

CANON 5F | SERVICE AS ARBITRATOR OR MEDIATOR

(1) A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law or Court rule. A judge may, however, take the necessary educational and training courses required to be a qualified and certified arbitrator or mediator, and may fulfill the requirements of observing and conducting actual arbitration or mediation proceedings as part of the certification process, provided such program does not, in any way, interfere with the performance of the judge's judicial duties.

(2) A senior judge may serve as a mediator in a case in a circuit in which the senior judge is presiding over criminal cases or in a circuit in which the senior judge is not presiding as a judge, or in both, only if the senior judge is certified pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators. Such senior judge may be associated with entities that are solely engaged in offering mediation or other alternative dispute resolution services but that are not otherwise engaged in the practice of law. However, such senior judge may not advertise, solicit business, associate with a law firm, or participate in any other activity that directly or indirectly promotes his or her mediation, arbitration, or voluntary trial resolution services and shall not permit an entity with which the senior judge associates to do so. A senior judge shall not serve as a mediator, arbitrator, or voluntary trial resolution judge in any case in a circuit in which the judge is currently presiding over civil cases as a senior judge. A senior judge who provides mediation, arbitration, or voluntary trial resolution services may preside over criminal cases in circuits in which the judge provides such dispute-resolution services. A senior judge who provides mediation, arbitration, or voluntary trial resolution services may also preside over civil and criminal cases in circuits in which the judge does not provide such dispute-resolution services. A senior judge shall disclose if the judge is being utilized or has been utilized as a mediator, arbitrator, or voluntary trial resolution judge by any party, attorney, or law firm involved in the case pending before the senior judge. Absent express consent of all parties, a senior judge is prohibited from presiding over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a



mediator, arbitrator, or voluntary trial resolution judge within the previous three years. A senior judge shall disclose any negotiations or agreements for the provision of services as a mediator, arbitrator, or voluntary trial resolution judge between the senior judge and any parties or counsel to the case.

([Amended Jan. 10, 2002 (816 So. 2d 1084); Feb. 20, 2003 (840 So. 2d 1023); Nov. 3, 2005, effective Jan. 1, 2006 (915 So. 2d 145); May 22, 2008 (983 So. 2d 550); June 19, 2014 (141 So. 3d 1172); July 7, 2016, effective Oct. 1, 2016 (194 So. 3d 1015) ; May 18, 2017, effective Jan. 1, 2017 (218 So. 3d 432); amended effective May 21, 2021 (317 So.3d 1090).])

Commentary

Canon 5F(1). Canon 5F(1) does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties. An active judge may take the necessary educational and training programs to be certified or qualified as a mediator or arbitrator, but this shall not be a part of the judge's judicial duties. While such a course will allow a judge to have a better understanding of the arbitration and mediation process, the certification and qualification of a judge as a mediator or arbitrator is primarily for the judge's personal benefit. While actually participating in the mediation and arbitration training activities, care must be taken in the selection of both cases and locations so as to guarantee that there is no interference or conflict between the training and the judge's judicial responsibilities. Indeed, the training should be conducted in such a manner as to avoid the involvement of persons likely to appear before the judge in legal proceedings.

Canon 5F(2). The purpose of the admonitions in this canon is to ensure that the impartiality of a senior judge is not subject to question. Although a senior judge may act as a mediator, arbitrator, or voluntary trial resolution judge in a circuit in which the judge is presiding over criminal cases or in a circuit in which the judge is not presiding as a senior judge, or in both, attention must be given to relationships with lawyers and law firms which may require disclosure or disqualification. These provisions are intended to prohibit a senior judge from soliciting lawyers to use the senior judge's mediation services when those lawyers are or may be before the judge in proceedings where the senior judge is acting in a judicial capacity and to require a senior judge to ensure that entities with which the senior judge associates as a mediator abide by the same prohibitions on advertising or promoting the senior judge's mediation service as are imposed on the senior judge.