HAS SOME COURT SANCTION EVEN WHEN THE PARTIES ARE CHOOSING NOT CERTIFIED MEDIATORS, WHICH JUST ISN'T THE CASE. SO A EARANCES ARE THERE, BUT IT SEEMS TO ME THAT IF HISTORY TELLS US WE'VE NOT HAD A SINGLE PUBLIC CASE IN WHICH THERE HAS BEEN A PROBLEM WITH THE SENIOR JUDGE ACTING AS A MEDIATOR OR VICE VERSA, THAT THE ACTUAL COMPLAINTS, THERE AREN'T ANY. SO HISTORY TELLS US --

JUDGE, DON'T YOU THINK THAT'S QUITE A STRETCH? WE DON'T HAVE A PLACE TO GO FOR FOLKS TO SAY, BOY, THAT LOOKS BAD. THAT JUST DOESN'T SEEM RIGHT. WE MAY HAVE IT IF SOMEBODY IS BEING BRIBED OR SOMETHING LIKE THAT BUT THE OVERALL A EARANCE DO WE REALLY HAVE A PLACE WHERE YOU COULD GO TO FIND IS SOMEBODY CONCERNED WITH HIS A EARANCE? BECAUSE I'M LOOKING AT YOUR COMMENTS AND RESPOND FULLY THE COMMENTS SAY THAT EVEN THE PEOPLE WHO ARE DOING IT ARE CONCERNED ABOUT THE A EARANCE. SO DO WE HAVE A PLACE WHERE WE CAN GO AND FIND A CASE WHERE SOMEBODY HAS COMPLAINED ABOUT A EARANCE?

CERTAINLY, AND I UNDERSTAND WHAT YOU ARE SAYING. CERTAINLY THE RULES FOR CERTIFYING COURT APPOINTED MEDIATORS HAVE A CODE OF PROFESSIONAL CONDUCT AND EITHER IT IS GOING TO FIT WITHIN THOSE RULES OR IT IS NOT. A EARANCES ARE TOUGH. IT IS SOMETHING THAT YOU ARE TRYING TO PROTECT AND IT MAY NOT NECESSARILY BE A RULE VIOLATION. I FREELY ADMIT THAT. BUT THE LACK OF ACTUAL COMPLAINTS, THE SUCCESS

OF CERTIFICATION WITH TRAINING , WITH MENTORSHIP , WITH CONTINUING MEDIATOR EDUCATION REQUIREMENTS IN CONJUNCTION WITH THE NOTIFICATION REQUIREMENTS , IN CONJUNCTION WITH A JUDICIAL EDUCATION PROGRAM SHOULD TUNE IN THE SENIOR JUDGES TO THE ISSUES , APEARANCE ISSUES THAT RESULT FROM DUAL SERVICE.

JUSTICE CANTERO ?

THE 31 STATES THAT YOU MENTIONED THAT ALLOW SENIOR JUDGES TO MEDIATE , ARE THERE ANY STATISTICS ABOUT WHETHER OR HOW MANY OF THOSE STATES LIMIT THE TYPES OF CASES THAT SENIOR JUDGES CAN EITHER MEDIATE OR SIT ON AS JUDGES ?

ICANT ANSWER THAT QUESTION. I DO NOT KNOW.

ILL GIVE YOU ONE OTHER , AND I KNOW THAT YOUR TIME IS UP, BUT SOMETHING THAT OCCURS TO ME AS YOU MENTIONED ABOUT HOW MEDIATION IS A CORE FUNCTION AND MAYBE THIS IS SOMETHING THAT OUR TRIAL COURT BUDGE T COMMISSION NEEDS TO LOOK AT. SOME OF THE STATES, I KNOW , THAT ALLOW BOTH SENIOR JUDGES TO SERVE AS MEDIATORS FULLY - - ACTUALLY HAVE SOME TYPE OF COMPENSATION SYSTEM WHERE THEY ARE COMPENSATING THOSE JUDGES AND THEREFORE THE TWO FUNCTIONS ARE THEY ARE ACTUALLY ALLOWING THEM TO MEDIATE BUT THEY ARE NOT BEING PAID BY THE PRIVATE PARTIES. HAS ANYONE LOOKED AT WHETHER THAT WOULD BE ANOTHER WAY TO A ROACH THIS? BECAUSE WE HAVE SUCH A NEED FOR MEDIATORS , AND MEDIATORS AND ALSO HAS THAT BEEN LOOKED AT?

WELL, I GUESS I DON'T THINK IT HAS. THE ONLY COMMENT THAT I WOULD MAKE ABOUT THAT AND ONE OF THE DOCUMENTS FILED IN OOSITION SUGGESTS THAT THE COURT SHOULD TAKE OVER THE PAYMENT FUNCTION. THAT I THINK WOULD REQUIRE A STATUTORY AMENDMENT.THERE IS NO AUTHORITY CURRENTLY FOR COURTS TO PAY FOR MEDIATION .

OK AY. THANK YOU VERY MUCH. JUDGE MCNEAL?

IM RAY MCNEAL , A CIRCUIT JUDGE AND IM HERE ON BEHALF OF THE FAMILY LAW RULES COMMITTEE.

YOUR OBJECTION OR COMMENT DOESN'T GO TO THE ISSUES THAT WE HAVE BEEN DISCUSSING THIS MORNING?

WELL, IT DOES - - AND ACTUALLY IT DOES NOT. THE RULES COMMITTEE VOTED TO OOSE THE CERTIFICATION REQUIREMENT, AND WE FRANKLY DIDN'T REALLY GET INTO A LONG DISCUSSION OVER WHETHER SENIOR JUDGES SHOULD BE MEDIATORS AT ALL. AND I REALIZE THAT THE IDEA THAT THIS COURT CAN PROHIBIT THEM FROM DOING THAT IS A POSSIBILITY AND IF YOU BELIEVE THAT THE PUBLIC TRUST AND CONFIDENCE AND THE INTEGRITY OF THE JUDICIARY REQUIRES THAT , I WOULDNT OOSE YOU DOING THAT . BECAUSE I THINK THAT IS YOUR CALL. THE BOSS HAS A RIGHT TO SET THE STANDARDS FOR THE EMPLOYEES, BUT I THINK THAT YOU NEED TO BE REALISTIC ABOUT HOW MOST SENIOR JUDGES WORK. THEY HEAR A CASE HERE , THEY HEAR A CASE THERE. THEY ARE CALLED IN FOR - - TO CLEAN UP A MESS OR TO HEAR A TWO-WEEK TRIAL THAT SOME BODY ELSE CANT HEAR. THATS THE WAY MOST OF THEM WORK. I KNOW THERE ARE SOME THAT WORK MORE HOURS AND THE MEDIATION IS THEIR PRIMARY BUSINESS . FOR SOME OF THEM. NOT ALL OF THEM. AND SO IF YOU SAY THAT SENIOR JUDGES CANT BE A MEDIATOR THEN YOU ARE LIMITING THAT PERSON TO REALLY AN ACT OF PUBLIC SERVICE, BECAUSE MOST OF THEM CAN MAKE MORE DOING A HOUR OF MEDIATION THAN THEY CAN A DAY OF SENIOR JUDGING .

JUST A PHILOSOPHICAL ISSUE ON THAT , WOULDNT IT BE TO SAY LET THAT JUDGE BE AT A LAW FIRM AND DO TRANSACTIONAL WORK THAT DOESN'T HAVE ANYTHING TO DO WITH THE C

OURT AND THE YCOULD THEN BE A SENIOR JUDGE? NEFERDZ IN OTHER WORDS, IT SEEMS THAT WE HAVE SAID MEDIATION IS MOST CONSISTENT WITH BEING A SENIOR JUDGE, BUT, IN FACT, THE YBOTH BECAUSE OF THE SAME PARTIES ARE INVOLVED WITHOUT A GEOGRAPHICAL LIMITATION, SO I MEAN IT IS JUST SORT OF A QUESTION ABOUT THE FACT THAT THERE IS OTHER WAYS IN TERMS OF PRACTICING LAW THAT WOULDN'T EVEN BRING UP ANY OF THIS AREA RANCE BUT WE HAVE MADE THAT DECISION THAT THAT'S THE BAN THAT A SENIOR JUDGE CANNOT PRACTICE LAW. BUT WE COULD SAY THE SAME THING IN THAT SITUATION WHY NOT BE A BLETOTAL IN THAT GOOD, YOU KNOW, SENIOR JUDGE, FORMER SENIOR JUDGE LAWYER? SO LET'S GET TO THE CERTIFICATION ISSUE, AND WHY YOU THINK THAT'S NOT A GOOD THING FOR IN THE FAMILY CONTEXT?

WELL, LET ME SAY FIRST. I BELIEVE INSERT IF I INDICATION. I'VE TAKEN THE MEDIATION TRAINING AND I WANT TO BE A CERTIFIED MEDIATOR AND I THINK MEDIATION CERTIFICATION SELLS ITSELF WITHOUT YOU HAVING TO IMPOSE IT ON ONE CLASS OF MEDIATOR. IT SELLS ITSELF BECAUSE YOU GET JUDICIAL IMMUNITY IF YOU ARE A CERTIFIED MEDIATOR. IT ALLOWS YOU TO DO FREE FILING MEDIATION, AND GET JUDICIAL IMMUNITY. SO THE JUDGE SOR SENIOR JUDGES WHO ARE DOING MEDIATION ARE SUBJECT TO THE RULE THAT A DR RULES IF THEY ARE DOING COURT ORDERED MEDIATION, IF THEY ARE DOING IT UNDER THE RULES OR IF THEY ARE CERTIFIED, AND THE REASON, THE RULES COMMITTEE OOSEED IT AND THE CIVIL RULES COMMITTEE VOTED OVERWHELMINGLY TO OOSE IT AS WELL. I THINK IS TO ALLOW THE PARTIES ANOTHER OPPORTUNITY TO CHOOSE SOMEBODY THEY HAVE CONFIDENCE IN. OBVIOUSLY IF THE COURT IS GOING TO ORDER MEDIATION AND SAY YOU WILL GO TO THIS PARTICULAR SENIOR JUDGE TO HAVE YOUR MEDIATION, THAT JUDGE IS SUBJECT TO THE MEDIATION RULES, AND THE STANDARDS.

I GUESS I WANT TO GO BACK TO THIS AEARANCE THING. ISN'T THERE A SUBTLE AND I KNOW YOU ARE IN THE 5TH CIRCUIT AND I'M THINKING OF SOUTH FLORIDA, A SUBTLE THING THAT, YOU KNOW, THE RE IS THAT SENIOR JUDGE THERE THAT IS GOING TO BE HEARING YOUR CASE AND MAY HEAR YOUR CASE AND THAT JUST IN A GENERAL WAY THAT THAT IS GOING TO ENHANCE THAT PERSON'S MEDIATION BUSINESS? >> HONESTLY, JUSTICE, I DON'T THINK BEING A SENIOR JUDGE WOULD DO IT, BUT BEING A RETIRED JUDGE DOES. I THINK IT IS JUST THE FACT THAT YOU WERE A JUDGE AND WHEN YOU HAVE SOMEONE THAT'S BEEN ON THE BENCH FOR 30 YEARS AND THEY RETIRE, AND THEY WANT TO MEDIA TE, PEOPLE SEEK THEM OUT FOR THEIR MEDIATION SKILLS NOT BECAUSE OF WHAT THEY DID ON THE BENCH, BUT BECAUSE THEY HAVE A BROAD RANGE OF EXPERIENCE.

IN THE CERTIFICATION COURSE YOU TOOK I ASSUME THERE WAS A SUBSTANTIAL EMPHASIS ON THE NEW TRAILT OF -- NEUTRALITY OF MEDIATORS?

ABSOLUTELY.

AND THAT THE MEDIATOR WAS NOT THERE TO BE A JUDGE AND MAKE A DECISION FOR THESE PARTIES?

ABSOLUTELY. I BELIEVE IN THE TRAINING AND I REALLY DON'T BELIEVE ANYBODY WOULD GO OUT AND TRY TO ATTEMPT MEDIATION WITHOUT TAKING TRAINING. THERE MAY BE SOMEBODY THAT WOULD DO IT, BUT I THINK ALL OF OUR JUDGES ARE SMARTER THAN THAT. YES, THE ROLE OF A MEDIATOR IS NOT JUDGING.

HOW MANY RETIRED JUDGES ARE SERVING AS MEDIATORS IN THE 5TH CIRCUIT? DO YOU HAVE ANY IDEA?

I BELIEVE THREE.

OKAY. >> I BELIEVE THERE ARE THREE. THERE MAY ONLY BE TWO. >> INCLUDING JUD

GE DANIELS ?

I WAS INCLUDING JUDGE DANIELS , JUDGE ALLS AND JUDGES LAGGARD NOW .

ARE THEY ALL CERTIFIED?

AS FAR AS I KNOW THEY ARE.I WANT TO BE CERTIFIED.

IF WE ARE CONCERNED ABOUT THE QUALITY OF MEDIATION AS SORT OF A SEPARATE ISSUE , SHOULDN'T THIS BE A VERY SIMPLE QUESTION AND THAT IS THAT I THINK EVERYBODY HAS LONG CONCEDED THAT THE SKILLS NECESSARY TO BE A JUDGE ARE NOT NECESSARILY THE SAME SKILLS THAT YOU NEED IN ORDER TO BE A MEDIATOR, AND, IN FACT , IN MANY INSTANCES THERE MAY BE HABITS DEVELOPED OR WATERS IN TERMS OF HAVING TO MAKE DECISIONS FOR THE PARTIES , AND THE AUTHORITY OVER THE PROCEEDINGS THAT ACTUALLY ARE INCONSISTENT WITH THE WAY MEDIATION SHOULD BE HANDLED? SO REALLY SHOULDN'T THIS BE A VERY SIMPLE QUESTION? THAT IS, IF WE ARE CONCERNED ABOUT THE QUALITY OF MEDIATION , THAT THERE SHOULD BE A RULE OF CERTIFICATION ? >> WELL, I DON'T --

FOR EVERYBODY?

FOR EVERYBODY . WELL, I JUST WENT TO A COURSE ON THAT WHERE THAT WAS THE PRIMARY TOPIC . DO WE CERTIFY OR DON'T WE CERTIFY? FRANKLY THERE IS NO EVIDENCE ANYWHERE THAT GETTING CERTIFICATION MAKES YOU A GOOD MEDIATOR. THAT'S JUST THE WAY ADULT EDUCATION WORKS. THE PEOPLE WHO WANT THE EDUCATION AND THE PEOPLE THAT WANT TO DO A GOOD JOB WILL DO A GOOD JOB .

WHAT IS THE STATUS NOW WITH -- FOR FAMILY LAW MATTERS? IS THE RE -- IF YOU REFER AS A JUDGE FOR MEDIATION , DO THEY HAVE TO BE A SUPREME COURT CERTIFIED MEDIATORS ?

UNLESS THE PEOPLE CHOOSE SOMEONE THEY WANT. IF I PICK SOMEONE AND SEND THEM, THEY HAVE TO BE CERTIFIED, BUT IF THEY CAN PICK THEIR NEXT DOOR NEIGHBOR TO DO IT.

THEY DON'T HAVE TO BE A LAWYER OR ANYBODY?

NO, SIR. IT CAN BE ANYBODY.

SO NOW WHAT WE WOULD BE SAYING IN THE FAMILY LAW CONTEXT THAT THEY COULD PICK ANYBODY THAT'S NOT CERTIFIED , OTHER THAN A JUDGE WHO WOULD HAVE TO BE CERTIFIED?

YES, SIR. -- I'M SORRY , YES, MA'AM .

IS THAT THE CASE , BECAUSE THAT'S A FAMILY MATTERS , BECAUSE IN CIVIL THEY HAVE TO BE ATTORNEYS , RIGHT ? IS IT JUST FAMILY THAT'S --

I REALLY HAVE TO PLED IGNORANCE ON THAT .

AND WHEN WE ARE TALKING ABOUT FAMILY, TOO, YOU HAVE TO REMEMBER THAT IN FAMILY LAW, WE'VE GOT 70% OF THE PEOPLE THAT ARE COMING IN FRONT OF US WHO ARE REPRESENTING THEMSELVES , AND WHAT WE DO IN THE COURTROOM IS MORE A KIN TO MEDIATION THAN IT IS A JUDICIAL ACTION. OBVIOUSLY WE HAVE THE FINAL SAY AND WE CAN SAY I'VE HEARD ENOUGH. THIS IS THE WAY IT IS GOING TO BE BUT A LOT OF WHAT WE DO AND I DO IT , I MEAN , ALL DAY LONG SOMETIMES I SAY , WILL THIS WORK FOR YOU OR WHAT ARE YOUR

OPTIO NS ? LET'S WOR K O N SOM E W AY S T HA T WE CAN S OLVE THI S PROBLEM.

JUDGE M CNEAL, W HA T WOU LD BE, THOUGH , I N T ER MS O F T HE C URRENT COMMENTARY THAT SAYS IF YOUR THREE JUDGE S WHO ARE MEDIATING, THEY COULD S ERVE IN THE 5TH CIRCU IT , B UT I F THEY WERE MED IA TING CIV IL CASES, WHICH I S W HE RE T HE BIG BUCKS ARE, S O T O S PEAK , T HEY WOULD B E , Y OU K NOW , THEY COULD BE ASS I G NED TO DEPENDENCY, THEY COULD BE ASSIGNED TO JUVENILE , THEY COULD BE ASSIGNED T O CRIMINAL BUT THEY WOULDN'T BE ASSIGNED TO T HE CIV IL DIVISION, AND THA T' S H OW IT HAS WORKED S O FAR AND N O O NE HAS REALLY SUG GE STED T HA T THAT'S BEEN A HAR DS HI P F OR ANYBODY. SO DO YOU SEE A NY - -

I DON'T SEE ANY P ROBL EM WITH THAT A ND PERSONALLY I THINK THAT IS J US T G OO D PRACTICE. THOSE OF US WHO HAVE BEEN JUDGES FOR A LONG T IME H AV E DEALT WITH THIS WHOLE IDE A O F CONFLICT OF INT ER ES T A ND AEARANCE OF I MP RO PR IE TY . WE DEAL W ITH IT EVERY D AY , AND I CERTAINLY DON'T WAN T TO DO ANYTHIN G IN R ET IREM EN T THAT WOU LD C RE AT E ANY PROBLEMS AT ALL. SO I B EL IE VE T HAT PEO PLE SHOULD BE CAREFUL, AND I BELIEVE THAT OUR J U DGE S WILL BE CAREFUL . I T HINK THAT WE H AVE A G REAT JUDICIARY AND WE HAVE GREAT TRAINING, A ND I HAVE A L OT OF CONFIDENCE.

HOW ABOUT GIVIN G US T HE BENEFIT SORT OF OF YOU R VIEWS ABOUT T HI S G ENER AL ISSUE, AND THAT I S T HE QUESTION THAT I HAV E P OSED T O JUDGE B RIESE AND T HAT I S A L IN GE R IN G C ONCE RN THAT WE HAVE A ND A LOT O F I T I S N OT WITH SENIOR JUDGES, I T I S WITH RETIRED JUD GE S , B UT THAT W E C RINGE S OM EWHA T W HE N WE SEE E LABO RATE ADVERTISEMENTS, OKAY , A ND I N THE A D T HE Y CLA IM T HAT , Y OU KNOW, H ERE'S OUR F IRST T EA M , YOU KNOW, A ND I T I S J U DGE THIS AND JUDGE T HA T AND JUDGE THAT O R W HA TEVE R , A ND THAT'S PART OF THE B USINES S AD. IN OTHER WORDS, THA T'S PART OF AN A D THA T I S S EE KING B USINESS , A ND SO I T G IVES R ISE TO T HI S CON CE RN THE N , A S I SAID , W ITH SEN IO R JUDGES IF THE Y A RE DON NING A HAT OF A B US IN ES SM AN ONE DAY OVER HERE A ND DOI NG THA T , AND THEN THE NEXT D AY THE Y GO OVER AND T HE Y P UT O N THE ROB E. CAN YOU JUS T GIVE U S T HE BENEFIT OF YOU R GEN ER AL OBSERVATIONS ABOUT T HAT I N T ERMS O F W HA T W E C AN D O , PERHAPS , T O DIS CO URAG E THA T OR TO A T LEA ST PUT U P A S MANY PROTE CT IVE D EV ICES A S WE CAN T O D ISCO UR AG E T HA T KIND OF T HING ?

SO WHAT YOU ARE A SKING M E IS TO TELL YOU WHA T YOU CAN DO TO D ISCO URAG E SENIO R JUDGES FROM SER VING AS MEDIATORS?

I'M ASKING YOU I N T ERMS OF THI S A EA RA NCE T HA T I'M A BUSINESSMAN ONE D AY , O KA Y , AND I CAN D O ALL O F T HE A DS THAT I WANT AND I C AN , A S I S AID, I N M AN Y I NSTA NCES IT IS NOT A JUDGE THA T SERVE S ON THE S ENIOR S TATU S , I T IS A JUDGE T HA T S IMPL Y T HA T' S - - THAT IS PART O F T HE PACKAGE, YOU KNOW , A ND T HE N I T'S T HE A EA RA NC E AND T HE DIS COM FORT C OM ES NOT WITH THE FACT, YEAH , T HA T' S P AR T OF THE CRE DENT IA LS FOR YOU TO GO BACK AND WORK FOR A LAW FIRM O R T O GO WITH A MEDIATION FIR M , THE D IS TRES S COMES WHEN THE Y A RE P UT OUT THE RE THEN AS J UD GE S.

I UND ERST AN D . I REA LLY HAVEN 'T T HOUGHT ABOUT THAT A WHOLE L OT . I HAD T HOUGHT ABOUT ADVERTISING A LOT, A ND I THINK T HAT W E'VE D ONE OURSELVES A DIS SERV IC E B Y PERMITTING A LOT OF THE ADVERTISING THAT WE HAVE . SO I DON'T KNOW HOW I C AN ADD RESS THAT, BECAUSE I REALLY, I D ON 'T F EE L COMPETENT TO ADDRESS IT , AND I D O HAVE A B IA S AGA INST ADV ERTISING ALL T OGETHER.

THAT'S W HAT'S HA ENED , OF COURSE, IS T HA T M AR KETI NG , AS IT W IL L , I S P AR T O F B OT H T HE LAW BUSINESS OR A NY BUSINESS AND NOW, OF COURSE , WE SEE THAT THE MAR KE TING HAS B EEN E XTEN DE D EXTEN SIVELY TO THE MED IA TI ON BUSINESS.

I DIDN'T EVEN K NO W YOU COULD USE JUDGE I N T HA T K IND OF ADVERTISING SO THAT SHOWS

HOW IGNORANT I AM.

I KNOW YOU CAME UP HERE TO BE A REPRESENTATIVE OF THE FAMILY LAW RULES COMMITTEE, SO WE ARE CRITICIZING YOUR RESPONDING TO THESE OTHER QUESTIONS, BUT I THINK YOU'VE MADE YOUR POINT THAT YOU THINK THAT THAT SHOULD NOT BE MANDATORY REQUIREMENT FOR THE SENIOR JUDGES WHO ARE SITTING AS MEDIATORS AND WE ARE HERE.

THANK YOU, AND I WANT TO THANK JUDGE BRIESE AND THE WORK OF THEIR COMMITTEE. I HAVE A LOT OF GREAT FRIENDS ON THAT COMMITTEE AND THEY'VE DONE WONDERFUL WORK AND I KNOW YOU HAVE MORE PETITIONS COMING UP FROM THEM.

AND WE THANK YOU, JUDGE MCNEAL AND THIS WEEK THERE HAVE BEEN CERTAIN PEOPLE I HAVE ACKNOWLEDGED PUBLICLY, AND YOU ARE ONE OF THE JUDGES THAT THROUGH OUR KNOWLEDGE ALWAYS STEPS UP TO THE PLATE TO DO MORE AND TO LOOK AT THE GREAT GOOD AND SO ON BEHALF OF THE COURT, WE WANT TO THANK YOU FOR BEING HERE AND FOR YOUR NEVER-ENDING CONCERN ABOUT THE BEST INTERESTS OF THE JUSTICE SYSTEM. THANK YOU. JUDGE BRIESE?

THANK YOU. I JUST WANT TO MAKE CERTAIN -- CERTAIN POINTS IN REBUTTAL. AS I SAID, THE CURRENT PRACTICE, CURRENT PRECEDENT IN THE STATE OF FLORIDA IS THAT SENIOR JUDGES CAN ACT AS MEDIATORS. AS LONG AS CERTAIN CONDITIONS ARE MET. IF THIS COURT IS GOING TO TAKE A CHANGE AND PROHIBIT SENIOR JUDGES FROM MEDIATING ALL TOGETHER, I WOULD POINT OUT THAT JUSTICE WELLS AND JUSTICE ANSTEAD ARE THE TWO MEMBERS OF THIS COURT THAT SERVED IN THE 1994 DECISION THAT AROSE TO THE CURRENT CODE OF JUDICIAL CONDUCT WHICH DOES ALLOW SENIOR JUDGES TO MEDIATE.

I THOUGHT YOU WERE GOING TO POINT OUT THAT THEY ARE THE CLOSEST TO RETIREMENT.

NO. SECONDLY, WITH REGARD TO GEOGRAPHICAL LIMITATIONS, THAT IS A DOABLE, I GUESS IS DOABLE, BUT TODAY MEDIATION PRACTICES IN FLORIDA ARE MORE STATEWIDE THAN COUNTY OR CIRCUIT AND SENIOR JUDGE SERVICE IS ALSO MORE STATEWIDE THAN CIRCUIT, AND AS THE COURT WELLS KNOWS, THE SENIOR JUDGES SERVE UNDER THE AUTHORITY OF THE CHIEF JUSTICE AND NOT UNDER THE AUTHORITY OF THE CHIEF JUDGES OF APPELLATE CIRCUITS. THERE WAS ALSO A QUESTION ABOUT JUDICIAL IMMUNITY. IT ONLY ATTACHES TO COURT ORDERED MEDIATION. JUST BECAUSE SOMEBODY BECOMES A CERTIFIED MEDIATOR DOESN'T MEAN THEY HAVE JUDICIAL IMMUNITY WHEN THEY MEDIATE.

SO IS THERE -- IS THERE REQUIREMENT NOT THAT YOU DON'T HAVE TO BE A CERTIFIED MEDIATOR FOR ALL OF THE DIVISIONS OR ONLY FOR CERTAIN KINDS OF CASES?

THERE IS NO REQUIREMENT THAT ANYONE HAS TO BE A CERTIFIED MEDIATOR TO MEDIATE A CASE IN WHICH BOTH SIDES AGREE TO THE INDIVIDUAL. SOMEBODY ASKED THE QUESTION IN 2004 THERE WERE 153 SENIOR JUDGES OF WHICH 43 WERE CERTIFIED MEDIATORS. THAT DOESN'T NECESSARILY MEAN THAT ALL OF THE SENIOR JUDGES WERE ACTUALLY MEDIATING. ADVERTISING, THAT IS AN ISSUE THAT IS ON THE FRONT BURNER FOR THE ADMINISTRATIVE AND POLICY COMMITTEE. THE PROBLEM IS THAT YOU ARE TALKING ABOUT FORMER JUDGES, FORMER JUDGES FROM WHICH THIS COURT HAS NO CONTROL OVER AT LEAST TO THE CODE OF JUDICIAL CONDUCT BECAUSE THEY ARE NOT SENIOR JUDGES, THEY ARE NOT SUBJECT TO RECALL. THEY HAVE RETIRED.

DO WE KNOW WHAT PERCENTAGE OF SENIOR JUDGES HAVE SERVED AS MEDIATORS CURRENTLY ARE SUPREME COURT CERTIFIED? DID YOU DO THAT ANALYSIS?

ALL I CAN TELL YOU IS IN 2004, 43.

ONLY 43? >> CORRECT. >> AND ON THEIR RENEWAL FORM, DO THEY HAVE TO INDICATE HOW OFTEN THEY HAVE SERVED AS A SENIOR JUDGE AND IN WHAT DIVISION THEY HAVE SERVED?

THEY DO NOT. IN OUR THIRD RECOMMENDATION, WE ARE RECOMMENDING LIMITED COLLECTION OF THE DUAL SERVICE ON RENEWAL CERTIFICATIONS. THAT'S ONE OF THE THINGS THAT WE WANT TO KEEP TRACK OF AND MONITOR.

IF WE COULD KEEP TRACK OF IT THE OTHER WAY WHEN THEY COME UP FOR SENIOR JUDGE CERTIFICATION, RENEWAL?

CERTAINLY. CERTAINLY IN THE SCREENING PROCESS THE DISTRICTS COULD LOOK AT THAT AND I GUESS MAKE THAT PART OF THE RECOMMENDATION. I GUESS THEY HAVE THE CAPABILITY OF DOING THAT. BUT AS FAR AS ADVERTISING GOES, IT IS A PROBLEM, BUT IT DOESN'T SEEM TO BE A PROBLEM WITH SENIOR JUDGES BECAUSE THERE IS A PROHIBITION FOR SENIOR JUDGES ADVERTISING, SOLICITING BUSINESS, ASSOCIATING WITH A LAW FIRM OR IN ANY WAY PROMOTING THEIR MEDIATION SERVICES. THEY CAN'T DO IT. IT IS PROHIBITED AND WHILE WE HAVE SUGGESTED THAT THE COMMENTARY BE STRICKEN, THAT HAS BEEN MOVED INTO SECTION 5 OF THE CODE OF JUDICIAL CONDUCT.

ACCORDING TO THE COMMENTS FROM YOUR SURVEY, IT IS THE IMPLIED, I MEAN THAT'S INHERENT?

WE ARE CURRENTLY DEALING WITH AGENCIES AND THE COMMITTEE BELIEVES THAT THE CERTIFICATION, THE NOTIFICATION AND THE JUDICIAL EDUCATION COURSE WILL ADEQUATELY ADDRESS THAT. LASTLY, I WOULD BE REMISS IF I DIDN'T PUBLICLY ACKNOWLEDGE THE COMMITTEE AND THE SUBCOMMITTEE WHO DID THIS WORK. WE SPENT MANY HOURS DEALING WITH THIS ISSUE. IT IS A DIFFICULT ISSUE. THIS IS THE MOST ENGAGED AND FORWARD-THINKING COMMITTEE I'VE HAD THE PLEASURE OF SERVING ON IN MY PROFESSIONAL CAREER OR IN MY VOLUNTEER SERVICE. LIKEWISE, IT IS MY OPINION THAT THIS COMMITTEE HAS THE BEST STAFF IN STATE GOVERNMENT AND THAT'S THE STAFF OF THE DISPUTE RESOLUTION CENTER WITH THEIR LEADER, SHARON PRATT, SO WITHOUT THEIR HELP WE WOULDN'T BE ABLE TO DO WHAT WE DO. THANK YOU.

THANK YOU, AND JUDGE BRIESE THANK YOU VERY MUCH TO YOU FOR YOUR LEADERSHIP AND FOR YOUR HARD WORK ON THIS REPORT AND ON THE COMMITTEE AND OF COURSE ALSO PUBLICLY. WE WANT TO ACKNOWLEDGE THE EXCELLENT WORK OF SHARON AND HER STAFF. WITH THAT, THE COURT WILL BE IN RECESS.

PLEASE REPLY. THANK YOU.