

**APPLICATION FOR  
VOLUSIA COUNTY COURT**

**WESLEY HEIDT**

Wesley Heidt  
Applicant for Volusia County Judge

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**APPLICATION FOR NOMINATION  
TO THE VOLUSIA COUNTY COURT**

**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: Wesley Harold Heidt**

**Social Security No.:** [REDACTED]

**Florida Bar No.: 773026**

**Date Admitted to Practice in Florida: 9/27/1988**

**Cell Phone:** [REDACTED]

**E-Mail:** [REDACTED]

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.

Florida Attorney General  
Bureau Chief, Assistant Attorney General

Office of the Attorney General  
State of Florida  
444 Seabreeze Blvd., Suite 500  
Daytona Beach, FL 32118  
(386) 238-4990

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]

[REDACTED]

I am a Florida native, and I have lived in Volusia County since 1993. I have lived at this address since January of 2004.

3. State your birthdate and place of birth.

[REDACTED]  
Eglin AFB, Florida

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.

Florida Bar	September 27, 1988
Middle District Court of Florida	July 28, 1989
Court of Appeals, Eleventh Circuit	February 23, 1996
United States Supreme Court	February 22, 2000

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).

Hamilton County High School		1981
Valdosta State College (now Valdosta State University)	B.A. in History	1981-1985
University College of Law	Juris Doctorate	1985-1988

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.

I was my High School Valedictorian; Senior Class president

At Valdosta State College (now University), I earned an award for graduating with the highest grade point average in my major (History); graduated cum laude.

At the University of Florida, I was a member of the John Marshall Bar Association and played multiple sports in intramurals.

## **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.

### **Bureau Chief**

Office of the Attorney General  
Criminal Appeals  
444 Seabreeze Blvd., FL 32118  
Daytona Beach, FL 32118

**February 2008 to Present**

### **Assistant Attorney General**

Office of the Attorney General  
Criminal Appeals

**April 1993 to February 2008**

444 Seabreeze Blvd., FL 32118  
Daytona Beach, FL 32118

**Staff Attorney**

**September 1988 to April 1993**

Tenth Judicial Circuit  
255 North Broadway Ave.  
Bartow, FL 33830

**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 currently serve as the Bureau Chief for the Florida Attorney General's Daytona Beach criminal appellate division. In this role, I manage an office of about twenty attorneys and ten staff. My duties require the day to day supervision of one of the largest legal offices in the area. As an assistant attorney general, I represent the State of Florida in criminal appeals in the state and federal courts. I became board certified by the Florida Bar in the area of criminal appeals in August of 1997 and was recertified in 2002, 2008, 2012, and 2017. I also have been an AV rated attorney by Martindale-Hubbell since 1997.

Representing the State, I have handled a variety of issues which include almost every conceivable challenge to a trial including such arguments as constitutional questions, evidence, jury selection, sentencing, etc. I have filed numerous pleadings in the Florida Supreme Court and have had the opportunity to argue before that court several times. In fact, I have almost forty published opinions from that court. Additionally, I have handled hundreds of cases in the Fifth District Court of Appeal.

I also represent the State in federal court addressing habeas petitions and appearing in all levels of the federal court system. At times these cases have required evidentiary hearings where I have appeared as both lead and as co-counsel. I have also argued several in the Eleventh Circuit, again, representing the State of Florida.

As Bureau Chief of the office, I deal regularly with prosecutors from the 5<sup>th</sup> Circuit, 7<sup>th</sup> Circuit, 9<sup>th</sup> Circuit, and 18<sup>th</sup> Circuit discussing pretrial strategies in addition to the issues related to the cases for appeal. I also discuss legal issues with trial judges on miscellaneous pleadings. Previously, I handled civil forfeitures in the circuit court representing the Department of Highway Safety and Motor Vehicles.

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	<u>5</u>	%	Civil	<u>          </u> %
Federal Trial	<u>          </u>	%	Criminal	<u>95</u> %
Federal Other	<u>          </u>	%	Family	<u>          </u> %
State Appellate	<u>95</u>	%	Probate	<u>          </u> %
State Trial	<u>          </u>	%	Other	<u>5</u> %
State Administrative	<u>          </u>	%		
State Other	<u>          </u>	%		
<b>TOTAL</b>	<u>100</u>	%	<b>TOTAL</b>	<u>100</u> %

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?	0	Non-jury?	30 plus
Arbitration?	0	Administrative Bodies?	0
Appellate?	Thousands		

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.

The Office of the Attorney General has given me the unique experience of handling thousands of cases in the Florida appellate courts and the Federal courts. A Westlaw search this month lists 2,357 cases in which I was counsel of record in the State appellate and Federal courts. For the vast majority of those cases, I was either the sole or the primary attorney.

I have handled cases at every level of the court system – the state trial court, multiple state district courts of appeal, the Florida Supreme Court, federal trial courts, federal appellate courts, and the United States Supreme Court.

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.*



- (a) State v. Patterson, 45 Fla. L. Weekly D2005 (Fla. 5<sup>th</sup> DCA Aug. 21, 2020)  
Chantay Perry, [cperry@circuit9.org](mailto:cperry@circuit9.org)  
(407) 836-4845
- (b) L.A.T. v. State, 45 Fla. L. Weekly D1484 (Fla. 5<sup>th</sup> DCA June 19, 2020)  
Ailene S. Rogers, [ailene.rogers@petersonbernard.com](mailto:ailene.rogers@petersonbernard.com)  
(954) 763-3200
- (c) Smith v. State, 45 Fla. L. weekly D1439 (Fla. 5<sup>th</sup> DCA June 12, 2020)  
Robert Jackson Pearce, [pearce.robert@pd7.org](mailto:pearce.robert@pd7.org)  
(386) 254-3758
- (d) Martin v. State, 291 So. 3d 631 (Fla. 5<sup>th</sup> DCA 2020)  
Kathryn Rollison Radtke, [Radtke.kathryn@pd7.org](mailto:Radtke.kathryn@pd7.org)  
(386) 254-3758
- (e) Henry v. State, 285 So. 3d 387 (Fla. 5<sup>th</sup> DCA 2019)  
Danielle R. Rufai, [rufai.danielle@pd7.org](mailto:rufai.danielle@pd7.org)  
(386) 254-3758
- (f) Parker v. State, 263 So. 3d 192 (Fla. 5<sup>th</sup> DCA 2018)  
Peyton B. Hyslop, [lawclerk@hglawpa.com](mailto:lawclerk@hglawpa.com)  
(352) 799-9666

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.*

Not applicable.

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 do not currently appear in court regularly.

For almost ten years during the 1990's and early 2000's, I represented the Florida Department of Highway Safety and Motor Vehicles on many civil forfeitures in the circuit court. These cases were filed by me in the Fifth, Seventh, Ninth, and Eighteenth circuits. Preliminary probable cause hearings, status hearings, pretrial conferences, hearings on motions to dismiss, and bench trials were needed to resolve these cases.

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) Anthony v. State, 108 So.3d 1111 (Fla. 5<sup>th</sup> DCA 2013)

Lisabeth Fryer

[lisabeth@lisabethfryer.law](mailto:lisabeth@lisabethfryer.law)

(407) 960-2671

Very high profile case which was regularly in the news, Casey Anthony was charged with first degree murder of her daughter. In the case, I had helped the prosecutors pretrial with legal issues, I handled a pretrial, illegal detention challenge, I handled the direct appeal, and I handled an extraordinary writ challenging the probationary sentence which I have included as one of my writing samples.

(b) Shelton v. Secretary, Department of Corrections, 691 F.3d 1348 (11<sup>th</sup> Cir. 2012)

James E. Felman

[jfelman@kmf-law.com](mailto:jfelman@kmf-law.com)

(813) 229-1118

The Middle District Court of Florida found that Florida's drug statutes were unconstitutional based on a lack of *mens rea*. This case led to many, statewide, meetings within our office, and within days of it being decided, I created a memorandum setting out a plan of attack to handle the thousands of cases it generated statewide. I represented Florida in the Eleventh Circuit Court of Appeals successfully arguing that the statute was not unconstitutional.

(c) Golphin v. State, 945 So. 2d 1174 (Fla. 2006)

Noel A. Pelella

[nnoely@aol.com](mailto:nnoely@aol.com)

(386) 290-0645

The Florida Supreme Court in a lengthy opinion found that it is a consensual encounter when officers engage someone on the street and ask for identification. Additionally, subsequent discovery of an outstanding warrant would purge any illegality for the encounter. Golphin filed a petition for writ of certiorari in the United State Supreme Court; I filed a Response; and the Supreme Court denied the writ. Golphin v. Florida, 552 U.S. 810 (2007).

(d) State v. Modeste, 66 So. 3d 386 (Fla. 5<sup>th</sup> DCA 2011)

Frank J. Bankowitz

[fjb@bankowitzlaw.com](mailto:fjb@bankowitzlaw.com)

(407) 428-1514

I successfully argued to the Fifth DCA which sat *en banc* that it was not an unconstitutional violation of Miranda if law enforcement failed to inform a defendant of his right to counsel before an interview as well as during the interview. Initially, this decision was quashed, then stayed pending the outcome of Florida v. Powell, 130 S. Ct. 1195 (2010); however, after the decision in the United States Supreme Court, the Florida Supreme Court eventually accepted the position for which I had advocated.

(e) Brown v. State, 790 So. 2d 389 (Fla. 2000)

Barbara Davis

Barbara.davis@bellsouth.net

(386) 788-0401

The Florida Supreme Court addressed the issue of whether a defendant could commit attempted second degree murder. After spirited discussion at oral argument, the Court accepted State's position that a defendant could be convicted of attempting a general intent crime.

J.A.S. v. State, 705 So. 2d 1381 (Fla. 1998)

Kenneth Witts (passed away)

Constitutional challenge of the prosecution of a 15 year old defendant in a statutory rape case involving a 12 year old victim. Case involved issues of equal protection, right of privacy, selective enforcement, and cruel and unusual punishment. My efforts in this case led to a personal thank you note from Brad King (the elected State Attorney in the Fifth Circuit) which I have included in the appendix to my application.

State v. Hanna, 901 So. 2d 201 (Fla. 5<sup>th</sup> DCA 2005)

Richard Wilson

Rwilson14@cfl.rr.com

(407) 963-7732

Trial court had found various sections of Orange County's Adult Entertainment Code unconstitutional based upon issues of vagueness and of prompt judicial review. Little if any state cases addressing the issues existed. I successfully argued the appellate court that Orange County's Code was not unconstitutional. I was informed by Orange County's legal department that the case would influence numerous local government codes in Florida and throughout the country.

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.

I have included three writing samples. One involved partial restoration of rights and possession of ammunition. One was a response to an emergency writ of prohibition as to whether Casey Anthony's probation had ever been served. Lastly, I have also included an initial brief where a question was certified to the Fifth District Court of Appeal directly from county court (specifically, Volusia County Court). For all of these pleadings, I was lead counsel, and the attorney who researched and prepared the pleadings.

### **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.

No.

**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.

Yes. This Judicial Nominating Commission has selected me previously – 2006, 2007, 2010, 2012, and 2017.

**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.

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

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

(ii) the approximate number and nature of the cases you handled during your tenure;

(iii) the citations of any published opinions; and

(iv) 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.

Not applicable.

**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.

Not applicable.

**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.

Not applicable.

**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.

Not applicable.

**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.

Not applicable.

**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.

Not applicable.

## **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 am currently serving as President of Southeast Volusia Youth Sports, Inc. which is a non-profit, 501(c) organization that was set up to run the local baseball and softball leagues in the New Smyrna Beach area. I believe in community service and would continue to volunteer with local youth organizations but would resign as President given the new duties required of me as judge.

- 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.

For about twenty years, I have served as an adjunct professor in the paralegal program at Daytona State College. There, I teach courses in legal research, legal writing as well as constitutional law.

## **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.

No, I do not believe that there is any general group or relationship that would lead me to have to recuse myself.

## **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.

Not applicable.

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.

Not applicable.

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.

Twice, on behalf of the Young Lawyers Division of the Florida Bar, I have given a presentation on criminal appeals as part of the Basic Appellate Practice seminar. These were videotaped and were offered as CLE for attorneys in the future.

I previously made several presentations to the statewide convention of staff attorneys and was the only person asked to do an encore version which was taped and was used to train newly hired staff attorneys statewide as to postconviction issues.

In my position as bureau chief, I made a presentation to the local Rotary Club as to the duties and services of our office.

I served as Volusia County Bar President as well as serving in several officer positions and as a board member. In those roles, I spoke numerous times to a variety of groups including making a presentation to the FAMU law school committee when it was deciding where to place its law school.

Additionally, the Attorney General has a Cyber Crime Unit which emphasized the education of middle and high school students on some of the dangers that can arise on the internet. I have spoken to hundreds of students in that program.



Several times, I have been a guest lecturer at the appellate portion of Bench / Bar seminars, and I have spoken at several local bar seminars (including organizing and chairing one.).

I have spoken dozens of times at local schools as part of Law Week to classes ranging from pre-kindergarten, to high schools, to the juvenile detention center.

I have traveled and spoken to almost every assistant state attorney in the Fifth, Seventh, Ninth, and Eighteenth Circuits. This was part of a CLE training classes than I organized and scheduled.

I made a two hour presentation to a local law enforcement SWAT team addressing Fourth Amendment issues.

I was the keynote speaker at the graduation for a local college in 2014. There were about 130 graduates.

Twice, I have spoken to a group of homicide victims in central Florida explaining to them them appellate process.

- 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.

I have worked as an adjunct professor at Daytona State College for almost twenty years. During that time, I have taught Legal Research and Writing I, Legal Research and Writing II, and Constitutional Law.

- 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.

Not applicable.

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

I am AV rated by my peers and have been so since 1997.

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.

**Volusia County Bar Association\***

President (2000-2001)

President -Elect (1999-2000)

Treasurer (two terms: 1997-1998 / 1998-1999)

Board of Directors (1996-1997)

Chair of Government Liaison committee

Co-chair Law Week (2005)

\*I was a very active member of the Volusia County Bar Association. For example, I began the Historical Project which involves interviewing many of the experienced attorneys of this area and memorializing an oral history of their lives and of this area. I helped lead the VCBA's involvement in the local schools during law week and have spoken to all levels of classes. I also organized several bench / bar softball games trying to encourage the interaction between those two groups.

**Federalist Society Member** (2020 to present) (attended functions in person and webinars).

**Inns of Court:** Previous member

**Lakeland Bar Association** (1998-1993): Previous member

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.

In 2013, I led the creation of a 501(c)(3), non-profit corporation, and have served as its President every since. Southeast Volusia Youth Sports, Inc., helps over 600 boys and girls annually play baseball and softball. I have been very active with this group

seeking community support, conducting numerous fund raising events, conducting weekend clinics, and coaching.

As a member in the First United Methodist Church of Port Orange. I served on the Finance committee, as well as on the staff parish committee for a three year term (2002-2004). While on the staff parish committee, I served as the chair for two years (2003-2004). The staff parish committee in the Methodist Church is responsible for all administrative aspects of handling the staff. In this position, I led the team which interviewed and hired employees, disciplined employees, and dismissed employees. Additionally, for approximately one year while the church was searching for a youth pastor, I organized activities and taught Sunday school class to our high school students. I have also taught Sunday School for other grades including second graders, fourth and fifth graders.

I am Chair of the Paralegal Studies Advisory Committee at Daytona State College. Our committee advises the department as to what courses would best serve the legal community, and I helped organize and present at a career day type seminar which had paralegals from across legal fields - private, government, and corporate.

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.

Not applicable.

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

I previously volunteered at the advice clinics run by the Central Florida Legal Services program when I first moved to Volusia County. However, in my position as an assistant attorney general, conflicts are always a potential concern. I volunteered to serve on the guardian ad litem list designed to assist the family law

judges. I have also served as a judge in an attorney training seminar for legal service attorneys from several states.

**45. Please describe any hobbies or other vocational interests.**

I enjoy being active and involved in my local community. I coached all three of my sons in various sports and have continued to coach local youth after my sons were no longer playing.

I also have taught for many years and have a passion for history and the law. I am a fan of almost all sports and watch almost all teams of the University of Florida.

**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.**

I have never served in the military. Both my parents served in the United States Air Force, and one of my sons is currently serving in the United States Navy.

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

Twitter: [REDACTED]

LinkedIn: Wesley Heidt

Instagram: [REDACTED]

## **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.**

I am currently single.

I was previously married to Tammy Campbell Heidt.

Date/place/court number: January 30, 2017, Volusia County (Seventh Judicial Circuit), [REDACTED]

[REDACTED]

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.

Christopher Heidt, 36 years of age.

Software Engineer

[REDACTED]

[REDACTED]

[REDACTED]

Justin Heidt, 25 years of age.

United States Navy

Currently (he will be shipped out soon), Charlestown, South Carolina

[REDACTED]

John Heidt, 18 years of age.

He lives with me and is full time student at University of Central Florida

[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.

Yes. I was charged with driving under the influence in April of 1983. On May 27, 1983, I entered a plea to the charged offense. The judge who handled the case wrote me a recommendation letter for admission to law school.

**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.

See above.

**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.

Only as detailed in question 50.

**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.

Only as set out in question 48.

**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.

No.

**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 have always timely filed my tax returns.

## 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.

Hard work, respectful of others, public service, caring, community, love of law – these are just some of the ideals by which I have tried to live my life. I am a native Floridian who started working on a farm when I was in elementary school. During my years of school, I was known as a Class President, Valedictorian, student, athlete, friend, and more.

These experiences taught me the value of work hard, service to my community, and that I should treat others as I hope to be treated. These values I do not take lightly. Whatever I have done in the past or do in the future, doing it “the right way” matters to me.

I have always been active in my community and have often been asked to lead. These organizations have been as varied as bar associations, church groups, Sunday School classes, youth groups, colleges, and others.

I have never taken any of those roles lightly. If asked to serve or chosen for a position that I sought, the responsibility of leading by example has always mattered to me.

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.

I hold serving as a jurist to be one of the highest callings for an attorney. I believe if fortunate enough to be nominated by this Commission and selected by the Governor I would bring a unique combination of legal experience, leadership abilities, and patience. A county judge ideally is aware of the law and follows it. As an attorney with over thirty years of experience, I am an AV rated, Board Certified attorney who has a vast knowledge of the law. As an assistant attorney general, I have fought at every level of the court systems for Florida’s statutes to be applied as written. In the Florida trial court, in the Florida appellate courts, in the federal district courts, in the Eleventh Circuit Court of Appeals, and in the United States Supreme Court, I have advocated for the consistent application of Florida’s laws.

With the Florida Attorney General’s Daytona Beach office, I have twenty years of leadership experience serving first as Assistant Bureau Chief and now for over a

decade as Bureau Chief. During this time, I have led one of the largest legal offices in the area as the office expanded its physical facilities, added many new personnel (not only with new positions but also replacing those that left the office), dealt with budget concerns, transitioned to an electronic filing system both internally and with every court system (as well as the systems of the various clerks), weathered numerous storms and hurricanes, and, most recently, tackled the current challenges associated with COVID-19 and moving over twenty people off-site to be able to work both safely and remotely. Even outside of my duties as Bureau Chief, I have served in many leadership roles in a wide-spectrum of activities such as Commissioner with the Florida Medical Examiners, Volusia Bar President, President of Southeast Volusia Youth Sports, Inc., Chair of the Daytona State College Paralegal Advisory Committee, various committees at church, and many others.

Lastly, I have always taken a patient, respectful approach to handling problems. Most who appear in county court are not familiar with the court system, but the people of Volusia County understandably expect someone to listen and, then, to quickly and fairly apply the controlling law. Having taught for many years and having dealt with a variety of human resource issues, evolving law, adverse case law, and endless other variables during my public service to this point, all would make me a respectful, efficient judge.

If selected, I would be honored to serve on the bench and to continue my career in public service.

## 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) Judge Richard B. Orfinger, Fifth District Court of Appeal

[rickorfinger@gmail.com](mailto:rickorfinger@gmail.com)

(386) 947-1510

- (b) Volusia County Court Judge Belle Schumann,  
[bschumann@circuit7.org](mailto:bschumann@circuit7.org)  
(386) 257-6042
- (c) Volusia County Court Judge David Foxman,  
[dfoxman@circuit7.org](mailto:dfoxman@circuit7.org)  
(386) 257-6033
- (d) Flagler County Court Judge Andrea Totten  
[mwolfe@circuit7.org](mailto:mwolfe@circuit7.org)  
(386) 313-4525
- (d) James Martin, Counsel for Florida Department of Law Enforcement  
[jamesmartin@fdle.state.fl.us](mailto:jamesmartin@fdle.state.fl.us)  
(850) 410-7676
- (e) Brooke M. Gaffney, private attorney and former student  
[bgaffney@daytonalaw.com](mailto:bgaffney@daytonalaw.com)  
(386) 254-6875
- (f) James S. Purdy, Seventh Circuit Public Defender  
[purdy@pd7.org](mailto:purdy@pd7.org)  
(386) 239-7730
- (g) Patrick Krechowski, private attorney  
[pkrechowski@balch.com](mailto:pkrechowski@balch.com)  
(904) 393-9000
- (i) David Ray, Leisure Services Director for New Smyrna Beach  
[dray@cityofnsb.com](mailto:dray@cityofnsb.com)  
(386) 410-2891

(k) Todd Richardson, former Professor at Daytona State College

[tcrla@yahoo.com](mailto:tcrla@yahoo.com)

(386) 785-2054

## 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(1), 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 11<sup>th</sup> day of September, 2020.

Wesley Heidt  
Printed Name

Wesley Heidt  
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.

**Last Three Years:**

**2017: \$79,400.11**

**2018: \$81,344.42**

**2019: \$81,841.78**

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.

**Last Three Years:**

**2017: \$73,036.39**

**2018: \$74,909.42**

**2019: \$75,406.78**

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

See above.

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.

Teaching at Daytona State College



**Last Three Years:**

**2017: \$1935.00**

**2018: \$1935.00**

**2019: \$1935.00**

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.

Teaching at Daytona State College

**Last Three Years:**

**2017: \$1789.89**

**2018: \$1789.89**

**2019: \$1789.89**

**FORM 6**  
**FULL AND PUBLIC**  
**DISCLOSURE OF**  
**FINANCIAL INTEREST**

**PART A – NET  
WORTH**

Please enter the value of your net worth as of December 31 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 \_\_\_\_\_, 20\_\_\_\_ was  
\$ \_\_\_\_\_.

**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.

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. 3)	VALUE OF ASSET	OF

**PART C - LIABILITIES**

**LIABILITIES IN EXCESS OF \$1,000**

(See instructions on page 4):  
**NAME AND ADDRESS OF CREDITOR**

**AMOUNT OF  
LIABILITY**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
<b>JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR</b>	<b>AMOUNT OF LIABILITY</b>

**PART D - INCOME**

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments*, ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.

(if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

**PRIMARY SOURCE OF INCOME (See instructions on page 5):**

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

**SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]**

NAME OF BUSINESS ENTITY	NAME OF MAJOR BUSINESS' INCOME	OF SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

**PART E – INTERESTS IN SPECIFIC BUSINESS  
[Instructions on page 7]**

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD			

WITH ENTITY			
OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

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

<p style="text-align: center;"><b>OATH</b></p> <p>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.</p>	<p style="text-align: center;"><b>STATE OF</b></p> <p style="text-align: center;"><b>FLORIDA</b></p> <p style="text-align: center;"><b>COUNTY OF _</b></p> <p>Sworn to (or affirmed) and subscribed before me this _____ day of __, 20_____ by _____</p> <p>(Signature of Notary Public—State of Florida)</p> <p>(Print, Type, or Stamp Commissioned Name of Notary Public)</p> <p>Personally Known _____ OR Produced Identification _____</p>
<b>SIGNATURE</b>	<p>Type of Identification Produced _____</p>



## 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: 9/11/20  
JNC Submitting To: 7<sup>th</sup> Judicial Circuit

Name (please print): Wesley Heidt  
Current Occupation: Atty.  
Telephone Number: (386) 451-7141 Attorney No.: 773026

Gender (check one):  Male  Female  
Ethnic Origin (check one):  White, non-Hispanic  
 Hispanic  
 Black  
 American Indian/Alaskan Native  
 Asian/Pacific Islander

County of Residence: Volusia

*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.

*Wesley Heidt*

Printed Name of Applicant

*Wesley Heidt*

Signature of Applicant

Date:

*9/11/20*

# WRITING SAMPLE



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

CASEY MARIE ANTHONY,

Appellant;

v.

CASE NO.: 5D11-2707

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

STATE'S RESPONSE TO EMERGENCY PETITION

COMES NOW the State of Florida requesting that this Court deny the requested relief. As grounds supporting this response, the State offers the following facts and argument:

1. On January 25, 2010, Ms. Anthony pled to thirteen (13) counts in case 48-08-CF-013331-O.<sup>1</sup> Judge Strickland was the presiding judge in this case, and part of the sentence imposed was one year of probation which was orally pronounced to begin upon her release from incarceration.<sup>2</sup>

\_\_\_\_\_

1

This Court ordered Petitioner to provide copies of the sentencing hearings held on January 25, 2010, and August 5, 2011, by noon on Tuesday August 23, 2011. The prosecutor was able to provide the undersigned a copy of the January 25, 2010, which is being attached as an appendix. However, the undersigned was not able to obtain a copy of the August 2011 hearing and was not able to review that hearing prior to the due date of this response.

2

At the time of the imposition of probation, Ms. Anthony was being held in jail to face charges in case no.: 48-2008-0015606-O.

2. While the oral pronouncement was clear that probation would commence when Ms. Anthony was released, it appears that it was interpreted by the Department of Corrections as running while she was in jail. Additionally, the Department of Corrections sent her a letter on January 25, 2011, notifying her that she had completed her probation.

3. Judge Strickland *sua sponte* entered an order on July 29, 2011, which attempted to reiterate that probation was intended to begin upon Ms. Anthony's release from jail.<sup>3</sup>

4. On August 2, 2011, Judge Strickland recused himself, and evidently the order he entered was stayed with Judge Perry entering the case.<sup>4</sup>

5. Also, on August 2, 2011, Ms. Anthony filed a pleading entitled "Emergency Motion for Hearing to Quash, Vacate, and Set Aside Court's Order." (Defense's appendix.: E).

6. A hearing was held on August 5, 2011, and on August 12, 2011, a detailed order was entered finding that probation was not

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3

Presumably, because she was sentenced on her other case on July 7, 2011, and the error only, then, came to his attention.

4

Petitioner addresses in detail concerns about Judge Strickland, his delayed recusal, and his bias. However, Florida Rule of Judicial Administration 2.160(h) allows a successor judge to reconsider rulings that the disqualified judge made before disqualification, and any concerns Petitioner may have had about the initial judge were cured after substitution and review by the new judge. See Richardson v. State, 821 So. 2d 428 (Fla. 5th DCA 2002) (Defendant is not entitled to presumption of vindictiveness given that new sentence was imposed by different judge.).

supposed to commence until Petitioner was released and ordering Ms. Anthony to report "no later than 12:00 p.m. on August 26, 2011...."

7. On August 18, 2011, Petitioner filed the instant emergency petition for writ of prohibition submitting that the trial court's August 12th order was executed without jurisdiction and violates double jeopardy. On August 19, 2011, this Court has ordered the State to respond.

#### ARGUMENT

It is undisputed that on January 25, 2010, the trial court imposed one year of probation on Ms. Anthony to be served "once released" from being incarceration on her other case. (A 5). The fact that she would not be serving that probation while in jail appeared clear to defense counsel given he countered that any concerns as to when Ms. Anthony would begin probation could be solved by releasing her on bond on the pending homicide case; thus, allowing her to begin her probation instantly when out of jail. (A 8).<sup>5</sup> Even if the written order was inconsistent with the oral pronouncement, Petitioner acknowledges that it is well settled law that oral pronouncements control over any discrepancies in the

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5

This comment came after there was some discussion at the hearing as to the logistics of serving probation without an exact date to begin since she was being held in jail in the other case. During this discussion, the prosecutor made a statement about Ms. Anthony serving the probation while in jail (A 8) and defense counsel suggested bond, release, and, then, probation. However, none of these suggestions changed the fact the sentence imposed by the trial judge was for probation to begin after Petitioner's release from jail.

written document. See Williams v. State, 957 So. 2d 600, 603 (Fla. 2003).

Therefore, Petitioner's argument is that although knowing she was to serve the probation only after being released from jail some type of administrative error led the Department of Corrections to treat the probation as running while she was in jail. Then, she successfully completed this "probation," and the trial court cannot now find that probation was not properly completed. Respectfully, the State disagrees.

The primary goals of probation are to impose conditions so that: (1) the probationer will be rehabilitated; (2) society will be protected from future criminal violations by the probationer; and (3) the crime victim's rights will be protected. Woodson v. State, 864 So. 2d 512, 516 (Fla. 5th DCA), review dismissed, 889 So. 2d 823 (Fla. 2004); see also Grubbs v. State, 373 So. 2d 905, 909 (Fla. 1979) ("Protection of the public is an important and proper consideration by the trial judge when determining whether probation or confinement should be imposed."); Bernhardt v. State, 288 So. 2d 490, 494 (Fla. 1974) ("It is well settled that the primary purpose of probation is to rehabilitate the individual while he is at liberty under supervision."); Spry v. State, 750 So. 2d 123, 124-125 (Fla. 2d DCA 2000) ("[i]t is necessary to bear in mind the various purposes sought to be served by probation as a substitute for penitentiary custody. The freedom of the individual

is only one of the desiderata. Rehabilitation and public safety are others.”) (quoting from Sobota v. Williard, 247 Or. 151, 427 P.2d 758, 759 (1967)); Crossin v. State, 244 So. 2d 142, 145 (Fla. 4th DCA 1971) (“The underlying purpose of probation is to give the individual a second chance to live within the rules of society and the law of the land during which time he can prove that he will thereafter do so and become a useful member of society. A grant of probation is a matter of grace and not of right, such grant being subject to revocation at any time the court determines that the probationer has violated the terms and conditions thereof.”).

Knowing that it is a matter of grace, the court originally imposed probation to be served following her release from incarceration.<sup>6</sup> Legally, it is clear that a defendant cannot serve probation while incarcerated. As this Court wrote in Jones v. State, 964 So. 2d 167, 170-171 (Fla. 5th DCA 2007):

It is well settled that a defendant cannot serve a prison term and be on probation simultaneously. Porter v. State, 585 So. 2d 399, 400 (Fla. 1st DCA 1991). To hold otherwise would be inconsistent with the rehabilitative concept of probation which presupposes that the probationer is not in prison confinement. Id. Any term of probation presumed to run when the defendant cannot be supervised would be

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6

Furthermore showing that probation is to be served only once released are the very conditions of probation such as: not changing your residence, not possessing firearms, remaining at liberty without violating new laws, not using intoxicants, attempting to work diligently, submitting to a reasonable search, etc. One cannot even attempt to comply with these type of conditions while incarcerated (or the conditions are made nonsensical).

a nullity. Id. As this court explained in State v. Savage, 589 So. 2d 1016, 1018 (Fla. 5th DCA 1991):

Simple logic would seem to dictate that, where a defendant is incarcerated ..., a probationary period from an unrelated sentence would be tolled since a probationary term should not be allowed to expire simply because a defendant has decided to incur new prison time as a result of a separate and distinct offense.

So, while seeming to acknowledge that the intent of the trial court was for the probation to be served after her release, and while failing to address how one can lawfully serve probation while incarcerated, Petitioner asserts that the error cannot now be corrected submitting that the "probation" had already been completed.

The error in Petitioner's argument is that the court was not modifying a completed sentence; instead, the court was simply attempting to ensure the previously imposed, and never served, probation was begun. The one year of probation imposed tolled while Ms. Anthony was in jail. Upon her release, she should have reported. Admittedly, the treatment of her by the Department of Corrections was not executed with the greatest clarity; regardless, when this error became known to the trial court, the error was corrected.

In addition to arguing that the trial court lost jurisdiction over her, Petitioner also submits that the trial court's order violated double jeopardy. The United States Supreme Court has

written, "That guarantee [against double jeopardy] has been said to consist of three separate constitutional protections. It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969). It is this last prohibition that Petitioner submits was violated. However, the Court also noted in U.S. v. DiFrancesco, 449 U.S. 117, 133-134 (1980), when it was distinguishing sentencing issues from convictions:

Historically, the pronouncement of sentence has never carried the finality that attaches to an acquittal. The common-law writs of *autre fois acquit* and *autre fois convict* were protections against retrial. . . . Although the distinction was not of great importance early in the English common law because nearly all felonies, to which double jeopardy principles originally were limited, were punishable by the critical sentences of death or deportation, . . . it gained importance when sentences of imprisonment became common. The trial court's increase of a sentence, so long as it took place during the same term of court, was permitted. This practice was not thought to violate any double jeopardy principle. . . . The common law is important in the present context, for our Double Jeopardy Clause was drafted with the common-law protections in mind. . . .

(Citations omitted).

Consistent with that holding, the United States Supreme Court in Bozza v. United States, 330 U.S. 160 (1947), held that double jeopardy did not preclude a district court from increasing a sentence when a minimum mandatory term was mistakenly omitted.

Bozza was convicted of carrying on a distillery business with the intent to willfully defraud the United States of the tax on spirits. Id. at 162. The trial court originally sentenced Bozza to prison, but failed to impose the statutorily required fine of one hundred dollars. Five hours later, Bozza was returned to the courthouse from the local detention facility and the mandatory fine was imposed. Id. at 165. The Court rejected an interpretation of double jeopardy that allowed a defendant to "escape punishment altogether, because the court committed an error in passing sentence." Id. at 166. The Court explained that sentencing is not "a game in which a wrong move by the judge means immunity for the prisoner." Id. at 166-167.

Consistent with this United States Supreme Court law, an Ohio appellate court found that the Double Jeopardy Clause did not preclude the imposition of a mandatory prison term upon vacation of a previously paid fine in Ohio v. Vaughn, 462 N.E.2d 444 (Ohio 1st DCA 1983). The Ohio appellate court wrote:

Under the Double Jeopardy Clause, a defendant has a shield against sentences that exceed the legislative enactment, but this cannot be used as a sword to cut down his penalty to less than that which the legislature has clearly and unmistakably imposed on the offense of which he stands guilty. The defendant's interest in the finality of his sentence is, in this instance, outweighed by society's interest in enforcing the law and meting out what has been duly designated as just desserts.

Id. at 447-448.



While Bozza and Vaughn involved correction of legislatively mandated sentences which had been omitted, the principle that such correction does not violate double jeopardy - whether legislatively mandated or judicially imposed - is the same. Petitioner should not be allowed to take advantage of an administrative error and create a free pass. She, in essence, would be using the erroneous actions of the Department of Corrections as a sword to bypass the known intent of the sentencing court and the very purpose of probation - supervised release. Under the case law cited above, double jeopardy does not bar the trial court's correction.

So, given that the probation was tolling while Petitioner was incarcerated, the trial court had jurisdiction to clarify, and given that trial court's correction of any perceived error does not violate double jeopardy, the instant order should be affirmed on appeal. Petitioner, to date, has yet to serve the one year of probation she was ordered to complete. The trial court simply is attempting to achieve the originally ordered sentence.

WHEREFORE, the State respectfully requests this Court deny Petitioner's writ of prohibition and requests this Court affirm the trial court's order that Petitioner serve her one year of probation.

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

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WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR #0773026  
FIFTH FLOOR  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by U.S. mail and by electronic mail to counsel for Jose Baez, Esquire, The Baez Law Firm, office@baezlawfirm.com, 522 Simpson Road, Kissimmee, FL 34744; J. Cheney Mason, Esq., cheneylaw@aol.com; Lisabeth Fryer, Esq., Lisabeth@LisabethFryerLaw.com, 390 North Orange Avenue, Suite 2100, Orlando, FL 32801, this \_\_\_\_\_ day of August 2011.

---

WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL

# WRITING SAMPLE

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

STATE OF FLORIDA,

Appellant,

v.

CASE NO.: 5D08-2196

KENNETH HALPIN,

Appellee.

---

BY CERTIFIED QUESTION  
IN AND FROM VOLUSIA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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ATTORNEY GENERAL

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STATEMENT OF CASE AND FACTS

The Defendant<sup>1</sup> was charged with one count of unnatural and lascivious act and one count of indecent exposure. (R 96). The charges arose from what began as an investigation of complaints about sexual activity in the men's restroom of the Sear's department store at the Volusia Mall. (R 86). The defense filed an amended motion to suppress arguing that the Defendant had an expectation of privacy within the stall of the restroom that was violated by law enforcement. (R 110-113).

At the suppression hearing held on June 2, 2008, Captain Richard Gardner (Capt. Gardner) was the sole witness. Capt. Gardner testified that the Sears restroom had come to the attention of law enforcement based not only on "word of mouth" but also on internet websites which listed hotspot locations where sexual activity would occur. (R 15-16). He testified he worked for the Beach Patrol and because of his experience with similar activity at beachfront restrooms he assisted the Daytona Beach Police in its investigation at Sears. (R 12-13).

He continued his testimony detailing his encounter with the Defendant which occurred on November 1, 2007. Capt. Gardner

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<sup>1</sup>Appellant will be referred to as "the State" and Appellee will be referred to as "the Defendant" for purposes of this



stated that the Defendant entered the stall right next to the one he occupied, and the Defendant immediately began to sniff, cough, and raise and lower his zipper. (R 18). Additionally, the Defendant leaned down as if looking under the partition and was breathing heavily. (R 24-26). Capt. Gardner also testified that in such investigations law enforcement never initiates any of the actions. (R 26).

The officer testified that based on his experience this was an offer for oral sex. (R 26). The officer at this point exited the stall and was able to make eye contact with the Defendant through the gap in the partition of the stall door. (R 27). The officer saw the Defendant masturbating his exposed penis and soon thereafter the Defendant opened the stall door at which point the officer said, "What do you want?" The Defendant responded, "I like everything" and took his hair and tied it back into a pony tail. (R 30). The officer stated that he believed this was an invitation to step in and have oral sex. (R 30).

A second officer came into the restroom, and upon hearing someone enter, the Defendant said in an alarmed tone, "No, no, somebody is coming." (R 32). The Defendant was then arrested.

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brief.

Id. Capt. Gardner took the Defendant to a nearby room, and after being informed of his rights, the Defendant volunteered that he was being stupid and probably should have just exchanged telephone numbers. (R 33).

After this testimony, the trial court listened to argument from each side. (R 52-84). The judge then took the motion under advisement and entered an order on June 12, 2008, granting the motion. (R 119-133). In that order, the trial court certified to this Court the following question:

DOES THE ACT OF ENTERING A PUBLIC BATHROOM STALL AND CLOSING THE DOOR DEMONSTRATE A REASONABLE EXPECTATION OF PRIVACY THAT IS ENTITLED TO PROTECTION FROM ANY VISUAL INTRUSION ABSENT PROBABLE CAUSE TO BELIEVE THAT A CRIME IS BEING COMMITTED, EVEN IF THE PERSON IN THE STALL IMPLICITLY INVITES OTHERS TO VIEW OR PARTICIPATE IN A LEWD ACT?

This is the appeal of that ruling.

SUMMARY OF ARGUMENT

The State would first submit that the facts show no search by law enforcement in this case. Additionally, even if there was a search by the State, the Defendant's own actions waived whatever right of privacy he may have had within the restroom stall. Therefore, it is the position of the State that the trial court improperly granted the defense's motion to suppress and asks this Court to reverse the trial court's order.

ARGUMENT

POINT OF LAW

THE TRIAL COURT ERRED IN GRANTING  
DEFENDANT'S MOTION TO SUPPRESS.

The State would respectfully assert that the actions of the officer in this case do not rise to the level of being a search, and even if found to be a search, the Defendant's actions waived any right of privacy he may have had upon entering the restroom stall. Given this, it is the position of the State that the trial court improperly granted the motion to suppress.

First, case law holds that a trial court's ruling on a motion to suppress comes to the appellate court clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling. See Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court's factual findings if they are supported by competent, substantial evidence. Id. However, a trial court's determination of the legal issue of probable cause is subject to the *de novo* standard of review. See Ornelas v. United States, 517 U.S. 690 (1996); Connor v. State, 803 So. 2d 598 (Fla. 2001), cert. denied 535

U.S. 1103 (2002); Dewberry v. State, 905 So. 2d 963, 965 (Fla. 5th DCA 2005). With this *de novo* review, the State's position is that the trial court should be reversed.

Prior to reviewing the applicable law in this case, the State will first set out the facts. The Defendant was charged with one count of unnatural and lascivious act and one count of indecent exposure. (R 96). The charges arose from what began as an investigation of complaints about sexual activity in the men's restroom of the Sear's department store at the Volusia Mall. (R 86). The defense filed an amended motion to suppress arguing that the Defendant had an expectation of privacy within the stall of the restroom that was violated by law enforcement. (R 110-113).

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He continued his testimony detailing his encounter with the Defendant which occurred on November 1, 2007. Capt. Gardner stated that the Defendant entered the stall right next to the one he occupied, and the Defendant immediately began to sniff, cough, and raise and lower his zipper. (R 18). Additionally, the Defendant leaned down as if looking under the partition and was breathing heavily. (R 24-26). Capt. Gardner also testified that in such investigations law enforcement never initiates any of the actions. (R 26).

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A second officer came into the restroom, and upon hearing someone enter, the Defendant said in an alarmed tone, "No, no,

somebody is coming." (R 32). The Defendant was then arrested. Id. Capt. Gardner took the Defendant to a nearby room, and after being informed of his rights, the Defendant volunteered that he was being stupid and probably should have just exchanged telephone numbers. (R 33).

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DOES THE ACT OF ENTERING A PUBLIC BATHROOM STALL AND CLOSING THE DOOR DEMONSTRATE A REASONABLE EXPECTATION OF PRIVACY THAT IS ENTITLED TO PROTECTION FROM ANY VISUAL INTRUSION ABSENT PROBABLE CAUSE TO BELIEVE THAT A CRIME IS BEING COMMITTED, EVEN IF THE PERSON IN THE STALL IMPLICITLY INVITES OTHERS TO VIEW OR PARTICIPATE IN A LEWD ACT?

The trial court's order included a detailed analysis which contrasted the right of privacy involved in this case, the actions of the Defendant, and the interests of the State. However, the State would have two problems with trial court's holding. First, there was no search by the officer, and, secondly, even if the officer's limited actions did amount to a search, they were prompted by the Defendant's own invitation which would have waived any right of privacy the Defendant may

have initially had.

As to whether the officer's actions were a search, we should quickly review exactly what he did. The officer was in a stall when the Defendant entered the adjacent stall and closed the door. However, the Defendant immediately began a series of actions trying to signal the occupant of the next stall (which turned out to be Capt. Gardner). The trial court correctly noted in its order that officers are allowed to use their experience and training to make inferences that "might well elude an untrained person."<sup>2</sup> (R 125-126). Capt. Gardner testified that based upon his experience and training the Defendant's actions were an invitation for oral sex. (R 26, 30).

The officer next offered that he saw some actions by the Defendant through a gap between the partition and the wall as well as in reflections in the tile. (R 24-26). However, the trial judge stated that she with the permission of both parties

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<sup>2</sup>The trial court's order cited United States v. Arvizu, 534 U.S. 266, 273 (2002), in which the Court wrote, "A consideration of the totality of the circumstances of each case to determine whether the detaining officer has a well-founded suspicion of criminal activity allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person." See also State v.



had viewed a videotape of the location of the offense and would not consider these facts as proven. (R 120).

Capt. Gardner next exited his stall, and when he looked through what was described in the court's order as an inch and half gap in the door, he saw the Defendant make eye contact with him as the Defendant masturbated. (R 27, 121). The Defendant then opened the stall door and essentially invited the officer in. (R 30).

Again, it would be State's position that there was no search. It was the Defendant who initiated contact, it was the Defendant who wanted to and did make eye contact while masturbating, and it was the Defendant who opened his stall door. Like the officer in Moore v. State, 355 So. 2d 1219 (Fla. 1st DCA 1978), Capt. Gardner had a legal right to be in the public restroom. In Moore, the officer was investigating illegal drug activities in the Greyhound bus station, and testified,

Q. When you stopped outside the toilet, how big a crack was there? [Crack between the toilet stall and the door]

A. I'd say half an inch.

Q. You were able to stand outside the stall and look through that crack, and in plain view, you saw him with

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Marrero, 890 So. 2d 1278 (Fla. 2d DCA 2005).

the needle in his arm and his belt around his arm. Is that correct?

A. Yes, sir.

Further, the testimony of the officer revealed:

Q. How far away from the crack were you? Did you have to get close to it?

A. No, I didn't have to peep. \* \* \* so there's about a three-foot aisle in between the wash basins and toilets, so by me walking down the middle of the aisle, it puts me about six or eight inches in front of the stall.

Q. So you are about six to eight inches away?

A. All I had to do was look as I walked by. . . .

Id. at 1220. The court found that such actions did not constitute a search. See also United States v. Billings, 858 F.2d 617 (10th Cir. 1988) (Viewing by an officer underneath the bottom of a restroom stall door of a defendant's retrieval of cocaine from his sock was not an illegal search that violated any right of privacy given that the officer simply observed what "any ordinary patron of a public restroom" could have seen from that normal vantage point.) Like in these cases, Capt. Gardner's actions also did not constitute a search.

Additionally, even if the officer's actions did constitute a limited search and an intrusion on the Defendant's right of privacy, the State would assert that the Defendant's actions

waived his rights. The State agrees that if the Defendant had simply entered a restroom stall and closed the door that there would be a right of privacy. However, such right is clearly not absolute. The Court in the Ninth Judicial Circuit recognized that fact when it wrote in Smayda v. United States, 352 F.2d 251, 257 (9th Cir. 1965), cert. denied, 382 U.S. 981 (1966):

We agree that every person who enters an enclosed stall in a public toilet is entitled to believe that, while there, he will have at least the modicum of privacy that its design affords. We would not uphold a clandestine surveillance of such an area without cause. We are made as uncomfortable as the next man by the thought that our own legitimate activities in such a place may be spied upon by the police. We also think, however, that the nature of the place, the nature of the criminal activities that can and do occur in it, the ready availability therein of a receptacle for disposing of incriminating evidence, and the right of the public to expect that the police will put a stop to its use as a resort for crime all join to require a reasonable limitation upon the right of privacy involved. We hold that when, as here, the police have reasonable cause to believe that public toilet stalls are being used in the commission of crime, and when, as here, they confine their activities to the times when such crimes are most likely to occur, they are entitled to institute clandestine surveillance, even though they do not have probable cause to believe that the particular persons whom they may thus catch in flagrante delicto have committed or will commit the crime. The public interest in its privacy, we think, must, to that extent, be subordinated to the public interest in law enforcement.

See also United States v. Hill, 393 F.3d 839, 841 (8th Cir. 2005) (Officers entry into locked restroom was upheld with the

court writing, "[I]n the present case, the restroom was designed for use by one person, it was located in a convenience store,<sup>3</sup> and available for use by customers and guests of the store. Hill and his female companion occupied the restroom in a manner for which it was not designed, and remained there after being asked to leave. Under these circumstances, we hold that whatever reasonable expectation of privacy Hill and his companion had expired by the time the officers arrived."); Kansas v. Mudloff, 36 P.3d 326 (Kan. Ct. App. 2001) (In case where stall occupants were caught snorting cocaine the court held that an individual had a subjective expectation of privacy in a public bathroom; however, society would not recognize that right "if the stall's occupant was engaged in activity other than the stall's intended use.").

Again, after entering the stall, the Defendant immediately began actions which an experienced officer testified were an invitation for oral sex. It was the Defendant who did not utilize the facility for its intended purpose - instead seeking an activity in a public restroom used by others in a commercial

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<sup>3</sup>The court also quoted the United States Supreme Court's holding that "an expectation of privacy in commercial premises . . . is different from, and indeed less than, a similar expectation in an individual's home." Id., quoting, New York v.

department store which would involve two people. The Defendant's actions led the officer to exit his stall, and the Defendant opened his own stall door while exposing himself to the officer. Clearly, such actions constitute a waiver of any expectation of privacy.

The primary case relied upon by the trial court was Ward v. State, 636 So. 2d 68 (Fla. 5th DCA 1994). Ward can be distinguished by the fact it was the officer in Ward who took the initial action of standing near the closed door and peeking into the stall. Id. at 69. Ward never carried out a series of acts inviting the officer over prior to the officer even seeing him, and Ward never opened the door to the stall finalizing the earlier invitation. Therefore, not only were the officer's actions much greater as far as his efforts to view Ward than those of Capt. Gardner but his peeking was prior to any actions waiving the right to privacy.

The State would point out that this Court also wrote in Ward, "We agree with the circuit court that had Ward been masturbating in the public area of the restroom with the intent of exposing himself to others, **or had he been doing so in a stall, the interior of which could be freely seen from the**

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Burger, 482 U.S. 691, 700 (1987).

public areas, a reasonable expectation of privacy would not have existed." Id. at 71 (emphasis added). That is exactly what did occur here. Initially from inside the stall, then, opening the door, the Defendant was masturbating and inviting the officer to join him. Although more relevant to ultimately proving the case and not the suppression issue, the State would also note that the Defendant's actions immediately after the second officer entered ("No, no, somebody is coming.") as well as his statements right after arrest (that his actions were stupid) helped confirm Capt. Gardner's determination.

Given these facts and law, the State would respectfully assert that the actions of the officer in this case do not rise to the level of being a search, and even if found to be a search, the Defendant's actions waived any right of privacy he may have had upon entering the restroom stall. Therefore, the State would ask this Court reverse the lower court's order.

#### CONCLUSION

Based on the argument and authorities presented herein, the State requests this Honorable Court reverse the order of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to the Office of the Public Defender, counsel for the Appellee, 444 Seabreeze Blvd., Suite 210, Daytona Beach, FL 32118, this \_\_\_\_\_ day of November 2008.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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COUNSEL FOR APPELLANT

# WRITING SAMPLE



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

JERRY PARKER,

Appellant,

v.

CASE NO. 5D17-3446

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

ON APPEAL FROM THE CIRCUIT COURT  
OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR HERNANDO COUNTY, FLORIDA

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COUNSEL FOR APPELLEE

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STATEMENT OF CASE AND FACTS

Appellant was charged by information with possession of ammunition by a felon in violation of sections 790.23(1) and 790.23(2). (R 30). On September 6, 2017, defense counsel filed a motion to dismiss the charge. (R 30). The defense acknowledged that Appellant was convicted of a burglary in 1987; however, he argued his charge should be dismissed because in 1988 he had his civil rights restored with the exception of the right to possess a firearm. (R 30-31).

On September 7, 2017, the trial court held a hearing on the motion. (R 79-92). The majority of the hearing was the defense explaining his motion, and at the conclusion of the hearing, the trial court ordered the State to file a written response to the motion. Id. On September 20, 2017, the State filed its Response. (R 46-48).

On October 5, 2018, the trial court denied the motion to dismiss, Appellant entered a negotiated plea reserving the right to appeal the issue, and the trial court imposed the agreed to three (3) years of probation. (R 53-55, 94-111). The plea also provided that if Appellant met the conditions of the probation it would automatically terminate after 18 months. (R 52, 108). Appellant next filed the instant appeal.

SUMMARY OF THE ARGUMENT

The statute under which Appellant was charged - section 790.23, Fla. Stat. - is not unconstitutional as applied to Appellant. The statute under which he was charged for possession of ammunition specifically has an exception for those whose firearm rights have been restored. The executive restoration of his rights was clearly a partial restoration which exempted firearms.

ARGUMENT

THE STATUTE MAKING IT ILLEGAL FOR  
CONVICTED FELONS TO POSSESS FIREARMS  
OR AMMUNITION IS NOT  
UNCONSTITUTIONAL AS APPLIED TO  
APPELLANT.

Appellant submits the statute under which he was charged with possession of ammunition is unconstitutional as applied to him. The State respectfully disagrees.

Appellant was charged with possession of ammunition by a convicted felon. (R 30). Appellant acknowledged that he was convicted of a burglary in 1987; however, he argued to the trial court that his new charge should be dismissed because in 1988 he had his civil rights restored. (R 30-31). Based on this restoration, Appellant filed a motion to dismiss the charge. (R 40). The day after the motion was filed defense counsel orally presented his position to the trial court and the State. (R 79-93).

The State filed a written response detailing that Appellant's firearm rights had **not** been restored which allowed him to be prosecuted under the statute. (R 46-48). The Court agreed with the State's position, Appellant entered a plea reserving the right to appeal this issue, and the court placed him on probation. (R 94-111).

Appellant does not dispute that his restoration was a partial

one which excluded firearms. Clearly, the statute sets out that a previously convicted felon cannot possess a firearm or ammunition unless his firearms rights have been restored. Section 790.23, Florida Statutes, provides as follows:

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, **ammunition**, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(a) Convicted of a felony in the courts of this state;

...

(2) This section shall not apply to a person:

(a) Convicted of a felony whose civil rights **and firearm authority have been restored.**

(Emphasis added). Appellant's right to possess firearms was not restored. Therefore, he clearly falls under the statute as being barred from having ammunition.

Essentially, it appears Appellant is arguing that a partial restoration renders section 790.23 unconstitutional as applied to him. This case is very similar to the issues addressed in Williams v. State, 402 So. 2d 78 (Fla. 1<sup>st</sup> DCA 1981), and France v. State, 436 So. 2d 428 (Fla. 5<sup>th</sup> DCA 1983). See also, Thompson v. State, 438 So. 2d 1005 (Fla. 2d DCA 1983) (Governor's clemency power authorized a partial restoration of civil rights which exempted

possession of a firearm.) In those cases the defense was disputing whether the Executive Branch could grant a partial restoration of a felon's civil rights. In both cases the defendants' civil rights were restored with the exception of their right to own firearms. As this Court wrote,

It is clear that the executive branch has provided under these rules for restoration of some, but not all, civil rights for released felons. Given the broad discretion granted the executive branch and the policy sought to be served by restricting the use of firearms by felons, we perceive no constitutional deprivation.

France, 436 So. 2d at 430-431. Furthermore, as noted in Williams, what Appellant was given was a partial restoration of his civil rights with his right to own or possess a firearm specifically excluded. Specifically, the First District wrote:

We reject appellant's arguments and agree with the State. What appellant actually received was a partial restoration of his civil rights rather than a complete restoration. When the appellant was convicted of a felony, one of the rights that he previously held as a citizen, the right to possess a firearm, was taken away by virtue of s 790.23(1). Appellant could no longer legally possess or own a firearm. This was clearly a "civil right" that he no longer possessed. Under the Governor's discretionary clemency power (Article IV, s 8, Florida Constitution) appellant was restored to all other pre-conviction rights except the authority to possess or own a firearm. The trial court properly denied the motion to dismiss because appellant had not had his "civil rights" restored for purposes of s



790.23 when the event for which he was charged occurred.

Williams, 402 So. 2d at 79.

Case law is clear that when a statute is being interpreted, courts are bound "to resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent." State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994), quoting, State v. Elder, 382 So. 2d 687, 690 (Fla. 1980). Furthermore, there is a strong presumption in favor of the constitutionality of statutes. See State v. Fuchs, 769 So. 2d 1006 (Fla. 2000); State v. Mitro, 700 So. 2d 643 (Fla. 1997).

Appellant offers the argument that the partial restoration by the Executive Branch restored Appellant's right to own and possess ammunition and that the statute unconstitutionally tries to limit that restoration. He cites Padgett v. Estate of Gilbert, 676 So. 2d 440 (Fla. 1<sup>st</sup> DCA 1996), to support that position. Padgett involved a situation where a defendant received a full restoration of his civil rights but was not allowed to serve as a personal representative of an estate. The State acknowledges that in that situation the statute was in conflict with the actions of the Executive Branch; however, in the instant case, the statute works in concert with the partial restoration granted to Appellant. If

all rights are restored, then a statute should not be able to counteract the actions of the Executive Branch. In the instant case, the Legislature requires that a felon's firearm rights have been restored prior to him possessing ammunition. Appellant's restoration of rights was a limited, partial one, and his actions were outside that restoration. Clearly, this limitation does not create a statute that is unconstitutional as applied to Appellant.

#### CONCLUSION

Based on the arguments and authorities presented herein, Appellee respectfully requests this Honorable Court affirm the judgment and sentence in this case and not find the contested statute to be unconstitutional as applied to Appellant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Answer Brief of Appellee has been furnished to counsel for Appellant, Peyton B. Hyslop, Esq., Hyslop & Greenfelder, P.A., P.O. Box 1776, Brooksville, FL 34605-1776, by email at [hysloplaw@gmail.com](mailto:hysloplaw@gmail.com); this 7th day of May 2018.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: [crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com) (primary) and [wesley.heidt@myfloridalegal.com](mailto:wesley.heidt@myfloridalegal.com) (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier New as required by Rule 9.210(a)(2).

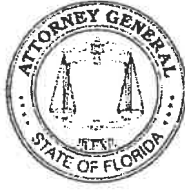
Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

/s/ Wesley Heidt  
WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar #773026  
444 Seabreeze Blvd.  
5th Floor  
Daytona Beach, Florida 32118  
(386) 238-4990  
(384) 238-4997 (fax)  
[crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com)

COUNSEL FOR APPELLEE

# MISCELLANEOUS



**STATE OF FLORIDA**

**PAM BONDI  
ATTORNEY GENERAL**

January 26, 2015

The Honorable Rick Scott  
Governor, State of Florida  
The Capitol  
400 South Monroe Street  
Tallahassee, Florida 32399-0001

Dear Governor Scott:

Section 406.02 (1)(b), Florida Statutes (2014), pertaining to the membership of the Florida Medical Examiners Commission, provides that one member of the Commission shall be the Attorney General or her designated representative. Please be advised that I am designating Assistant Attorney General Wesley Heidt, Bureau Chief, Daytona Beach Criminal Appeals, as my representative to sit on the Medical Examiners Commission effective Thursday, February 26, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Pam Bondi".

Pam Bondi  
Attorney General

PB/lpg

cc: Carolyn Snurkowski, Associate Deputy Attorney General  
Bob Krauss, Assistant Attorney General

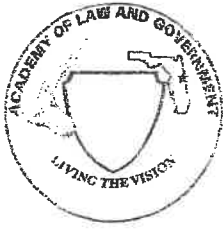
Hi Wesley,

I just wanted to thank  
you for participating in giving  
CyberSafety presentations to  
the students of Florida for  
the 2007-08 school year.

We appreciate your assistance  
in accomplishing our goals  
to educate our youth in  
staying safe on the internet.

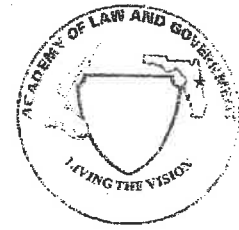
Thank you,

Steven R. Rhoads



ATLANTIC HIGH SCHOOL  
**ACADEMY OF LAW & GOVERNMENT**

1250 REED CANAL ROAD  
PORT ORANGE, FLORIDA 32129  
TELEPHONE (386) 322-6100  
FAX (386) 322-5649



RON PAGANO  
PRINCIPAL

May 1, 2005

KATHLEEN GIBBONS  
ASSISTANT PRINCIPAL  
CURRICULUM

Dear Wesley Heidt:

RONNIE GARRETT  
ACADEMY ADVISOR

On behalf of the teachers and students of Atlantic High Schools Academy of Law and Government, I would like to thank you for the splendid job you did arranging law week. The students are still talking about the fantastic time we spent with each speaker that was brought in – thank you, thank you!

COLLEEN KIRVAN  
CAREER CONNECTION  
FACILITATOR

These speakers provided an invaluable opportunity for the academy students to see leadership in action. We look forward to planning another law week next year with the academy. Again, thank you for your support.

CHRIS GUTH  
SOCIAL STUDIES

Sincerely,

JEREMY OSSLER  
LAW

RUIZ SHIVRATTAN  
GOVERNMENT

Colleen Kirvan  
Community Liaison  
Academy of Law and Government

LAUREL STEVENSON  
BUSINESS LAW

*"Gratitude is something of which none of us can give too much. For on the smiles, the thanks we give, our little gestures of appreciation, our neighbors build up their philosophy of life." (A.J. Cronin)*

thanks you  
so much for  
coming to our class  
to teach us about  
lawyers.

Mark Nagami

Thank u  
coming I think  
we all learn something  
new.  
Mary

I was  
absent but I  
heard many good  
things about your  
speech!

Always, in love  
with you  
Katie

Continue the fight  
for justice!

Thank you  
for bring time  
out of your  
busy day to come  
and talk to us!

OKaisey Bowles

Kind  
Thanks  
so much!!  
Ashley  
Pacalier

Thanks  
for the  
law talk. Go  
state!

-Michael

Thanks for  
sharing your expertise  
with us. You were a  
hit! Tex Volkman  
teacher

Thanks

Hey, thank  
u coming &  
seeing it was  
really awesome  
-Lubette

My name  
is [unclear]  
[unclear]

Thank so for  
coming to our  
class and talking  
to us. Rose

for coming  
to talk to us!

Billy Forrell

Thanks Mr. Haight  
for taking time out of your  
busy day to talk to some  
very curious middle school  
kids! We really appreciate  
it! -Tanya Channan  
:)

Thanks  
for the great  
speech!  
Julia







**OFFICE OF THE STATE ATTORNEY**  
Fifth Judicial Circuit of Florida  
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

**BRAD KING**  
State Attorney

Dear Wesley,

I just wanted to let you know we appreciate the Attorney General's Office efforts in State v. J.A.S.

This case was important from a public policy viewpoint and as a matter of the Court's doing what is right and following the law.

We appreciate your efforts as counsel of record for us.

Sincerely

Brad King



***Eighteenth Judicial Circuit  
State of Florida***

***E. Ashley Hardee, Senior Trial Court Staff Attorney***

---

*Moore Justice Center • 2825 Judge Fran Jamieson Way, Viera, Florida 32940 • Tel: (321) 617-7328*

May 25, 2012

The Honorable Rick Scott  
Governor of Florida  
The Capitol Building, PL05  
Tallahassee, Florida 32399-0001

Re: Recommendation for Wesley Heidt to be Selected as a Volusia County  
Court Judge

Dear Governor Scott:

It is with great pleasure that I recommend Attorney Wesley Heidt for selection as a county judge in Volusia County.

I came to know Mr. Heidt from serving as President of the Florida Trial Court Staff Attorneys Association and on its Board since 2001. Mr. Heidt taught Florida Trial Court Staff Attorneys on a statewide basis on postconviction and criminal law issues. Because of his expertise as an Assistant Attorney General, his vast experience in criminal law, and his teaching ability, he is very well-respected by the Florida Trial Court Staff Attorneys.

In 2010-11, Mr. Heidt participated in a first-ever virtual statewide course on post-conviction law for Florida Trial Court Staff Attorneys. The program was very well-received, and the course taught by Mr. Heidt is considered by many as an important primer on postconviction law for new staff attorneys in Florida.

Mr. Heidt is accomplished, intelligent, hardworking, and gives generously of his time to the community. Not only is Mr. Heidt intelligent, he has a wonderful demeanor, and would work well and get along with court staff and litigants. Mr. Heidt would make a fine county judge.

With Warmest Regards,

E. Ashley Hardee, Esq.

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**VICE CHAIR**

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850/561-5850  
mmcgill@flabar.org

**DEPARTMENT FAX**

850/561-9421



THE FLORIDA BAR



**BOARD OF LEGAL SPECIALIZATION & EDUCATION**

May 7, 2013

Mr. Wesley Harold Heidt  
444 Seabreeze Blvd Fl 5  
Daytona Beach, FL 32118-3958

Dear Mr. Heidt:

On behalf of the Board of Legal Specialization and Education (BLSE), it gives me great pleasure to inform you of your recertification in Criminal Appellate Law law effective August 1, 2012.

Your continued pursuit of board certification is a direct reflection of your commitment to excellence and professionalism in your practice of law. As a board certified lawyer, you have, in the eyes of the Supreme Court of Florida, the distinction of having "special knowledge, skills, and proficiency in your practice area, as well as character, ethics, and a reputation for professionalism in the practice of law." Moreover, you are entitled to represent yourself as a "specialist" and "expert" in your field of practice, and use the initials B.C.S. after your name to indicate Board Certified Specialist.

The Supreme Court of Florida has repeatedly stated its view that board certified lawyers have a special responsibility to maintain high standards of conduct and professionalism. The integrity of the Certification program depends upon the quality of its participants and the public is entitled to rely upon the fact that board certified lawyers are preeminent in competence and ethics. We are confident that you share our commitment to maintaining the Certification program's high standards in order to encourage and enhance professionalism for all lawyers.

Significantly gratifying was recognition by the Eleventh Circuit Court of Appeals that, "the goal of the Florida Bar's certification process is to recognize in various fields of specialization exceptional attorneys, meaning those who stand out from others in all of the ways that make an attorney outstanding." Doe v Florida Bar, 630 F.3d 1336, 1338 (11<sup>th</sup> Cir. 2011).

We thank you for your participation and welcome your suggestions regarding enhancing the Certification program. If there is anything the BLSE can do to improve the Certification program for you and for other certified lawyers, please let us know. You may contact Dawna Bicknell at the Florida Bar, 850-561-5850; dbicknell@flabar.org, or feel free to contact me directly at 813-223-5111 or at tsullivan@ogdensullivan.com.

Congratulations! We are proud and honored to renew your status as a Board Certified Criminal Appellate Law Lawyer.

Sincerely,

Timon V. Sullivan, B.C.S.  
Chair, BLSE

TVS/jc

Enclosures



**STATE OF FLORIDA**  
**COUNTY COURT, VOLUSIA COUNTY, FLORIDA**  
125 East Orange Avenue, Room 206  
Daytona Beach, Florida 32114

Telephone: (386) 257-6042  
Facsimile: (386) 248-8166

**BELLE B. SCHUMANN**  
County Court Judge

*Dusty Going*  
Judicial Assistant

May 6, 2015

Wesley H. Heidt, Esquire  
Office of the Attorney General  
444 Seabreeze Blvd., Suite 500  
Daytona Beach, FL 32118

RE: Professionalism Seminar May 1, 2015

Dear Mr. Heidt:

Thank you for your participation in the Law Day Professionalism Seminar on Friday, May 1, 2015. Your presence as a panel member greatly added to the quality of the discussion. We appreciate your volunteer efforts.

Sincerely,

*Belle Schumann*  
BELLE B. SCHUMANN  
COUNTY COURT JUDGE

BBS/dg



**DAYTONA  
STATE COLLEGE**  
STAY CLOSER. GO FURTHER.

1200 West International Speedway Boulevard  
Daytona Beach, Florida 32114  
(386) 506-3222

October 14, 2016

Mr. Wesley Heidt, PA  
Office of the Attorney General  
444 Seabreeze Blvd. FL 5  
Daytona Beach, FL 32118

Re: Gratitude for Service on the Paralegal Studies Advisory Committee

Dear Mr. Heidt:

I want to personally thank you for your service as a committee member on the Paralegal Studies Advisory Committee during the 2015-2016 academic year. This committee was very successful as a result of your leadership, contributions and hard work. The Paralegal Studies Advisory Committee plays an important role in occupational education and serves as a vital link between the College and the community.

Daytona State College was founded to provide citizens of Volusia and Flagler counties an opportunity to develop their potential to the fullest while achieving individual career goals. The College is committed to providing quality instruction that will enable our graduates to secure employment and to advance as paralegals.

Daytona State College and I look forward to your continued service on the Paralegal Studies Advisory Committee. We appreciate your guidance and industry input in assisting our Paralegal Studies Program to provide students with the skills, knowledge and attitudes necessary to succeed in their chosen career.

The next meeting of the Paralegal Studies Advisory Committee will be Monday, November 7, 2016 beginning at 5:30 PM on the Daytona campus, building 200, room 403. The Agenda, the Minutes of the last meeting and additional materials will be sent out via email and will be provided at the meeting.

Sincerely,

Kim Grippa, J.D.  
Academic Chair of the School of Business Administration

1770 Technology Boulevard • Daytona Beach, Florida 32117 • (386) 506-3222  
1155 County Road 4139 • DeLand, Florida 32724 • (386) 785-2000  
2351 Providence Boulevard • Deltona, Florida 32725 • (386) 783-7300  
3000 Palm Coast Parkway SE • Palm Coast, Florida 32137 • (386) 325-4444  
940 Tenth Street • New Smyrna Beach, Florida 32168 • (386) 423-1100

**DaytonaState.edu**  
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## Volusia County Bar Association

125 S. Palmetto Avenue • P.O. Drawer 15050 • Daytona Beach, FL-32115

May 1, 2009

Wesley Heidt, Esquire  
Office of the Attorney General  
444 Seabreeze Blvd. 5th Floor  
Daytona Beach, FL 32118

Dear Wes,

Great speakers, knowledgeable panel members and a perfect setting to share ideas about professionalism were the key ingredients for a successful Bench & Bar Professionalism Symposium.

Although considered a "small bar", we are able to offer "big bar" events because of your support. On behalf of the Volusia County Bar Association, thank you for your participation—we couldn't have done it without you!

Sincerely,

A handwritten signature in black ink, appearing to read "Kathie Selover".

Kathie Selover  
Executive Director



## VICTIM'S SERVICE COALITION OF THE 7<sup>TH</sup> CIRCUIT

May 8, 2009

Wesley Heidt, Esquire  
Office of the Attorney General  
444 Seabreeze Blvd., Suite 500  
Daytona Beach, FL 32118

Dear Attorney Heidt,

Thank you for helping to make our Eighth Annual Victims' Rights Week Breakfast a great success. Your commitment to Victims' Rights was shown in your willingness to speak on the criminal appeal process.

We want you to know that we truly appreciate all you do for crime victims.

The members of the Coalition all thank you.

Sincerely,

*Kimberly Beck-Frate*

Kimberly Beck-Frate  
President



March 5, 2009

Mr. Wesley Heidt  
Bureau Chief  
Office of the Attorney General  
444 Seabreeze Blvd., 5<sup>th</sup> Floor  
Daytona Beach, FL 32118

Dear Wes:

Thank you for your enthusiastic presentation on the role of the Attorney General's Office and the information available on the Attorney General's website on March 3, 2009. Several students have commented that they really learned a lot from your excellent presentation and enjoyed it greatly. I know that I am much better informed. It is of great assistance to the students to learn from a professional in the field and learn information that will help them in their paralegal career.

Your presentation was informative and enlightening, and we appreciate the opportunity that you extended us to ask questions. Thank you again for taking time from your busy schedule to speak to our Student Paralegal Association.

Sincerely,

Linda S. Cupick  
Senior Professor of Paralegal Studies

cc: Dr. Shawn Friend  
Mr. Bill Wetherell



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New Smyrna Beach, Florida 32169

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Stephanie Cagnet Myron  
West Palm Beach

16th Circuit Richard McChesney  
Key West

17th Circuit Valerie Barton Barnhart  
Estefania Nasielski  
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Charline Smith Valbrun  
Ft. Lauderdale

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Lake Mary  
Andrew B. Pickett  
Viera

19th Circuit Paige Hardy Gillman  
Stuart

20th Circuit John M. Miller  
Ft. Myers  
Maria Vigilante  
Naples

Out-of-State Natasha Dorsey  
Chicago, IL  
Eric Everson  
Worthington, OH  
Gillian Jones  
Washington, DC

**PROGRAM ADMINISTRATOR**  
Thomas V. Miller

October 26, 2016

Wesley Heidt  
Attorney General's Office  
444 Seabreeze Blvd, Floor 5  
Daytona Beach, FL 32118-3958

Dear Wesley:

On behalf of the Florida Bar's Continuing Legal Education Committee and the Young Lawyers Division, we would like to offer our sincere gratitude for your presentation on Criminal Appeals at the Basic Appellate Practice 2016 seminar on October 14, 2016.

We greatly appreciate the time you took out of your busy schedule to prepare for and present at the seminar, and we hope you will consider joining us again for future legal seminars.

Thank you also for your support of the young (and new) lawyers of The Florida Bar as well as the Young Lawyers Division. In addition to lawyers who attended in-person, hundreds of young and new lawyers will have the opportunity to fulfill their Basic Skills Course Requirement by downloading and watching the seminar online. We are certain that not only will those lawyers benefit from your presentation, but the profession and their clients will as well.

Regards,

Margaret Rowell Good  
Program Co-Chair

Dwayne Robinson  
Program Co-Chair

*P.S. Wesley, we cannot thank you enough for your sage advice. We hope you can join us in the future.*

**SUPREME COURT OF THE UNITED STATES**  
**OFFICE OF THE CLERK**  
**WASHINGTON, D. C. 20543**

**To Wesley Heidt:**

I am pleased to notify you on behalf of the Chief Justice and Associate Justices that the motion for your admission to practice has been granted and that you are now a member of the Bar of the Court and an officer of the Court.

Your admission is effective February 22, 2000 and a certificate of admission will be mailed to you in approximately six weeks.

The following provides information regarding your membership privileges:

- As a member of the Bar you are eligible to sit in a reserved section of the Courtroom. To attend an oral argument, members must register at the bar registration desk located near the John Marshall Statue in the Lower Great Hall, ground level. The hours of the registration desk are from 9:00 a.m. until noon and 12:30 p.m. until Court adjourns. Seating is on a first come, first served basis.

- Your membership entitles you to use of the public areas of the extensive law library located on the third floor. The telephone number for the library is 202-479-3173.

- Tours of the building are arranged by the Curator's Office. As a member of the Bar you may request a special tour for your family or friends by calling the Curator's Office at 202-479-3298. Tours are not conducted when oral arguments are being heard in the Courtroom. Tour arrangements must be made in advance.


- The cafeteria and snack bar located on the ground level are open from 7:30 a.m. until 3:30 p.m.

- The Supreme Court Historical Society gift shop, located on the ground level, is open from 9:00 a.m. until 4:15 p.m. The telephone number is 202-479-3450.

The Clerk's Office information number is 202-479-3011 and the Bar Admissions Office telephone number is 202-479-3387. The Supreme Court Bulletin Board System number is 202-554-2570.

If my office can assist in any way, we will be glad to do so.

I extend to you a warm welcome as a member of the Bar and an officer of the Court.

  
William K. Suter  
Clerk

