

APPLICATION FOR NOMINATION TO THE CIRCUIT 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: G. KIPLING MILLER **Social Security No.:** 312

Florida Bar No.: 0984884 **Date Admitted to Practice in Florida:** 9/27/1993

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.
Miller Law Firm – Owner; 400 North Halifax Ave, Daytona Beach FL 32118; 386-872-7800
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).
Drive Flagler Beach 32136, since 2007; Florida Resident since 1976
(386)
3. State your birthdate and place of birth.
Michigan
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 09/93 to present
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).

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Saint Thomas University	Top 30%	08/1990-05/1993	JD
Stetson University	GPA Unknown	08/1983-05/1987	Bachelor's of Bus. Administration
New Smyrna Beach High School	GPA unknown	08/1980-05/1983	High School Diploma

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.
 Pi Kappa Alpha Fraternity, Stetson University 1984-1987; Phi Alpha Delta, St. Thomas Honorary Academic Fraternity 1993.

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.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
1988	Stock	Publix Supermarkets	1930 State Road 44 New Smyrna Beach, FL 32168
08/1988-04/1990	Admissions Counselor	Jacksonville University	2800 University Blvd North Jacksonville, FL

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.
 Criminal Defense, Criminal Law

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:

	<i>Court</i>	<i>Area of Practice</i>
Federal Appellate	_____ %	Civil _____ %
Federal Trial	_____ %	Criminal <u>95</u> _____ %

Federal Other	_____ %	Family	<u>5</u> _____ %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>100</u> _____ %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
TOTAL	_____ <u>100</u> %	TOTAL	_____ <u>100</u> %

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

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

Jury?	<u>100+</u> _____	Non-jury?	<u>100+</u> _____
Arbitration?	_____	Administrative Bodies?	<u>1000+</u> _____
Appellate?	_____		

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.
None

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.*

1. State of Fla. v. Viktor Krivoshey, Case No.: 2016-000150-CF, Assistant State Attorney Mark Lewis, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Dennis Craig.
2. State of Fla. v. Sandra Heilman, Case No.: 2013-301515-CFDB, Assistant State Attorney Michael Willard, 386-822-6400; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Frank Marriot.
3. State of Fla. v. Pierce, Case No.: 2016-303954-MMDB, Assistant State Attorney Blake Tillman, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Belle Schumann.
4. State of Fla. v. Chadwick Vogt, Case No.: 2013-302925-CFDB, Assistant State Attorney Michael Willard, 386-822-6400; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Leah Case.
5. State of Fla. v. William S. Fahner, Case No.: 2013-301545-CFDB, Assistant State Attorney Laura Coln (deceased); G. Kipling Miller, Defense Counsel, 386-872-7800; Judge R. Michael Hutchenson
6. State of Fla. v. Carl W Lentz, IV, Case No.: 2014-310472-MMDB, Assistant State Attorney Jennifer Dunton, 386-239-7710; G. Kipling Miller and Lauren Y. Koleilat, Defense Counsel, 386-872-7800; Judge James Clayton.

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.*

1. State of Fla. v. Rush Rowland, Case No.: 2018-CT 000190: Hung Jury, Assistant State Attorney Robert Pickens, 386-239-7710; G Kipling Miller, Defense Counsel, 386-872-7800; Judge Melissa Distler.
2. State of Fla. v. Aaron J. Becker, Case No.: 2019-305104-MMDB, Assistant State Attorney Diane Tyler, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge David Foxman
3. State of Fla. v. Christy L. Hopkins, Case No.: 2018-306103-MMDB, Assistant State Attorney Spencer Hathaway, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Judith Campbell.
4. State of Fla. v. Dominique McPhee, Case No.: 2018-CT-938; Assistant State Attorney John Stokes, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Mellissa Distler.
5. State of Fla. v. Heather Mitchell, Case No.: 2019-300744-MMDB, Assistant State Attorney Spencer Hathaway, 386-239-7710; G Kipling Miller, Defense Counsel, 386-872-7800; Judge Judith Campbell.

6. State of Fla. v. Amy Harrigan, Case No.: 2017-304051-CFDB, Assistant State Attorney Shey McCurdy, 386-239-7710; G. Kipling Miller, Defense Counsel, 386-872-7800; Judge Sandra Upchurch.

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.

6 average times per month, 1993-2000 as Assistant State Attorney I was in court daily as I was Lead trial Attorney

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.

N/A

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?

N/A

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.

1. State of Fla. v. Carl Lentz, Case No.: 2014-310472-MMDB. Client, Carl W Lentz, was a commissioner for the City of Daytona Beach initially accused in the media of using his position as a commissioner to obstruct the case. Mr. Lentz was formally charged with simple battery. Mr. Lentz was vilified by the media yet acquitted at trial. Circuit Judge James Clayton presided. The [homicide unit] prosecutor, under special assignment, was Jennifer Dunton.
2. State of Fla. v. Walter E. Milane, Jr., 1996-031299-CFAES. Mr. Milane was found guilty after a trial of Second-Degree Murder, resulting in a twenty-six year prison term. The victim was brutally stabbed to death during Spring Break at a gas station for whistling at Mr. Milane's girlfriend. I served as the Assistant State Attorney assigned to prosecute Mr. Milane. Circuit Court Judge Shawn Briese presided. Public Defender was Michael O'Neal 386-239-7730. The victim's loved ones were extremely grateful for my getting justice for them.
3. State of Fla. v. James Pinkstaff, 1997-03150-CFAES. As an Assistant State Attorney, I was assigned to prosecute Mr. Pinkstaff for the charge of animal cruelty. Mr. Pinkstaff owned a dog grooming business and was accused of mortally wounding a small dog. The

case is significant because I was contacted by PETA and Court TV did a live broadcast featuring Nancy Grace. Horace Smith was the Defense Counsel.

4. State of Fla. v. Mary Bayer, 1998-032297-CFAES. As an Assistant State Attorney, I prosecuted Ms. Bayer, who was convicted of Aggravated Manslaughter of an Elderly Person. Ms. Bayer was accused of extremely neglecting her elderly mother, resulting in her death. At the time, there were no standard jury instructions for this crime, requiring me to draft them. On appeal, the 5th DCA affirmed the conviction stating there was no error for the jury instructions given. Judge Shawn Briese presided and Michael O'Neal was the Public Defender.
5. State of Fla. v. Jason Looney, 1997-3400-CFAES. Mr. Looney was charged with a series of local crimes after fleeing a double homicide in Wakulla County, Florida. I worked closely with State Attorney Willie Meggs to secure felony convictions, to be used during his murder trial for aggravating factors. Judge Shawn Briese presided. Public Defender was Matt Phillips.
6. State of Fla. v. John Kalimnios, 2011-035339-CFAES. Mr. Kalimnios is an elderly man who was accused of sexual battery on a person under 12 years. This case is significant as it started with a divorce action against his wife, who fabricated charges to get the upper hand financially. I handled the criminal matter, injunction for protection, DCF action, along with civil litigation.

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. Petition for Writ of Certiorari filed in the case styled John Taylor Black v. State of Florida, DHSMV. Petition for Writ of Certiorari filed in the case styled Neelam Lochab v. State of Florida, DHSMV. Prepared and filed pleading.

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.

7th Judicial Circuit, Flagler County Court, August, 2019, certified to the Governor's Office; 7th Judicial Circuit, Volusia County Court, October 2020, certified to the Governor's office

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.

N/A

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.

N/A

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.

N/A

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.

N/A

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

No

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

No

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

No

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties,

and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

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.

No

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.

None

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.

None

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed. None

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

None

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.

No

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.

None

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

No

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

None

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.

None

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.

No

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

None

45. Please describe any hobbies or other vocational interests.

Fishing, Boating, Running, Biking

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.

No

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

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. Divorced, George K Miller v. Honey H. Miller, Case No. 2006-32300-FMCI/ Daytona Beach, Volusia County, Florida. Final Judgment entered 02/14/2007.

n/k/a Honey H. Jones

Port Orange, FL 32128

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.

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Caroline Miller	22	Student	Flagler Beach, FL 32136
Maxwell Miller	20	Student	Flagler Beach, FL 32136

CRIMINAL AND MISCELLANEOUS ACTIONS

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

No

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

No

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

No

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

No

- 54.** To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?
No
- 55.** To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.
No
- 56.** Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, provide the particulars of each finding or investigation.
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 complied with all legally required tax return filings. No tax penalties or liens.

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.

None

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 will bring to the position twenty-seven (27) years of courtroom experience handling jury trials and hearings before the court. I have had the opportunity to see the administration of law from both the prosecution and defense perspectives. I believe this will enable me to be fair and impartial. I have also had the opportunity to practice as both a state employee and in private practice. I understand the unique problems facing advocates in both sectors, which I believe will benefit me in maintaining an efficient, yet fair docket.

I have been involved in both trial practice and appellate practice. My extensive trial experience has allowed me to see both sound and questionable judicial decisions and more importantly, taught me the ability to firmly grasp the difference. I am keenly aware of the roll that the trial court plays in the overall administration of justice. The law must be followed, both substantively and procedurally. I have always demonstrated a tireless work ethic, both as a state employee and in private practice. Lastly, my extensive courtroom experience has taught me the importance of courtesy and respect for the process, litigants and members of the bar.

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.
1. Honorable David Foxman, County Court Judge-125 East Orange Ave, Suite 203, Daytona Beach, FL 32114, dfoxman@circuit7.org, 386-257-6033
 2. Honorable Raul Zambrano, Circuit Court Judge- 251 North Ridgewood Avenue, Daytona Beach, FL 32114, rzambrano@circuit7.org, 386-239-7791
 3. Honorable Steven Henderson, Circuit Court Judge- 125 East Orange Avenue, Suite 310, Daytona Beach, FL 32114, shenderson@circuit7.org, 386-257-6051
 4. Honorable Matthew Foxman, Circuit Court Judge- 251 N Ridgewood Avenue, Daytona Beach, FL 32114, mfoxman@circuit7.org, 386-239-7793
 5. Bryan Shorstein, Esquire, ASA, 251 N Ridgewood Avenue, Daytona Beach, FL 32114, shorsteinb@sao7.org, 386-239-7710
 6. Philip J. Bonamo, Esquire, 222 Seabreeze Blvd. Daytona Beach, FL 32118, pbonamo@ricelawflorida.com, 386-257-1222
 7. Larry Kelly, 2808 Paradiso Court, New Smyrna Beach, FL 32168, lkelly@ritcheyautos.com, 386-547-4464
 8. Ben Fox, Esquire, ASA, 2725 Judge Fran Jamieson Way, Viera, FL 32940, bfox@sal8.org, 321-917-7510
 9. Todd Jones, CEO Publix Supermarkets Inc., 3300 Publix Corporate Parkway, Lakeland, FL 33811, todd.jones@publix.com , 863-661-9927
 10. Carl W. Lentz, III, M.D., 570 John Anderson Drive, Ormond Beach, FL 32176, cwlentz@mac.com, 386-299-9299

CERTIFICATE

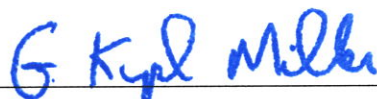
I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any 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 19 day of October, 2020.

G. Kipling Miller

Printed Name



Signature

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

FINANCIAL HISTORY

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

Current Year-To-Date: 113,000.00

Last Three Years: 106,153.76 119,839.88 85,846.00

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

Current Year-To-Date: 113,000.00

Last Three Years: 106,153.76 119,839.88 85,846.00

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current Year-To-Date: 0

Last Three Years: 18,438.00 19,269.00 46,000.00

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

Current Year-To-Date: 0

Last Three Years: 18,438.00 19,269.00 46,000.00

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

Current Year-To-Date: 0

Last Three Years: 18,438.00 19,269.00 46,000.00

**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 10/14, 2020 was \$1,030,000.00

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
242 Ocean Palm Drive, Palm Coast, FL 32136	550,000
2016 Boston Whaler Outrage	200,000
Publix Stock	244,000
Ameriprise Brokerage Account	472,000

PART C - LIABILITIES

LIABILITIES IN EXCESS OF \$1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Mortgage - Specialized Loan	232,000
BBT Boat	91,000
Yamaha Financial Service – Jet Ski	7,900
GMC Financial Service	34,000
JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

--	--

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 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	G. Kipling Miller		
ADDRESS OF BUSINESS ENTITY	400 North Halifax Avenue		
PRINCIPAL BUSINESS ACTIVITY	Law Firm		
POSITION HELD WITH ENTITY	Owner		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	Yes		
NATURE OF MY OWNERSHIP INTEREST	100		

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

OATH

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

G Kipl Miller

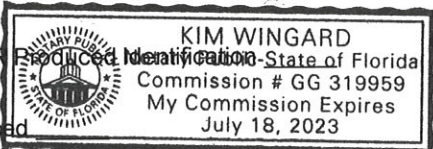
SIGNATURE

STATE OF FLORIDA
COUNTY OF *Volusia*
 Sworn to (or affirmed) and subscribed before me this *19th* day of *Oct*, 20*20* by _____
[Signature]

(Signature of Notary Public—State of Florida)

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

Personally Known OR



Type of Identification Produced _____

INSTRUCTIONS FOR COMPLETING FORM 6:

PUBLIC RECORD: The disclosure form and everything attached to it is a public record. Your Social Security Number is not required and you should redact it from any documents you file. If you are an active or former officer or employee listed in Section 119.071(4)(d), F.S., whose home address is exempt from disclosure, the Commission is required to maintain the confidentiality of your home address if you submit a written request for confidentiality.

PART A – NET WORTH

Report your net worth as of December 31 or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all of your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate net worth figure in most cases.

To total the value of your assets, add:

- form;
- (1) The aggregate value of household goods and personal effects, as reported in Part B of this form;
 - (2) The value of all assets worth over \$1,000, as reported in Part B; and
 - (3) The total value of any assets worth less than \$1,000 that were not reported or included in the category of “household goods and personal effects.”

To total the amount of your liabilities, add:

- (1) The total amount of each liability you reported in Part C of this form, except for any amounts listed in the “joint and several liabilities not reported above” portion; and,
- (2) The total amount of unreported liabilities (including those under \$1,000, credit card and retail installment accounts, and taxes owed).

PART B – ASSETS WORTH MORE THAN \$1,000

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

The value of your household goods and personal effects may be aggregated and reported as a lump sum, if their aggregate value exceeds \$1,000. The types of assets that can be reported in this manner are described on the form.

ASSETS INDIVIDUALLY VALUED AT MORE THAN \$1,000:

Provide a description of each asset you had on the reporting date chosen for your net worth (Part A), that was worth more than \$1,000 and that is not included as household goods and personal effects, and list its value. Assets include: interests in real property; tangible and intangible personal property, such as cash, stocks, bonds, certificates of deposit, interests in partnerships, beneficial interest in a trust, promissory notes owed to you, accounts received by you, bank accounts, assets held in IRAs, Deferred Retirement Option Accounts, and Florida Prepaid College Plan accounts. You are not required to disclose assets owned solely by your spouse.

How to Identify or Describe the Asset:

— Real property: Identify by providing the street address of the property. If the property has no street address, identify by describing the property’s location in a manner sufficient to enable a member of the public to ascertain its location without resorting to any other source of information.

— Intangible property: Identify the type of property and the business entity or person to which or to whom it relates. Do not list simply “stocks and bonds” or “bank accounts.” For example, list “Stock (Williams Construction Co.),” “Bonds (Southern Water and Gas),” “Bank accounts(First

National Bank),” “Smith family trust,” Promissory note and mortgage (owed by John and Jane Doe).”

How to Value Assets:

- Value each asset by its fair market value on the date used in Part A for your net worth.

- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.

- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.

- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.

- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.

- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.

- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.

- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.

- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

List the name and address of each creditor to whom you were indebted on the reporting date chosen for your net worth (Part A) in an amount that exceeded \$1,000 and list the amount of the liability. Liabilities include: accounts payable; notes payable; interest payable; debts or obligations to governmental entities other than taxes (except when the taxes have been reduced to a judgment); and judgments against you. You are not required to disclose liabilities owned *solely* by your spouse.

You do not have to list on the form any of the following: credit card and retail installment accounts, taxes owed unless the taxes have been reduced to a judgment), indebtedness on a life insurance policy owned to the company of issuance, or contingent liabilities. A “contingent liability” is one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note. If you are a “co-maker” on a note and have signed as being jointly liable or jointly and severally liable, then this is not a contingent liability.

How to Determine the Amount of a Liability:

- Generally, the amount of the liability is the face amount of the debt.

- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.

- If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship,

report 100% of the total amount owed.

— If you are only jointly (not jointly and severally) liable with another person or entity, your share of the liability should be determined in the same way as you determined your share of jointly held assets.

Examples:

— You owe \$10,000 to a bank for student loans, \$5,000 for credit card debts, and \$60,000 with your spouse to a saving and loan for the mortgage on the home you own with your spouse. You must report the name and address of the bank (\$10,000 being the amount of that liability) and the name and address of the savings and loan (\$60,000 being the amount of this liability). The credit cards debts need not be reported.

— You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability. If your liability for the loan is only as a partner, without personal liability, then the loan would be a contingent liability.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

List in this part of the form the amount of each debt, for which you were jointly and severally liable, that is not reported in the “Liabilities in Excess of \$1,000” part of the form. Example: You and your 50% business partner have a \$100,000 business loan from a bank and you both are jointly and severally liable. Report the name and address of the bank and \$50,000 as the amount of the liability, as you reported the other 50% of the debt earlier.

PART D – INCOME

As noted on the form, you have the option of either filing a copy of your latest federal income tax return, including all schedules, W2's and attachments, with Form 6, or completing Part D of the form. If you do not attach your tax return, you must complete Part D.

PRIMARY SOURCES OF INCOME:

List the name of each source of income that provided you with more than \$1,000 of income during the year, the address of that source, and the amount of income received from that source. The income of your spouse need not be disclosed; however, if there is a joint income to you and your spouse from property you own jointly (such as interest or dividends from a bank account or stocks), you should include all of that income.

“Income” means the same as “gross income” for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report that income to you, as calculated for income tax purposes, rather than the income to the business.

Examples:

— If you owned stock in and were employed by a corporation and received more than \$1,000 of income (salary, commissions, dividends, etc.) from the company, you should list the name of the company, its address, and the total amount of income received from it.

— If you were a partner in a law firm and your distributive share of partnership gross income exceeded \$1,000, you should list the name of the firm, its address, and the amount of your distributive share.

— If you received dividend or interest income from investments in stocks and bonds, list only each individual company from which you received more than \$1,000. Do not aggregate income from all of these investments.

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's

identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

— If more than \$1,000 of your income was in the form of interest from one particular financial institution (aggregating interest from all CD's, accounts, etc., at that institution), list the name of the institution, its address, and the amount of income from that institution.

SECONDARY SOURCE OF INCOME:

This part is intended to require the disclosure of major customers, clients, and other sources of income to businesses in which you own an interest. It is not for reporting income from second jobs. That kind of income should be reported as a "Primary Source of Income." You will **not** have anything to report **unless**:

- (1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and
- (2) You received more than \$1,000 in gross income from that business entity during the period.

If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's more recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income.

Examples:

- You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).
- You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

The types of businesses covered in this section include: state and federally chartered banks; state and federal savings and loan associations; cemetery companies; insurance companies; mortgage companies, credit unions; small loan companies; alcoholic beverage licensees; pari-mutuel wagering companies; utility companies; and entities controlled by the Public Service Commission; and entities granted a franchise to operate by either a city or a county government.

You are required to make this disclosure if you own or owned (either directly or indirectly in the form of an equitable or beneficial interest) at any time during the disclosure period, more than 5% of the total assets or capital stock of one of the types of business entities listed above. You also must complete this part of the form for each of these types of business for which you are, or were at any time during the year an officer, director, partner, proprietor, or agent (other than a resident agent solely for service of process).

If you have or held such a position or ownership interest in one of these types of businesses, list: the name of the business, its address and principal business activity, and the position held with the business (if any). Also, if you own(ed) more than a 5% interest in the business, as described above, you must indicate that fact and describe the nature of your interest.

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: October 19, 2020

JNC Submitting To: 7th Judicial Circuit

Name (please print): G. Kipling Mil

Current Occupation: Attorney at La

Telephone Number: 386-852-5678

Attorney No.: 0984884

Gender (check one): Male Female

Ethnic Origin (check one): White, non-Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Flagler

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.

G. Kipling Miller

Printed Name of Applicant

G. Kipling Miller

Signature of Applicant

Date: October 19, 2020

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

JOHN TAYLOR BLACK,

CASE NO.:

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent.

_____ /

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, JOHN TAYLOR BLACK, by and through undersigned counsel, pursuant to rule 9.100 Fla.R.App.P. and files this Petition for Writ of Certiorari and states:

JURISDICTION

The Circuit Court has jurisdiction pursuant to section 322.2615(13) and section 322.31 of the Florida Statutes.

BRIEF STATEMENT OF THE FACTS

According to the arrest reports (C-2, C-4, C-5, C-6), on March 5, 2020, Sgt. Moore of the Daytona Beach Shores Department of Public Safety, observed Petitioner's vehicle speeding on South Atlantic Avenue in Daytona Beach Shores. Petitioner's vehicle was stopped, and Sgt. Moore approached him. Respondent "appeared confused" to Sgt. Moore. At about that time, Officer Rooney of the same agency arrived on scene and was asked by Sgt. Moore to check Petitioner for the odor of alcohol. Officer Rooney did not detect the odor of alcohol at that time. When the speeding citation was complete, police discovered that Petitioner "was asleep with his head tucked downwards." Based

on Petitioner's "actions and response time" police believed he may be impaired by alcohol or narcotics and initiated a DUI investigation. At the conclusion of FSEs, Petitioner was arrested for DUI. He refused a breath test and his driving privilege was suspended. (C-1) Petitioner requested a formal review hearing for which Officer Rooney, the arresting officer, was subpoenaed. The subpoena was served on the witness coordinator for Daytona Beach Shores Department of Public Safety by Andrew Cospito. Mr. Cospito's Return of Service and counsel's notification to the State Attorney was filed with the Department. (C-10) The hearing was held telephonically on July 16, 2020. (B). Officer Rooney failed to appear at the hearing. (B, pg. 5) The hearing officer, on her own motion, challenged the validity of the service of the subpoena, inquiring whether the person serving same was a "certified process server." (B pg. 6) Counsel for Petitioner responded that service of a witness subpoena in these matters did not require a certified process server. (B, pg. 8) Petitioner presented testimony of the process server attesting to his service on the witness coordinator for the Daytona Beach Shores Department of Public Safety and stating that he had been serving witness subpoenas on law enforcement officers in this manner for over ten years. (B, pg. 8) The hearing officer questioned Mr. Cospito and confirmed that he was not a certified process server. (B, pg. 9) She also confirmed that she had received his "authenticated and notarized return." (B, pg. 9) The hearing officer confirmed the name of the agency as Daytona Beach Shores Department of Public Safety. She did not raise an issue as to the name of the agency. (B, pg. 10) The hearing officer marked into the record the documents which had been submitted by law enforcement. (B, pg. 11) Petitioner's proof of service and notice were added to the record as Driver's Exhibit A. (B, pg. 14)

Counsel moved to invalidate the suspension under Section 322.2615(11) based upon Officer Rooney's failure to appear. (B, pg. 15) The hearing officer reserved ruling on this motion. (B pg. 18),

(A)

The hearing officer issued a Final Order of License Suspension on July 17, 2020, denying Petitioner's motion to invalidate the suspension. (A) In support of her ruling the hearing officer found service of the subpoena "deficient," because "Service of the subpoena was not delivered by a Sheriff of the county, certified process server nor a special process server, as required by Florida Statute 48.021." The hearing officer further noted that the name of the agency on the subpoena was incorrectly listed as the "Daytona Beach Shores Police Department" as opposed to the "Daytona Beach Shores Department of Public Safety". The Final Order affirmed the order of suspension. (A). Pursuant to sections 322.2615(13), and 322.31, Fla. Stat., Petitioner now files this Petition.

NATURE OF RELIEF SOUGHT

Petitioner seeks for this Court to set aside the Final Order of License Suspension entered by the hearing officer on July 17, 2020.

STANDARD OF REVIEW

The Circuit Court's standard of review is set forth in *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). The Court must determine:

- (a) whether procedural due process has been accorded;
- (b) whether the essential requirements of law were observed; and
- (c) whether the administrative findings and judgment are supported by competent substantial evidence.

ARGUMENT I

THE HEARING OFFICER DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW AND DENIED PETITIONER DUE PROCESS WHEN SHE SUA SPONTE EXCUSED THE FAILURE TO APPEAR BY THE ARRESTING OFFICER BY FINDING

SERVICE OF THE WITNESS SUBPOENA DEFICIENT

At the Formal Review hearing, Respondent (“the Department”) had the burden to prove Petitioner’s suspension should be continued. *State, Department of Highway Safety and Motor Vehicles v. Farley*, 633 So. 2d 69 (Fla. 5th DCA 1994); *Vernon v. State*, 558 So. 2d 535 (Fla. 1st DCA 1990). In order to sustain a licensee’s suspension for refusal to submit to chemical testing, the Department must prove by a preponderance of the evidence that 1) the arresting officer had probable cause to believe the licensee was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances; 2) the licensee refused to submit to a breath test at the request of a law enforcement or correctional officer; 3) the licensee was told that if he refused his license would be suspended for a period of one year for a first refusal or eighteen months for a subsequent refusal.

To meet its burden of proof, Law enforcement, on behalf of the Department, submitted written reports and records which were marked into the record at the hearing. Petitioner was afforded the opportunity to question the arresting officer, Officer Rooney, about his reports by requesting and receiving a subpoena for the hearing. The subpoena was issued by the hearing officer, directed to the arresting officer at his employing agency, listed as the Daytona Beach Shores Police Department, 3050 S. Atlantic Avenue, Daytona Beach Shores, 32118. This subpoena was served upon the witness coordinator at that agency by Andrew Cospito in accordance with the procedures of Section 48.031, Florida Statutes. An affidavit of such service was filed with the Department along with a certification of notification to the States Attorney for the Seventh Judicial Circuit.

At the hearing, the Hearing Officer noted that the arresting officer had not contacted the Department with a telephone number where he could be reached for testimony as directed in the

subpoena. This was considered a failure to appear.

Petitioner moved to invalidate the suspension for Officer Rooney's failure to appear under Section 322.2615 (11). The hearing officer entered her final order upholding the suspension, effectively excusing Officer Rooney's non-appearance by finding service of the subpoena deficient because it "was not delivered by a Sheriff of the county, certified process server nor a special process server, as required by Florida Statute 48.021." This is not only an erroneous interpretation of the law but by depriving Petitioner a statutory invalidation of the subpoena, she departed from the essential requirements of law. Her ruling is a "violation of a clearly established principle of law resulting in a miscarriage of justice. *Allstate Ins. Co. v. Kaklamanos*, 843 So.2d 885 (Fla. 2003)

The Hearing Officer further found fault with the fact that the witness subpoena (which she signed) was directed to the Daytona Beach Shores Police Department, where the reports listed the Daytona Beach Shores Department of Public Safety. The hearing officer did not raise this objection to the validity of service at the hearing, depriving Petitioner the opportunity to show that they were the same entity. The Hearing Officer injected herself into the proceedings by creating an issue with the service of the witness subpoena so as to save the case for the Department. This is a blatant denial of Petitioner's right to an impartial magistrate. See *Scarborough v. DHSMV*, 18 Fla. L. Weekly Supp. 918a (7th Judicial Circuit, July 14, 2011); cert. den. 11/10/2011(5 DCA Case No. 5D11-2678)

The hearing officer departed from the essential requirements of law by her misinterpretation of the law. Section 48.021, which she cited, provides that "Civil witness subpoenas shall be served by any person authorized by the rules of civil procedure."

Rule 1.410(d), Florida Rules of Civil Procedure provides: " A subpoena may be served by any person authorized by law to serve process or by any person who is not a party and who is not less

than 18 years of age.” (emphasis added)

The Department promulgated rules to be followed in these formal review proceedings. These include Rule 15A-6.012, Florida Administrative Code, which provides in material part: “(2) A driver who requests subpoenas to be issued is responsible for service of such subpoenas... . Service of witness subpoenas... shall be in the manner provided for service of witness subpoenas pursuant to Sections 48.031... .” (emphasis added) There is no restriction in Rule 15A-6.012 on who may serve such subpoenas.

Section 48.031 deals with the manner of service and not who may accomplish such service. Section 48.031(4)(a) states: “Service of a criminal witness subpoena upon a law enforcement officer or upon any federal, state, or municipal employee called to testify in an official capacity in a criminal case may be made as provided in subsection (1) or by delivery to a designated supervisory or administrative employee at the witness’s place of employment if the agency head or highest ranking official at the witness’s place of employment has designated such employee to accept such service.” Mr. Cospito testified that this is the procedure he used in this case, as well as all the prior cases where service of law enforcement was required.

Section 322.2615 (11) states “The formal review hearing may be conducted upon a review of the reports of a law enforcement officer or a correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take either test or the refusal to take a urine test. However, as provided in subsection (6), the driver may subpoena the officer or any person who administered or analyzed a breath or blood test. If the arresting officer or the breath technician fails to appear pursuant to a subpoena as provided in subsection (6), the department shall invalidate the suspension.” (emphasis added)

Officer Rooney failed to appear. Based upon this non-appearance, the Hearing Officer was required to invalidate the suspension. But for her erroneous interpretation of the law this should have been done. Due process requires that her order not only be quashed, but that the Department be ordered to invalidate the suspension. See *Futch v. DHSMV*, 189 So.3d 131 (Fla. 2016), Justice Canady dissenting, quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982). (where findings are infirm because of an erroneous view of the law, a remand is the proper course unless the record permits only one resolution of the factual issue)(emphasis added) Under 322.2615(11) the only resolution of the factual issue of Officer Rooney's non-appearance is invalidation.

ARGUMENT II

THE HEARING OFFICER DENIED PETITIONER DUE PROCESS BY INJECTING HERSELF INTO THE PROCEEDINGS AS AN ADVOCATE FOR THE DEPARTMENT

In response to Petitioner's motion to invalidate the suspension based upon the arresting officer's failure to appear, the Hearing Officer, sua sponte, raised the issue of adequacy of the service of the subpoena. She raised issues which would have been more appropriately raised by the witness in defense of an order to show cause why he should not be held in contempt for violating the subpoena. In doing so, the Hearing Officer stepped into the shoes of an advocate, raising the only issues which would save the Department's case from statutory invalidation. Further, in her order, the hearing officer stated: "Furthermore, although all reports in connection with this case list the arresting law enforcement agency as Daytona Beach Shores Department of Public Safety, Counsel's office directed their witness subpoena to the Daytona Beach Shores Police Department. When the discrepancy was pointed out by this Hearing Officer before the subpoena was finalized, Counsel's staff elected to use

their original wording.” (A) None of this was raised at the hearing, thus depriving Petitioner of the opportunity of resolving the conflict. Of more importance, the Hearing Officer injected herself into the proceeding as a witness for the Department on an issue that was material to her decision. By not raising the issue in the hearing, the Hearing Officer deprived Petitioner of the opportunity of moving to disqualify her.

There have been numerous instances where non-lawyer hearing officers were called to task by the courts for stepping over the line. In *DHSMV v. Griffin*, 909 So.2d 538 (Fla. 4th DCA 2005), the court upheld a circuit court finding that the hearing officer had denied due process by stopping the proceedings to look for a record on behalf of law enforcement and entering it into the record. The court found that the hearing officer “was affording the Department an opportunity to correct a defect in the record evidence of her own accord, and thus acted impermissibly as an advocate for the Department.” *Id* at 542. In so doing, her actions “demonstrated a departure from her neutral role as magistrate, and ... Griffin’s due process rights were violated.” *Id* at 543. The court noted that ‘due process of law means a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights.’ See *Keys Citizens for Responsible Government, Inc. v. Florida Keys Aqueduct Authority*, 795 So.2d 940 (Fla. 2001) and *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991)(Procedural due process requires both fair notice and a real opportunity to be heard.)

In *Futch v. DHSMV*, 189 So.3d 131 (Fla. 2016), the Supreme Court upheld a circuit court finding that a hearing officer’s refusal to permit counsel to ask more than two questions of Futch’s expert witness amounted to a denial of Futch’s due process rights. The circuit court had granted the

petition for certiorari, quashed the order of suspension and ordered the Department to reinstate Futch's driving privileges. The Fifth District Court of Appeals agreed that the hearing officer denied Futch's due process rights but ordered that the matter be remanded to the Department for further hearing. The Supreme Court found that the Fifth DCA exceeded its jurisdiction on second-tier certiorari and reinstated the circuit court's decision.

In *Scarborough v. DHSMV*, 18 Fla. L. Weekly Supp 918a (7th Judicial Circuit, July 14, 2011), the hearing officer attempted to rehabilitate the arresting officer by asking questions regarding jurisdiction, after the driver's expert had established that the stop and arrest had occurred outside of the officer's jurisdiction, thus rendering the arrest unlawful. The court held that "when the Hearing Officer injected herself into the proceeding to save the case for the City of Port Orange by asking jurisdictional questions. ... A strong case can be made that procedural due process was not accorded the petitioner." The court went on to quash the order of suspension on other grounds.

Here, when faced with the statutory mandate that non-appearance of the arresting officer required invalidation of the suspension, the Hearing Officer injected herself into the proceedings to save the case for the Department. She further made herself a witness on behalf of the Department on a material issue. In so doing, she departed from her neutral role as magistrate and Petitioner's due process rights were violated. Her order upholding the suspension should be quashed. Because the remedy for non-appearance of the arresting officer is set by statute, this court should direct the Department to invalidate the suspension.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e mail to: OGCFiling@flhsmv.gov, General Counsel, Department of Highway Safety & Motor Vehicles, Legal Department, this 9th day of August, 2020

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

NEELAM LOCHAB,

CASE NO.:

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent.

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, NEELAM LOCHAB, by and through undersigned counsel, pursuant to rule 9.100 Fla.R.App.P. and files this Petition for Writ of Certiorari and states:

JURISDICTION

The Circuit Court has jurisdiction pursuant to section 322.2615(13) and section 322.31 of the Florida Statutes. Petitioner is a resident of Flagler County, Florida (C-2)

BRIEF STATEMENT OF THE FACTS

According to the arrest report (C-3), on December 2, 2019, at approximately 5:01 pm, Deputy Nguyen of the Flagler County Sheriff's Office responded to the area of Belle Terre Parkway and Pine Lakes parkway North in response to a possible single motor vehicle accident. After witnesses identified Petitioner as the driver and after noting signs of impairment, Deputy Nguyen conducted a DUI investigation, resulting in Petitioner's arrest. (C-3), (C-1) Petitioner was transported to the Flagler County Inmate Facility where, at 6:30 pm, she was read the Implied Consent warning and a twenty-minute observation period started. (C-3), (B pg. 10) Petitioner agreed to a breath test (B pg. 10) Thereafter, Petitioner provided a breath sample of 0.150 g/210 ml at 6:53 pm. (C-3, C-5, (B pg.11)

Petitioner then stated she had asthma and began coughing. (C-3), (B pg. 11) She attempted to provide two additional samples “but it was inconclusive per the machine.” (B pg.11) Petitioner was deemed to have refused and her driving privilege was suspended. (C-3), (B-1), Petitioner requested a formal review hearing which was held telephonically on February 4, 2020. (B). At the hearing, the hearing officer marked into the record the documents which had been submitted by law enforcement. (B, pg.5) Deputy Nguyen testified as set forth above. (B pgs. 6-12) Petitioner testified that she was read implied consent at 6:30 pm, and that she submitted to the breath test. (B pg. 14) She testified that she had asthma. (B pg. 15) She tried to give the second and third samples but could not do so because of her asthma (B pg. 15) Nobody told her that she would lose her driving privilege for eighteen months because she had not given two valid samples. (B pg. 15)

Counsel moved to invalidate the suspension on the ground that there was no competent substantial evidence in the record to establish that Petitioner was operating a vehicle. (B pg. 16) The hearing officer reserved ruling on this motion and later denied it. (B pg. 18), (A) This ruling is not involved in this petition.

Counsel also moved to invalidate the suspension on the grounds that there is no competent substantial evidence that Petitioner willfully refused to take the breath test where she provided one sample and was prevented from providing a second by her asthma; that the officers did not reread Implied Consent after Petitioner submitted a valid sample but failed to provide a second acceptable sample; and that nobody ever advised her that two samples were required. (B, pgs. 19-21). The hearing officer reserved ruling on this motion. (B, pg. 22)

The hearing officer issued a Final Order of License Suspension on February 10, 2020, (A) denying Petitioner’s motion to invalidate the suspension on the all grounds. In response to Petitioner’s

second motion, the hearing officer found “there was no evidence that Petitioner had any difficulty providing the first breath sample or that she requested a blood sample.” She also reasoned “Petitioner did not enter any medical documentation to prove she suffers from asthma or proof of any prescription medication for the treatment of asthma.” (A) The Final Order affirmed the order of suspension. (A). Pursuant to sections 322.2615(13), and 322.31, Fla. Stat., Petitioner now files this Petition.

NATURE OF RELIEF SOUGHT

Petitioner seeks for this Court to set aside the Final Order of License Suspension entered by the hearing officer on February 10, 2020.

STANDARD OF REVIEW

The Circuit Court's standard of review is set forth in *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). The Court must determine:

- (a) whether procedural due process has been accorded;
- (b) whether the essential requirements of law were observed; and
- (c) whether the administrative findings and judgment are supported by competent substantial evidence.

ARGUMENT I

THE HEARING OFFICER DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW AND ABUSED HER DISCRETION IN SUSTAINING THE SUSPENSION WHEN THE RECORD IS DEVOID OF ANY COMPETENT EVIDENCE THAT PETITIONER WILFULLY REFUSED THE BREATH TEST AND WAS PROPERLY ADVISED OF IMPLIED CONSENT AFTER SHE SUBMITTED ONE VALID SAMPLE BUT FAILED TO PROVIDE A SECOND

At the Formal Review hearing, Respondent (“the Department”) had the burden to prove Petitioner’s suspension should be continued. *State, Department of Highway Safety and Motor*

Vehicles v. Farley, 633 So. 2d 69 (Fla. 5th DCA 1994); *Vernon v. State*, 558 So. 2d 535 (Fla. 1st DCA 1990). In order to sustain a licensee's suspension for driving with an unlawful blood-alcohol level, the Department must prove by a preponderance of the evidence that 1) the arresting officer had probable cause to believe the licensee was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances; 2) the licensee refused to submit to a breath test at the request of a law enforcement or correctional officer; 3) the licensee was told that if she refused her license would be suspended for a period of one year for a first refusal or eighteen months for a subsequent refusal.

In order to sustain the suspension of Petitioner's driving privilege, the hearing officer must find that there is competent substantial evidence in the record to support a finding that Petitioner was advised that if she refused to submit to a requested breath test, her license would be suspended for the requisite period. The record reflects that Petitioner was read the standard implied consent warning at 6:30 pm (C-3), (B pg.10) This was established by Deputy Nguyen's testimony as the documentary evidence is blank where the time should be entered. (C-6) Thereafter, Petitioner submitted to a breath test with a valid result at 6:53 pm. (C-5), (B pgs. 11-12) Although she attempted to blow two more times, she failed to provide a second acceptable sample (B pg. 12) She explained to the operator and the hearing officer that she had asthma, which caused her failure. (C-3) (B pgs. 11, 15) It is important to note that the implied consent warning does not contain any statement that a valid sample requires two tests. See (C-6). In response to the first reading of implied consent, Petitioner agreed to submit to testing. (C-5) She provided one valid sample. (C-10) She was never advised that the result she submitted was inadequate to meet her obligations under the implied consent law. The hearing officer's

finding implies that she failed to satisfy the hearing officer that a medical condition was the cause of her inability to blow and therefore not willful. (A) This ignores the fact that the record clearly shows that after she was initially read implied consent, she blew. She was never read implied consent again. Deputy Nguyen made no attempt to refute Petitioner's testimony that asthma caused her failure. (B pg. 12) He characterized the second and third test results as merely "inconclusive." (B pg. 12) There was never any testimony that anyone ever discussed a blood test as suggested by the hearing officer's findings. The refusal affidavit (C-6) is silent as to the timing of the reading of implied consent. The testimony and probable cause narrative clearly show that it was only read once, after which Petitioner attempted to comply, On her failure to provide an additional sample, she should have been advised that the one result was inadequate to meet her obligation and that she would be suspended.

Counsel submitted for consideration, the case of Counts v. DHSMV, 19 Fla. L. Weekly Supp. 1002a (15th Judicial Circuit Appellate 2012). That case involved remarkably similar facts where the driver provided one sample but was unable to provide a second because of asthma. The court found that the evidence was undisputed that the Petitioner was unable to perform the breath test," therefore there (was) no competent substantial evidence to support a finding that she refused to submit to a breath test." The court also was mindful of its limitations regarding reweighing of the evidence stating: "In determining whether or not competent substantial evidence exists, however, the Court may determine that the evidence is undisputed and cannot support the Hearing Officer's decision." Citing DHSMV v. Sarmiento, 989 So.2d 692 (Fla. 4th DCA 2008) This case was also submitted to the hearing officer for consideration.

In this case, the evidence is undisputed that Petitioner was only read Implied Consent once, after which she gave one valid sample and was unable to provide another because of asthma. She was

never advised that two samples were required to avoid suspension. There is no competent substantial evidence that she refused to provide a breath sample and her suspension should be set aside.

WHEREFORE, the Petitioner respectfully requests this Honorable Court grant this Petition and vacate the administrative final order suspending Petitioner's driving privileges.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e mail to: OGCFiling@flhsmv.gov, General Counsel, Department of Highway Safety & Motor Vehicles, Legal Department, this 9th day of March, 2020

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