

Application for Nomination to the
Fifth District Court of Appeal

MELANIE CHASE

Circuit Judge

January 2021

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**APPLICATION FOR NOMINATION TO
THE FIFTH DISTRICT COURT OF APPEAL**

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: Melanie Freeman Chase

Social Security No.: [REDACTED]

Florida Bar No.: 574368

Date Admitted to Practice in Florida: 09/27/2002

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

Circuit Judge
Eighteenth Judicial Circuit
Seminole County Criminal Justice Center
101 Eslinger Way
Sanford, FL 32773
(407) 665-4996

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).

Home Address: [REDACTED]

Resided at this Address: 5 years

Resided in Florida: 50 years

Cell number: [REDACTED]

3. State your birthdate and place of birth.

[REDACTED]

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.

Supreme Court of the United States (10/16/2006)

United States District Court, Middle District of Florida (11/19/2003)

United States Court of Appeal, Eleventh Circuit (3/31/2003)

Florida Bar (9/27/2002)

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

Melanie Freeman Carter during former marriage (1996-2000)

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).

University of Florida College of Law

Attended 1/2000-7/2002

Juris Doctor

Unknown class standing and GPA

Rollins College

Attended 8/1998-12/1999

Bachelor of Arts

GPA – 3.95

Graduated *Summa Cum Laude*

Seminole Community College
Attended 8/1990-8/1998
Associate of Arts
Graduated with *Highest Honors*

University of Central Florida
Attended 5/1988-6/1989
Transferred

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.

Except for law school, I worked full-time throughout my college education.

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.

NON-LEGAL EMPLOYMENT:

<u>Dates</u>	<u>Position</u>	<u>Employer</u>	<u>Address</u>
12/2011- 03/2014	Lobbyist (Legislative)	Florida Strategic Advisors, Inc.	379 Whitcomb Drive Geneva, FL 32732
1999	Paralegal	Zimmerman, Shuffield, et al.	P. O. Box 3000 Orlando, FL 32802
1998- 1999	Paralegal	Law Office of Norman Monroe	1780 N. Mills Ave. Orlando, FL 32803
1997- 1998	Paralegal	Fisher & Matthews	112 W. Citrus Street Altamonte Springs, FL
1993-1994 and 1995-1997	Paralegal	Kevin P. Bailey, Esq.	P. O. Box 320530 Cocoa Beach, FL 32932

1994-1995	Paralegal	Page, Eichenblatt, et al.	1560 Orange Ave., #200 Winter Park, FL 32789
1993	Paralegal	Law Office of Lawrence Hornsby	1936 Lee Rd., Suite 100 Winter Park, FL 32789
1991-1993	Paralegal	Hurt & Parrish, P.A. (n/k/a Parrish Law Grp)	807 W. Morse Blvd, #203 Winter Park, FL 32789
1990-1991	Clerk	Court Administration 18 th Judicial Circuit	Seminole Co. Courthouse Sanford, FL 32771

LEGAL EMPLOYMENT:

07/26/2008- 12/31/2014	Attorney	Chase Freeman, P.A.	1525 International Pkwy. Suite 4021 Lake Mary, FL 32746
01/03/2006- 07/25/2008	Senior Staff Attorney	Law Office of John J. Pine	200 Colonial Center Pkwy. Suite 550 Lake Mary, FL 32746
11/01/2003- 01/02/2006	Shareholder, Vice-President	Chase Freeman, P.A.	250 International Pkwy. Suite 330 Lake Mary, FL 32746
10/01/2002- 10/31/2003	Staff Attorney	Law Office of John J. Pine	200 Colonial Center Pkwy. Suite 550 Lake Mary, FL 32746

- 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.

Prior to becoming a Circuit Judge, my law practice included general civil litigation (plaintiff and defense), business litigation, eminent domain, criminal defense and family cases. I also worked as an in-house insurance defense attorney for The Hartford Insurance Company defending workers' compensation and auto insurance claims.

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	_____ %	Civil	<u>70</u> %
Federal Trial	_____ %	Criminal	<u>5</u> %
Federal Other	_____ %	Family	<u>15</u> %
State Appellate	<u>5</u> %	Probate	<u>10</u> %
State Trial	<u>85</u> %	Other	_____ %
State Administrative	<u>5</u> %		
State Other	<u>5</u> %		
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:

Estimates of the number of trials tried to conclusion as both an advocate and presided over as a trial judge are:

Jury? 2

(As Circuit Judge, estimated over 30 civil and over 50 criminal.)

Non Jury? 3

(As Circuit Judge, estimated over 250 civil, over 50 criminal and over 150 family.)

Arbitration? 0

Administrative Bodies? 10

Appellate? 0

(As Circuit Judge sitting in appellate capacity, estimated over 75 appeals from the County Court of Seminole County, Florida.)

(As Associate Appellate Judge on Florida's Fifth District Court of Appeals, 9 appellate oral arguments and final opinions.)

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.

Unknown. I did not keep these records during my legal practice, but I did very little federal work or appellate oral argument.

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.*

Not applicable.

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 appear in court almost every day. I have served in the following divisions with the noted caseloads.

January 2015 - June 2017:

Civil and Family Division, including injunctions for protection and mental health

Civil Appeals from County Court

Approximately 3,200-3,600 cases

July 2017 - June 2019:

Felony Division

Criminal Appeals from County Court

Approximately 250 felony cases

Associate Judge, Fifth District Court of Appeal

July 2019 - June 2020

Civil and Family Division, including injunctions for protection and mental health

Civil Appeals from County Court

Approximately 2,800-3,000 cases

Associate Judge, Fifth District Court of Appeal

July 2020 - present

Felony Division

Criminal Appeals from County Court

Approximately 500 felony cases

Associate Judge, Fifth District Court of Appeal

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.

SC-Read, Inc., Finch & Tusawilla HOA v. Seminole County School Board

Seminole County Circuit Court

Case No.: 2005-CA-616-16-K

Appellate citations: 932 So. 2d 1255; 951 So. 2d 3; 966 So. 2d 968

Honorable Debra S. Nelson, Circuit Judge

Attorneys involved: Damon Chase, Ned Julian, Alex Finch, Dennis Wells

In 2005, the Seminole County School Board rezoned high school students in the county. Three entities sought injunctive relief to stop the rezoning; our firm represented the Tusawilla Homeowners' Association. There were complaints of several procedural violations committed by the School Board, including the School Board members' trip around the county in a school bus. The trip was not advertised, open to the public, or recorded pursuant to Florida's Sunshine Law.

The matter was first tried by an administrative judge, then tried again in circuit court. An expedited three-day bench trial commenced on July 15, 2005 (less than two weeks before the school year was scheduled to begin). Television cameras and news media were in the courtroom each day because of the possible impact of a reversal of the rezoning at such a late date.

The trial court held that the bus ride was not a Sunshine Law violation and allowed the rezoning to occur as planned. On appeal, the Fifth District Court of Appeal ruled that the bus trip was in fact a Sunshine Law violation, however, it believed that subsequent measures by the School Board had cured the violation. At the time the appeal was heard (three years after the rezoning occurred), it was agreed that the issue of the school assignments was moot.

H&R Land Development v. Palm Beach County

Palm Beach County Circuit Civil

Consolidated Case No.: 2004-CA-5767, 2004-CA-9683, 2005-CA-7463, 2005-CA-74998

Appellate Citations: 43 So. 3, 61; 103 So. 3d 171

Honorable Glenn D. Kelley, Circuit Judge

Attorneys involved: Damon Chase, Michael D. Jones, Philip Mugavero, Robert Banks

This was an eminent domain case wherein Palm Beach County condemned an 1,100 acre tract of land referred to as Unit 11. Unit 11 was part of several large tracts of land which were developed and sold for residential purposes during the 1960s. A sophisticated series of canals was cut into each tract in order to drain them. Dirt roads were installed in a grid pattern for

access to each residential lot inside each Unit. The lots averaged approximately one acre each. Each Unit had its own micro water management district which was funded by the property owners within the Unit and charged with maintaining the canal system.

Unit 11 had the misfortune of being situated between two large conservation properties. In the early 1970s, Palm Beach County, the Florida Department of Environmental Protection and the South Florida Water Management District decided Unit 11 should be acquired by the government to create a wildlife corridor between the two conservation properties. Rather than filing formal condemnation proceedings, Palm Beach County began buying individual lots for \$4,050.00 each through a "willing seller" program. By the late 1980s, Palm Beach County had acquired hundreds of lots throughout Unit 11 and began efforts to restore Unit 11 to its natural condition. Once Palm Beach County became the largest land owner within the Unit, the County stopped funding the micro water management district which meant there was no money to maintain the canals. The canals began failing and by the late 1990s, most of Unit 11 was flooded wetlands.

In the late 1990s, attorney Michael D. Jones, sued Palm Beach County for inverse condemnation. While that case was pending, Palm Beach County filed formal condemnation proceedings against groups of land owners within Unit 11. Mr. Jones was lead counsel for those land owners in those subsequent eminent domain cases. In each case, Palm Beach County took the position that the properties were worthless because they were all flooded. Mr. Jones took the position that they were all flooded because the county flooded them.

As the cases proceeded to trial, Palm Beach County argued the only comparables were other lots within Unit 11, most of which the county purchased for \$4,050.00. Mr. Jones argued that those comparables could not be used because they were tainted by the flooding caused by the condemning authority. Mr. Jones argued that the lot values should be compared to adjoining units which by this time had more fully developed into residential neighborhoods. He argued that but for the County's actions, Unit 11 would have developed the same way as the other units. The trial courts disagreed with Mr. Jones, and appeals ensued. Mr. Jones won the appeals and new trials were ordered. This is when Chase | Freeman entered the litigation.

My role was to assist in preparation for trial. Mr. Jones and Damon Chase tried the case in December 2008. It is significant because of the interesting history and the novel legal issues it presented. The trial itself was not in any way a run-of-the-mill eminent domain case. Ultimately, the jury awarded the property owners \$35,000.00 per acre. Palm Beach County thereafter settled the remaining cases. After the trial, I further assisted in the research into the initial inverse condemnation case. We argued that the County's filing of formal condemnation proceedings in Unit 11 was a confession of judgment in the original inverse condemnation case, and as a result, Palm Beach County also owed attorney's fees for that case. The court agreed, and Palm Beach County paid.

R.A.W. v. Moosehaven Lifecare Center and The Hartford

Office of the Judge of Compensation Claims, Jacksonville Office

Case No.: 06-026450-ICH

Honorable Ivy Cream Harris, Judge of Compensation Claims

Attorneys involved: Melanie Sacks

The claimant worked as a registered nurse and injured her back while moving a patient. In a workers' compensation claim against Hartford and the insured, she first sought lost wages and orthopedic care. After years of treatment, the back injury had become a much greater exposure for the insurance company than ever expected. The claimant had suffered and survived cancer, become diabetic and developed a serious psychological condition that required continued treatment. Although these conditions appeared to be unrelated, a claim was made for permanent total disability benefits. This would have cost the insurance company an estimated \$750,000.00 or more, based on her age and medical needs.

The claimant had received much of her medical treatment through Medicare and therefore no settlement could be reached without creating a Medicare Set Aside to pre-pay Medicare what it expects to spend on the claimant in the future. The Medicare Set Aside process is arduous and made this case especially difficult for the insurer.

The first figure received from Medicare would have required the insurance company to pay more than \$200,000.00, in addition to any settlement amount. However, I was able to obtain medical opinions from each of the claimant's physicians regarding exactly what treatment was related to the original back injury and resulting in a greatly reduced Medicare Set Aside of less than \$40,000.00. The parties were then able to settle the case for just over \$150,000.00. The savings to the insurance company was hundreds of thousands of dollars, and the claimant was able to resolve her claim and seek treatment with doctors of her own choosing. It was a difficult case with an outcome that was positive for all parties.

Hadden & Associates, Inc. v. WSOS-FM, Inc.

and (companion case) *Hadden & Associates, Inc. v. WSOS-FM, a dissolved Florida corp. and Ronald Roseman and Edward Roseman*

Seminole County Circuit Court

Case No.: 2004-CA-0233

Appellate citation: 951 So. 2d 61

Honorable James E. C. Perry, then Circuit Judge

Case No.: 2007-CA-2467

Honorable Clayton D. Simmons, Circuit Judge

Attorneys involved: Damon A. Chase, JD Fuller, Dock Blanchard

This case involved a sales broker who arranges the sale of radio and television stations (our client) and WSOS-FM, Inc., a Florida corporation whose sole asset was a radio station in

north Florida. Our client recruited the purchaser but was not paid a commission after the \$3.7 million sale took place. The two sole shareholders of the corporation disbursed all of the corporate assets to themselves and allowed the corporation to be administratively dissolved by the state of Florida. This case was significant because of the time and efforts necessary to obtain our client's rightful commission. It involved complex business litigation, including a bench trial on entitlement to the commission, an appeal on that issue, a bench trial on the fraudulent transfer of the funds to the shareholders, and an appeal on that issue as well.

I worked extensively on preparing the matter for each trial and contributed significantly to researching matters in preparation of the appellate briefs on the second appeal. Our client prevailed on the first trial before then Judge James E.C. Perry as to corporate liability and also prevailed on the first appeal. The second trial on this matter was held before Judge Clayton D. Simmons on April 3, 2009. Following the bench trial, the Court ruled that the shareholders did not take the statutory precautions that would have protected them from the corporation's creditors' claims and therefore each was personally liable for his pro rata share of the debt.

I enjoyed working on this matter because the shareholders who disbursed the proceeds after the sale had been defiant in their refusals to pay our client. The judge's ruling that they were personally responsible was especially rewarding.

Judith Crowder v. Community Loans of America and Hartford Insurance Co.

Office of the Judge of Compensation Claims, Daytona Beach Office
Case No.: 06-028919-TGP
Honorable Thomas G. Portuallo, Judge of Compensation Claims
Attorneys involved: Jon Lambe

This workers' compensation claim involved a woman who worked at a check-cashing facility in Daytona Beach. Her job included a daily trip to the bank to get cash for the day's transactions. When she arrived for work in the parking lot, she was shoved into her car by an assailant who held her down with his knee on the back of her neck while he searched the car for money. She suffered cervical and psychological injuries as a result.

I represented the employer and its insurance company in the action. There was no dispute that the event had occurred and that her injuries were compensable, but the potential for this to become a permanent total disability matter made the exposure to the insurance company in the range of \$1 million or more. The claimant was approximately 45 years old and a lifetime of medical treatment and lost wages would have been extremely expensive.

The initial injuries of a cervical sprain and psychological impairment began to snowball into pain management needs, difficulties with medications that resulted in blood count abnormalities, and even gynecological issues. The potential cost to my clients was skyrocketing and the injured worker wanted out of the workers' compensation system. After doctors' depositions, mediations and several hearings, we were able to settle the matter for \$100,000,

inclusive of attorney's fees and costs. My clients were pleased with the resolution and I believe that the claimant was glad to be able to manage her own healthcare at that point.

Highway 46 Holdings, LLC v. Michael B. Myers, et al.

Orange County Circuit Court

Case No.: 2008-CA-1466

Appellate Citations: 65 So. 3d. 58, 114 So. 3d. 215, 163 So. 3d 1269

Honorable Donald Myers, Circuit Judge

Attorneys involved: Damon A. Chase, Marc Jones, Gus Benitez

This case was originally filed in 2008 by the Lowndes Drosdick firm on behalf of Highway 46 Holdings, LLC. Chase | Freeman substituted in for Lowndes Drosdick in May 2013. The case is essentially a corporate divorce between our client, Donald Hachenberger, and the defendant, Michael Myers. In 2004, the parties entered into an agreement to develop an automobile memorabilia themed entertainment district comprised of several restaurants and bars. Mr. Myers would provide approximately \$4,000,000.00 worth of memorabilia, and Mr. Hachenberger would provide the funding to construct the buildings. The agreement further provided that Mr. Myers would run the day-to-day operations, but Mr. Hachenberger had ultimate authority over the entire enterprise. Ultimately, Mr. Hachenberger contributed more than \$22,000,000.00 into the project.

During construction of the business, the parties irreconcilably disagreed on a number of issues which led to Mr. Hachenberger removing Mr. Myers from his management position and trespassing him from the project. Litigation ensued. Mr. Hachenberger, through the parties' LLC, sued Mr. Myers and others in a five-count complaint for essentially conversion and declaratory relief. Mr. Myers countered with more than 20 counts in hundreds of pages of pleadings which included third-party claims, cross-claims and just about every business cause of action imaginable.

Every aspect of the case was extensively litigated with multiple orders and injunctions being entered, involving not only the property at issue but the parties themselves. Mr. Myers' claims were dismissed with prejudice several times but always reemerged. The case is significant to me because of the complexity of all the issues and parties.

In April and May of 2017, after I left Chase | Freeman to take the bench, the case proceeded to three weeks of trial (two weeks with a jury and one week non-jury). Our client won on every issue. The appellate court affirmed.

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 been fortunate to sit as an associate judge at the Fifth District Court of Appeal on three occasions (2018, 2019 and 2020). On two of those occasions, I wrote the published opinion. I was the sole author of each. I have also attached a trial court order that I wrote without input from any clerk or attorney. It relates to the case of *State of Florida v. Anita Jane Smithey*.

Recco v. State of Florida, 264 So.3d 273 (Fla. 5th DCA 2019)

Patel v. Patel, 277 So.3d 776 (Fla. 5th DCA 2019)

State of Florida v. Smithey, Case No.: 2010-CF-1851 (Fla. 18th Cir. Ct. 2010)

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.

May 2014 – Elected without opposition as Circuit Judge, 18th Judicial Circuit, Group 2

May 2020 - Re-elected without opposition

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.

October 2020 – I applied for appointment to the Fifth District Court of Appeal. My name was not certified to the Governor's Office.

May 2018 – I applied for appointment to the Fifth District Court of Appeal. My name was certified to the Governor's Office. I first interviewed with general counsel and then later interviewed with Governor Scott.

April 2009 – I applied for appointment to the Eighteenth Judicial Circuit. My name was not sent 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.

Code Enforcement Magistrate for City of Oviedo (2012-2014) -

The City of Oviedo created a new magistrate position to more efficiently deal with certain matters that were difficult to handle before a multiple-member code enforcement board. I was the first to fill the position. I resigned to run for judge.

Planning and Zoning Commission for Seminole County (2007-2009) –

This was an advisory board reporting to the Seminole County Board of County Commissioners. I was elected Vice-Chair in 2009.

Board of Adjustment for Seminole County, Alternate Member (2005-2007) –

This was an advisory board reporting to the Seminole County Board of County Commissioners.

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:

Clayton D. Simmons, Esq., 1220 Commerce Park Dr., #207, Longwood, FL 32779,
(407) 878-4590

(Mr. Simmons is a former Circuit Judge. Since returning to the practice of law, he has tried family cases before me and appeared frequently in civil matters as well.)

Amanda Jacobson, Esq., 351 E. SR 434, Suite A, Winter Springs, FL 32708,
(407) 921-8856

(Ms. Jacobson is a criminal defense and family attorney who has tried several cases before me, including a recent dissolution of marriage trial that lasted five days.)

John Edward Jones, Esq., P.O. Box 181985, Casselberry, FL 32718,
(407) 834-5700

(Mr. Jones is a civil trial lawyer who has had cases in my civil division on several occasions.)

David Webster, Esq., 1220 Commerce Park Dr., Suite 207, Longwood, FL 32779.
(407) 862-9222

(Mr. Webster is a criminal defense attorney who has had several cases in my division.)

Justice Jamie Grosshans, Florida Supreme Court, 500 S. Duval St., Tallahassee,
FL 32399, (850) 488-0125

(As an attorney, Justice Grosshans tried a family case before me.)

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

January 2015 - June 2017:

Civil and Family Division, including injunctions for protection, mental health
Civil Appeals from County Court
Approximately 3,200-3,600 cases

July 2017 - June 2019:

Felony Division
Criminal Appeals from County Court
Approximately 250 felony cases

July 2019 - June 2020

Civil and Family Division, including injunctions for protection, mental health
Civil Appeals from County Court
Approximately 2,800-3,000 cases

July 2020 - present

Felony Division
Criminal Appeals from County Court
Approximately 500 felony cases

(iii) the citations of any published opinions; and

Recco v. State of Florida, 264 So.3d 273 (Fla. 5th DCA 2019). Attached.

Patel v. Patel, 277 So.3d 776 (Fla. 5th DCA 2019). Attached.

(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.

STATE OF FLORIDA v. ASGEIRR ULFR

Case No. 2018-CF-1124-A, Felony Criminal Division
Attorney for State: Stewart Stone, Esq., (407) 665-6000
Attorney for Defendant: J. Jeffrey Dowdy, Esq., (407) 665-4524

This case is significant because it is a death penalty case. Defendant is charged with First Degree Felony Murder, Burglary of a Dwelling with an Assault or Battery (Reclassified), and Kidnapping. It is still ongoing, and due to the restrictions imposed by the pandemic and the suspension of defendants' rights to speedy trial, it remains in the discovery phase without much judicial labor to be performed by me. Nevertheless, every hearing, even if perfunctory in nature, is treated differently because of the possible sanctions involved. Additional precautions have to be taken to protect the record, and the rights of the victim's survivors have to be respected as well, pursuant to Marsy's Law.

FLORIDA DEPT OF TRANSPORTATION v. GRE ALTAMONTE, L.P., et al.

Case No. 2012-CA-5219, Circuit Civil Division
Attorneys for Plaintiff: George Gaskel, Esq. and Jad Brewer, Esq. (407) 264-3174
Lead Trial Attorney for Defendants: Andrew Prince Brigham, Esq. (904) 730-9001

This matter was an eminent domain case involving the state taking part of the property known as the Interstate Mall on the corner of State Road 436 and Interstate 4 in Altamonte Springs for a new exit ramp. It involved over 40 commercial defendants and governmental entities, each of which alleged different business damages as a result of the taking.

The case went to trial before a jury of 12 on February 29, 2016. The jurors were asked to consider the property values for that which was taken, as well as severance damages. After a site visit with jurors, Sheriff's deputies, court reporters and clerks, the jury awarded \$2,900,000.00 to the multiple defendants.

The number of parties with differing claims, the complex and specialized legal issues, the site visit and 12-person jury, all made this case both unusual and significant.

CHERICA BROWN v. HENRY RAMONE BROWN, III

Case No. 2015-DR-4900
Circuit Domestic Division

This case, while not legally challenging or intellectually difficult, was important to me personally. It involved an Emergency Injunction for Protection Against Domestic Violence. An evidentiary hearing was held on January 8, 2016 that included stories of extreme and escalating domestic violence committed by the husband against the wife. Despite her description of the violence committed towards her, the wife testified that she thought the husband was not a danger to the children (ages 1 year and 4 years old). I entered an injunction prohibiting the husband from having any contact with the wife, somewhat over the wife's objection because her testimony vacillated on the issue of her own fear. On April 17, 2016, the husband ignored that injunction and stabbed ChERICA Brown to death, then shot their two young children, killing them both before committing suicide. It was tragic. I keep ChERICA Brown's file in my desk at all times as a reminder of the somber importance of some of the decisions we make.

STATE OF FLORIDA v. JOSEPH IRWIN

Case No. 2017-CF-2377A, Circuit Criminal Division
Case No. 5D-17-3634, Fifth District Court of Appeal
Counsel for the State: Anna Valentini, Esq. (407) 665-6000
Counsel for the Defense: J. Jeffery Dowdy, Esq. (407) 665-4524

The defendant was charged with Second Degree Murder Reclassified While Inflicting Great Bodily Harm, a Life Felony. On October 24, 2017, he filed a motion to dismiss based on Section 776.032, Florida Statutes (2017), (Stand Your Ground immunity). The statute had been revised not long before the hearing and it was necessary to apply the new burden standards, different than those previously prescribed by the legislature. Although the defendant's burden was merely to make a prima facie case that he acted reasonably when he used deadly force in defense of another, I was unable to find that he had met that burden, such that the burden would shift to the State for clear and convincing evidence that the immunity should not attach.

The significance of this case was in the newly-revised statutory language and change in the burden required of each party, as well as the significant sanctions facing the defendant. The Fifth District denied the defendant's Petition for Writ of Prohibition and the matter was resolved by a jury with a verdict of Not Guilty.

STATE OF FLORIDA v. ANITA JANE SMITHEY

Case No. 2010-CF-1851-A, Circuit Criminal Division
Fifth District Court of Appeal Case No. 5D-19-0880
Counsel for State: Stacey Salmons, Esq. (407) 665-6000
Counsel for Defense: Michael Ufferman, Esq. (800) 386-2345

Defendant, Anita Jane Smithey, was tried and found guilty of Second Degree Murder Reclassified with a Firearm, a Life Felony. The trial judge, my predecessor, sentenced her to 40 years in prison. The matter came before me on her post-conviction relief motion pursuant to Rule 3.850.

A two-day evidentiary hearing was held. Defendant alleged that trial counsel was ineffective for opening the door to damaging testimony that had previously been excluded. She was charged with the second-degree murder of her estranged husband, Robert Kline. Prior to the trial, she sought immunity from prosecution under the Stand Your Ground Law, claiming that she shot to defend herself from the infliction of a forcible felony. Specifically, she asserted that she and Mr. Kline had consensual sex, but it turned into non-consensual sex when he became violent, resulting in her shooting him in self-defense. The trial court rejected her self-defense claim before trial.

The trial judge also suppressed a portion of her law enforcement interview wherein she admitted that, despite previously claiming that Mr. Kline had stabbed her in the abdomen, she had actually stabbed herself. In his ruling, the trial judge indicated that the portion of the interview was suppressed, absent any opening of the door on that subject. During closing arguments, defense counsel played the defendant's 9-1-1 call, including statements alleging that Mr. Kline had stabbed her. The trial judge found that the door had been opened for purposes of impeachment. The matter at issue for the 3.850 hearing was whether the decision to play the 9-1-1 call constituted ineffective assistance of counsel. I have attached my order finding that counsel was not ineffective because the decision to play the call was strategic in nature. The Fifth District Court of Appeal has reversed, with one judge dissenting, and a motion for rehearing en banc is pending. This case demonstrates the current differences of judicial philosophies on the issue of ineffective assistance of counsel determinations.

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.

As to civil or family matters, I am aware of four (4) reversals or partial reversals and twenty-seven (27) orders affirming or denying petitions for writ. I have never received significant criticism about my substantive or procedural rulings. The four (4) reversals are:

Olson v. Picket Downs Unit IV Homeowners' Association, 5D15-4043
Appellate court reversed my denial of attorney's fees and costs based on a prevailing-party analysis.

Wash v. Ferdinand, 5D16-612
Appellate court affirmed in part and reversed in part. My ruling on entitlement and amount of attorney's fees was affirmed. My assessment of the fees to the litigant only was reversed; counsel and litigant were ordered to share them equally.

Wilmington Trust, National Association as Trustee for MFRA Trust 2015-2 v. Rolland Moon, et al., 5D16-3934
Appellate court reversed my entry of summary judgment on a foreclosure action based on a standing issue.

Florida Organic Aquaculture v. Advent Environmental Systems, 5D17-530
Appellate court reversed based on a procedural issue involving a motion for reconsideration and the trial court's jurisdiction after rehearing was denied.

As to criminal matters, I am aware of six (6) reversals or partial reversals and forty-three (43) orders affirming or denying petitions for writ. The six (6) reversals are:

Kelly Mathis v. State of Florida, 5D14-492
Appellate court reversed the denial of Defendant's motion for costs.

Adrian James v. State of Florida, 5D17-3557
Appellate court affirmed in part and reversed in part, ordering an evidentiary hearing on one count of the requested post-conviction relief.

Offeyette Speed v. State of Florida, 5D18-621
Appellate court affirmed in part and reversed in part. It remanded for the State to produce an affidavit supporting the costs of investigation.

Jonathan Smith v. State of Florida, 5D18-2444

Appellate court reversed and ordered a new trial for due to the admittance of portions of the police interview that were found to be more prejudicial than probative.

Maurio Hall v. State of Florida, 5D18-3505

Appellate court affirmed in part and reversed in part. The conviction on one of the charges was reversed and the matter remanded for a new sentencing based on the revised scoresheet.

Anita Jane Smithey v. State of Florida, 5D19-880

Appellate court reversed the denial of post-conviction relief based on ineffective assistance of counsel. Motion for rehearing has not yet been ruled upon.

I was also reversed by the Fifth DCA on a case that went the Supreme Court. The Supreme Court reversed the DCA and its order was later vacated. The matter involved the sentencing of a juvenile.

The case name is Deon C. Gilchrist v. State of Florida.

The case numbers are SC19-613 and 5D18-3545.

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

None.

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

I have never been contacted by the Judicial Qualifications Commission, and I am unaware of any complaints having been filed against me.

- 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.

None.

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.

Florida Strategic Advisors, Inc. (12/2011 – 3/2014)

I was a lobbyist for the City of Casselberry when it lost funding for a roadway project. I was able to help restore funding for the project and expedite the building of a flyover that benefited the city. I did not serve as a lobbyist for any other clients. I received approximately \$1,500.00 per month for a significant period of that time.

POSSIBLE BIAS OR PREJUDICE

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

I have never recused myself from any case based on its classification or subject-matter, and I cannot imagine any type of case that I could not hear as a general proposition. I have however recused on cases in which there could be a perception of bias based on my professional or familial relationship with the lawyer or lawyers involved.

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.

I have spoken several times at bar meetings and as a member of panels on issues including how to become more involved in voluntary bar associations, navigating local judicial rules, and practicing before the courts remotely during the pandemic. I have no records of when these speaking engagements occurred. The events were not covered by the press, nor were any recorded or otherwise memorialized to my knowledge. Such voluntary bar associations in which I have spoken include: Seminole County Bar Association, Seminole Inn of Court and the Seminole County Chapter of the Florida Association of Women Lawyers.

- 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 participated in CLE events provided by the Seminole County Bar Association to its members (and jointly with the Brevard County Bar) but those did not involve a syllabus or titled courses. I am always happy to help with presentations but do not keep detailed records of when I have done so. I also volunteer to judge mock trial competitions for students, including at The Florida Bar Annual Meeting.

- 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.

"Distinguished Service Award", Seminole County Bar Association (November 2020)

"Judge of the Year", Seminole County Bar Association (2019-2020)

- "Public Service Award", Seminole County Legal Aid Society (2017)
- "Award for Outstanding Professionalism", Seminole County Bar Association (2013)
- "Women Who Mean Business" Finalist, Orlando Business Journal (2011)
- "Florida Bar President's Pro Bono Service Award" for Eighteenth Judicial Circuit (2009)
- "Past Presidents' Award" Seminole County Legal Aid Society (2009)
- "Edward C. Smith Award", Seminole County Legal Aid Society (awarded for Outstanding Contributions to Pro Bono Projects and the General Betterment of the Community) (2008)

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.

Seminole County Bar Association

President	2009
Board of Directors	2010 to present
Secretary	2007
Treasurer	2006

Seminole County Inn of Court

President	2009-2010
Board of Directors	2010 to present
Treasurer	2005-2007

Seminole County Bar Association Legal Aid Society

President	2008
Treasurer/Secretary	2007
Chair, Compensation Committee	2007

Florida Council of Br Association Presidents	
President	2011-2013
Board of Directors	2008-Present
Federalist Society, Member	2019-Present
Nominating Committee for Eighteenth Judicial Circuit Florida Bar Presidents Pro Bono Service Awards	
Brevard County Bar Association, Member	
Florida Association of Women Lawyers (FAWL), Member	
Seminole County FAWL Chapter's Judicial Liaison	
Florida Bar Foundation, Fellow	

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.

East Central Florida Regional Planning Council	
Chairman	2013-2014
Re-appointed by Governor Scott	2013
Originally appointed by Governor Crist	2009
Senate confirmation	
Resigned to run for current Circuit Judge position	
SERTOMA (Service to Mankind) Seminole County	2014 to present
Private Business Association of Seminole	2008-2013
President (two terms)	2010-2012
Republican Women's Club of Seminole – Federated	2005-2012
President (two terms)	2011-2012
Suburban Republican Women’s Club	2008
Early Learning Coalition of Seminole	2008-2013
Gubernatorial appointee	
Habitat for Humanity of Seminole County	
Board of Directors	2009-2010

Women's Advisory Council South Seminole Hospital Chair	2009-2012 2011
Ovarian Cancer Alliance of Florida Board of Directors	2011
Seminole County Economic Development Task Force	2010
Seminole County Planning and Zoning Commission Vice-Chair	2007-2009 2009
Wayne Dench Performing Arts Center Board of Directors	2009-2010
Affordable Housing Advisory Commission Appointed by Board of County Commissioners	2008
City of Winter Springs Districting Commission	2008-2009
Cystic Fibrosis Foundation - Florida Chapter Board member	2007-2008
Space Coast Tiger Bay	2007-2008
Tiger Bay of Central Florida, Inc.	2006-2007
Community Leaders and Elected Officials	2002 to present

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.

I have been committed to pro bono legal work for many years, including serving as President and on the Board of Directors of the Seminole County Legal Aid Society. When I was elected as a circuit judge, I had to resign that position but then served as co-chair of the Eighteenth Judicial Circuit Pro Bono Committee.

I have received the following awards for dedication to pro bono efforts:

Florida Bar President's Pro Bono Service Award
for Eighteenth Judicial Circuit (2009)

Seminole County Legal Aid Society Past President's Award (2009)

Edward C. Smith Award from Seminole County Legal Aid Society
(awarded for "Outstanding Contributions to Pro Bono Projects
and the General Betterment of the Community") (2008)

Seminole County Legal Aid Society Eighteenth Judicial Circuit
"Public Service Award" (2017)

45. Please describe any hobbies or other vocational interests.

I enjoy being involved in our local Bar association, Inn of Court, Seminole County Association of Women Lawyers and other legal organizations. I dedicate a substantial amount of time to mentoring professionals who are new to the practice of law. I also enjoy spending time with my husband at our lake house with friends and family.

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.

I do not have Facebook, Twitter, LinkedIn, Instagram or other social media accounts.

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 have been married to Damon A. Chase, Esq. since December 15, 2000. He is an attorney and mediator who operates the law firm of Chase | Freeman, P.A.

I was previously married to Michael Shane Carter, D.C., whose professional address is 4705 S. Clyde Morris Blvd., Port Orange, FL 32129. We divorced amicably on May 1, 2000 in Seminole County (Case No. 2000-DR-1309). I do not know his current telephone number.

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.

Not applicable.

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.

I was a party to a dissolution of marriage suit that was filed and resolved amicably in 2000. Seminole County case number 2000-DR-1309 was resolved with a Final Judgment of Dissolution of Marriage on May 1, 2000.

I believe I was included as a party in an auto negligence case filed in my former husband's name. He was the plaintiff. Seminole County case number 1998-CA-0589 ended with a Voluntary Dismissal with Prejudice on July 2, 1999.

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.

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.

In the past five (5) years, I have taken the following Continuing Judicial Education courses:

Handling Capital Cases - "Death is Different"

This is a week-long class that Circuit Judges must complete in order to be certified to handle death penalty cases. I am death penalty qualified and currently preside over capital cases.

Handling Capital Cases – Refresher Course (Dec. 2020)

Florida Judicial College, Phases I and II

Advanced Alimony and Child Support

Civil Evidence

Civil Litigation

E-Discovery

Advanced College of Judicial Studies

Florida Judicial College Criminal Division

Eliminating Bias in the Courts

Florida Rules of Judicial Administration

Canvassing Board Law and Procedure

Families First Coronavirus Response Act

Federalist Society Florida Conference Annual Event 2020

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 have been fortunate to have served as an associate judge for the Fifth District Court of Appeal on three occasions in 2018, 2019 and 2020. While it was surprising just how much preparation goes into a single oral argument docket, it was such a satisfying process for me. I generally work well with people, but I worked especially well with these particular judges. I found them to be a collegial group and very welcoming to me personally. I enjoyed the intellectual conversations (sometimes debates) and I left there a better judge than when I arrived. I would be honored to work with them again.

I have been on the circuit bench for over six (6) years and have been seated in almost every division. My background is diverse and would serve me well if I were able to sit in an appellate capacity. I have handled matters in each of these areas:

Civil (contract/business, personal injury, eminent domain, etc.)

Family (dissolution of marriage, custody, paternity, child-support, etc.)

Domestic violence injunctions

Foreclosures

Civil appeals from the county court

Arrest warrants, search warrants, wire-tap warrants

First appearances

Felonies and misdemeanors

Violations of probation

Involuntary civil commitment and capacity reviews

Criminal appeals from the county court

I am the circuit judge who handles all of the issues related to the Grand Jury. This includes overseeing jury selection, accepting indictments or results of sessions, sealing documents and addressing writs and bond issues. It is one my favorite administrative duties.

I am death penalty qualified and have attended the course at Advanced Judicial College addressing all appropriate standards for death penalty cases in Florida.

I enjoy being involved in leadership positions and while on the bench, I have served in several administrative capacities. They include:

Administrative Judge, Criminal Division

Being the administrative judge of the felony division as we come out of the recent closures has involved quite a bit of logistical challenges. I have worked with the Sheriff's Office and Clerk's Office to coordinate remote hearings, limited live appearances, and now a return to in-person jury trials. I was the first judge in Seminole County to impanel a jury on October 5, 2020. We completed the trial with a jury verdict involving charges of Travel to Meet a Minor and Transmission of Material Harmful to a Minor.

Administrative Judge, Civil Appeals

Administrative Judge, Eighteenth Circuit Judicial Circuit Diversity Liaison

Seminole County Bar-Bench Liaison

Seminole County Courthouse Security Committee

Co-chair, Circuit-wide Pro Bono Committee

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

Phil Archer, State Attorney
Eighteenth Judicial Circuit
2725 Judge Fran Jamieson Way
Viera, FL 32940-6605
(321) 637-5575
parcher@sa18.org

Phil Archer is the elected State Attorney for our circuit, and I have known him since he was running for election for that position. We have worked together on issues that affect the Eighteenth Judicial Circuit and he would be able to speak as to my qualifications, including my work ethic and temperament.

Sheriff Dennis Lemma
100 Eslinger Way
Sanford, FL 32773
(407) 665-6635
sheriff@seminolesheriff.org

Sherriff Lemma and I have worked together, especially in my capacity as the Administrative Judge of the Criminal Division. He works with each of the judges and is well-suited to comment on my professionalism from an administrative perspective.

James H. Stelling
1161 Pallister Lane
Lake Mary, FL 32746
(407) 383-8746
jhstelling3@gmail.com

Jim Stelling is a longtime community leader that I came to know almost 20 years ago. He knows me well and can comment on my character and work ethic.

David Johnson
Seminole County Property Appraiser
1101 E. First St.
Sanford, FL 32771
(407) 665-7506


David Johnson is Seminole County's elected Property Appraiser. We have worked together on fundraising events, and we are both members of SERTOMA, a service organization. He has known me for years and would be able to speak as to my work in the community.

Captain Kip Beacham
Seminole County Sheriff's Office
100 Eslinger Way
Sanford, FL 32773
(407) 665-6600
kbeacham@seminolesheriff.com

Captain Beacham and I met while serving on the Board of Directors of Seminole County's Habitat for Humanity. He was previously on the 18th Circuit Judicial Nominating Commission and can speak on my commitment to community service, as well as my temperament and work ethic.

Commissioner Bob Dallari
Seminole County Commissioner
1101 E. First Street
Sanford, FL 32771
(407) 665-7215
[REDACTED]

I met Bob Dallari in his capacity as a County Commissioner. He has appointed me to voluntary board positions and knew me long before I went on the bench. Bob Dallari is well-situated to speak on my character and judgment.

Fred Streetman
125 Lake Rena Drive
Longwood, FL 32779
(407) 256-7296
fstreetman@aol.com

Fred Streetman was the Chairman of the Seminole County Board of County Commissioners years ago, but I came to know him through our membership in SERTOMA. Fred Streetman is a trusted mentor of mine and I consult him on professional issues that are important to me. He would be well-situated to discuss my general character and professionalism.

Mark A. Nation, Esq.
The Nation Law Firm
570 Crown Oak Centre Drive
Longwood, FL 32750
(407) 339-1104
mark@nationlaw.com

Mark Nation and I met when I was working as a paralegal and he was early in his practice, well over 20 years ago. He has known me throughout my law school years, early years in the practice of law, and now as judge. We both attend Inn of Court and Bar meetings, and I see him in court as well. Mark Nation is uniquely qualified to speak on my legal abilities and qualifications for this position.

John Edward Jones, Esq.
John Edward Jones, P.A.
P. O. Box 181985
Casselberry, FL 32718
(407) 834-5700
jjones@jejlaw.com

John Jones is an attorney who has known me since I was a child when Mr. Jones and my father were two of the few lawyers practicing in South Seminole County. We see one another frequently at Bar and Inn meetings. He is a former member of the 18th Circuit Judicial Nominating Commission and he can comment on my qualifications and demeanor.

Justice James E. C. Perry

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Justice Perry was a Circuit Judge in Seminole County and shared his judicial chambers with my father before going to the Florida Supreme Court. His daughter and I graduated law school at the same time and both fathers swore us in together. I grew to know him and his family well, and consider him to be like family. Having served as both a trial judge and an appellate judge, he would be well-suited to comment on my qualifications for this position.

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 19th day of January, 2021.

Melanie Freeman Chase

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.

TAB B

The Honorable Melanie Chase



EDUCATION:

- JD, University of Florida College of Law,
- BA, Rollins College (Summa Cum Laude)
- AA, Seminole State College (with Highest Honors)

PROFESSIONAL HISTORY:

- Supreme Court of the United States (Admitted 2006)
- United States Court of Appeals for the Eleventh Circuit (Admitted 2003)
- United States District Court for the Middle District of Florida (Admitted 2003)
- The Florida Bar (Admitted 2002)

JUDICIAL HISTORY:

- Administrative Judge, Criminal/Felony Division
- Administrative Judge, Civil Appeals Division
- Eighteenth Judicial Circuit Diversity Liaison
- Bar-Bench Liaison, Seminole County
- Civil and Family Division
- Criminal Division

ORGANIZATIONS, COMMITTEES AND COMMISSIONS:

- **LEGAL LEADERSHIP (Present):**
Judicial Liaison, Seminole County Florida Association of Women Lawyers
Board of Directors, Seminole County Bar Association
Board of Directors, Seminole County Inn of Court
Board of Directors, Florida Council of Bar Association Presidents
Fellow, The Florida Bar Foundation
- **LEGAL LEADERSHIP (Past):**
President, Seminole County Bar Association
President, Seminole County Inn of Court President
President, Florida Council of Bar Association Presidents (Statewide)
President and Director, Seminole County Legal Aid Society
Eighteenth Judicial Circuit Pro Bono Service Awards Committee
Co-Chair, Eighteenth Judicial Circuit Pro Bono Committee
- **COMMUNITY INVOLVEMENT (Past and Present):**
Chair, East Central Florida Regional Planning Council (Appointed by two Governors)
Vice-Chair, Seminole County Planning and Zoning Commission
Seminole County Board of Adjustment
Code Enforcement Magistrate, City of Oviedo
President, Private Business Association of Seminole
Brevard County Civilian Military Council, 45th Space Wing
Board of Directors, Habitat for Humanity in Seminole County
Seminole County Affordable Housing Commission
Board of Directors, Cystic Fibrosis Foundation Orlando Chapter
Chair, South Seminole Hospital Women's Advisory Council
Board of Directors, Early Learning Coalition of Seminole
Board of Directors, Wayne Densch Performing Arts Center
Districting Commission Advisory Board, City of Winter Springs
Member, SERTOMA (Service to Mankind)
Community Leaders and Elected Officials Member
Board of Advisors to The Village (providing transitional living to children aging out of Florida's Foster Care System)
-

AWARDS AND RECOGNITIONS:

- Seminole County Bar Association's Judge of the Year
- Florida Bar President's Pro Bono Service Award for the Eighteenth Judicial Circuit
- Seminole County Bar Award for Outstanding Professionalism
- "Women Who Mean Business" Finalist, Orlando Business Journal
- Seminole County Legal Aid Society Past President's Award
- Edward C. Smith Award from Seminole County Legal Aid Society (awarded for "Outstanding Contributions to Pro Bono Projects and the General Betterment of the Community")
- Seminole County Legal Aid Society's 18th Judicial Circuit Public Service Award

TAB C

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: 1/19/2021
JNC Submitting To: Fifth District Court of Appeal
Name (please print): Melanie Freeman Chase
Current Occupation: Circuit Judge
Telephone Number: 407-645-4996 Attorney No.: 574368
Gender (check one): Male Female
Ethnic Origin (check one): White, non-Hispanic
 Hispanic
 Black
 American Indian/Alaskan Native
 Asian/Pacific Islander
County of Residence: Seminole

TAB D

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.

Melanie Freeman Chase

Printed Name of Applicant

Melanie Freeman Chase

Signature of Applicant

Date: 11/19/2021

TAB E

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

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

JOSE LUIZ RECCO,

Appellant,

v.

Case No. 5D17-2648

STATE OF FLORIDA,

Appellee.

Opinion filed January 25, 2019

Appeal from the Circuit Court
for Orange County,
John H. Adams, Sr., Judge.

William R. Ponall, of Ponall Law, Maitland,
for Appellant.

Ashley B. Moody, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

CHASE, M., Associate Judge.

Appellant, Jose Luiz Recco, appeals his convictions and sentence on three counts of lewd or lascivious molestation, one count of lewd or lascivious exhibition, and one count of lewd or lascivious conduct. He argues that the trial court improperly limited his right to fully cross-examine the alleged victim by denying him the opportunity to inquire into, or demonstrate, prior inconsistent statements. We agree, and accordingly, reverse.

FACTUAL BACKGROUND

In August of 2016, Appellant, a family friend, babysat the five-year-old alleged victim, S.B. Soon after, S.B. told her mother that she had seen Appellant naked in the bathroom and that they had played a game involving the removal of clothes. When asked on subsequent occasions about the events of that day, S.B. offered differing versions. Her descriptions of what occurred varied when questioned by her father, during a later forensic interview, a videotaped deposition, and finally at trial. Because there was no physical evidence and no eyewitnesses other than Appellant and S.B., the defense sought to call S.B.'s credibility into question by, among other things, placing before the jury the differing accounts she had given.

The court ruled that it would not follow the normal impeachment procedure of confronting S.B. with her prior inconsistent statements because the court found she lacked the intellectual and emotional capacity to understand that process. Instead, the trial court advised that it would allow the defense to play for the jury's consideration any portion of S.B.'s videotaped deposition that contradicted her trial testimony.

After completing the truncated cross-examination of S.B., Appellant showed the court several statements in S.B.'s deposition testimony that directly conflicted with her trial testimony. Appellant argued that S.B.'s descriptions of the alleged criminal episode included variations on who initiated the game-playing, where each person was located, whether clothing was worn or had been removed, as well as her descriptions of Appellant's anatomy. After considering the discrepancies, the trial court found that the statements dealt with collateral matters rather than material issues and did not permit the defense to play any portion of the deposition for the jury. Despite the fact that these

discrepancies encompassed several aspects of how this alleged criminal episode occurred, Appellant was left with neither an opportunity to explore the inconsistencies with the accuser on the witness stand, nor the chance to fully demonstrate to the jury the extent of the inconsistencies between her current and prior testimony.

The jury found Appellant guilty as charged on all five counts. The trial court adjudicated him guilty and sentenced Appellant to twenty-five years in prison followed by life on sex offender probation for the first three counts and twelve years for the fourth and fifth counts. Appellant timely appealed, raising four issues. Because we reverse on the first, the remaining issues are moot.

ANALYSIS

Appellant argues that the trial court abused its discretion by completely precluding him from cross-examining the alleged victim with prior inconsistent statements. The State argues that if the trial court's actions constituted error, it was harmless error. A court's decision to limit the scope of cross-examination is subject to an abuse of discretion standard. *Moore v. State*, 701 So. 2d 545, 549 (Fla. 1997).

This Court has previously held that “[a] criminal defendant should be afforded wide latitude to cross-examine the State’s witnesses, especially when cross-examining a key prosecution witness.” *Elmer v. State*, 114 So. 3d 198, 201 (Fla. 5th DCA 2012). The cross-examination process is important as it is often “the principal means by which the believability of a witness” is tested. *Id.* at 202 (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)). The trial court does have broad discretion to limit any examination to protect a witness from repetitive or unduly harassing interrogation. It may impose reasonable limits on cross-examination when the court is concerned about, “among other things,

harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Moore*, 701 So. 2d at 549 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

Here, the trial court sought to provide protection for the child witness. The trial court deemed the cross-examination process, and specifically the laying of a foundation for impeachment, to be beyond S.B.'s capacity to understand. The limitation on cross-examination went beyond the issue of laying a foundation, however, and the court further denied Appellant's request to publish all or parts of the inconsistent deposition testimony. The ruling was based on the trial court's finding that the inconsistencies involved collateral rather than material issues. However, "cross examination is not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify, supplement, contradict, rebut, or make clearer the facts testified to in chief." *Docekal v. State*, 929 So. 2d 1139, 1143 (Fla. 5th DCA 2006) (citing *Chandler v. State*, 702 So. 2d 186, 195 (Fla. 1997)). The alleged victim's credibility was a central issue in this case and Appellant's ability to challenge that credibility was unduly encumbered.

The jury instructions given in this case expressly directed the jury to consider whether the witness seemed to have an accurate memory and whether the witness made any prior statement inconsistent with her trial testimony. Had the trial court allowed Appellant to publish the inconsistent deposition statements to the jury, Appellant would not have been materially prejudiced by the trial court's elimination of the usual steps followed in laying the foundation for impeachment using prior inconsistent statements. Because Appellant was not able to show the jury that S.B.'s trial testimony and deposition testimony were inconsistent in certain regards, the jury did not have all the evidence on

whether S.B.'s memory was accurate and whether she had given inconsistent statements at other times. The trial court erred by not permitting Appellant to follow the normal impeachment process and by not allowing him to publish S.B.'s inconsistent deposition testimony.

The trial court concluded that barring the defense from playing the deposition did not prevent it from arguing to the jury that S.B.'s story had changed through time, as that had already been established in the record by other means. While there might have been other examples of S.B.'s story changing through time, the trial court unduly limited Appellant's "absolute right to conduct a full and fair cross-examination of the witnesses called by the State." See *Arrascue v. State*, 42 So. 3d 927, 928 (Fla. 5th DCA 2010). The credibility of a testifying witness is always the proper subject for cross-examination, especially here, when the witness is the State's key witness in a case that otherwise lacks corroborating evidence. For the foregoing reasons, we conclude that the limitation on Appellant's right to confront witnesses against him constituted an abuse of discretion and was not harmless error. Accordingly, we reverse and remand to the trial court for a new trial.

REVERSED and REMANDED.

ORFINGER and EDWARDS, JJ., concur.

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

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

KETAN PATEL,

Appellant,

v.

Case No. 5D18-2926

RAMANLAL PATEL,

Appellee.

_____ /

Opinion filed August 23, 2019

Appeal from the Circuit Court
for Citrus County,
Patricia V. Thomas, Judge.

Kevin K. Dixon, of Kevin K. Dixon, P.A.,
Inverness, for Appellant.

Russell W. LaPeer, of Landt, Wiechens,
LaPeer & Ayres, LLP, Ocala, for
Appellee.

CHASE, M., Associate Judge.

Appellant Ketan Patel appeals the trial court's order disbursing the proceeds from the sale of property, which was the subject of an action for partition, without first holding an evidentiary hearing. We agree with Appellant that he is entitled to an evidentiary hearing to determine the appropriate liabilities and credits due each party, and therefore reverse for further proceedings.

BACKGROUND

The parties were joint owners of commercial real property that was mortgaged to secure a note on which they were jointly and severally liable. In 2014, Appellee Ramanlal Patel filed an action for partition of real property by sale, reimbursement of attorney's fees and costs, reimbursement for rental value during Appellant's tenancy, and equitable distribution of sale proceeds between the parties. Appellant filed a confession of judgment of partition and arrangements were made for the sale of the property.

The parties first attempted a private sale but when that failed, Appellee moved the court for entry of summary judgment and an order that the property be sold at public auction. The parties eventually reached an agreement on the language to be included in the Second Amended Final Judgment ("Judgment"). The trial court entered the agreed upon Judgment and set the sale at public auction.

The property was sold at auction to Appellant, as the highest bidder, and the proceeds were placed into the registry of the court. Appellant then moved for the proceeds to be disbursed to satisfy the outstanding mortgage.¹ On the other hand, Appellee moved for the proceeds to be disbursed equally to the parties. The court granted Appellee's motion and ordered the proceeds disbursed equally between the two parties without having held an evidentiary hearing to determine any appropriate credits or set-offs due either side.

¹ Appellant, without awaiting any disbursement order by the court, individually paid the outstanding mortgage which left the property now owned by him clear of any encumbrance.

ANALYSIS

Because partition is a subject of equitable jurisdiction, a trial court will be affirmed unless it is shown that the trial court abused its discretion in determining whether credits or set-offs are appropriate. *Wood v. Friedman*, 388 So. 2d 1355, 1358 (Fla. 5th DCA 1980). Partition principles are applied in a flexible manner “in order to arrive at a fair, equitable, and just decree.” *Fernandez v. Gonzalez*, 758 So. 2d 1192, 1193 (Fla. 3d DCA 2000) (citation omitted).

Appellee argues that the following language in paragraph 4 of the Judgment supports the court’s order of disbursement:

The Clerk of this Court . . . shall sell the real property . . . free and discharged of any and all claims, liens, encumbrances, rights, equity and interest of the parties. The mortgage and any and all claims, liens, encumbrances, rights, equity and interest of any person or entity not a party to this action shall be unaffected by this order and the sale

Appellee contends that this language extinguished all of the parties’ pre-sale expenses or claims. However, the remaining language of the Judgment supports Appellant’s argument that the parties intended the court to make an equitable distribution rather than defaulting to an equal distribution. Specifically, paragraph 3 of the Judgment states, “[t]he proceeds of the sale shall be deposited into the court to be divided among the parties as later determined by this Court.” Paragraph 7 includes language that “any surplus [will be] deposited into the court, to be divided among the parties as later determined by this Court.” Paragraph 9 provides that the trial court retained jurisdiction to “enter further orders that are proper including, but not limited to the entry of orders apportioning the proceeds of the sale and directing the payment of costs and attorney[’s] fees, as

appropriate.” Because of this language, it cannot be said that the parties intended to waive any and all post-sale review by the court.

Despite the equitable nature of partition proceedings, the record here lacks sufficient support for the trial court's equal distribution of proceeds. For that reason, we reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

ORFINGER and COHEN, JJ., concur.

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

FILED
GRANT HAYES
CLERK CIRCUIT COURT
2019 MAR 13 PM 2:20
SEMINOLE CO. FLA.
BY D.C.

STATE OF FLORIDA,

CASE NO. 2010-CF-1851-A

v.

ANITA JANE SMITHEY,

Defendant.

**ORDER DENYING DEFENDANT'S AMENDED MOTION
FOR POST-CONVICTION RELIEF**

Defendant ANITA JANE SMITHEY was tried and found guilty of second-degree murder reclassified with a firearm, a life felony. The Court sentenced her to 40 years in prison on February 2, 2015. The Fifth District Court of Appeal affirmed the judgment and sentence without written opinion. *Smithey v. State*, 206 So. 3d 717 (Fla. 5th DCA 2016).

In the Defendant's initial Motion for Post-Conviction Relief dated February 12, 2018, she raised three grounds. The State responded to the motion on May 17, 2017 and the Defendant replied on June 20, 2018. On January 14, 2019, she filed an Amended Motion for Post-Conviction Relief in which she supplemented the allegations made in ground two.

The Court held an evidentiary hearing on the matter over two days on January 31, 2019 and February 1, 2019. At the hearing, the Court heard live testimony from second-chair trial counsel, Ryan Belanger. The Court also received into evidence, by agreement of the parties, an affidavit from lead trial counsel Rick Jancha, who was unable to attend the evidentiary hearing. Finally, the Court heard proffered testimony from Michael Kessler, a board certified attorney in the area of criminal trial practice, but the testimony was not admitted into evidence.

Defendant raised three claims in her motion. In ground one, she alleged that trial counsel was ineffective for opening the door to damaging testimony that had previously been excluded. The second claim was that once that door was opened, counsel was ineffective for not advising her to testify in her own defense. Finally, she asserted that the cumulative errors committed by counsel deprived her of a fair trial. At the hearing, counsel withdrew ground two, recognizing that the Defendant's testimony would have been very damaging to her case on matters in addition to the source of her knife wound. This necessarily removed the claim of cumulative error because there was only one ground remaining.¹

According to the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant must meet a two-prong test to successfully allege ineffective assistance of counsel.

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Id., at 687. The Supreme Court further stated that

A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

¹ "[W]here allegations of individual error are found without merit, a cumulative-error argument based thereon must also fail." *Bryan v. State*, 748 So. 2d 1003, 1008 (Fla. 1999).

Id. at 689. “Moreover, strategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct.” *Occhicone v. State*, 768 So. 2d 1037, 1048 (Fla. 2000). “The standard is reasonably effective counsel, not perfect or error-free counsel.” *Coleman v. State*, 718 So. 2d 827, 829 (Fla. 4th DCA 1998). “Counsel cannot be deemed ineffective merely because postconviction counsel disagrees with trial counsel's strategic decisions.” *Hannon v. State*, 941 So. 2d 1109, 1119 (Fla. 2006). “A defendant bears the burden of establishing both prongs of the *Strickland* test before a criminal conviction will be vacated.” *Schofield v. State*, 681 So. 2d 736, 737 (Fla. 2d DCA 1996).

The Defendant was charged with the second-degree murder of her estranged husband, Robert Kline. Prior to the trial, she sought immunity from prosecution under the Stand Your Ground Law, claiming that she shot Mr. Kline to defend herself from the infliction of a forcible felony. Specifically, she asserted that she and Mr. Kline had consensual sex, but it turned into non-consensual sex when he became violent, resulting in her shooting him in self-defense. The trial court rejected her self-defense claim before trial.

The Defendant also filed a motion to suppress her interview with law enforcement. Due to the fact that she had previously invoked her right to remain silent, the trial court suppressed a portion of the interview. One of the key pieces of substantive evidence that was excluded was her admission about the source of the knife wound to her abdomen. She originally reported that Mr. Kline had stabbed her during the incident, but in the suppressed portion of the police interview, she admitted that she had actually stabbed herself. In its order suppressing the statement, the trial court noted that relevant portions of the interview could become admissible for impeachment purposes if the Defendant opened the door on that issue.

At trial, she again asserted that she acted in self-defense. The State offered substantial incriminatory evidence against the Defendant. This included witnesses testifying that it appeared she was feigning her emotions following the event. The first responding paramedic testified that the victim's body was cold to the touch when they arrived. There was also evidence that she staged the scene before leaving the residence. The Defendant also failed to report that she had been raped to the first responders or neighbors. The sexual assault nurse who examined the Defendant testified that she could not determine whether the sex was consensual or non-consensual, only that there was evidence of sexual activity. Dr. Predrag Bulic, the medical examiner, also testified that he could not rule out sexual assault, but the injuries were so minor that he believed that they resulted from consensual sex. Dr. Bulic also believed that the Defendant's stab wound was self-inflicted. In addition to the crime scene and medical evidence, the State introduced several jail telephone calls from which the jury could infer that she was dismissive of the severity of the situation and also included some damning statements about the justification for shooting Mr. Kline. The Defendant presented contrary evidence from several witnesses, culminating in testimony from Dr. William Anderson, who testified that the stab wound could not have been self-inflicted. This opinion was somewhat impeached because it was based largely upon evidence that the Defendant has been in restraints, but he was later forced to concede that the abrasion that he thought came from those restraints was actually a shadow cast on her in the photographs.

At the point in the trial when the defense introduced the Defendant's 9-1-1 call, the weight of the evidence heavily favored a guilty verdict. Trial counsel testified that the defense team felt it was important to get the Defendant's own words before the jury. They did not believe that the interview with law enforcement and the jail telephone calls, which were the only

instances when the jury heard the Defendant's voice, painted her in a flattering light. The defense team then sought to introduce evidence of the Defendant's emotional state after the shooting. This evidence would serve several purposes – to counter the evidence that she was feigning hysteria, to show that this was not a planned act, and to show that she had been severely traumatized. Counsel's options for getting this information before the jury included presenting the Defendant's testimony on the stand, introducing Kristin Sammarco's 9-1-1 call, or introducing the Defendant's 9-1-1 call.

The first option, that the Defendant testify to introduce her version of events to the jury, created several problems for the defense. If she elected to testify, she would have been asked directly about the source of her abdominal wound. She would also have to disclose that Mr. Kline had a \$750,000 life insurance policy and she was the beneficiary. The defense must also have considered that when she last testified at the Stand Your Ground hearing, the trial court found her not to be credible, rejecting her testimony almost in its entirety. Trial counsel understood these problems and had consistently recommended that she not exercise her right to testify. The Defendant concurred with this strategy. Collateral counsel recognized that having her testify in her own defense would not have been a viable trial strategy, so he withdrew this claim for relief from the post-conviction motion.

Another potential way to bring the Defendant's emotional state before the jury would have been to play neighbor Kristin Sammarco's 9-1-1 call for the jury. This call was made shortly after the Defendant exited her house after shooting Mr. Kline. During the 9-1-1 call, Ms. Sammarco stated that the Defendant was hysterical. However, as collateral counsel discovered when he played the recording at the evidentiary hearing, Ms. Sammarco relayed to the dispatcher that Mr. Kline had stabbed the Defendant. Therefore, in light of the trial court's

ruling, this evidence also would have opened the door to the damaging portion of the police interview. Accordingly, this strategy would not have changed the result of the trial. Recognizing this outcome, collateral counsel withdrew the claim as it relates to this evidence.

Finally, trial counsel had the option of playing the Defendant's 9-1-1 call, as he ultimately decided to do. After the recording was played for the jury, the State moved to introduce the suppressed portion of the police interview because the door had been opened. This was the sixth time during the trial that the State argued the defense had opened the door to this evidence. In this instance, the main thrust of trial counsel's argument was that the evidence was not being introduced for the truth of the matter asserted but for the Defendant's state of mind. After hearing substantial argument on whether the admission of the 9-1-1 call opened the door, during which trial counsel cited several supporting cases, the trial court found that the Defendant had opened the door to this evidence for purposes of impeachment. In its rebuttal case, the State played several of the suppressed statements for the jury.

The Defendant now claims that the decision to play the 9-1-1 call was both deficient and prejudicial because it removed all credibility from the Defendant after presenting testimony that she could not have stabbed herself. This criticism appears to be an example of viewing the trial with the benefit of hindsight. It can be argued that the decision turned out to be detrimental, but when considered from counsel's perspective at the time the decision was made, it is clear that this was a reasonable strategic decision.

Despite trial counsels' assertions that they did not believe, or even consider, that the trial court would find the playing of the 9-1-1 call to have opened the door, that matter was such a recurring issue throughout the trial that it is impossible for this Court to accept that possibility. This was a legal team that provided exceptional legal representation on behalf of the Defendant.

In fact, after the tape was played and the State made its motion, defense counsel made a cogent argument as to why the door had not been opened. His primary argument was that the statement was not hearsay because it was not being introduced for the truth of the matter asserted; it was being admitted to show her emotional state of mind after shooting and killing her estranged husband. This was a colorable argument against the statement's admission, even though it was ultimately unsuccessful.


Finally, the above analysis notwithstanding, this was a reasonable strategic decision, even if trial counsel knew that it was likely the suppressed statements would be admitted if he played the 9-1-1 call. Trial counsel Belanger testified that he and Attorney Jancha felt it was very important to get the Defendant's voice before the jury. Having her testify was not a viable option, as it was more problematic than the 9-1-1 call. Even if this Court accepts the argument that it was not necessary to the case, counsel did feel that it would be helpful. "[S]trategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel's decision was reasonable under the norms of professional conduct." *Occhicone*, 768 So. 2d at 1048. Trial counsel did consider the alternatives and judged that the admission of the 9-1-1 tape was worth the risk that the suppressed statement would also be admitted. Although collateral counsel argued that this decision was not reasonable, "[c]ounsel cannot be deemed ineffective merely because post-conviction counsel disagrees with trial counsel's strategic decisions." *Hannon*, 941 So. 2d at 1119. While a different attorney might have made a different decision about whether to admit the 9-1-1 call, the *Strickland* test is to be applied without the distorting effects of hindsight. *See Strickland*, 466 U.S. at 689. Trial counsel assessed the risks and proceeded with the strategy he thought best. This Court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable

professional assistance.” *Id.* Accordingly, this Court finds that trial counsel’s representation of the Defendant in this case was not deficient. As such, the Defendant is not entitled to relief.

It is hereby ORDERED AND ADJUDGED:

1. Defendant’s Amended Motion for Post-Conviction Relief is denied.
2. Defendant has 30 days from the date of this Order in which to file an appeal.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida this 13th day of March, 2019.



HONORABLE MELANIE CHASE
Circuit Judge

I hereby certify that copies of the foregoing have been furnished by mail this 14 day of March, 2019, to:

Stacy Straub Salmons, Esquire
Office of the State Attorney
SemFelony@sa18.org

Don Pumphrey, Esquire
Pumphrey Law Firm, P.A.
553 East Tennessee Street
Tallahassee, FL 32308

Michael Ufferman, Esquire
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, FL 32308

Anita Jane Smithey #E52701
Lowell Correctional Institution
11120 N.W. Gainesville Road
Ocala, FL 34482-1479

GRANT MALOY, Clerk of Courts

By:



DEPUTY CLERK

TAB F

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: Not applicable

Last Three Years: Not applicable

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: Not applicable

Last Three Years: Not applicable

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: \$0.00

Last Three Years:

2020	\$154,711.62 from State of Florida \$415.75 from dividends
2019	\$160,688.00 from State of Florida \$200.00 from dividends
2018	\$153,693.66 from State of Florida \$2,400.00 from dividends

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: \$0.00

Last Three Years:

2020	\$154,711.62 from State of Florida \$415.75 from dividends
2019	\$160,688.00 from State of Florida \$200.00 from dividends
2018	\$153,693.66 from State of Florida \$2,400.00 from dividends

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: \$0.00

Last Three Years: Unknown; taxes are filed jointly with spouse.

AMENDED

FORM 6

FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS

2019

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

FOR OFFICE USE ONLY:

LAST NAME — FIRST NAME — MIDDLE NAME:
Chase Melanie Freeman

MAILING ADDRESS:
101 Eslinger Way

CITY: ZIP: COUNTY:
Sanford 32773 Seminole

NAME OF AGENCY:
State of Florida

NAME OF OFFICE OR POSITION HELD OR SOUGHT:
Circuit Judge, Eighteenth Judicial Circuit, Group 2

CHECK IF THIS IS A FILING BY A CANDIDATE

PART A -- NET WORTH

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

My net worth as of December 31, 2019 was \$ 1,186,626.36

PART B -- ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$ 100,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)	VALUE OF ASSET
222 Cue Lake Drive, Hawthorne, FL	\$275,000.00
226 Cue Lake Drive, Hawthorne, FL	\$226,000.00
5222 NW 27th Drive, Gainesville, FL	\$132,929.00

PART C -- LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
American Education Services Payment Center, PA 17130 (student loans)	\$72,050.51
Bank of America, PO Box 15220, Wilmington, DE 19886 (Range Rover)	\$21,684.61
Bank of America, PO Box 15220, Wilmington, DE 19886 (Carver, joint and several)	\$54,688.94

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Bank of America, PO Box 15220, Wilmington, DE 19886 (Carver, joint and several)	\$54,688.94

PART D -- INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida (salary)	200 E. Gaines Street, Tallahassee, FL 32399	\$160,688.00
General Electric (dividends)	3135 Easton Turnpike, Fairfield, CT 06828	\$200.00

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

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

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

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2	BUSINESS ENTITY # 3
NAME OF BUSINESS ENTITY			
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

PART F - TRAINING

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

I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

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

STATE OF FLORIDA
 COUNTY OF Seminole
 Sworn to (or affirmed) and subscribed before me by means of
 physical presence or online notarization, this 21st day of

April, 2020 by Melanie Chase

Joanne Biron
 (Signature of Notary Public, State of Florida) JOANNE BIRON
 MY COMMISSION # FF 984982
 EXPIRES: April 24, 2020
 (Print, Type, or Stamp Commission # and Name of Notary Public) Underwriters

[Signature]
 SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

Personally Known OR Produced Identification
 Type of Identification Produced _____

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

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

Signature _____

Date _____

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

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

ATTACHMENT -- FORM 6 (2019)
FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST

ELECTED OFFICIAL: Chase, Melanie Freeman
OFFICE HELD: Circuit Judge, Eighteenth Judicial Circuit, Group 2

PART B -- ASSETS (CONTINUED):

Lake TGF, LLC (Land Development Trust) Real property -- 37500 St. Louis Ave., Umatilla, FL 20% ownership interest	\$ 84,671.00
Stocks (General Electric)	\$ 55,800.00
Stocks (WABTEC)	\$ 2,022.80
Cash Account (Merrill Lynch)	\$ 59.00
Cash Account (Fairwinds Credit Union)	\$ 12,664.78
Cash Account (BB&T) (1/10/2020)	\$ 8,133.02
2003 Carver 366 MY	\$100,000.00
1949 Chris Craft	\$ 50,000.00
2011 Pontoon	\$ 9,000.00
2016 Range Rover	\$ 40,114.00
2006 Polaris Ranger	\$ 4,500.00
Manifest Destiny, LLC Real property -- 127 Old Cue Lake Rd., Hawthorne, FL 16.665% ownership	\$ 15,156.82
Chase Holdings, LLC John Deere tractor	\$ 19,000.00
Loan to campaign account	\$200,000.00