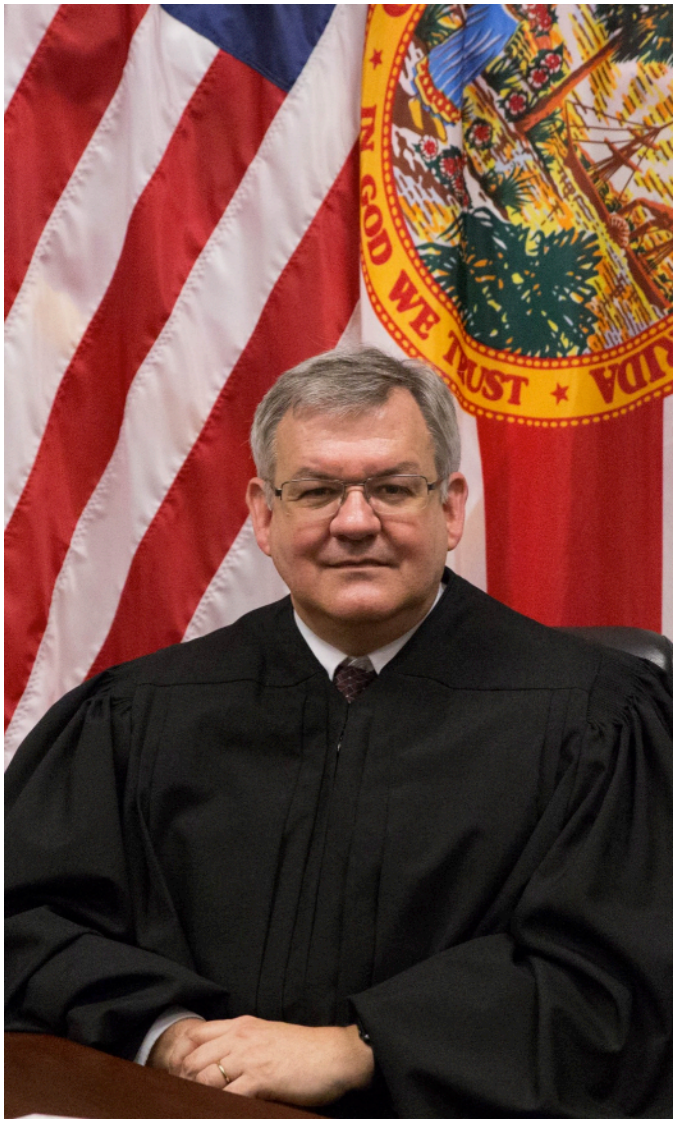

Application for Appointment to the 5th District Court of Appeals

Howard O. McGillin Jr.

October 2020

APPLICATION FOR NOMINATION TO THE 5th DISTRICT COURT OF APPEALS

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Howard O. McGillin, Jr. **Social Security No.:** [redacted]

Florida Bar No.: 814600 Date Admitted to Practice in Florida: 9/20/1989

1. **Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.**

   Circuit Judge, Seventh Judicial Circuit of Florida, 515 Reid Street, Palatka, FL 32177 (386) 329-0266.

2. **Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number).**

   [redacted] St Augustine, FL [redacted] I have been a resident of Florida since 1984. I was absent from the state for military service from 1984 - 1986 and from 1989 – 2005.

3. **State your birthdate and place of birth.**

   July 31, 1959; Philadelphia, PA

4. **Are you a registered voter in Florida (Y/N)?**

   YES

5. **Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.**

   a. Florida Supreme Court (Florida Bar) September 20, 1989
   b. US Army Court of Criminal Appeals (then known as US Army Court of Military Review) - December 1989
   c. US Court of Appeals for the Armed Forces (then known as US Court of Military Appeals) - April 15, 1993
   d. US Supreme Court - March 7, 1994

e. US District Court - Middle District of FL - December 15, 2005 (Inactive since appointed to Florida Bench)
f. US Court of Appeals of Veterans Claims - May 2014
g. Florida Supreme Court Certified Civil Mediator – 2009 - 2016 (I allowed my certification to lapse after going onto the bench)

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

No.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

a. LLM – 1994 - Military Law - The Judge Advocate General's School US Army; Class Standing Estimate 10-15/75 (I was named to the Commandants List which is the top 20% of students or 15 students). GPA: 93.469 (not on GPA system) 1993-1994. The School has verified that class rank is not available for this course.
b. JD with Honors – 1989 – University of Florida College of Law – Class Standing 8/184 GPA 3.44; 1986-1989.
c. BS – 1981 – US Military Academy (West Point) – General Order of Merit Class Standing 109/962 GPA 3.29 1977-1989 (Distinguished Cadet for AY 79-80 and 80-81 – top 5% of class for those two academic years)
d. HS Diploma – 1977 - Devon Preparatory School, Devon, PA. Class Standing Est 13/31 GPA not available.

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

a. University of Florida College of Law; Florida Law Review 1987-1989 (Chief Tax Editor 1988-1989) John Marshall Bar Association Election Judge 1988-1989; Catholic Student Center folk choir (1986-1987).
b. US Military Academy: German Club (1977-1978); Dialectic Society (1977-1979); WKDT Radio Station (Music Director) (1977-1981/Music Director 1979-1980); Yearbook; Hop Committee (1977 – 1981); Catholic Chapel Folk Choir (1977) Fourth Class System Committee (Secretary) (1979-1980); Cadet Captain – Regimental Adjutant Cadet Basic Training (1980); Cadet Captain – Regimental Operations Officer, 1st Regiment, US Corps of Cadets (1980-1981).

EMPLOYMENT:

9. **List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.**

    a. Circuit Judge – Seventh Judicial Circuit December 30, 2014 – present.

    b. Allegiance Law Group, St. Augustine, FL (July 2013 – December 2014) - owner; Small law firm with three attorneys focusing on Estate Planning, Probate, Family Law, Bankruptcy and Veterans benefits issues. I sold the assets of this firm when I was appointed to the bench.

    c. Fairbanks & McGillin PL, St. Augustine, FL (August 2009 – June 2013) – co-owner of small firm (4 attorneys) focusing on estate planning, probate, civil litigation and veterans' benefits. This firm dissolved in July 2013 when I formed Allegiance Law Group.

    d. The Law Offices of Howard O. McGillin, PA, St. Augustine FL (March 2008 – August 2009); solo practice firm focusing on Estate Planning, probate, civil litigation and military and veterans' legal issues. This firm was dissolved when we formed Fairbanks & McGillin.

    e. Executive Vice President and General Counsel, MDI, Inc, Ponte Vedra Beach FL; In-house counsel for small closely held corporation handling medical care for Federal and state inmates; managed all matters of corporate legal governance; managed outside counsel and litigation; conducted internal reviews and investigations. This company dissolved approximately 3 years after I left it.

    f. Brennan, Manna & Diamond PL, 800 Monroe St, Jacksonville FL (904)366-1500; Associate and Of Counsel; civil litigation firm.

    g. US Army (See specific assignments and duties below) May 1981 – June 2005. Please note that my military records are available upon request. None of the units listed below is likely to have any current record of my service there.

        i. Headquarters, Department of the Army 2002 – 2005 Pentagon, Washington DC, 20310:

        ii. Executive Officer and Special Counsel to the General Counsel of the Army (2002 – 2003); managed operations of the Office of General Counsel and served as special counsel on certain projects.

        iii. Legal Advisor to The Inspector General of the US Army (2003 – 2005). Responsible for advice on investigations into high profile issues including General Officer misconduct, Abu Ghraib / Detainee abuse allegations and other matters at the Headquarters US Army; managed Freedom of Information releases for the IG. Retired from Active Duty June 1, 2005.

iv. Staff Judge Advocate, Fort Eustis, VA (2000 – 2002). Principal legal advisor to General Court Martial Convening Authority. Managed Legal Office of approximately 14 attorneys providing full range of legal services. Promoted to Colonel May 2002.

v. Deputy Staff Judge Advocate, 25th Infantry Division and US Army Hawaii, Schofield Barracks, HI (1998 – 2000); Deputy legal advisor to Commanding General; responsible for daily operations of legal office of 30 attorneys providing full range of legal services to the Command.

vi. Student Officer, Command and General Staff College, Fort Leavenworth, KS (1997-1998); Section Leader of 64 student officer section; student at Command and Staff Officer Course – diploma awarded.

vii. The Judge Advocate General's School, US Army, Charlottesville, VA (1993 – 1997)

1. Deputy Director, Academic Department (1996 – 1997); Managed the LLM program; acted as assistant Dean of students for all student officers; managed the CLE program of the School; conducted investigations of student misconduct. Promoted to Lieutenant Colonel May 1997.

2. Professor, Administrative and Civil Law (1994 – 1996); Provided CLE and LLM program instruction to students at the School, in overseas locations and to allied nations. Subject matter expert on Consumer Law, Landlord tenant relations, Professional Ethics and Investigations.

3. Student Officer – LLM Program (1993-1994) – degree awarded May 1994.

viii. US Army Infantry Center, Fort Benning, GA (1989-1993)

1. Chief Military Justice Division (1992-1993). Head prosecutor for large Army installation. Supervised 5 trial counsel in their caseload and second-chaired cases as required. Promoted to Major December 1992.

2. Senior Trial Counsel (1991-1992) Tried military Courts-martial trials before juries and bench. Legal Advisor to two brigade commanders and their subordinate battalion commanders. Second chaired cases for junior trial counsel.

3. Chief Legal Assistance Division (1990-1991) Supervised 4 legal aid attorneys providing full range of non-criminal legal advice to soldiers, family members and retirees. During Desert Shield/Storm supervised up to 20 lawyers providing pre-deployment advice to over 25,000 soldiers.

4. Administrative Law Officer – (1989-1990) Provided legal opinions on all topics of command including personnel, investigations, and administrative

discipline. Represented the command before the MSPB and EEOC and in administrative discharge proceedings.

ix. US Army Student Detachment, Fort Benjamin Harrison, IN, with duty at the University of Florida College of Law, Gainesville, FL. Student Officer attending Law School at UF Law under the Judge Advocate Generals Funded Legal Education Program. JD with honors awarded May 5, 1989. Order of the Coif and Phi Kappa Phi awarded.

x. US Army Field Artillery School Fort Sill, OK (1985-1986). Student Officer in the Field Artillery Officer Advanced Course – awarded diploma – Commandant's List.

xi. 1st Battalion (Airborne) 320th Field Artillery, 82d Airborne Division, Fort Bragg, NC (1982-1985).

1. Battalion Supply Officer (S-4) (1984-1985). Responsible for approx. $1M unit budget, supply requisitions, vehicle fleet management, property accountability and unit mess hall for an airborne field artillery battalion. Promoted to Captain, December 1984.

2. Battery Executive Officer (Jan 1984-Aug 1984). Second in command of airborne artillery battery with 6 -105mm howitzers. Responsible for 90 soldiers, vehicle maintenance and firing battery operations in combat training situation.

3. Fire Direction Officer (Sept 1982 – Dec 1983). Responsible for section providing firing data to 6-gun howitzer battery. Responsible for safe and in combat, lethal, fires of battery. Deployed to combat in Grenada in October 1983. Supervised firing of combat fire missions in support of Army Ranger and 82d Airborne Division operations.

4. Fire Support Team Chief (Jan 1982 – Sep 1982). Led a team of 8 observers and their radio operators in support of an Airborne Infantry Company. Conducted observed fire operations and infantry operations employing mortar, artillery and close air support. Promoted to First Lieutenant November 1982.

xii. US Army Field Artillery School, Fort Sill, OK (Aug 1981 – Jan 1982). Attended Field Artillery Office Basic Course. Distinguished Honor Graduate (top graduate) of course.

xiii. US Army Infantry Center and School, Fort Benning, GA (June 1981 – July 1981). Attended Basic Airborne Course – awarded parachute badge.

xiv. US Military Academy, West Point, NY (July 1977 – May 1981). Cadet at US Military Academy obtaining 4-year degree and commission as a Second Lieutenant, US Army.

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

I am assigned to the felony criminal division in Putnam County (Palatka) Florida. I began this assignment in January 2019. We have approximately 1600 new felony cases per year. Until COVID-19 we were trying 2-4 jury trials per month to verdict. I am Capital Case certified and have 3 current capital cases (1 pre-trial; 2 re-sentencing).

I also handle the Veterans Treatment Court Division which I helped found in 2014-2016. Originally established in St. Johns County, the division now handles veterans from Putnam and Flagler Counties as well. We average 30 participants at any time. We have graduated about 40 veterans and so far, have had only one incidence of re-offense.

From December 2014 through January 2019 I was assigned to a Unified Family Court division in St Johns County handling all aspects of family law including dissolution, paternity, injunctions, dependency, delinquency and mental health matters.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

	Court			Area of Practice	
Federal Appellate	2	%	Civil	35	%
Federal Trial	3	%	Criminal	3	% (military only)
Federal Other	2	%	Family	30	%
State Appellate		%	Probate	33	%
State Trial	85	%	Other		%
State Administrative	5	%			
State Other		%			
TOTAL	100	%	TOTAL	100	%

NOTE: These percentages apply to my pre-judicial practice.

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	Est 20	Non-jury?	Est 35
Arbitration?		Administrative Bodies?	Est 15
Appellate?			

NOTE: These percentages apply to my pre-judicial practice.

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

I have not had the honor of arguing any such matters. I have served as an Associate Judge on the 5th DCA. All of the cases resulted in PCA decisions so there are no written opinions.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

I have been on the bench for more than five years.

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more*.

I have been on the bench for more than five years.

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

I have been in court virtually every working day of the past five years as a judge.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

Not Applicable.

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

Not Applicable.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

a. US v. Williams - 39 MJ 758, (US Army Court of Military Review 1994) (trial in 1992) - criminal prosecution of soldier accused of attempted premeditated murder and drug distribution. Jury Trial - Verdict guilty - 20-year sentence - reduced on appeal in citation noted; defense counsel the Honorable Virginia Carlton (admitted in U.S. Military and in Mississippi - now Judge on the Mississippi Court of Appeals), co-prosecuting counsel Douglas Dribben (Admitted in U.S. Military and Missouri – (301) 677-9484, 2529 Rolling Forest Drive, Hanover, MD 21076). This case was significant as it involved multiple issues involving pre-trial confessions and other inculpatory statements by the accused. The appeals court later struck down admission of one statement by the victim that we fought to have admitted as opinion evidence and as (ironically) the equivalent of Florida "Williams Rule" evidence. The Appeals Court noted that all evidence, otherwise admissible, must also be subject to a basic probative/unduly prejudicial analysis. The Appeals Court left the conviction intact but reduced the accused's sentence. The judge in this case was (now) COL Keith Hodges (USA Retired) 912-264-6416. I was lead counsel in this case from investigation through conviction.

b. My last military court-martial (as a direct litigator - as trial counsel /prosecutor for the Army) involved a young soldier who was absent without leave from Fort Benning. I cannot now recall the soldier's name. During the trial, his counsel (then) CPT Kevin Govern (now Professor, Ave Maria School of Law 1025 Commons Circle, Naples, FL 34119, (239)687-5390), over his client's objections, raised the issue of his client's sanity. As Government representative we arranged for the accused to appear before two separate one-person (minimum due process) sanity reviews. He "passed" both and after a lengthy hearing, was found competent to stand trial. At trial, the judge asked whether he should consider the evidence from the sanity hearings on the merits - as trial counsel I agreed to this knowing that my burden might be higher. The evidence of his absence was conclusive. Later in the trial, defense counsel had to ask for a hearing regards his client's intent to commit perjury. After appropriate warning, the accused took the stand and was subject to cross-examination. His statements made it clear he was either lying or terribly confused about reality. He was convicted. In an unreported case on appeal, his conviction was struck down with a holding that the accused should have been granted a full competency/sanity review. In retrospect, I agree wholeheartedly with the appellate finding. This case reinforced for me that as a litigator and prosecutor, justice demands a balanced approach to advocacy. I was also impressed by the defense counsel's attempts to seek justice while preserving the integrity of the system. The trial judge in this case was COL Keith Hodges - same information above.

c. Swann v. Swann - St. Johns County Circuit Court (not reported) Case DR05-1041 - I represented the respondent, husband in a limited appearance in a hearing regarding the post-divorce division of military retired pay. This case, before (now retired) Judge Edward Hedstrom, involved a highly specialized area of inquiry involving the interaction of state domestic relations orders, federal military pay regulations and federal law relative to division of military retired pay. Opposing counsel was Jill Barger (current address PO Box 1131, Chester, VT 05143 (904) 806-3936) While military members are protected by a series of federal and state laws, it is incumbent on the parties to instruct the court. While I disagreed with the outcome, on a purely procedural basis, I believe Judge Hedstrom took the time and made the considerable effort to inform himself of the law in this case. I have used this as a great example of judicial conduct. The trial Judge was Edward Hedstrom - now retired and in private practice (Hedstrom & Harris, 601 St. Johns Ave, Palatka FL 32177, (386) 385-3101).

d. Van der Linden v. Van Hees - Circuit Court - St. Johns County - DR 12 -386 - (the Late) Judge Clyde J. Wolfe. Opposing Counsel was Samuel Jacobson (Bledsoe, Jacobson, Schmidt Wright & Sussmann, 501 Riverside Ave, Ste 903, Jacksonville, FL 32202 (904) 398-1818). This matter involved a two-day bench trial on the issue of relocation of the minor children of the marriage. The case involved the application of a complex multi-factor statutory standard for relocation of minor children as well as use of expert testimony. Co-Counsel Patricia Kuendig, (PO Box 684079, Park City, UT 84068 (435) 200-4691)

e. Vaden v. Willich - St. Johns County Circuit Court - Case No: CA 05-0891 - I was co-counsel for defendant along with Michael R. Freed in my former firm, Brennan, Manna & Diamond PL. (Mr. Freed's current address Gunster, 225 Water St, Ste 1750, Jacksonville, FL 32202 (904)350-7167) Judge Wendy Berger was the trial judge. We took over this case post-trial and handled all post-trial motions. This case, and several companion cases represented significant litigation against an individual and a corporation by former employees. There were companion cases in Duval County and in federal court. This series of cases taught me numerous lessons regarding management of complex and inter-related civil litigation matters. The cases (which settled confidentially) ultimately also taught me the considerable power of mediation and conciliation. Opposing Counsel Gregory Lineberry 4981 Atlantic Blvd, Jacksonville FL 32207 (904) 233-5503.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

a. State v. King, 2019 CF 56 – Order on Motion for Immunity. I recently wrote this order on a "Stand Your Ground" motion. I am solely responsible for this Order. (Enclosure 1).

b. State v. Brown, 2017 CF 1239 – Order on Motion to Dismiss (Double Jeopardy). I am solely responsible for this Order. This matter is on appeal to the 5th DCA. (Enclosure 2).

c. Bryan v. Larson, 2014 DR 1956 (St Johns County) Order on Motion to Dismiss. I am solely responsible for this Order. The appeal on this matter was dismissed by the parties. (Enclosure 3).

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

I was appointed to the Seventh Circuit in November 2014, taking the bench in December 2014. I was elected to a full term in a contested election in August 2016 with my current term starting in January 2017.

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

a. Supreme Court Judicial Nominating Commission December 19, 2019.

b. 5th District Court of Appeals Judicial Nominating Commission, June 2012 and August 2019.

c. Seventh Circuit Judicial Nominating Commission

d. September 2010; nominated to the Governor for a St. Johns County Court vacancy.

e. October 2012; nominated to the Governor for Circuit Court position.

f. November 2013 - nominated to the Governor for Circuit Court position.

g. April 2014; nominated to the Governor for Circuit Court Position.

h. August 2014 - nominated to the Governor for Circuit Court Position; appointed by Governor Rick Scott, November 2014.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

From 1990-1991 I served as a part-time military magistrate at Fort Benning, GA. This was a collateral duty to my regular duties. I was responsible for issuing search authorizations (warrants) for both military and federal criminal investigations. I conducted pre-trial confinement reviews on all soldiers placed in pre-trial detention (similar to first appearance review).

26. If you have prior judicial or quasi-judicial experience, please list the following information:

a. the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

i. Michael Hines, (904) 794-7898, 4425 US Highway 1 S Ste 105, Saint Augustine, FL 32086-3127

ii. Jennifer True, 904-619-1386, Sasso & Guerrero, 9191 RG Skinner Parkway, Unit 703, Jacksonville, FL 32256-9662.

iii. Sung Lee, 904-829-3035, Law Office of Shorstein & Lee, LLC, 305 Kingsley Lake Dr Ste 701, Saint Augustine, FL 32092-3045

iv. Norma Wendt, 904-827-5669, Public Defender's Office, 7th Judicial Circuit, 4010 Lewis Speedway Ste 1101, Saint Augustine, FL 32084-8637

v. Benjamin Rich, 904-209-1620, Office of the State Attorney Seventh Judicial Circuit, Building A, Ste. 2022, 4010 Lewis Speedway, Saint Augustine, FL 32084-8637

vi. Garry Wood, 386-326-3993, 415 Saint Johns Ave, Palatka, FL 32177-4704

b. the approximate number and nature of the cases you handled during your tenure;

i. Felony Criminal: 2800

ii. Family Law: 4000

iii. Veterans Treatment Court: 60

iv. Juvenile Dependency: 300

v. Juvenile Delinquency: 400

vi. Mental Health: 400

c. the citations of any published opinions; None;

d. descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

i. State of Florida v. Terrence Brown, Putnam County Case 2017 CF 1239 (2019) Currently on appeal to the 5th DCA. On motion by the Defendant, I dismissed the charges on the grounds of double jeopardy after a detailed review of both Florida and US Supreme Court caselaw. The order cites to unchallenged Florida Supreme Court precedent which creates a unique departure from US Supreme Court jurisprudence based on the Florida Constitution. The state is appealing. Assistant State Attorney Sharleen Sullivan; Assistant Public Defender Stephanie Park.

ii. Tracey Lynn Bryan v. Margaret Kelley Larsen, St Johns County Case 2014 DR 1956 (2015-2017). Appeal Dismissed by the 5th DCA. The petitioner was the former same sex partner of the respondent. They were never married. While together, the Respondent adopted a child from overseas. The parties jointly raised the child while their relationship was intact. After they broke up as a couple, the petitioner sued for parenting rights over the child. I granted the Respondent's Motion to Dismiss the petition for failure to state a claim for relief and wrote a detailed opinion holding that notwithstanding the recent legalization of same-sex relationships that it was not the province of the judiciary to grant the parental rights sought. Later the parties returned to court seeking a Declaratory Judgment on a settlement they reached. Again, I dismissed the action as not bringing a matter in controversy subject to the jurisdiction of the Circuit Court. Attorney Carrington Madison (Rusty) Mead and Sung Lee were the Petitioner and Respondent attorneys respectively. The Respondent was *pro se* for the Declaratory Judgment action. A copy of the initial Order to Dismiss is enclosed at Enclosure 3 as a writing sample.

iii. State of Florida v. George Cochren, St Johns County 2014 CF 832 (2017-2019). Mr. Cockhren was one of the first participants in the St. Johns County Veterans Treatment Court. He entered the program on February 23, 2017, on a violation of probation. Within two months he also had a new law violation in Duval County for a substance related charge. He had several jail sanctions while in the VTC. Both he and the treatment team persevered, however, and he graduated from the Court on February 14, 2019 after over a year of sobriety. All of his fees were paid. He was employed and, perhaps most importantly, he was reconnected with his family. He had been facing over 5 years in the Department of Corrections if he

had not participated in the Court. Our team learned numerous critical lessons from his experience. Real court cases have real people and real consequences.

Unfortunately, on the day Mr. Cockhren graduated, we learned that another participant took his own life after relapsing into extreme substance abuse. We also learned from this tragedy. We brought in Suicide Prevention Specialists from the Department of Veterans Affairs and had extra sessions with both the participants and the team to help manage the trauma.

iv. In the Interest of MG, LG and WB, St Johns County Case DP 16-76 (2016-2018). This case started as a dependency case involving an infant child (WB). The case soon expanded to include his two older siblings (MG and LG). Collateral cases in Unified Family Court involved injunctions filed by the dependency case workers against the Father for stalking them. The Dependency case ultimately concluded in a Termination of Parental Rights trial that stretched (unexpectedly) over four different trial days. As trial judge I ultimately granted the TPR petition. The case was upheld by the 5th DCA. A termination of parental rights case is likened to a capital case because of the high standard of proof and the significance of the rights at issue. I presided over numerous TPR cases. Each one was important because there is, short of life, no more fundamental, inherent human right, than that of two parents to raise their children. Natalie Cooper represented DCF; Brad McBride represented the Father; Deborah Alexander represented the Mother; Jennifer True represented the Guardian Ad Litem Program; Rebeccah Beller represented two of the children as special Guardian Ad Litem.

v. In the Interest of TRO, St. Johns County Case DP 15-86 (2015-2017). This dependency case presented a unique application of facts to a recently revised Florida statute. The maternal grandmother filed a Motion to Intervene to adopt the grandchild out of a dependency case that was headed for termination of parental rights. In 2016 the legislature made specific changes to Fla. Stat. § 63.082(6)(e)(1)-(8) adding several factors for the Court to analyze. While changing certain language the legislature did not change any definitions. The intervening party argued the legislature's changes did not allow a comparison of potential placements - which was the state of the law before the change in the statutes. In my Order I analyzed the change to the statute, the legislative history and ultimately ruled that the legislature's change would have been meaningless unless it was read to allow (or mandate) a comparison of placement options. The Order was not appealed. Amanda Riyad represented the DCF; Joseph Anthony represented the Mother; Jennifer True represented the Guardian Ad Litem Program; Katrina Muse represented the intervenor.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

a. Wanchic v. Wanchic - 5D15-2623 – The Fifth DCA upheld my substantive ruling but remanded the matter for me to correct the written order to conform to oral pronouncement. Lesson learned – be careful of an order written by counsel! Copy attached at Enclosure 4.
b. Quinby v. State - 5D20-928 – The Fifth DCA upheld the conviction and sentence but remanded the case to strike $100 cost of investigation. This has happened in approximately 5 other cases. The state and the public defender in the Seventh Circuit had agreed to a "standard" $100 cost of investigation; the DCA reversed holding that the state never affirmatively asserted on the record that the law enforcement agency actually requested the $100 in each case. The Fifth DCA remanded the cases to strike the fee while upholding all remaining substantive issues. Copy attached at Enclosure 5.

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

None.

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No.

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

No.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

No.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

I have no outside business interests.

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

I have not had any outside business interests.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

I have never recused myself from any class of cases. I have recused myself categorically from cases that involved the firm (and attorney) that purchased my law office when I went on the bench. I recused myself from cases in my division that involved any of my former clients.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

a. Article 31(b) Triggers, Re-thinking the Officiality Doctrine, 150 Mil L. Rev. 1, 1996; https://tinyurl.com/yxozeby4

b. Multiple Practice Notes - The Army Lawyer periodical

i. Legal Assistance Note: August 1994, pp. 58-59; https://tinyurl.com/yytjzlsk

ii. Consumer Law Note: December 1994, pp 43-44; https://tinyurl.com/yxjlfnz8

iii. Legal Assistance Note: January 1995 pp 68-71; https://tinyurl.com/y56sgzxv

iv. Legal Assistance Note: March 1995, pp 41-42 https://tinyurl.com/y2lxssur

v. Legal Assistance Note: May 1995, pp 71-72; https://tinyurl.com/y6jdz5ay

vi. Consumer Law Note: June 1995, pp 55-56; https://tinyurl.com/y5ah9zdw

vii. Legal Assistance Note: July 1995, pp 68-70; https://tinyurl.com/y3lq3rtr

viii. Professional Responsibility Note; August 1995 pp 44-46; https://tinyurl.com/y6h6gpdl

ix. Mobilization and Deployment Note: February 1996, p 37; https://tinyurl.com/y6zmqux2

x. Legal Assistance Note; May 1996 pp 29-30; https://tinyurl.com/yyzaung6

c. Letter to the Editor

i. Jacksonville Times Union – May 23, 2014 – Memorial Day at Jacksonville National Cemetery; https://tinyurl.com/y24hs33f

ii. Election Campaign Statement – Orlando Sentinel July 27, 2016; https://tinyurl.com/yyxefn8b

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

None.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

a. Veterans Day Keynote – St Johns County November 11, 2019; Video Available on YouTube – introduction starts at 43:38, my presentation starts at 47:05 and ends at 1:14:15. https://www.youtube.com/watch?v=szSqGcDbWZM&t=4458s

b. Presentations on Veterans Treatment Court:

i. St Johns County Commission – Hearing in Support of Funding for Veterans Treatment Court. May 2016. St Augustine, FL minutes of Meeting at https://stjohnsclerk.com/minrec/minutes/2016/050316mrbcc.pdf ; video of hearing at https://stjohnscountyfl.new.swagit.com/videos/30431

ii. Military Officers Association St Augustine Chapter – Fall 2016; April 2019

iii. Association of the US Army St Augustine Chapter – April 2018.

iv. St Johns County Bar Association – Summer 2016

v. Anastasia Baptist Mens Group –2017

vi. Knights of Columbus chapter St. Anastasia Church – 2016

vii. Rotary Club of St Augustine – Summer 2016; summer 2020.

viii. Rotary Club of Palatka – Sunrise Club – Fall 2019

ix. Rotary Club of Palatka – Lunch Club – Fall 2019.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

a. Troy State University – Labor Law and Employment Law Courses – Fall, Winter and Spring 1990 -1991 Fort Benning Georgia satellite campus.
b. The Judge Advocate Generals School, US Army – CLE instruction on Professional Responsibility, Consumer Law, Landlord Tenant law, Servicemembers Civil Relief Act and interviewing and counseling. August 1994 – June 1997.
c. The Florida Bar Military Affairs Committee CLE – Professional Responsibility – January 1997.
d. ABA Legal Assistance to Military Personnel (LAMP) CLE, Fall 1994, Spring 1995, Fall 1996. Professional Responsibility and Servicemembers Civil Relief Act.
e. Defense Institute for International Legal Studies Presentations:
    i. Lithuania – 1995 – US Military law, government ethics, military personnel law
    ii. Indonesia – 1999 – US Military Law, Human rights law, government ethics, law of armed conflict.
    iii. Republic of Georgia, Tbilisi Georgia, spring 2004, fall 2004 – military and government ethics, internal investigations, human rights law.
f. US Army - The Inspector General's School
    i. Government ethics – regular adjunct faculty member for all new Inspectors General in training at the School – Fall 2003 – Spring 2005.
    ii. Sarajevo, Bosnia Herzegovina – International Inspector General Training Course – summer 2004. Inspector General regulation, government ethics, personnel law.
g. The Florida Bar – Annual Military Affairs Committee CLE Symposium – January 2006 – Professional Responsibility and Government Ethics; January 2008 – Introduction to military law.
h. Rutgers University School of Law guest lecture – Abu Ghraib – lessons learned – Spring 2006.
i. Texas Womens University, Denton, TX, guest lecture – Abu Ghraib – lessons learned – spring 2008.
j. Government Information Practices – Fall 2005 – Jacksonville FL, NBI Seminars.
k. American Bar Association Legal Assistance to Military Personnel (LAMP) CLE NAS Jacksonville, fall / winter 2009 – Foreclosure mediation.
l. Probate Process in Florida – 2009 – Jacksonville, FL - NBI Seminars.
m. Flagler College – Guest lecture – multiple occasions
n. Abu Ghraib retrospective - 2009
o. Judicial Process - 2018
p. Justice Teaching presentations – Bartram Trail High School, Liberty Pines Academy, Valley Ridge Academy, Gamble Rogers Middle School, Mill Creek Elementary, Hartley Elementary (all St Johns County Schools) - various times 2006 – present.

q. Comments – Dedication of Carillon at Jacksonville National Cemetery – Mar 2, 2014; video at https://www.youtube.com/watch?v=ssQxDxpd0Cw .
r. Guest Speaker - Missing In America Internment Ceremony - Jacksonville National Cemetery - March 28, 2014.
s. Catholic Lawyers Guild, Jacksonville, FL – Summer 2016 – Reconciling Catholic Faith with Family Law.
t. Florida Coastal School of Law – 2013 – 2014 – Adjunct Faculty – taught and managed the Veterans Benefits Clinic at the school. Taught students the process of handling Veterans Benefits claims as well as supervised them in actual pro bono cases referred from Jacksonville Legal Aid.
u. Florida Coastal School of Law – Spring 2016 – guest instructor Family Law – a judge's perspective.
v. Judicial Investiture March 2015.
w. Primer on Servicemembers Civil Relief Act - Colorado State Judges Training - Denver, Colorado, June 2017.
x. Effective Collaboration in Child Support Enforcement, National Child Support Enforcement Association Annual Conference, Phoenix, AZ, August 2017.
y. The Military's Response to Domestic Violence, Florida Coalition Against Domestic Violence Annual Training May 2017; Also presented at the Florida Association of Family and Conciliation Courts in August 2016.
z. Florida Conference of Circuit Court Judges Annual Training - August 2017 - presented as part of a course on Animal Cruelty and Juvenile Delinquency - presented on the substantive law.
aa. Welcome to the Bench - Investiture of the Honorable Mitchell D. Bishop, County Judge Union County, Florida, March 2019.
bb. National Conference of Family Court Judges - Training Program - The Military Response to Domestic Violence - September 2019.
cc. Florida Trial Court Staff Attorneys Annual Training Course - presentation on Unified Family Court and the role of the staff attorney, Jacksonville, FL October 2019.
dd. Veterans Day Keynote Speech - St Johns County Veterans Day commemoration November 11, 2019.
ee. The Seminar Group –Technology in Court – Construction Law CLE – October 2020.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

a. Presidential Scholarship to attend Rollins College, Winter Park, FL (declined scholarship to attend US Military Academy).
b. US Air Force ROTC 4-year full Scholarship (declined scholarship to attend US Military Academy)
c. US Military Academy at West Point - Named as a "Distinguished Cadet" (designation awarded to the top 5% of class for each academic year - awarded for Junior and Senior years); awarded Cadet Captain rank at West Point (Regimental Adjutant, Cadet Basic

Training Regiment - Summer 1980; Regimental Operations Officer, 1st Regiment US Corps of Cadets - Fall 1980).

d. Distinguished Honor Graduate (Top graduate) - Field Artillery Officer Basic Course - Fort Sill, OK, January 1982, Awarded Order of St Barbara.
e. Commandants List - Field Artillery Officer Advanced Course - Fort Sill, OK, March 1986.
f. University of Florida College of Law - Juris Doctor with Honors (1989); Editorial Board, Florida Law Review, Chief Tax Editor, Florida Law Review; Honor Society of Phi Kappa Phi; Order of the Coif (1989)
g. Commandant's List, The Judge Advocate General's School, US Army Judge Advocate Officer Basic Course (Second in class), December 1989.
h. The Judge Advocate General's School, US Army - Named to Commandant's List of LLM Program (1993) top 20% of graduating LLM class; Specialty awarded in Criminal Law; Wrote Graduate Thesis later published at 150 Mil Law Rev. 1.
i. Outstanding Younger Federal Lawyer - Federal Bar Association (national) March 1993
j. Pro Bono service Award - St. Johns County Bar Association - December 2009, December 2011, December 2012, December 2013, December 2014
k. Florida Bar - Military Affairs Committee - Clayton Burton Award of Excellence 2010 - awarded June 2011
l. Veterans Council of St. Johns County - Colonel Ed Taylor Award - 2018.
m. Military Awards and Decorations: Legion of Merit, Meritorious Service Medal (6 awards), Army Commendation Medal (4 awards), Army Achievement Medal (4 awards), Meritorious Outstanding Volunteer Service Medal, Armed Forces Expeditionary Medal (Grenada 1983), Global War on Terrorism Service Medal, Overseas Service Ribbon, Army Service Ribbon, Senior Parachutist Badge, Department of the Army Staff Identification Badge

40. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

No.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

a. Member Florida Bar – 1989 – present
    i. Florida Bar - Family Law Rules Committee - 2020 - present.
    ii. Florida Bar - Military Affairs Committee 2005 to 2011 (Chair 2008 - 2009), 2017-2020.
b. Member, St. Johns County Bar Association, 2009 - present.
c. Military Order of the World Wars - Hereditary Perpetual Member
d. Military Officers Association of America, President Ancient City Chapter (St. Augustine) Jan 2010 to January 2012. Member 2008 – July 2020.
e. Chester Bedell Inns of Court Pupil 2007-2008; inactive alumni member at present.

f. St. Johns County Inns of Court - Member 2018 - present. Program Co-chair 2019 - 2020.

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

a. Federal Bar Association – No longer active
b. American Bar Association – No longer active
c. Jacksonville Bar Association, Chair Military Affairs Committee (2011-2012)
d. 210 Community Alliance - Board Member - 2004-2005 (Local Civic Organization)
e. Jacksonville National Cemetery Support Committee - Member 2010 - December 2014; Chair January 2012- December 2014.

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

I belong to the Knights of Columbus which does limit its membership to men who profess the Roman Catholic Faith. The Knights of Columbus is a fraternal Catholic men's organization. I believe that membership in this organization as a fraternal religious organization is, however, consistent with Canon 2 of the Code of Judicial Conduct.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

May 2008 - December 2014 - Pro Bono Volunteer with St Johns Legal Aid and Jacksonville Legal Aid - conduct client intake; participate in consumer and foreclosure review panel. Awarded St. Johns County Pro Bono Award for 2009, 2011, 2012 and 2014.

March 2008 - December 2014 - I did a variety of Veterans Pro Bono Work for veterans attempting to secure disability ratings with the U.S. Department of Veterans Affairs; I also taught students and was attorney of record on cases handled by the Veterans Benefits Clinic at Florida Coastal School of Law.

45. Please describe any hobbies or other vocational interests.

I play guitar and am the leader of the folk choir at San Juan del Rio Catholic parish; I hold a private pilot license (inactive); I am a computer hobbyist; my greatest interest outside of my professional life however, is as a father to four wonderful daughters and husband to a wonderful (and tolerant) wife - all of whom I am honored and privileged to have as family members.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

United States Army – July 1977 – May 1981 (Cadet, US Military Academy). May 1981 – June 2005 active duty (see duty assignments listed above). Retired from active duty and placed on the retired list with an Honorable Discharge June 1, 2005 as a Colonel (O-6).

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

a. Facebook: hmcgillinjr; link: https://www.facebook.com/hmcgillinjr
b. Twitter: JudgeMcGillin; link: https://twitter.com/JudgeMcgillin
c. Instagram: hmcgillin; link: https://www.instagram.com/hmcgillin/

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

My wife is Anne Smith McGillin. We were married on December [redacted] 1981 at West Point, NY. Anne is a former registered nurse. She now cares full time for our granddaughter and her elderly parents.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

a. Kristin McGillin Bozeman – [redacted] – Assistant Principal, Pedro Menendez High School, St Augustine, FL; [redacted] St Augustine, FL [redacted]
b. Kathryn Jeanne McGillin – [redacted] – Teacher, St Joseph's Catholic School, Winter Haven FL; [redacted] Winter Haven, FL [redacted]
c. Elizabeth Anne McGillin – [redacted] – Youth Minister, San Juan del Rio Catholic Church, St Johns, FL; [redacted], Jacksonville, FL [redacted]
d. Erin Leigh McGillin – [redacted] – Teacher, Bartram Trail High School, St. Johns FL; [redacted] St Augustine, FL [redacted]

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

No

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

No

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

No

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.

In the 2016 judicial election, we were late in filing a financial disclosure. I was assessed an automatic fine. I appealed the fine; the appeal was granted and the fine dismissed by the Florida Election Commission.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation.

No

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No

60. In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain.

No

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I paid an $8.00 penalty in 2014 (the year my practice was sold and I went on the bench, and $47.00 in 2016 (the year in which I received final payment for law firm sale) I had underestimated the net income for tax purposes on these two transactions and paid a small penalty for under-withholding in both years.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, provide full details as to court, date, and circumstances.

No

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.)

No

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test.

No

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

No

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

I have had the high honor to serve our Nation first in the military, then as a member of the Bar, and now on the Bench. My legal career is part of a career of service which started at West Point and continues to the present. Judges must possess superior legal skills, unquestionable ethics and a wealth of life experience. I believe I have all three. I don't claim, however, to be the smartest, the purest, or the most experienced. As I stated in my investiture "Response" speech, however, I try to live by the West Point motto - ***Duty - Honor - Country***. As General MacArthur famously stated, "those three hallowed words reverently dictate what you ought to be, what you can be, and what you will be."

Judges bear a special ***Duty*** towards the law. As a trial judge a primary duty is to determine the facts. The Courtroom is the crucible of the truth. An equally important duty of every trial judge, however, is to apply the law, as it is, to those facts. We are a common law country. There remain portions of law that are uniquely judge-made. However, the vast majority of our law is positive law, mandated by the people through their elected representatives or set forth in the State and Federal Constitutions. I was once asked if I believe in natural law. The simple answer is that there are those fundamental rights that are inherent in all people - notably life and liberty. The Founding Fathers of the Revolutionary period believed those were rights they held as British subjects only to find those rights removed by Parliamentary fiat or royal decree. Learning these essential lessons, they crafted the rights found in the Constitution and amended by the Bill of Rights and other amendments. All of those rights are utterly meaningless, however, without a judiciary willing to enforce them with fidelity. That is a judge's Duty.

Honor means integrity in all dealings - whether with opposing counsel, clients or from the bench. I have never been afraid to make an unpopular decision and have, when necessary, made recommendations directly contrary to my own personal advancement. Honor is meaningless without the courage to stand by one's convictions! I have brought that same integrity to the bench. I have, when appropriate, admitted in Orders when I made a mistake and then corrected that mistake. Honor demands nothing less. Saying that "integrity is not negotiable" isn't just a trite expression, it is my way of life.

I believe we are privileged to live in the greatest ***Country*** this world has known. I have been doubly privileged to serve in many corners of our country and the world. I have come to know Americans of every race, creed, political orientation and background. I've served with them in peace and war. I came "home" to Florida upon retirement from the Army because I love this, my adopted state (of over 30 years), as a special part of a great country. My national and international experience gives me a unique perspective. In travels overseas, I saw, quite

graphically, what happens when the rule of law fails. I visited both the former Yugoslavia and parts of the former Soviet Union. I cannot erase the memories of burned out houses in Bosnia, the mass graves at Srebrenica, or of cities ruined by years of corrupt and inept communist/socialist management in Lithuania and the Republic of Georgia. Those memories make me cherish our American legal system and America even more. We have flaws, but our system and our Country is still the best I've seen.

Finally, in my military career, and now in my time on the bench, I have had to decide the fate of many soldiers and civilians. Some of those decisions were life and death military command and leadership decisions in peacetime and in combat. Others were judicial decisions on parenting or sentencing decisions in capital cases. The decisions I made, and the actions I have taken, have given me a deep "well" of legal and life experiences from which to draw. I seek to continue to apply those diverse experiences on the 5th DCA.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

It goes against every fiber of my being to "toot my own horn." I think I bring several important characteristics worthy of consideration for appointment to the 5th DCA.

I am both a leader and a lawyer/jurist. I have served in combat as a line officer and battled in the courtroom as an advocate. I would bring that unique blend of leadership and legal skills to the 5th DCA. While I am not as young as many of the applicants, I fully intend, if appointed, to serve until mandatory retirement. My unique blended military and civilian legal background has grounded me in both law and leadership. As a military lawyer and later as a solo and small practice lawyer I simultaneously had to practice law and manage a law firm. I have made *actual* life and death decisions. I have practiced law with discipline and adherence to the rule of law.

In my trial court orders I try to explain both what the law is, and my reasoning. I understand, with particular sense of discipline, the role of the judiciary. With the very small parts of the Common law that remain as the exception, it is the judiciary's unique role to apply the law as it is today, not as any individual judge or Court might hope it should be. It is important to understand and apply the history of the law, to retain fidelity to the roots of the law. A legal system adrift from precedent has little value to society. Law is fundamentally about stability and predictability. The people, the source of our power and our "bosses" need to know that a certain action will result in a certain legal consequence or reaction.

The judicial branch needs to bring innovation in the practice of law to the forefront - using both the tools already allotted to us in the Constitution and Statutes, and by working with the Executive and Legislature to bring common sense solutions forward for our State. In St. Johns County, I, along with the Chair of our Veterans Council worked for several years to create the Veterans Treatment Court. We started the effort before I applied for the bench. We created the Court using the statutory framework that already existed. We adapted Court processes and advocated for administrative changes in the Seventh Circuit that allowed us to bring the Court

into being. I took the time out of my Family Law docket to both steer the creation of the Court and then, upon implementation, to preside over it. We coordinated with the County Commission and with stakeholders such as the Sheriff, State Attorney, and Public Defender to build consensus. We started with a goal of spending no new dollars in the effort. Ultimately, we concluded that we needed one full time employee to administer the program. We presented a compelling cost savings proposal to the County Commission and secured funding for the position. More recently, we expanded that Court to include Putnam County as well.

The principal duty, however, of an appellate judge is to rule on matters of great consequence. A minority of cases make it to the level of intermediate appeal. For the vast majority that make it to the 5th DCA, only a small number proceed further. For vast majority of appellants, the 5th DCA is the end of their appeal. That finality comes with a special responsibility to explain the Court's reasoning and to map out the precise contours of the law. The very best opinions from our appellate courts and the Supreme Court are clear, concise and bear true fidelity to precedent of higher courts. Real judicial leadership requires both the discipline to study the law and the facts, and the courage to make the hard calls. I believe, indeed, I pray, that I bring those two characteristics to Court every day.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

a. Paul T. Mikolashek, Lieutenant General, US Army (Retired) - former The Inspector General of the US Army; Home address: [redacted]
b. Brandon Patty, St. Johns County Clerk of Court, 4010 Lewis Speedway, St Augustine, FL (904) 819-3600.
c. Patrick Kilbane, Attorney, [redacted] Jacksonville Beach, FL 32350, [redacted]
d. Daniel Bean, Attorney (Also Captain, U.S. Navy Reserve (Retired), Abel Bean Law, 50 N. Laura Street, Suite 2500, Jacksonville, FL 32202, 904-516-5423
e. Michael R. Freed, Attorney, Gunster Law, 225 Water Street, Suite 1750, Jacksonville, FL 32202, (904) 354-1980
f. Thomas Schacht, Businessman, [redacted] Switzerland, FL 32259 [redacted]
g. William Dudley, Chair, St. Johns County Veterans Council, Lieutenant Colonel, US Air Force Reserve (Retired). [redacted] St Augustine FL 32086, [redacted]
h. Megan Wall - Managing Attorney - St. Johns Legal Aid, 222 San Marco Avenue, St. Augustine, FL (904) 827-9921
i. Robert J. (Jeff) Barham - Attorney - Lieutenant Colonel, US Army (Retired), Home Address [redacted], Irmo, SC [redacted].

j. Thomas Norton - retired NY Police Officer - Former Neighbor - St. Augustine, FL 32092 [redacted]

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 6th day of October 2020.

Howard O. McGillin Jr.

Printed Name

Signature

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $120,516.03

   Last Three Years: $160,688.04 $158,038.04 $149,731.98

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $120,516.03

   Last Three Years: $160,688.04 $158,038.04 $149,731.98

3. State the gross amount of income or loses incurred (before deducting expenses or taxes)

   Current Year-To-Date: $175,881.87

   Last Three Years: $233,450.74 $228,895.46 $219,160.71

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

   Current Year-To-Date: $55,365.84 (all funds are from military retired pay)

   Last Three Years:$72,762.70 $70,857.42 $69,428.73

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

   Current Year-To-Date: $48,618.59 (all funds are from military retired pay)

   Last Three Years: $63,434.83 $61,722.13 $58,844.65

FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 2019

Please print or type your name, mailing address, agency name, and position below:

FOR OFFICE USE ONLY:

LAST NAME — FIRST NAME — MIDDLE NAME:
McGillin Howard Ogle Jr.

MAILING ADDRESS:
PO Box 758

CITY: Palatka ZIP: 32178 COUNTY: Putnam

NAME OF AGENCY:
Florida Courts - Seventh Circuit

NAME OF OFFICE OR POSITION HELD OR SOUGHT:
Circuit Judge

CHECK IF THIS IS A FILING BY A CANDIDATE ☐

PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2019 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of December 31, 20 19 was $ 238,238.22.

PART B -- ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use, whether owned or leased.

The aggregate value of my household goods and personal effects (described above) is $ _____

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)	VALUE OF ASSET
See Continuation Sheet	

PART C -- LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
See Continuation Sheet	

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

(Continued on reverse side)

PART D -- INCOME

Identify each separate source and amount of income which exceeded $1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2019 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

☐ I elect to file a copy of my 2019 federal income tax return and all W2's, schedules, and attachments.
[If you check this box and attach a copy of your 2019 tax return, you need not complete the remainder of Part D.]

PRIMARY SOURCES OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
See Continuation Sheet		

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person--see instructions on page 5]:

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
None			

PART E -- INTERESTS IN SPECIFIED BUSINESSES [Instructions on page 6]

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2	BUSINESS ENTITY # 3
NAME OF BUSINESS ENTITY	None		
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

PART F - TRAINING

For officers required to complete annual ethics training pursuant to section 112.3142, F.S.

☐ I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Howard M. Gillespie

SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

STATE OF FLORIDA
COUNTY OF St. Johns

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 30 day of April, 2020 by Howard M. McGillespie, Jr.

Ashanti Austin

(Signature of Notary Public--State of Florida)

Ashanti Austin
Comm. #GG977345
Expires: April 9, 2024
Bonded Thru Aaron Notary

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ *OR* Produced Identification _____

Type of Identification Produced _____

If a certified public accountant licensed under Chapter 473, or attorney in good standing with the Florida Bar prepared this form for you, he or she must complete the following statement:

I, _____, prepared the CE Form 6 in accordance with Art. II, Sec. 8, Florida Constitution, Section 112.3144, Florida Statutes, and the instructions to the form. Upon my reasonable knowledge and belief, the disclosure herein is true and correct.

_____ _____
Signature Date

Preparation of this form by a CPA or attorney does not relieve the filer of the responsibility to sign the form under oath.

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

Form 6A. Disclosure of Gifts, Expense Reimbursements or Payments, and Waivers of Fees and Charges

All judicial officers must file with the Florida Commission on Ethics a list of all reportable gifts accepted, and reimbursements or direct payments of expenses, and waivers of fees or charges accepted from sources other than the state or a judicial branch entity as defined in Florida Rule of Judicial Administration 2.420(b)(2), during the preceding calendar year as provided in Canons 5D(5)(a) and 5D(5)(h), Canon 6A(3), and Canon 6B(2) of the Code of Judicial Conduct, by date received, description (including dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid, or waived), source's name, and amount for gifts only.

Name: Howard Ogle McGillin Jr Work Telephone: 386-329-0266

Work Address: 515 Reid Street Palatka FL Judicial Office Held: Circuit Judge

1. Please identify all reportable gifts, bequests, favors, or loans you received during the preceding calendar year, as required by Canons 5D(5)(a), 5D(5)(h), and 6B(2) of the Code of Judicial Conduct.

DATE	DESCRIPTION	SOURCE	AMOUNT
	None		$
			$
			$
			$

☐ Check here if continued on separate sheet

2. Please identify all reportable reimbursements or direct payments of expenses, and waivers of fees or charges you received during the preceding calendar year, as required by Canons 6A(3) and 6B(2) of the Code of Judicial Conduct.

DATE	DESCRIPTION (Include dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid or waived)	SOURCE
	None	

☐ Check here if continued on separate sheet

CONTINUE TO PAGE 2 FOR OATH

OATH

State of Florida

County of Putnam

I, Howard Ogle McGillin Jr, the public official filing this disclosure statement, being first duly sworn, do depose on oath and say that the facts set forth in the above statement are true, correct, and complete to the best of my knowledge and belief.

(Signature of Reporting Official)

(Signature of Officer Authorized to Administer Oaths)

My Commission expires 4/9/24

Ashanti Austin
Comm. #GG977345
Expires: April 9, 2024
Bonded Thru Aaron Notary

Sworn to and subscribed before me this

30th day of April, 2020

Form 6B. Report of Business Interests

Instructions: List the names of any corporations or business entities, not otherwise identified on Form 6, in which you had a financial interest as of December 31 of the preceding year. If no business interests, or the interests are already identified on Form 6, then indicate "None," or "N/A." Attach additional pages as necessary. This form is filed only with the JQC.

Name of Judge: Howard Ogle McGillin Jr Telephone: 386-329-0266

Address: 515 Reid Street Palatka FL 32178 Position: Circuit Judge

Name of Business Entity	Address of Business Entity
None	

I certify that the foregoing information is complete, true, and correct.

Howard O McGillin

JUDGE'S SIGNATURE

OATH

State of Florida,
County of Putnam.

Sworn to (or affirmed) and subscribed before me by means of

☒ physical presence or ☐ online notarization, this 30 day of April,

20 20, by Howard Ogle McGillin Jr (Name of Judge).

Ashanti Austin.
(Signature of Notary)

Notary Seal

Ashanti Austin
Comm. #GG977345
Expires: April 9, 2024
Bonded Thru Aaron Notary

Personally Known ☑, or Produced Identification ☐.

Identification Produced: _____.

Continuation Sheet – Form 6 Full and Public Disclosure of Financial Interest
Howard O. McGillin Jr
2019 Report

TABLE B ASSETS

Asset Name		Value
[redacted]	$	695,000.00
2019 Subaru Forester	$	26,074.00
2017 Subaru Forester	$	20,216.00
2017 Subaru Impreza	$	17,131.00
2015 Toyota RAV 4	$	14,115.00
Bank of America Checking	$	5,498.88
USAA Checking	$	15,840.49
USAA Savings	$	4,212.78
USAA Money Market	$	3,252.60
USAA IRA	$	16,559.26
Apple Stock	$	13,687.03
CSX Stock	$	9,029.37
Florida Pre-paid College Fund	$	466.65
Principal Rollover IRA	$	64,423.63
Total	$	905,506.69

TABLE C LIABILITIES

Name and Address of Creditor		Amount of Liability
Subaru Motors Finance C/O Chase, P.O. Box 9001083, Louisville, KY 40290-1082	$	30,147.80
Subaru Motors Finance C/O Chase, P.O. Box 9001083, Louisville, KY 40290-1083	$	16,793.01
VyStar Credit Union, P.O. Box 45085, Jacksonville, FL 32232-5085	$	10,244.75
USAA Federal Savings Bank 10750 McDermott Freeway San Antonio, TX 78288-9876	$	10,333.80
Quicken Loans, 1050 Woodward Avenue, Detroit MI 48226	$	627,337.00
Total	$	694,856.36

TABLE D – INCOME 2019

Source of Income	Address	Amount
US Army Retired Pay -- Defense Finance and Accounting Service	PO Box 713 London, KY 40742	$ 72,762.70
Florida State Courts	200 E. Gaines St Tallahassee, FL 32399	$ 157,988.04
	Total	$ 230,750.74

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 5, 2020

JNC Submitting To: 5th District Court of Appeals

Name (please print): Howard Ogle McGillin Jr.

Current Occupation: Circuit Judge

Telephone Number: [redacted] Attorney Number: 814600

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one):
☒ White, non-Hispanic
☐ Hispanic
☐ Black
☐ American Indian/Alaskan Native
☐ Asia/Pacific Islander

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Printed Name of Applicant: Howard Ogle McGillin Jr.

Signature of Applicant: 

Date: October 6, 2020

Enclosure 1 – Writing Sample

State v. King, 2019 CF 56 – Putnam County

Order on Motion for Immunity

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

CASE NO.: 2019000056CFAXMX

DIVISION: 52:

STATE OF FLORIDA
VS.
RONDALE KING,
DEFENDANT
_____/

Order on Motion for Immunity

THIS CAUSE came before the Court on 09/04/2020. The State of Florida was represented by Assistant State Attorney JENNIFER DUNTON. The Defendant, RONDALE KING, was represented by ROSEMARIE PEOPLES. The Court, having heard the testimony of witnesses, and observing and evaluating the demeanor of the witnesses, considering the evidence of record and reviewing the file, hearing argument of counsel and being otherwise fully informed on the premises thereof, hereby finds as follows:

SECTION I: Procedural Posture

The trigger is pulled. The firing pin strikes the primer and ignites gunpowder causing an explosive expansion of gases in the chamber of the firearm. Those gases propel a bullet down the barrel. The bullet leaves the control of the firearm in a split second on its path to the point of aim. The bullet entered Jahme Jones above his left elbow and passed through his arm. It did not strike the bone. It exited his arm *below* the elbow. This is the first indication that the bullet was on a downward trajectory. After leaving his arm, the bullet re-entered his body on his left flank or side. It passed diagonally through his torso at a sharply downward angle. The fully jacketed bullet passed through the intestines and came to rest in his right hip. While passing through his body it nicked the spine and damaged the aorta.

The aorta is the largest blood vessel in the human body. Damage to the aorta results in loss of a large volume of blood causing hypovolemic shock from the loss of blood volume. Unless immediate surgical intervention is provided there is almost no chance of recovery from such an injury. The bullet, being fully jacketed did not expand. It did not ricochet off any bones. Its path was dictated by the laws of physics and human anatomy. Other than grazing the spine, there was

no evidence that any bones deflected the bullet from its straight path from the barrel of the gun to its final resting place against Jahme Jones' right hip. Unfortunately, Jahme Jones died within minutes.

The State charged the defendant Rondale King with 2nd Degree murder. It is undisputed that Rondale King pulled the trigger. He claims self-defense and seeks immunity from prosecution. The state concedes that the motion states sufficient facts to meet the prima facie standard shifting the burden to the state. Many of the facts are not in dispute. Where they are, it is first this Court's and then perhaps later, a jury's duty to resolve those disputes.

Rondale King lawfully possessed the gun. He had a concealed carry permit allowing him to carry a firearm on his person. He does not claim that he accidentally fired the gun. He does not claim there was a malfunction. He pulled the trigger intentionally. The question is what was his intent? If his intent was to defend himself, he may be entitled to immunity from prosecution. If that is true, this case is over. If not, a jury will have to decide if he meant to kill, to injure, or if there was no intent to harm, but only to defend himself.

The incident happened fairly quickly. The law, however, is complex. Rondale King had to make split second decisions which separate the lawful use of a powerful tool of self-defense from the crime of murder. It is in those split seconds that this Court must analyze what we can know, what we can infer, and what we can conclude, went through his mind. It turns out we don't just care about what he actually thought, we have to measure that against what a perfectly reasonable person in the same split seconds would have thought.

SECTION II: Legal Standard

A. The Motion for immunity invokes Fla. Stat. §776.032 "Immunity from criminal prosecution and civil action for justifiable use or threatened use of force" otherwise known as the Stand Your Ground law. The statute was revised in 2017 to change the burdens on the parties. 2017 Fla. Laws ch. 72, 2017 Fla. SB 128. Under the current statute "once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1)." Fla. Stat. § 776.032 (4)

B. The Defendant's motion did not specify which substantive immunity he claimed. The statute has three broad categories. Counsel for Defendant posited two which were potentially

applicable to this situation. Either could provide full immunity. See generally *State v. Wonder*, 162 So. 3d 59 (Fla. 4th DCA 2014). Fla. Stat. § 776.012 "Use or threatened use of force in defense of person" and Fla. Stat. § 776.013 "Home Protection; Use or threatened use of Force; presumption of fear or great bodily harm." For reasons set forth below, the second is not applicable.

C. Fla. Stat. § 776.013 (Defense of Home) does NOT appear to apply for definitional reasons. That statute only applies, by its own terms to actions "in a dwelling or residence in which the person has a right to be." Fla. Stat. § 776.013(1). "Dwelling" and "residence" are defined in the statute. "'Residence' means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest." Fla. Stat. § 776.013(5)(b). "'Dwelling' means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night." Fla. Stat. § 776.013(5)(a). The incident in question did not occur in a physical dwelling or residence. Rather, it occurred in a common area of a multi-family housing complex.

D. Defense of Person: Fla. Stat. § 776.012(2) DOES appear to be applicable to this factual situation:

> A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

E. Case law reveals a multi-step analysis of the immunity. The Defendant must "(1) reasonably believed that using such force was necessary to prevent imminent death or great bodily harm to himself or to prevent the imminent commission of a forcible felony, (2) was not engaged in a criminal activity, and (3) was in a place he had a right to be." *State v. Chavers*, 230 So. 3d 35, 39 (Fla. 4th DCA 2017).

F. A Defendant is NOT entitled to assert the reasonable use of force if he "was involved in criminal activity just prior to the shooting." *State v. Kirkland*, 276 So. 3d 994, 996 (Fla. 5th DCA 2019). In the *Kirkland* case, the Defendant ***initiated*** the use of force by illegally displaying a

firearm and making threatening movements towards other persons. When another threatened the use of a firearm, Kirkland responded by shooting into the building where the other person had retreated. The Fifth DCA found that his initial illegal use or threat of deadly force precluded his claim of self-defense once threatened himself with deadly force.

G. The text of the statute further compels a more detailed analysis of the first *Chavers* element. There are three critical sub-parts applicable to the analysis. The analysis actually proceeds from the end to the beginning. First, does the situation objectively qualify for the use of deadly force? Specifically, does the situation involve the use of deadly force, threat of deadly force or the prevention of a forcible felony against either the Defendant or another? Second and third, would a reasonably prudent person in the same circumstances as the Defendant's conclude that the responsive use of deadly force was *necessary* to prevent the harm. The first analysis is about the circumstances of the event. The second and third are a combined objective / subjective analysis. Did the Defendant actually believe that a particular level of force was necessary (subjective) and was that force such that the "reasonable person" would reach the same conclusion under the circumstances (objective)?

H. Deadly Force is limited to use in situations in which death or great bodily harm is caused or threatened or when used to prevent a "forcible felony." The statute defines "forcible felony" very broadly.

> "Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; *and any other felony which involves the use or threat of physical force or violence* against any individual. Fla. Stat. § 766.08. {*emphasis added*}

SECTION III: Findings of Fact and Conclusions of Law

A. Findings of Fact

(1) The State and the Defendant stipulated that the allegations in the Motion asserted a *prima facie* claim of self-defense immunity. The Court progressed, based on this stipulation, to hear evidence first from the state and then from the Defendant on the issue of whether the State could overcome the claim of immunity by clear and convincing evidence.

(2) The Court heard from the following witnesses:

a) Dr. Predrag Bulic, Medical Examiner for District 23, St Johns, Putnam and Flagler Counties (State Witness);

b) Syrhonda Leonard, eyewitness (State Witness);

c) State Attorney Investigator Michael Shane Harrell (State Witness)

d) Andre Purdy, eyewitness (Defense Witness);

e) Cleveland Hobbs, Palatka Housing Authority, (Defense Witness); and,

f) Catherine Robinson, eyewitness (Defense Witness).

(3) The Court received numerous exhibits, including, notably, photographs of the scene and autopsy photographs of the decedent.

(4) The Court finds the following facts:

a) On December 31, 2018 Jahme Jones traveled from the home in which he was staying to the home of Rondale King. Syrhonda Leonard testified she drove to Mr. King's house with Mr. Jones and Promisse Bolling in her car. Jahme Jones got out of the car and knocked on Rondale King's door. There was no answer. As he was returning to her car, the witness heard shouting and calling coming from a gazebo located to her rear, in a common area of the apartment complex. Rondale King was apparently part of the group at the gazebo.

b) Jahme Jones passed her car and walked towards the gazebo and Rondale King while the shouting continued. The contents of that shouting are hearsay; we don't know the exact words. We do know they did not sound friendly. Within a few moments Ms. Leonard observed Jahme Jones and Rondale King "tussling". She described this as standing in close quarters and essentially wrestling in an upright position. They then fell to the ground and continued wrestling on the ground. After some amount of time on the ground the parties stood up and separated. The witness testified that Mr. Jones began walking away.

c) At this point Mr. King produced a firearm and fired a warning shot into the air. Mr. Jones then turned around and re-approached Mr. King. They locked hands and wrists together and stood in close proximity to each other for what she described as to up to five minutes. At the end of this time they let go of each other and Mr. Jones again backed away from Mr. King. Mr. Jones raised his hands up. She demonstrated the gesture at once with his hands up with his upper

arm parallel to the ground at shoulder level *and* then with his upper arm at his side but with his forearm raised. She then saw the Defendant shoot Mr. Jones, who fell to the ground.

d) Mr. Andre Purdy was also present. His testimony is consistent with Ms. Leonard's. He was part of the group with Mr. King at the Gazebo. Therefore, he had a different visual perspective as the events unfolded. Two sidewalks led from the parking area where Ms. Leonard had parked towards the gazebo where Mr. Purdy, the Defendant and their friends were gathered. The sidewalks ran along each side of the central grassy area which contained the gazebo. Mr. Purdy claims that he saw one person on the left sidewalk and one person on the right sidewalk approaching the gazebo when Mr. Jones approached Mr. King via the grassy area in the center. He claims there were three or four people in the car with Mr. Jones. All of the persons approaching Mr. King were shouting and yelling. Again, we don't know the exact words; they were not friendly. Mr. Purdy saw King and Jones wrestling and then heard the warning shot. He then decided to leave the area. He testified he only heard the fatal shot. He did not witness the final fatal encounter.

e) Ms. Catherine Robinson was also an eyewitness. She was called by the defendant.

(1) She lived in a home to the side of the grassy area. The sidewalks allow access to houses like hers from the parking area where Ms. Leonard had parked. The sidewalks frame the grassy area. She was on her front porch for most of the events.

(2) She was also the least reliable witness. While still on the stand, she admitted to perjury in the early part of her testimony.

(a) At first, she claimed she only saw the very first part of the altercation and went inside before the fatal shot. On cross examination, however, she admitted that in a prior interview, she had admitted to seeing the fatal shot. Upon further cross examination she also admitted she previously claimed Jahme Jones had lunged towards Rondale King just before the fatal shot.

(b) She admitted to knowing the mother of the victim. She never explained why she lied in her first account of the incident. It appears, however, that she was trying to minimize fault on the part of the victim. Her actions give rise to an inference that she may have been motivated by a misguided attempt to help the victim's family.

(3) Her general description, in broad brushstrokes, was consistent with the other witnesses. She saw Jones walking towards the gazebo and heard the yelling and shouting. She is the only witness, however, who claims to have seen the victim "lunging" towards the Defendant just before the shot.

f) State Attorney Investigator Harrell testified about the interview of the Defendant shortly after the incident. The Defendant made no attempt to flee the scene and was identified to law enforcement and was interviewed in fairly short order. The Defendant was advised of his rights and consented to be interviewed. In his interview, however, he claimed not to have known Mr. Jones. We know this to be false. He admitted to wrestling with Mr. Jones but claimed that he fired the fatal shot while they were on the ground wrestling. He further asserted the firearm was in a holster in his wasitband and that he drew it while on the ground. He claimed the victim was trying to "damage" him. He did not know how many times he fired the weapon.

g) The Medical examiner, Dr. Bulic, conducted the autopsy of Mr. Jones. He testified that he observed wounds consistent with only a *single* gunshot.

(1) As described above in the introduction, the bullet entered above Jahme Jones's left elbow and exited the first time below the elbow. It then entered his left flank. The bullet continued on a "steeply downward trajectory" passing through the stomach, the small intestine, damaging the aorta, grazing the spine and coming to rest in Mr. Jones's right pelvic area. As described in the introduction above, the wound to the aorta was likely the fatal wound.

(2) The Medical Examiner testified there was no evidence of burning or stippling around the first entry wound such as would be consistent with either a shot fired at point-blank range or a shot fired within 2 feet of the decedent. Photographs and examination of the hands of the decedent revealed no injuries consistent with the use of his hands as weapons (fist). There was neither any bruising nor any abrasions on either of the Mr. Jones's hands. The State introduced photos of the wounds and of Mr. Jones's hands into evidence.

h) Cleveland Hobbs of the Palatka Housing Authority (PHA) testified that Jahme Jones was not permitted on any PHA property. The PHA had issued a trespass notice to Mr. Jones.

B. Analysis:

(1) Was the Defendant lawfully in the location when the incident occurred? **Yes**. The Defendant was lawfully in the location at the time of the incident. The Gazebo and common area park are all part of the PHA facility at which the Defendant resided. There is no question that he was lawfully at the location.

(2) Was the Defendant engaged in criminal activity? **No**. When Mr. Jones first approached him and even when they "tussled" on the ground, the Defendant was not engaged in any illegal activity. He did not clearly instigate the physical confrontation with Mr. Jones. The situation becomes more muddled, however, when the parties separated.

a) It appears that Mr. Jones was retreating from the confrontation when the Defendant drew his firearm and fired the "warning shot." Neither side addressed the significance of this shot. There is no "warning shot" exception in Florida law. Indeed, the concept is not a legal one, but vernacular. It is not clear to the Court that the Defendant was entitled at this point to draw his concealed weapon and use it, essentially making a display of deadly force. It does not appear that the display and discharge of a weapon was necessary at this stage as Jones was retreating. Indeed, Jones, who was trespassing, did not have the stand your ground privilege himself. Retreat was both the prudent and lawful action for him. The "warning shot" indeed likely constituted a basis for Jones to have reasonable fear that *his* life was in danger. This "shot" puts the case close to the precedent in *Kirkland* above. This Court is not, however, stopping its analysis at this point, although such may be merited.

b) The victim, Jahme Jones *did not* have the privilege to stand his ground under Florida law. Recall that he was not lawfully on the property; he was trespassing. His option at this point was limited to traditional common law self-defense requiring first an attempt to retreat and only after unsuccessful retreat, the possible application of defensive force. He chose to reengage and commenced wrestling with the Defendant.

c) By Ms. Leonard's description, when the two stood up after wrestling on the ground, they were holding each other's wrists. They continued in this posture for some time while they spoke to each other. While this was not a friendly conversation, it did not appear to escalate. To the contrary, when they again separated, Mr. Jones adopted a posture that seems similar to a "surrender" gesture with ones' hands up and backing away. It was at this point the Defendant fired

his weapon. The Court will conclude, for the purpose of further analysis, however, that the Defendant was *not yet* in violation of the law at the point Mr. Jones backed away and raised his arms. Therefore, he was, *arguendo*, entitled to stand his ground.

(3) Having concluded the Defendant is likely eligible to *assert* the immunity, the critical question remains whether the Defendant "reasonably believed that using such force was necessary to prevent imminent death or great bodily harm to himself or to prevent the imminent commission of a forcible felony." This Court concludes it was not.

(4) Was Jahme Jones about to commit great bodily harm or a forcible felony upon the Defendant?

a) Objectively the answer this Court reaches is **No**. Jones was yelling, perhaps even cursing and calling the Defendant names. There is no evidence there was any objective threat. Indeed, as noted above, Jones retreated twice during this encounter. On the first retreat it was the Defendant who took action to re-escalate the situation. On the second, although there is a suggestion that Jones may have lunged towards the Defendant, the forensic evidence provides an alternate and more likely answer.

(1) The testimony of the Medical Examiner offers considerable insight into the events. The path of the bullet was from left to right and downward across the body of the decedent. Ms. Leonard testified the decedent had his hands up in a "surrender" position with either his upper arm perpendicular to his shoulder or perhaps parallel to his flank. The latter is consistent with the forensic evidence as the bullet passed through the elbow area before entering the lower left flank – as if his arm was down at his side. It is also clear that the shot was not fired at close range. Therefore, it could not have been fired while the Defendant and decedent were wrestling on the ground.

(2) Indeed, even the large parts testimony of Ms. Robinson is consistent with what the court finds to be the most likely scenario. The Court finds it highly likely that Mr. Jones, upon seeing the firearm raised again, turned his body with his left side facing the Defendant and likely dropped his arms to his side in a defensive ("cover") stance and likely also bent left and forward – perhaps to rush the Defendant, or perhaps to minimize his profile. This would account for the path of the bullet both through his arm from above the elbow to below the elbow and then on a "steeply downward" path through his torso (as testified by the medical examiner). What Ms.

Robinson described as a "lunge" towards Mr. King is consistent with either a defensive "ducking" maneuver or an attempt to minimize his profile to the Defendant. Ms. Leonard, the other eyewitness, did not describe Jones's motion as a "lunge." Reviewing all of the evidence, the Court finds there was NO objective threat of the application of great bodily harm.

(3) The Court also finds there is also no evidence of the likely commission of a forcible felony. Battery, as might occur in a fist fight, or the wrestling and "tussling" are both misdemeanors – not felonies. A misdemeanor battery does not justify deadly force. The misdemeanor battery is all that Mr. Jones had shown any disposition towards committing. On the contrary, the Defendant is the one who escalated to the use of deadly force. Again, the forensic evidence is telling. There is no bruising or abrasions on the decedent's hands or knuckles consistent with even a fist fight or a solid blow. While it remains a legally theoretically possibility that fists *could* be used to commit an aggravated assault, there is no evidence to support this level of violence. While it is arguable that a person *could* employ their fists in such a way as to use them to commit grievous bodily harm, none occurred here. As the court posited to the attorneys, a well-directed blow to the nose, or indeed the neck, *could* be result in grave bodily injury. However, in this case, there is no evidence, whatsoever, that Jahme Jones used this level of force. Therefore, there was no objective basis to believe the Defendant should have believed that he was about to suffer a forcible felony at Mr. Jones' hands.

b) Subjectively, the answer is also **No**. The Court finds the Defendant did not *subjectively* fear either a forcible felony or great bodily harm. The Defendant's account of the fights and of the shooting is wildly inconsistent with the observers, even the somewhat unbelievable Mrs. Robinson. His account of drawing his weapon from his waistband while pinned to the ground by the victim is possible, but mechanically unlikely. His claim that he fired the weapon while they were in close proximity on the ground is forensically implausible. There were no burn marks on the victim as would be found in such a close shot. There was no stippling from the burned gunpowder that would be exhausted and sprayed into the victim's skin if they had been within two feet of each other. As these explanations differ widely from the strong consensus of evidence, the Court has no reason to believe counsel's proposition that he reasonably feared such harm.

(5) Was the use of a firearm necessary to prevent the harm? The answer is **No**. Apart from the above analysis of whether the Defendant believed that he was about to be the victim of a

qualifying act, there was no need to use deadly force. The victim twice appeared to be retreating from the Defendant. On the first retreat the Defendant fired the warning shot – apparently without provocation. On the second retreat he fired at a man who was in the posture of surrender. The circumstances objectively, did not necessitate the use of any force, let alone deadly force. The confrontation, although heated, had apparently cooled. Deadly force was not necessary to prevent any further harm. As noted above, the Defendant's own version of the incident is incompatible with all of the other eyewitnesses. For these reasons, the Court cannot believe his counsel's assertion that he subjectively believed deadly force was necessary.

C. The State has met its heavy burden by clear and convincing evidence that the Defendant is NOT entitled to immunity from prosecution. This matter shall proceed to trial.

IT IS HEREBY ORDERED AND ADJUDGED:

The Motion for Immunity is DENIED.

DONE AND ORDERED in chambers, in Putnam County, Florida, on 05 day of October, 2020.

10/5/2020 8:54 PM
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e-Signed 10/5/2020 8:54 PM 2019000056CFAXMX
CIRCUIT JUDGE

Copies to: All parties of record:

Office of the State Attorney

ROSEMARIE PEOPLES, Assistant Public Defender

Enclosure 2 – Writing Sample

State v. Brown, 2017 CF 1239 - Putnam County

Order on Motion to Dismiss (Double Jeopardy)

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

CASE NO.: 17001239CFAXMX

DIVISION: 52

STATE OF FLORIDA
VS.
TERRANCE DEMOND BROWN,
DEFENDANT
_____ _____ _____/

Order on Motion to Dismiss or in the Alternative Preclude Evidence

THIS CAUSE came before the Court on 02/27/2019. Present in Court were the State of Florida represented by Assistant State Attorney SHARLEEN SULLIVAN and the Defendant, TERRANCE DEMOND BROWN, represented by STEPHANIE H PARK. The Court, having considered the evidence of record and reviewing the file, hearing argument of counsel and being otherwise fully informed on the premises thereof, hereby finds as follows:

SECTION I Procedural Posture

A. The Defendant was charged by information with 2 counts of assault with a deadly weapon, one count of possession of firearm by a convicted in-state felon and one count of willful discharge of a firearm from a vehicle.

B. The Defendant moved to sever the count of possession of a firearm by convicted in-state felon. The State concedes it had no objection to that severance. The State elected to try the possession of firearm by in-state felon charge first. That count proceeded to trial and a jury returned a verdict of guilty (Docket Entry Number 81). The Defendant moved for a new trial. That motion was granted (Docket Entry Number 97). As noted in the Defendant's motion, the Court held several in court and chambers conferences with the parties at which the logistical aspects of a trial on all four charges were discussed. The state elected to conduct the retrial on the firearms possession charge only.

C. The retrial was held January 23, 2019. At retrial, the state and Defendant stipulated the Defendant was a convicted in-state felon. The jury was informed of the stipulation. After

FILED IN OPEN COURT
THIS 4th DAY OF March 19
DEPUTY CLERK OF CIRCUIT COURT

deliberating, the jury found the Defendant not guilty of the charge of possession of a firearm by a convicted in-state felon. See Docket Entry Number 115.

SECTION II Legal Issues

A. The Defendant makes two arguments. First, the Defendant argues that Federal and State Constitutional rights against being twice put at jeopardy for the same criminal offence preclude a trial on the remaining counts. Second, the Defendant argues that it is fundamentally unfair under the Florida Constitution, Section I, Article 9, for the Defendant to be tried for an offense using evidence of another offense for which he was acquitted. The state objects on both grounds.

B. The state argues that the new US Supreme Court case of *Currier v. Virginia*, 138 S. Ct. 2144 (2018) coupled with a new Third DCA case, *Morris v. State*, 252 So. 3d 383 (Fla. 3d DCA 2018) are dispositive.

C. The Defendant argues that *Currier* is not applicable as it is federal precedent ruling only on the federal constitution. The Defendant argues that Florida jurisprudence applies a different analysis and mandates a different outcome. The Defendant also asserts that *Currier* does not control because only Section I and II are majority opinions. The Defendant argues that since Section III of the opinion, which held that an issue-by-issue analysis was not necessary was only a plurality opinion, that there is no precedential value to that portion of the opinion. He suggests that an issue-by-issue (collateral estoppel) analysis may still be required, particularly if the fundamental issue is double jeopardy under the Florida Constitution.

D. The State, conversely, argues that *Morris v. State* controls the outcome. In *Morris v. State*, the Third DCA ruled that post-*Currier*, a trial court need look no further than the motion to bifurcate a trial to determine if double jeopardy applies. Moreover, the *Morris* court makes no distinction in its analysis under both the US Constitution *and* the Florida Constitution.

SECTION III Conclusions of Law

A. This Court finds neither party's analysis to be wholly correct. A review of the critical precedent is in order.

B. Florida jurisprudence on this specific aspect of double jeopardy flows first from a US Supreme Court case *Ashe v. Swenson*, 397 US 436 (1970).

(1) In *Ashe*, the Defendant faced serial prosecutions for the robbery of 6 different victims, all of which occurred at the same time and place. After acquittal on the charges involving the first victim, the state perfected its case on the next victim and achieved a conviction. The US Supreme Court ultimately overturned that conviction holding that the principles of collateral estoppel were embodied in the Fifth Amendment protection against double jeopardy. The Court held the acquittal at the trial on victim one foreclosed another trial on another victim since the jury necessarily found that the Defendant was not a participant in the robbery as a whole.

(2) Florida adopted the *Ashe* analysis in *State v. Perkins*, 349 So. 2d 161 (Florida 1977). The *Perkins* Court held "the *Ashe* rule forbids the admission in a subsequent trial of evidence of an acquitted collateral crime ***only*** [***emphasis added***] when the prior verdict clearly decided in the defendant's favor the issue for which admission is sought." *Id* at 163. The *Perkins* Court also noted a circuit split in the federal appellate circuits and held:

> We agree with [the Fifth Circuit] that it is fundamentally unfair to a defendant to admit evidence of acquitted crimes. To the extent that evidence of the acquitted crime tends to prove that it was indeed committed, the defendant is forced to reestablish a defense against it. Practically, he must do so because of the prejudicial effect the evidence of the acquitted crime will have in the minds of the jury in deciding whether he committed the crime being tried. It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior defense against a crime for which he is not on trial. Therefore, we hold [*164] that evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial. *State v. Perkins*, 349 So. 2d 161, 163-64 (Fla. 1977).

(3) Two other Florida Supreme Court cases clarified the analysis and specifically found that the holding in *Perkins* was based on *Florida law*, not federal jurisprudence. In *Gragg v. State* the Court held that "a defendant who successfully severs one charge from other charges is not estopped from asserting collateral estoppel as a bar to further prosecution under the severed charge." *Gragg v. State*, 429 So. 2d 1204, 1208 (Fla. 1983). The *Gragg* Court, however, did *not* explicitly state that its outcome (and that of *Perkins*) was based on Florida law. In 1991 the Florida Supreme Court again addressed the issue in *Burr v. State*, 576 So. 2d 278 (Fla. 1991). *Burr* was a death penalty appeal. There were issues of double jeopardy and a collateral estoppel analysis in both the guilt phase and the penalty phase. The US Supreme Court had reversed aspects of *Burr* in earlier proceedings. The Florida Supreme Court stated "[t]urning now to the central issues of this case, we must acknowledge that our prior opinion in this case did not state

with sufficient clarity the requirements of *Florida* [emphasis in original] law. As a result, the [US] Supreme Court apparently perceived that our prior opinion rested on no adequate and independent state ground...." *Burr, Id* at 280. The Court went on to hold, unequivocally:

> It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior defense against a crime for which he is not on trial. Therefore, we hold that evidence of crimes for which a defendant has been acquitted is not admissible in a subsequent trial. *State v. Perkins*, 349 So.2d 161, 163-64 (Fla. 1977).
>
> *Perkins* rests entirely on Florida law. Art. I, § 9, Fla. Const."
>
> *Burr Id* at 280.

(4) The *Ashe-Perkins-Burr* analysis has held sway in all courts in Florida since 1991 on this specific issue. Several District Courts, including the Third DCA, acknowledged that *Perkins* had a specific Florida basis to apply a collateral estoppel analysis to double jeopardy cases under the Florida Constitution. In *Diaz v. State* the Third DCA held "Florida has developed its own body of law interpreting the double jeopardy clause of the state constitution. See *Burr v. State*, 576 So. 2d 278, 280 (Fla. 1991)." *Diaz v. State*, 609 So. 2d 1337, 1341 (Fla. 3d DCA 1992).

(5) The line of cases has not, however, been without debate among the Districts. The Fourth DCA suggested that the *Perkins* line of cases was tied inexorably to *Ashe* when it said "[a]s previously discussed, *Burr II* relied exclusively on *Perkins*, and *Perkins*, in turn, relied on the decision of the United States Supreme Court in *Ashe v. Swenson*, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), which held that the doctrine of collateral estoppel was a requirement of due process of law embodied in the Fifth Amendment's guarantee against double jeopardy." *Moore v. State*, 127 So. 3d 607, 608-09 (Fla. 4th DCA 2012). That case, however, analyzed, as did several other District cases, a unique fact pattern that arose in *Burr* and was repeated elsewhere. In both *Burr* and *Moore*, a Defendant was found guilty of an offense, based partially on testimony of other offenses, and then subsequently acquitted of one or more of those other offenses. Both *Burr* and *Moore* found the earlier conviction had to be vacated. This produced some anomalous results.

(6) The 1st DCA wrestled with the same facts in a case very similar to the one at bar in *Hines v. State*, 983 So. 2d 721 (Fla. 1st DCA 2008). In *Hines*, the Defendant went on trial first for a robbery with a firearm. He was convicted. He was then tried for possession of a firearm by a convicted in-state felon. The Defendant and State stipulated that Hines was a felon. The jury

in the later trial acquitted him of the firearms charge. The District Court found that second jury verdict necessarily was a specific finding that he did not use or possess a firearm on the day in question. The District Court found that under *Ashe-Perkins-Burr* the first conviction had to be vacated on double jeopardy grounds. See *Id.* The Court also certified the question to the Florida Supreme Court which initially granted a hearing. The Supreme Court later discharged jurisdiction because the Justices could not reach a 4 justice majority. *State v. Hines*, 26 So. 3d 1289 (Fla. 2010).

(7) In 2018, the US Supreme Court revisited *Ashe* in *Currier v. Virginia*. In *Currier*, the Defendant faced Virginia charges on burglary and larceny of firearms as well as a charge of possession of firearms by a convicted felon. Virginia, like Florida, allows a Defendant to move to sever such charges. "They asked the court to try the burglary and larceny charges first." *Currier v. Virginia*, 138 S. Ct. 2144 (2018). The Commonwealth acquiesced and tried the larceny and burglary cases first. The jury acquitted Currier. The Commonwealth then proceeded on the possession charge and Currier objected. *Id.* The US Supreme Court ultimately rejected Currier's argument, finding that his request for a separate trial was a complete waiver. The Court, however, noted some significant additional points applicable here. The Court noted that "*Ashe* forbids a second trial only if to secure a conviction the prosecution must prevail on an issue the jury necessarily resolved in the defendant's favor in the first trial. *Currier v. Virginia*, 138 S. Ct. 2144, 2150 (2018).

(8) Florida's Third DCA (which is the only District to have ruled on this issue since *Currier*) seized on the *Currier* holding in its decision in *Morris v. State*, 252 So. 3d 383 (Fla. 3d DCA 2018) and held that the prosecution for the severed charge of firearm possession is not barred by double jeopardy. The Third District based its ruling, in large part, on their reading of *Dunbar v. State*, 89 So. 3d 901 (Fla. 2012). Specifically, the District Court cited to a footnote in *Dunbar* stating "[t]he scope of the Double Jeopardy Clause is the same in both the federal constitution and the Florida Constitution. *Hall v. State*, 823 So. 2d 757, 761 (Fla. 2002)." *Dunbar*, *Id* at 904 n.2 (Fla. 2012). The citation to *Hall v. State* is significant. *Hall* was a case ruling on a challenge to the Florida Sentencing Code on, *inter alia*, double jeopardy basis. *Dunbar*, likewise was a challenge to a sentence correction on double jeopardy basis. Neither had anything to do with the applicability of a collateral estoppel based analysis to a subsequent trial because of a verdict of acquittal at an earlier trial. The reliance on *Dunbar* to jettison Florida's

own Constitutional analysis under other Florida Supreme Court case law may be misplaced particularly in light of the Third DCA's earlier holding in *Diaz v. State*, *Id* at 1341, in which it held *Perkins* was based on Florida law. The Third District also relied on *Gragg v. State*, 429 So. 2d 1204 (Fla. 1983), which it read, correctly, as not relying on the Florida Constitution. It is unclear why the Third DCA failed to apply its own precedent from *Diaz*, holding that *Perkins* created a unique Florida holding. It is also unclear if it considered the Florida case law after *Gragg*. There appears, however, a path to harmonize the essential elements of *Morris* and *Currier* with Florida jurisprudence as this inferior trial court does not and cannot grant itself any authority to fail to follow applicable DCA and Florida Supreme Court precedent.

C. Facts matter. Facts are within the province of this Court.

(1) These type of cases often present with a similar fact pattern. That pattern includes one or more, what may be called, "active" crimes including assault, burglary, or other alleged criminal actions taken by the defendant which include as a part of the crime, and the elements thereof, the use of a firearm. They all also include, typically, what may be referred to as the "status" crime of possession of a firearm by a convicted in state felony.[1] In all of the precedent cases the state elected to go to trial first on the underlying "action" crimes that involved the use or possession of a firearm in some other felonious act and then later try the Defendant for the "status" crime.

(2) *Gragg* and *Hines* are good examples. The *Gragg* jury asked a question about the use of the firearm and then rendered a verdict on a lesser included offense that eliminated a finding that the firearm has been used. *Id* at 1205. In *Hines*, the Defendant was convicted first of the "action" crime then acquitted of the "status" crime. The District court felt compelled by *Perkins* to grant relief. In *Hines* the Defendant stipulate to his status as a felon leaving the only issue being whether he possessed a weapon. *Hines, Id* at 724.

(3) These facts go to the core of the *Ashe* finding as quoted by the *Currier* Court. *Currier* stated that "*Ashe* forbids a second trial only if to secure a conviction the prosecution must prevail on an issue the jury necessarily resolved in the defendant's favor in the first trial. *Currier Id* at 2150. In many of the subsequent cases finding a double jeopardy violation, the

[1] This Court notes that is not truly a status crime because it does require an activity that being the acquisition of a firearm. However the status of being a convicted in state felony is what creates the prohibition on the defendant.

verdict *specifically negated* the use or existence of the firearm. The *Currier* Court did not recede from that strict analysis when applicable.

(4) It is also important to note that the Courts resist any analysis of the jury's motive. A double jeopardy analysis must be done on the factual findings only. See *Gragg, Id* at 1206 and *Jones v. State*, 120 So. 3d 135 (Fla. 4th DCA 2013). While a jury may have exercised its pardon power, anything other than a factual determination is inappropriate.

(5) In *Currier*, the Supreme Court stated the Defendant made a tactical decision to ask for two trials. The verdict in *Currier* on the larceny and robbery *did not,* however, negate the possible use or possession of a firearm. The opinion does not recite a special jury question or a finding of a lesser included offense that negated the factual finding regarding the existence of a firearm. In short, the general verdict in *Currier* provided no factual basis for an analysis of collateral estoppel. The jury could have believed (or disbelieved) a variety of witnesses, found one or more elements lacking evidence, or exercised its pardon power. There is no way to know. Those critical facts, which are, and remain elements of the *Ashe* analysis distinguish *Ashe* and *Currier*. The case at bar has one additional strikingly different fact.

(6) As noted, in most, if not all, of the precedent cases, including *Currier, Ashe, Perkins, Gragg, Burr* and *Morris*, the "action" crimes were tried first and resulted in a verdict of either acquittal or conviction of a lesser included offense that made an inescapable factual conclusion negating the possession or use of a firearm. The state (or commonwealth) then attempted to try the "status" crime later. The appellate outcome hinged on whether there was a general verdict or acquittal or a specific finding or other factual indication about the existence of the firearm. The general verdict, the *Currier* court points out, tells us nothing about the factual findings. A specific factual finding negating the factual existence of the firearm, however, has caused the Florida Courts, where such a verdict is made, to find that a retrial on that particular issue is a violation of the protection against double jeopardy under the Florida Constitution and a matter of fundamental fairness.

(7) That is not the fact pattern in *Currier* and in *Morris*. The verdicts from the first trials in both *Currier* and *Morris* did not conclusively establish a fact about the existence or use of a firearm *before* a trial on the "status" charge. The relatively straightforward waiver analysis would then appear to be wholly applicable to those cases. The US Supreme Court did not do

away with the critical holding of *Ashe* about specific factual findings! Rather, in *Currier*, and later in *Hines*, there were no factual findings made that would be determinative of the second case's outcome. There was no need to analyze beyond waiver. This was, it should be noted, the basis for Justice Kennedy's departure from the *Currier* Court ruling on the issue preclusion analysis in Section III of the decision (which he did not join). *Currier, Id* at 2156-2157.

D. It is now for the court to apply those harmonized findings to the facts at bar.

(1) In the case before the Court the state elected to try the "status" crime first. That election has resulted in a conclusive factual finding that the Defendant did not have a firearm in his possession on the date of the incident. If the state were to proceed forward with a trial, the Defendant would <u>again</u> have to defend against the State's assertion of that very fact – a fact that has been conclusively decided at trial. The outcome of his acquittal on the "status" crime in this case is a conclusive factual determination by a jury as to only one issue - - the possession of a firearm by the Defendant.

(2) It is critical to note again that the Defendant in this case and the state stipulated at the first trial that the Defendant was a convicted in state felony. There are only two elements to the crime of possession of a firearm by an in state convicted felon. The jury was instructed on these elements. See Docket Entry Number 114. The jury was also instructed separately about the stipulation and that they may accept such a stipulation as conclusive proof of the element. There remained, therefore, only one factual element for the jury to analyze in deliberation. The question, simply put was did the Defendant possess a firearm on the day in question? The Jury's verdict answered that in the negative by acquitting the Defendant.

(3) A plurality in *Currier* held that the civil principles of issue preclusion are not applicable to criminal courts. Florida precedent has held that the related (but not identical) principles of collateral estoppel are implicated in a proper analysis of double jeopardy. That appears to be undisturbed under any reading of *Currier*. While the *Morris* Court did not conduct this analysis, the order in which the cases were tried in *Morris* did not present facts that would necessitate the analysis. The first *Morris* verdict did not factually precludes a trial on the existence of the firearm and its possession by a convicted felon.

(4) The Court finds, therefore that the facts of this case require a collateral estoppel analysis. *Cook v. State*, 921 So. 2d 631 (Fla. 2d DCA, 2005) lays out those elements:

> For the doctrine of collateral estoppel to apply to bar relitigation of an issue, five factors must be present: (1) an identical issue must have been presented in the prior proceedings; (2) the issue must have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate that issue; (4) the parties in the two proceedings must be identical; and (5) the issues must have been actually litigated. *Cook, Id* at 634 (Fla. 2d DCA 2005)

(5) Applying those factors to this case:

a) The state admits that its only theory of the case on the remaining three charges is that the Defendant used a firearm to assault the two victims and that he discharged a firearm from a car. The jury has already found he did not possess a firearm. The state cannot prove any of the remaining charges without trying to prove, contrary to the jury's finding, that the Defendant possesses a firearm.

b) The issue of the possession of the firearm was not only a critical and necessary part of the prior determination – it was the only factual issue before the jury.

c) The prior trial presented a full and fair opportunity to present the issue. Indeed the evidence at the trial would be almost certainly the exact same evidence at the new trial. The State presented the two victims and the two other eyewitnesses to the incident. They all testified to the entire sequence of events from their individual perspectives.

d) The parties are identical.

e) The issue of the presence of the firearm was already litigated. There cannot be an assault with a firearm when the jury has found there was no firearm in the Defendant's possession. There cannot be a discharge of a firearm when the jury has found there was no firearm in the Defendant's possession.

(6) To put the Defendant on trial for the remaining charges, given the conclusive determination on the only fact at issue, would require the Defendant to defend himself again against the possession of a firearm at the future trial, an issue that has been conclusively determined by a jury of his peers to have been settled. This is the essence of fundamental fairness. Consistent with the law as announced in *Currier* and *Ashe*, it would be a violation of

double jeopardy under the Fifth Amendment to the US Constitution to try the Defendant on these remaining charges. In addition, this Court finds that Mr. Brown should be spared a second trial under Article I, section 9 of the Florida Constitution as a matter of both fundamental fairness and in recognition of the right to be protected against double jeopardy under Florida law arising in *Perkins* and its progeny.

IT IS HEREBY ORDERED AND ADJUDGED:

1. The remaining charges of the Information are hereby dismissed.
2. The Defendant is to be released from custody on these charges.

DONE AND ORDERED IN PALATKA, PUTNAM COUNTY, FLORIDA, THIS 4th DAY OF MARCH 2019.

HOWARD O. MCGILLIN, JR.
CIRCUIT JUDGE

Copies to: All parties of record

Party Name
Stephanie Park, Esq. – Attorney for Defendant
Office of the State Attorney

Enclosure 3 – Writing Sample

Bryan v. Larson, 2014 DR 1956 (St Johns County)

Order on Motion to Dismiss

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
ST. JOHNS COUNTY, FLORIDA

CASE NO: DR 14-1956

DIVISION: 58

TRACI LEIGH BRYAN

PETITIONER

V.

MARGARET KELLER LARSON

RESPONDENT

_____/

ORDER ON MOTION TO DISMISS

THIS CAUSE came before the Court on the Motion of the Respondent on March 12, 2015. The Court has jurisdiction as is further set forth herein. Present in Court were Petitioner, Traci Leigh Bryan, represented by Carrington M. Mead, attorney at law, and Respondent, Margaret Keller Larson, represented by Sung Lee, II, attorney at law. The Court, having reviewed the file, hearing argument of counsel and being otherwise fully informed on the premises thereof, hereby finds as follows:

This case is before the court on a motion to dismiss. For the purpose of a motion to dismiss, the court shall accept all factual assertions of the petitioner and construe any ambiguous fact in favor of the petitioner. See e.g., *Lincoln Tower Corp. v. Dunhall's-Florida, Inc.*, 61 So. 2d 474, 474 (Fla. 1952) ("In considering the motion to dismiss, all allegations . . . must be taken as true."), *Mazzoni Farms v. E. I. Dupont De Nemours & Co.*, 761 So. 2d 306, 309 n.3 (Fla. 2000). The facts are set forth in paragraphs 1-27 of the petition and are viewed with a light most favorable to the petitioner. For brevity they will not be set forth herein but will be referenced when necessary to this Order.

Petitioner's requests Declaratory Judgment under Chapter 86. She asserts that her rights, status and privileges with regard to minor child L. E. L. are in doubt. There is no Florida statute recognizing the parental rights of a non-biological, non-legally declared parent. Therefore the

Petitioner is correct that there is no other statutory framework for jurisdiction than Declaratory Judgment. This is a significant. The petitioner is not seeking to vindicate a statutory grant of parental rights. All of Florida's jurisprudence, to date, has centered on the constitutionality of explicit statutory provisions as found in Chapters 61 (Dissolution, Timesharing and Support), Chapter 63 (Adoption), Chapter 39 (Dependency) and Chapter 742 (Paternity) of the Florida Statutes. Petitioner's claims all arise from her assertions of Constitutional rights alone.

Petitioner asserts this court should recognize her status as a person with parental rights regarding minor child L.E.L. Her argument has several bases. 1) Waiver: She asserts Respondent has waived her status as sole parent when Respondent held herself out as a co-parent with Petitioner. 2) Denial of Equal Protection: She asserts failure to recognize her status as a parent denies her the equal protection of the law. 3) Best Interests and Detriment to the child: She asserts the standards for discernment of rights are the best interests of the child and potential for detriment to the child. She also asserts she is, by those same standards, a fit and proper parent for L. E. L. She further asserts, by way of complaints quite common before family court judges, Respondent has certain alleged deficiencies as a co-parent. Among those she asserts Respondent seeks to alienate the affections of L.E.L. towards to petitioner. 4) Deprivation of her Constitutional right to due process (liberty): She asserts a denial of recognition of her parental rights would be violating her right to due process under both the state and federal constitutions. 5) Deprivation of the child's right to Equal Protection: She asserts the child's right to equal protection is violated in a failure to recognize the child's bond to Petitioner as a parental figure.

Respondent moves this court to dismiss on several grounds. First she asserts the complaint fails to state a claim for relief. Second she asserts the Petitioner lacks standing to bring the petition. She also asserts this court lacks subject matter jurisdiction. Finally she asserts the petition demands relief that would violate her own Constitutional right which "protects the fundamental right of parents to make decisions concerning the care, custody and control of their children." (Paragraph 5, DKT 21).

Both parties submitted briefs (DKT 25 and 27). Both parties presented argument at hearing.

Respondent claims this court is without subject matter jurisdiction or that Petitioner fails to state a claim for relief are unavailing. Declaratory Judgment provides a cause of action in which parties can bring novel questions of law before the courts for resolution. In order to

prevail Petitioner must only show that there is a good faith dispute between the parties (who shall exercise parental rights and time sharing); petitioner has a justiciable question concerning the existence or non-existence of a right (parental rights); petitioner is in doubt of her status (parental rights uncertain under Constitution and chapter 61 Florida statutes); a bona fide actual and present need exists (petitioner is uncertain of her parenting rights regards the minor child) See, e.g. *Ribaya v. Bd. Of Trustees*, 2015 Fla. App. LEXIS 5008 (Fla. 2d DCA, 2015); *State Farm v. Wallace*, 209 So. 2d 719 (Fla. 2d DCA 1968). The Circuit Courts of Florida are courts of general jurisdiction. Moreover, the Circuit court is the appropriate forum for matters involving parenting, dissolution of family relationships and the rights of children. A court has subject matter jurisdiction when it has the authority to hear and decide the case. *The Fla. Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988). " 'In this state, circuit courts are superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which *clearly* and *specially* appears so to be.'" *Mandico v. Taos Constr., Inc.*, 605 So. 2d 850, 854 (Fla. 1992) (quoting *English v. McCrary*, 348 So. 2d 293, 297)" *G.P. v. C.P. (In re D.P.P.)* 158 So. 3d 633, 636 (Fla 5th DCA, 2014).

Respondent's arguments regarding standing and her own Constitutional rights are the crux of the matter. Moreover, this case sets up a clash of Constitutional rights both under the Florida and Federal Constitutions this Court is sworn to uphold and defend. As with many clashes of fundamental rights, this case is really about drawing a line. In a recent case, which will be analyzed herein, Justice Polston illuminated this point in dissent. *D.M.T. v. T.M.H.*, 129 So. 3d 320, 356 (Fla. 2013). Where this court draws that line, or perhaps more accurately stated, finds the line to exist, will define the rights of the parties. [1]

Petitioner claims both due process and Equal Protection rights. Her claim seems to fail on equal protection grounds.

Equal protection analysis, blessedly, has the benefit of a word that denotes a standard – "equal." Citizens in equivalent circumstances should be treated equally by Government and before the law. "The reason for the equal protection clause was to assure that there would be no

[1] At the outset, the court observes that it, as a court, not a legislature, is ill suited to the task of drawing a line. Courts rule on questions of established law (with the exception of true common law questions). In this vein, this court will endeavor to apply *stare decisis* and discern where the higher courts of this state and the nation have already drawn the line between these competing rights. If I am wrong, then I hope this Order will illuminate the analytical framework that existing caselaw seems to have established. I am certain that other courts will further illuminate the way. This effort is likely the beginning of a long trek to discovery.

second class citizens." *Osterndorf v. Turner*, 426 So. 2d 539, 545-46 (Fla. 1982). Cited in *Fla. Dep't of Children & Families v. X.X.G.*, 45 So. 3d 79, 91 (Fla. 3d DCA 2010) Our Florida Constitution states it succinctly and clearly:

> All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.
>
> Fla. Const. Art. I, § 2

Unfortunately for Petitioner, she cannot point to a classification applicable to her by which she is being treated differently than any other citizen. Her claim for declaratory judgment is grounded in her assertion there is no other way to vindicate her rights. She notes Florida statutes do not grant a person who is, by all definitions, a legal "stranger" to the parent child relationship, a basis or cause of action to seek to insert themselves into an otherwise intact parent-child relationship. Therefore her claims of denial of Equal Protection appear unavailing. The parent child relationship exists between, at most two, but often only one adult and a child. No other adult on the face of the earth has the *personal* right to intrude into that relationship absent a specific grant of authority. Petitioner does not challenge that others have a right that is denied her because she is a member of some suspect classification. Rather she challenges that she, and therefore, presumably others similarly situated should be afforded the right. The law is equally prohibitive of her and every other stranger.

Her due process claims bear deeper examination for they assert a specific right to be a part of the parent child relationship.

The Court observes the "substantive due process" rights in question are among the most amorphous of constitutional rights – particularly in federal constitutional jurisprudence. The notion that the guarantee of "due process" gives rise, seemingly by the very nature of the process that is due, to identifiable substantive rights, notably liberty and privacy, are among the least grounded in the text of the federal constitution. Both the Federal and State Supreme Courts tread carefully among the analytical "mines" in this area of jurisprudence. However, as *stare decisis* demands respect for the existing law, the essence of the right is best announced by direct

reference to one of those decisions: "The liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060 (2000).

The Florida Supreme Court observed, "[a]lthough often expressed as a 'liberty' interest, the protection of 'childrearing autonomy' reflects the Court's larger concern with privacy rights for the family. The [US Supreme] Court in *Prince v. Massachusetts*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944), acknowledged the existence of a 'private realm of family life which the state cannot enter.' . . . The Court's protection of parental rights . . . evidences a deeper concern [514] for the privacy rights inherent [13] in the federal Constitution." *Von Eiff v. Azicri*, 720 So. 2d 510, 513-14 (Fla. 1998).

Fortunately our Florida constitution states a more certain right to privacy rather than rely on "substantive due process." Our Florida Supreme Court observed:

> While an implicit right of privacy is recognized under our federal constitution, Floridians enjoy an explicit right of privacy under article 1, section 23 of the Florida Constitution, which provides in pertinent part that "every natural person has the right to be let alone and free from governmental intrusion into his private life." In enacting this freestanding constitutional provision, the "citizens of Florida opted for more protection from governmental intrusion" than that afforded under our federal constitution. *Beagle*, 678 So. 2d at 1275 (quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985)). The state constitutional right to privacy is much broader in scope, embraces more privacy interests, and extends more protection to those interests than its federal counterpart. See *City of North Miami v. Kurtz*, 653 So. 2d 1025, 1027-28 (Fla. 1995); *In re T.W.*, 551 So. 2d 1186, 1191-92 (Fla. 1989); *State v. Conforti*, 688 So. 2d 350, 357 (Fla. 4th DCA), review denied, 697 So. 2d 509 (Fla. 1997).
>
> *Von Eiff*, 720 So. 2d at 514.

As these rights are "fundamental", the state (and one of its courts) has a high burden before intruding upon this, almost sacred, legal territory. Intrusion requires a compelling governmental interest. "Without a finding of harm, we are unable to conclude that the State demonstrates a "compelling" interest. We hold that, in the absence of an explicit requirement of harm or detriment, the challenged paragraph is facially flawed." *Beagle v. Beagle*, 678 So. 2d 1271, 1276-77 (Fla. 1996) (holding Florida's Grandparent visitation statute unconstitutional).

Moreover, the Court cautioned in *Beagle,* "[i]t is irrelevant, to this constitutional analysis, that it might in many instances be "better" or "desirable" for a child to maintain contact with a grandparent." *Id.* Thus even an abstract, conceptually good, potential outcome that may well be "in the best interests of the child" is not sufficiently compelling to overcome the fundamental nature of the parent's exclusive right.

The simplest (and oldest) initial threshold for creation of parental rights, is simple biology. If a person is a biological parent, the rights follow naturally (certainly this is Justice Scalia's deeply held belief – see dissent in *Troxel*, 530 US 57, 92), although not necessarily absolutely. A mother who has conceived in the "traditional" way has the firmest legal tie to parental rights. Conversely, a father's parental rights depend on, *inter alia*, his marital status at the time of the child's birth. For father's (particularly those out-of-wedlock) legal distinctions exist distinguishing the mere contribution of genetic material and participation in natural conception. Recently the Florida Supreme Court observed:

> Moreover, "we recognize the sanctity of the biological connection" between parents and children, and thus, "we look carefully at anything that would sever the biological parent-child link." ... With respect to the link between a biological father and his child, we have previously explained that constitutional protection of the individual's right to be a parent applies "when an unwed [biological] father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in raising his child." ... The approach this Court has taken regarding the rights of biological but unwed fathers echoes the United States Supreme Court's recognition that a biological father's constitutional rights are inchoate and develop into a fundamental right to be a parent "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' . . . [because] his interest in personal contact with his child acquires substantial protection under the due process clause."
> *D.M.T. v. T.M.H.*, 129 So. 3d at 335 (internal citations omitted)

Similarly, Florida courts recognize parental rights when a person, whether biologically related or not, knowingly and willfully seeks the law's *imprimatur* of parental rights by affirmatively seeking recourse to the law. Decisions note actions such as signing a birth certificate, (*G.P. v. C.P. (In re D.P.P.),* 158 So. 3d at 636), making petition for adoption, *Id.*, or even by marrying a person pregnant with a child and subsequently allowing their name to be placed on the birth certificate (Van Weelde v. Van Weelde, 110 So. 3d 918 (Fla. 2d DCA, 2013)) as sufficient to raise a right.

An adoptive parent has identical parental rights to a biological parent. Quoting Florida Statute §63.172(1)(c) the Florida Supreme Court observed, "[m]oreover, the adoption of the child by [the step mother] Cheryl Von Eiff creates the same 'relationship . . . for all purposes' between the adopted child and the adoptive parent 'that would have existed if the adopted [child] were [the adoptive parent's] blood descendant.' § 63.172(1)(c), Fla. Stat. (1993)." *Von Eiff*, 720 So. 2d at 516.

This case presents neither biology nor, before this petition, a history of formal appeal for the protection of the law by either the petitioner, or more importantly, the respondent on behalf of petitioner. The Petitioner has no biological ties to the child. The child was born in China while the petitioner and respondent lived in Tennessee and Georgia. The petitioner and respondent held themselves out as co-parents in a variety of social situations. The parties were not married. They were not joined by a civil union. They had no co-parenting agreement. The petitioner did not jointly petition for adoption of L.E.L. Petitioner's name is not on the birth certificate of L.E.L. Petitioner is, legally speaking, a stranger to the child.

In this light, petitioner's position is legally indistinguishable from the position that many contemporary unmarried couples face. This case is not about same gender relationships, with one possible exception. It has not been *pled* that the either party was, heretofore, precluded from establishing a legal relationship, whether denominated as marriage, step-parent adoption, or civil union. Petitioner argued (not fact for purposes herein) that she was precluded from establishing such a formal relationship in Georgia and Tennessee before the Respondent's adoption of L.E.L. Conversely, Respondent has argued (also not fact for purposes herein) that *she affirmatively chose not to create* a legal relationship between the child and Petitioner. Citizens routinely choose to live together and hold themselves out as family units without ever engaging in the formal process of establishing a legal link. For the purpose of this case, therefore, it is immaterial whether they could, at the time of the adoption, formalize their relationship. It is immaterial to an analysis of their rights whether under existing statutory law, they could have jointly adopted the child in either Tennessee or Georgia. They did not apply for joint adoption, nor did they seek to change Georgia or Tennessee law by reaching out to the courts and seeking such an adoption.

Petitioner argues the Respondent waived her rights. Waiver of Constitutional rights is not taken lightly. Waiver is possible, but is generally disfavored in circumstances where the

waiver was not affirmative, but by acquiescence. The right in question is one of the most fundamental rights of a human being – the right to parenting. Ordinarily arising from the biological imperative of reproduction, it is arguable that only the right to life itself is more fundamental to human nature than the right to parent one's child to the exclusion of all others.

In recognition of the fundamental nature of this right, the law establishes a formal process whereby the rights of one parent might be terminated and the link to a new parent formally established. The detailed legal process to terminate parental rights is a result of the understanding that the state must show a compelling reason to terminate the right. Consequently, neither the disestablishment nor establishment of parental rights occurs without scrupulous adherence to rigorous procedural and statutory safeguards. Only in the case of parental abandonment or birth resulting from certain sexual assaults can disestablishment take place without the participation of the parent at risk of losing their rights. Florida Statute §39.801 and §63.082(1)(d). Conversely, a consensual waiver of parental rights in Florida must occur either in the presence of two witnesses, by affidavit under oath, or in open court upon inquiry under oath by a judicial official. Florida Statute § 63.082(1)(a) In the absence of consensual waiver, Florida law requires a trial to determine both whether there are grounds for termination of rights and whether such termination is in the manifest best interests of the child. Florida Statute §§39.806, 39.810. This dual analysis when rights are being adversely terminated also highlights the dual nature of the parenting bond. It belongs to both the parent and the child (as Petitioner rightly points out).

The factual record in this case, as stated by the petitioner, does not reflect any action by the respondent to invoke the formal protection of the law for the parenting rights of the respondent. In *G.P. v. C.P. (In re D.P.P.),* 158 So. 3d 633 the parties had jointly petitioned the court for, and received a judgment of step-parent adoption. That they did so without informing the court of the same sex nature of their relationship, which was, at that time a bar to step parent adoption, was of no concern for the appeals court in a later action contesting parental rights. What was significant was that the parties had sought, and obtained, even by what appeared potentially fraudulent means, legal recognition of their parenting rights. The court applied the principal of equitable estoppel to hold that once a party seeks the protection of the law, that party is precluded from later taking an adverse position. In that case, the respondent assisted in establishing a legal connection between her child and that petitioner.

In the case before the court, the parties never attempted to formalize the co-parenting relationship of the Petitioner. Respondent *never acknowledged* in a formal legal proceeding the parental rights of the petitioner. While the parties held themselves out as a couple in social situations and as co-parents, such social recognition is not sufficient. The purchased a home together – a contractual relationship for property rights. The parties did both attend medical appointments for L.E.L and apparently both had access to her medical records and school records. Presumably this required some affirmative waiver by Respondent. However, none of these were appeals to the legal system to recognize them as co-parents.

Petitioner argues, however, that the sum of these actions amounts to *de facto* parental status. Florida Courts have largely rejected appeals from so-called psychological or *de facto* parents in the absence of other essential links to the child (usually biology or legal formality). Two cases, *Music v. Rachford* and *Wakeman v. Dixon* appear directly on point. Indeed the facts of *Music* are extraordinarily close to the case at bar. The only discernible difference was that the mother with parental rights in *Music* conceived the child rather than adopting the child. Those courts rejected the notion of psychological parenting.

> We reject appellant's argument that she is a de facto parent and as such, entitled to the rights of a parent under chapter 61, Florida Statutes, and AFFIRM on the controlling authority of *Meeks v. Garner*, 598 So. 2d 261 (Fla. 1st DCA 1992)("visitation rights are, with regard to a non-parent, statutory, and the court has no inherent authority to award visitation"; the courts have "no authority to compel visitation between a child and one who is neither a parent, grandparent, nor great-grandparent").[internal citations omitted]
>
> *Music v. Rachford*, 654 So. 2d 1234, 1235 (Fla. 1st DCA 1995)

> Our holding in the case on appeal is controlled by our decision in *Music v. Rachford*, ... In *Music*, we held that chapter 61, Florida Statutes, does not allow non-parents to seek custody or visitation. By its explicit provisions, section 61.13, Florida Statutes (2004), concerns only the parents' custody, support and visitation. In *Music*, we affirmed an order dismissing with prejudice a complaint in which the plaintiff, Music, sought shared parental responsibility and visitation with a child conceived by her lesbian former partner. *Music* alleged facts similar to those alleged in the instant case: the parties established a domestic ... partnership, decided to conceive a child together and utilized artificial insemination, went to pre-natal classes together, and jointly reared the child in a single household for three years before the relationship ended. When the relationship ended, the biological parent denied her former partner all access to the child. In affirming, this court explained: We reject appellant's

> argument that she is a de facto parent and as such, entitled to the rights of a parent under chapter 61, Florida Statutes, and AFFIRM on the controlling authority of *Meeks v. Garner* ("[v]isitation rights are, with regard to a non-parent, statutory, and the court has no inherent authority to award visitation"; the courts have "no authority to compel visitation between a child and one who is neither a parent, grandparent, nor great-grandparent") [internal citations omitted]
>
> *Wakeman v. Dixon*, 921 So. 2d 669, 673 (Fla. 1st DCA 2006).

Indeed, it appears that the only basis for granting a non-parent any rights has been by statutory entitlement to assert such rights, and only then when the statute in question requires a demonstration of harm to the child in the absence of intervention. In the cases invalidating Grandparent claims, the courts held: "Based upon the privacy provision in the Florida Constitution, we hold that the State may not intrude upon the parents' fundamental right to raise their children except in cases where the child is threatened with harm." *Beagle*, 678 So. 2d at 1276. The *Von Eiff* court went further to the point: "[i]n summary, government interference in a parent's decision to exclude or limit grandparental visitation cannot be countenanced without a showing of a compelling state interest." *Von Eiff*, 720 So. 2d at 516.

In the case at bar the Petitioner does assert harms that are or may be visited upon the child. These factual assertions are accepted for the basis of this Motion to Dismiss. If true, they are sad commentary on the lengths to which adults will go to isolate former romantic partners from children.[2] However, the law does not promise a remedy to every human failing. If deemed necessary to advance public policy, a limited right to interfere in parental rights has to be created by the legislature, not the courts. Petitioner herein does not assert Chapter 39, 61, 63, or 742 or any other provision of Florida law as positive authority for intervention. Thus, even if there is potential for some degree of harm, she had no right to intervene.[3] The concurring opinion in *Wakeman* summarized that judge's and this judge's conundrum:

> Florida law does not provide a remedy in the case before us, even if the relief *Wakeman* seeks would be in the best interest of the minor children here. The number of children in Florida raised in so-called non-traditional households, such as the Wakeman-Dixon household, is increasing. I am concerned that, when those households dissolve, Florida

[2] Children should not be "played" as if in a game of ping-pong *Perez v. Perez*, 769 So. 2d 389, 392 (Fla. 3d DCA 1999)

[3] Courts have even limited private parties from commencing actions under chapter 39 for such conduct – holding that dependency proceedings are not the proper forum for allegations of putative co-parent parental alienation. (CITE)

law ignores the needs of those children. I write to urge the Florida Legislature to address the needs of the children born into or raised in these non-traditional households when a break-up occurs.

Wakeman, 921 So. 2d at 674.

THEREFORE, THIS COURT FINDS:

1. This Court has jurisdiction over the parties and the Subject matter. The Petition does adequately state the essential elements of a claim for Declaratory Relief, although none can be granted under current legal authority.
2. Respondent has not waived her right to sole parental authority.
3. Petitioner's due process liberty right and her right to Equal Protection are not violated by the failure to accord her parental rights over L.E.L.
4. Petitioner has no statutory right or standing to assert that L.E.L. is being "harmed" by a failure of Respondent to accord Petitioner time sharing. Nor does Petitioner have any standing to assert L.E.L. is supposed denial of equal protection.

IT IS HEREBY ORDERED AND ADJUDGED THAT THE MOTION TO DISMISS THE PETITION IS GRANTED.

DONE AND ORDERED IN CHAMBERS AT ST. AUGUSTINE, FLORIDA, THIS 8 DAY OF June, 2015.

HOWARD O. MCGILLIN, JR.
CIRCUIT JUDGE

Copies provided this 8th day of June, 2015 NWJ

Carrington M. Mead, Esquire, Attorney for petitioner cmeadlaw@comcast.net
Sung Lee, II, Esquire, Attorney for respondent slandmservice@gmail.com

Enclosure 4 – Wanchic v. Wanchic

5D15-2623

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ANNE C. WANCHIC, N/K/A ANNE C. ST. JOHN,

Petitioner,

v. Case No. 5D15-2623

JOHN F. WANCHIC,

Respondent.

_____/

Opinion filed February 26, 2016

Petition for Certiorari Review of Order from the Circuit Court for St. Johns County, Howard O. McGillin, Jr., Judge.

Tania R. Schmidt-Alpers, of Tania R. Schmidt-Alpers, P.A., St. Augustine, for Petitioner.

William S. Graessle, Jonathan W. Graessle, of William S. Graessle, P.A., Jacksonville, for Respondent.

PER CURIAM.

Anne C. Wanchic, n/k/a Anne C. St. John, petitions for a writ of certiorari to quash a trial court order requiring disclosure of certain documents, which she claims are protected by statutory privilege, in her ongoing child custody dispute with John F. Wanchic. We grant the petition and quash the portion of the order that permits Mr.

Wanchic to personally view Ms. St. John's disclosed records, contrary to the trial court's oral pronouncement. In all other respects, we deny the petition.

PETITION GRANTED in part and DENIED in part.

SAWAYA, PALMER and ORFINGER, JJ., concur.

Enclosure 5 - State v. Quinby

5D20-928

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

TERRI FERGUSON QUINBY,

Appellant,

v. Case No. 5D20-928

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed July 31, 2020

Appeal from the Circuit Court
for Putnam County,
Howard O. McGillin, Jr., Judge.

James S. Purdy, Public Defender, and
Steven N. Gosney, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Whitney Brown Hartless,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

In this *Anders*[1] appeal, we affirm Terri Ferguson Quinby's judgment and sentence. We remand for the trial court to strike from the order for costs the $100 cost of investigation for the Putnam County Sheriff's Office because the State did not request it

[1] *Anders v. California*, 386 U.S. 738 (1967).

or offer evidence to support the amount. *See* § 938.27(1), Fla. Stat. (2019); *Negron v. State*, 266 So. 3d 1266, 1267 (Fla. 5th DCA 2019).

AFFIRMED and REMANDED with directions.

COHEN, LAMBERT and TRAVER, JJ., concur.