

**JUDICIAL NOMINATING COMMISSION**

**SEVENTH JUDICIAL CIRCUIT OF FLORIDA**

**APPLICATION FOR NOMINATION  
TO THE COUNTY COURT OF ST. JOHNS**

**LAUREN P. BLOCKER**



**APPLICATION FOR NOMINATION TO THE COUNTY COURT OF ST. JOHNS**

*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: Lauren Patricia Blocker      Social Security No.: [REDACTED]**

**Florida Bar No.: 88558      Date Admitted to Practice in Florida: 4/14/2011**

- 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.

**Corporate Counsel II, Fidelity Information Services, LLC (“FIS”)  
601 Riverside Ave.  
Jacksonville, FL 32204**

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

**[REDACTED]  
Ponte Vedra, St. Johns County, Florida 32081**

**I have lived at the above address since approximately December 17, 2017. I have resided in Florida since 1988. I can be reached on my cell phone at [REDACTED].**

- 3. State your birthdate and place of birth.

**[REDACTED], St. Louis, MO**

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

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

**Florida Supreme Court (Florida Bar) Admitted April 14, 2011  
Missouri Supreme Court (Missouri Bar), Admitted September 14, 2011**

**I have not been suspended or resigned from admission in the above jurisdictions; however, I elected to go on inactive status with the Missouri Bar in 2014.**

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

**Prior to my marriage on July 31, 2010, I was known by Lauren Patricia Shaffar.**

**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).

**Florida Coastal School of Law**

Attended January 2008 to December 2010

Juris Doctor, *Summa Cum Laude*, received December 11, 2010

Ranked 1 out of 466

3.90 GPA

**University of Florida**

Attended August 2003–May 2007

Bachelor of Science, *Cum Laude*, received May 5, 2007

Major in Environmental Science, Minor in Italian

Class Rank: Not given by institution

3.71 GPA

**Miami Dade College**

Attended May 2005–June 2005

Summer Study Abroad in Italy

Degree not received or requested

**Our Lady of Lourdes Academy,**

Miami, Florida

Attended August 1999–May 2003,

High School Diploma, Received in May 2003

Ranked in the top 10

4.666 Weighted GPA

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.

**Law Review Member, August 2008–December 2010**

**Moot Court Member, August 2008–December 2010**  
**National Environmental Moot Court Competition (Quarterfinalist)**  
**National Civil Rights and Liberties Moot Court Competition**  
**Charleston National Constitutional Law Moot Court Competition**

**Alpha Epsilon Delta, the Health Professional Honor Society, Member, 2005-2007**

**We the People Constitution Team, 2002-2003,**  
**District and State Champions, Second Place Nationally**

**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.

**Fidelity Information Services, LLC**  
Corporate Counsel, September 2018–present  
601 Riverside Ave  
Jacksonville, FL 32204

**United States District Court for the Middle District of Florida**  
The Honorable Carol Mirando, U.S. Magistrate Judge  
Law Clerk, May 2018–August 2018  
2110 First Street  
Fort Myers, Florida 33901 (remote)

**Southeastern Grocers, LLC**  
Assistant General Counsel, June 2016–May 2018  
8928 Prominence Parkway, #200  
Jacksonville, FL 32256

**United States District Court for the Middle District of Florida**  
The Honorable Patricia D. Barksdale, U.S. Magistrate Judge,  
Law Clerk, September 2015–June 2016  
The Honorable Marcia Morales Howard, U.S. District Judge,  
Law Clerk, October 2011–September 2015  
300 N. Hogan Street  
Jacksonville, FL 32204

**Held & Israel**  
**Stacy Watson May, P.A.**  
Associate, January 2011–September 2011  
6320 St. Augustine Road, Suite 2  
Jacksonville, FL 32217 (Office since closed).

**Supreme Court of Florida**

The Honorable Ricky Polston  
Judicial Extern, Fall 2010 Semester (full-time for course credit)  
500 South Duval Street  
Tallahassee, FL 32399-1927

**Law Firm of Lansing J. Roy, P.A.**

Law Clerk, February 2010–July 2010  
1710 Shadowood Lane, Suite 210  
Jacksonville, FL 32207

**Florida Coastal School of Law**

Research Assistant, Spring and Summer 2009, Spring 2010  
8787 Baypine Road  
Jacksonville, FL 32256

**McGuireWoods LLP**

Environmental Extern, Fall 2009 Semester (part-time for course credit)  
50 North Laura Street, Suite 3300  
Jacksonville, FL 32202-3661

**Fourth Judicial Circuit**

The Honorable David M. Gooding  
Judicial Extern, Summer 2008 (part-time for course credit)  
330 East Bay Street (Courthouse since moved to 501 W Adams St)  
Jacksonville, FL 32202

**Graper Facial Institute**

January 2006–December 2007 (job description below)  
832 NW 57<sup>th</sup> ST  
Gainesville, FL 32605

**During my junior and senior years of college, I had the opportunity to work for Dr. Charles Graper, an oral and maxillofacial as well as cosmetic surgeon. I prepared rooms, managed consent forms, billed insurance, handled insurance disputes, and assisted during consultations and surgeries. His practice manager was his wife, Beverly Graper, who can be reached at (352) 316-5354.**

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.

**My current practice is transactional. I am corporate counsel for FIS, a Fortune 500 financial services technology company, and primarily assist internal clients with a high**

**volume of both customer and vendor contract negotiation as well as contract disputes. I also conduct legal research as needed and draft memoranda for senior leadership. In my prior position at Southeastern Grocers, in addition contract negotiation, I advised internal clients as to compliance with state and local laws in seven different state jurisdictions, reviewed outside counsel filings on labor and employment matters, managed collections litigation matters with outside counsel, and assisted the payroll department in managing garnishment proceedings as needed, including filing motions to vacate defaults and default judgments.**

**My experience as a judicial law clerk provided opportunities to work on a wide variety of legal practice areas, including commercial litigation, personal injury, labor and employment, bankruptcy appeals, social security appeals, and criminal matters, at each stage of litigation, including initial filing review for jurisdiction, discovery disputes, dispositive motions, *Daubert* motions, pretrial motions, drafting jury instructions during trial, motions for new trial following trial, and drafting proposed findings of fact and conclusions of law following bench trials.**

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

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

**As a judicial law clerk, I was in the courtroom often, an average of at least 5 times a month, being assigned to a number of civil and criminal trials, with varying frequency, as well as motion hearings. The split between federal criminal and federal civil in the courtroom was about 30% civil, 70% criminal, and 100% at the federal trial court level.**

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

Jury? 1 (Second Chair) Non-jury? N/A  
Arbitration? N/A Administrative Bodies? N/A  
Appellate? N/A

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

**None.**

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

**No.**

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

**No.**

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

***Buyer's Broker Realty Consultants, Inc. v. Martha and Walter Taylor, 16-2002-CA-005343***

**Main Counsel: Kim Israel, Esq.**

**McGlinchey Stafford**

**10407 Centurion Pkwy N Ste 200**

**Jacksonville, FL 32256**

**(904)224-4485**

**kisrael@mcglinchey.com**

**Opposing Counsel: P. Campbell Ford, Esq.**

**Ford, Miller, & Wainer, P.A.**



1835 3rd St. N.  
Jacksonville Beach, FL 32250  
Telephone: 904-390-1970

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

**Not applicable.**

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

**I do not currently appear in court. During my time as a law clerk, I was in court an average of at least 5 times a month.**

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.

**Although FIS transactions are confidential, I can generally describe my major transactions: those involving large financial institutions for core banking solutions along with a host of ancillary products such as online banking, credit and debit processing, consumer reporting services, and item processing. These transactions typically involve tens of millions of contract value. Transactions for large financial institutions are among the most difficult because they involve bespoke contracts and intense negotiation over multiple days if not weeks.**

**I have also worked on a considerable number of agreements for core banking solutions for community banks and credit unions. While I cannot disclose opposing in-house counsel without disclosing FIS confidential information, the outside counsel listed below represented more than one client entering into a business arrangement with FIS.**

**Barry Hester**  
[Barry.hester@bclplaw.com](mailto:Barry.hester@bclplaw.com)  
(404) 572-6711

**Peter Wilder**  
[Pwilder@gklaw.com](mailto:Pwilder@gklaw.com)  
(414) 287-9609

**While Southeastern Grocers transactions are also confidential, I negotiated all the contracts associated with the Star Wars Cosmic Shells promotional campaign. This involved**

**negotiating with an international brand promotion company as well as The Walt Disney Company and its affiliates for product licensing.**

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.

**Not directly applicable. However, as a judicial law clerk for the Honorable Marcia Morales Howard, I was assigned the following significant cases to assist at trial and made the following contributions:**

***United States v. Godwin, et. al*, 3:10-cr-276-J-34TEM: This case involved six defendants charged with violations of the Racketeer Influenced and Corrupt Organization (RICO) Act and conspiring to commit racketeering, as well as twenty-four predicate racketeering acts. Two defendants went to trial, which required empaneling of two juries and complex jury instructions addressing both state and federal criminal laws, including extortion, home invasion robbery, bank robbery, transferring stolen goods, drug trafficking, money laundering, as well as the RICO violation. There were motions to dismiss the indictment before trial, a motion to excuse a seated but not yet empaneled juror, and a dismissal of a juror refusing to follow instructions during deliberations. Excluding two days of jury selection, the trial lasted thirteen days. At the conclusion of trial, there was also a motion for new trial. I assisted at each stage of the proceeding reviewing filings, researching relevant case law, preparing jury instructions, and drafting necessary orders.**

***Ioselev v. Schilling*, 3:10-cv-1091-J-34MCR: This case was significant as it was a breach of contract claim for specific performance between two *pro se* litigants. The plaintiff alleged the defendant promised him a life estate in Florida property in exchange for property management services. Prior to trial, I assisted drafting the order adopting as modified a report and recommendation that summary judgment be granted in part and denied in part. On the remaining issues, there was a four-day jury trial with special interrogatories for the equitable claims and a verdict resolving the legal claims. I assisted both with the jury instructions and drafting detailed findings of fact and conclusions of law to resolve the case.**

***Hooks v. GEICO*, 3:13-cv-891-J-34JBT: This case involved a claim alleging that the defendant breached its duty of good faith to the plaintiff, its insured, in the handling of a personal injury claim against the plaintiff for a car accident. This was a five-day jury trial.**

There were a number of evidentiary issues during trial, an objection to improper closing argument that required research, and the preparation of jury instructions, which involved a contentious charge conference over the inclusion of a jury instruction that would have required a conscious disregard for the rights of the insured that was ultimately excluded from the instructions. I conducted legal research regarding the evidentiary issues, prepared the initial jury instructions, and conducted legal research regarding the requested conscious-disregard instruction.

*United States v. Miller, et. al*, 3:11-cr-81-J-34JBT: This case involved an extensive mortgage fraud scheme. Defendant Kessler Holzendorf, a local political figure, went to trial and was convicted of one count of conspiracy to commit mail and wire fraud, fifteen substantive counts of mail fraud, and fifteen substantive counts of wire fraud. With multiple defendants, I assisted with the motions to dismiss the indictment and for a bill of particulars; the jury trial, including the jury instructions, which were contested; the motion for new trial; and the forfeiture issues that arose during sentencing.

*United States v. Holmes*, 3: 13-cr-47-J-34JBT: This was a production of child pornography case where the central issue was whether the depictions created by the defendant, who surreptitiously videotaped his stepdaughter for months in her bathroom, constituted child pornography. I assisted with drafting the jury instructions as well as the order denying the motion for new trial following the defendant's conviction.

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 personally wrote the attached orders for U.S. Magistrate Judge Carol Mirando during my time as her law clerk and am attaching them with her permission. Writing Sample 2 relied in small part (the first paragraph of section I and the paragraphs in Section II before the Background subsection a.) on statements of law from prior orders.

#### **PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE**

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

No.

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

**Not applicable.**

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.

**Not applicable.**

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

- (i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;
- (ii) the approximate number and nature of the cases you handled during your tenure;
- (iii) the citations of any published opinions; and
- (iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

**Not applicable.**

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

**Not applicable.**

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

**Not applicable.**

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

**Not applicable.**

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

**Not applicable.**

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

**Not applicable.**

#### **NON-LEGAL BUSINESS INVOLVEMENT**

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

**Not applicable.**

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

**No.**

#### **POSSIBLE BIAS OR PREJUDICE**

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

**My husband is a practicing attorney. I would recuse myself from any case involving him. Otherwise, there are no types of cases, groups of entities, or extended relationships or associations which would require recusal.**

#### **PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES**

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

**Not applicable.**

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the

document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

**Not applicable.**

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

**I was chosen to speak at the induction ceremony for newly admitted lawyers on the basis of receiving the highest score on the Florida Bar. *Speaker on Behalf of Newly Admitted Lawyers at the Florida Supreme Court, Tallahassee, FL (May 2, 2011), [Florida Supreme Court Gavel to Gavel Video Portal | Case \(wfsu.org\)](#) (32:00-35:00)***

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

**No.**

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

**Book Awards for the highest grade in the following classes:**

<b>Contracts I</b>	<b>Civil Procedure</b>	<b>Torts I &amp; II</b>
<b>Lawyering Process I</b>	<b>Property I</b>	<b>Professional Responsibility</b>
<b>Evidence</b>	<b>Criminal Law</b>	<b>Family Law</b>
<b>Environmental Law</b>	<b>Environmental Law &amp; Toxic Torts</b>	

**College of Agriculture Honors Program, 2004-2007**

**Intermediate Italian Student of the Year, 2005**

**Golden Key International Honor Society Member, 2005-2007**

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.

**Fifth District Court of Appeal Judicial Nominating Commission, July 2020-present**

**St. Johns Women Lawyers Association, 2018–present**

**St. Augustine Inn of Court, 2018–present**

**Jacksonville Women Lawyers Association, 2017–present**

**Catholic Lawyers Guild, 2013-2018**  
**Spiritual Chair 2013–2015**

**Jacksonville Bar Association, Judicial Liaison, 2013–2015**

**Federal Bar Association, Jacksonville Chapter, 2012–2015**

**Chester Bedell Inn of Court, Associate Member, 2012–2013**

**St. Johns County Bar Association, Member, 2021**

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.

**Rotary Club of 32081, Founding Member, January 2021–present**

**First Coast Cultural Center (formerly known as the Cultural Center of Ponte Vedra Beach), Board Member, January 2021–present**

**Federalist Society, Member August 2019–December 2020,**  
**Leadership 2021–present**

**St. Johns County Sheriff's Advisory Council ("SHADCo"), July 2019–present**

**St. John Paul II Catholic Church 2014–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.

**As a judicial law clerk, I was not able to perform pro bono legal work. I have provided legal advice pro bono since joining as a board member for the Cultural Center of Ponte Vedra Beach. I have also provided pro bono legal advice for national service dog association that includes K9s for Warriors in 2019. I am currently a volunteer for St. Johns County Legal Aid.**

45. Please describe any hobbies or other vocational interests.

**I enjoy swimming, reading, traveling, and sporting clay shooting.**

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

**I have not served in the military.**

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

<https://www.linkedin.com/in/lauren-blocker-916ab02b/>

<https://www.facebook.com/lauren.blocker.5>

## **FAMILY BACKGROUND**

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

**I am married to Jeremiah Blocker and have been since July 31, 2010. Jeremiah is a St. Johns County Commissioner, attorney, military veteran, and current member of the Florida National Guard.**

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.





## CRIMINAL AND MISCELLANEOUS ACTIONS

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

**I have filed my taxes annually as required without issue.**

## **HEALTH**

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

No.

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

**No.**

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

**No.**

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

**No.**

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

**No.**

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

**No.**

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged

consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

**No.**

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

**No.**

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

**No.**

#### **SUPPLEMENTAL INFORMATION**

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

**I have had a number of varying experiences that have helped shape me into the attorney that I am and would greatly impact the judge I would be. I lost my father to cancer when I was only a year old. Although growing up with that absence in my life felt unfair, I was also blessed to have a great extended family. One such family member was my paternal grandfather. He was an extremely hardworking attorney that clients, fellow attorneys, and judges could trust. At his funeral shortly before I graduated from law school, a judge stated he never had to double check my grandfather's filings. The judge knew the facts and the law as stated would be accurate. My grandfather demonstrated the importance of integrity, and I strive to live up to his example.**

**My view of the law as I grew up was as a basic set of rules and principles applicable to everyone in society. Every individual is equal, no matter their background. It is essential for every person who comes before any court to be confident in the ability to receive fair and impartial treatment. While clerking, I discovered the attorney representing the plaintiff in a complex commercial litigation I was assigned had disparaged the judge as partial to the defendant. The plaintiff was distraught as he had spent twice what he could hope to recover in attorney's fees and had no confidence that he had received a fair opportunity to be heard. The judge had in reality given his case the same diligent and fair treatment it deserved. This had a profound impact on me as I observed how critical it is for each litigant to know that they will receive equal, fair, and impartial treatment.**

**I would carry my experiences with me to the bench to serve with a focus on involvement in the community. It is important for a judge, as a public servant, to be a visible presence in the community. This is particularly relevant when dealing with pro se litigants, as is common in county court. A judge cannot give legal advice but must balance that with each litigant's need to be fully heard. I have experience reviewing pro se filings and drafting orders on those filings from my time as an intern in circuit court, working on motions for postconviction relief, and from my time as a law clerk reviewing motions to proceed in forma pauperis and pro se complaints. While a pro se litigant may not be familiar with precise legal terminology, a litigant cannot be penalized for being pro se when a colorable claim has been alleged. My experience will allow me to balance the interests of all parties that would come before me and ensure that they receive the same treatment and feel that they have had an opportunity to be heard.**

**My diverse legal experience would serve me well as a County Court judge. I have had the opportunity to work within the court system as an intern in state trial court as well as the Florida Supreme Court and as a law clerk in federal court at both the magistrate and district judge levels. As a new lawyer, I had the opportunity to represent clients in state court, drafting complaints, motions, answers, and responses to motions. I have had the opportunity to be mentored by excellent jurists and have seen the proper ways to manage busy dockets and run a courtroom from the perspective of the court. As in-house counsel, I have had the opportunity to be the client as well as to advise internal clients of litigation risk and help bring conflicting business and sales teams together to achieve the best results for the companies I have represented. Overall, throughout my legal career, I have developed the ability to switch from one legal area to another efficiently and effectively, at times with no prior background in the particular area of law, from bankruptcy in law school; to a variety of civil and criminal matters while serving as a law clerk; to the areas of intellectual property, advertising and marketing, and alcohol restrictions at the state and local level; and finally to the area of negotiating technology services contracts in a highly regulated banking and consumer protection environment.**

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.

**A judge must have integrity, intelligence, and the appropriate judicial temperament. I have a strong desire to serve St. Johns County and my community. Throughout my legal career, I have treated all parties, including clients, colleagues, judges, court staff, opposing counsel, and litigants, with respect and kindness. I have been faithful to the oath all attorneys take upon being sworn in to the Florida bar. I have been a team player, stepping up for colleagues to cover matters as needed. This trait will be valuable as the county and circuit court judges in St. Johns County exemplify this same type of collegiality. I would continue to demonstrate integrity and professionalism upon appointment to the bench.**

**My intellectual capabilities are well suited to the bench. As a prior law clerk, I can efficiently research complicated legal issues and issue clear rulings, both from the bench and in writing, in a timely, fair, and consistent manner. Having experience in both trial and appellate courts at the state and federal level, I have a keen understanding of the role of the judiciary. As provided in Article II, Section 3 of the Constitution of the State of Florida, “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided” in the Constitution. It is essential for a judge to be a continuous student of the law but not an author. A judge should exercise judicial restraint by deciding only the cases before the judge and applying the law as written in the plain language and text.**

**I also have the appropriate judicial temperament. I have a strong work ethic. I am compassionate but stern enough to manage a courtroom. I am patient, which will be necessary for mentoring new attorneys and providing all litigants with a meaningful opportunity to be heard. I will be decisive in making clear rulings to manage a busy docket. I will not have any tendency or bias to favor either plaintiffs or defendants in a civil context or the state or the defendant in a criminal context. I will follow the law in each case even if it does not lead to the outcome I would prefer. I will perform the duties of a county court judge in a consistent manner to give every litigant, attorney, and member of the public the utmost confidence in their ability to receive just rulings.**

**As a member of local organizations and my church, I have strong connections to St. Johns County. I know what it takes to run a successful campaign, and I will work tirelessly to retain the seat if appointed.**

## **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.**

**Kim Israel  
McGlinchey Stafford  
10407 Centurion Pkwy N Ste 200  
Jacksonville, FL 32256  
(904)224-4485  
kisrael@mcglinchey.com**

**The Honorable Marcia Morales Howard  
United States District Court, District Judge  
300 N. Hogan Street, Suite 11-350  
Jacksonville, FL 32202  
(904)-301-6750**

**Peggy Hunt Miller**  
300 N. Hogan Street, Suite 11-350  
Jacksonville, FL 32202  
(904) 301-6755  
Peggy\_miller@flmd.uscourts.gov

**The Honorable Patricia Barksdale**  
United States District Court, Magistrate Judge  
300 N. Hogan Street, Suite 5-311  
Jacksonville, FL 32202  
(904)549-1950

**Justin Markley**  
Southeastern Grocers, Inc.  
8928 Prominence Parkway, Building 200  
Jacksonville, FL 32256  
(904)370-8116 (Office)  
(904)229-2699 (Cell)  
Justin.r.markley@gmail.com

**The Honorable Carol Mirando (U.S. Magistrate Judge, retired)**  
1350 Woodmere Ln  
Fort Meyers, FL 33919  
(239)227-5889  
cmmirando@aol.com

**Ben Bruins**  
Corporate Counsel II, FIS  
601 Riverside Avenue, Floor 11  
Jacksonville, FL 32204  
(410)991-4971  
Bruinsbf@gmail.com

**Anna Shea**  
Assistant General Counsel, FIS  
8100 Cypress Hollow Court  
Ponte Vedra Beach, FL 32082  
(904)293-9980 (cell – preferred)  
(904) 285-5169 (home)

**Robert Hardwick, St. Johns County Sheriff**  
**4015 Lewis Speedway**  
**St. Augustine, FL 32084**  
**(904)824-8304**  
**[REDACTED] (cell)**

**Pat Kilbane**  
**Ullmann Wealth Partners**  
**1540 The Greens Way**  
**Jacksonville Beach, FL 32250-2448**  
**(904) 280-3700 (Office)**



**CERTIFICATE**


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

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

Dated this 2nd day of August, 2021.

Lauren Blocker

\_\_\_\_\_  
Printed Name



\_\_\_\_\_  
Signature

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

**FINANCIAL HISTORY**

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

**Current Year-To-Date: \$60,389.70**

**Last Three Years: \$138,802 (2018)      \$100,119.62 (2019)      \$113,753.11 (2020)**

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: \$60,389.70**

**Last Three Years: \$138,802 (2018)      \$100,119.62 (2019)      \$113,753.11 (2020)**

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:           N/A**

**Last Three Years:           N/A                          N/A                          N/A**

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:           N/A**

**Last Three Years:           N/A                          N/A                          N/A**

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:           N/A**

**Last Three Years:           N/A                          N/A                          N/A**

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

**PART A – NET WORTH**

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

My net worth as of August 2, 2021 was \$328,639.87.

**PART B - ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

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

The aggregate value of my household goods and personal effects (described above) is \$100,000

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Real Property: [REDACTED]	Approx. \$700,000
401(k) (Fidelity)	\$41,143.53
FIS Stock	Approx. \$4,500
Thrift Savings Plan	Approx. \$12,000
Raymond James Investment Account	\$34,210.24
401(k) (Vanguard)	\$41,910.32
Wells Fargo Checking Account	\$14,112.02
TIAA Checking Account	\$1,698.47
Whole Life Insurance Cash Value	\$10,000

**PART C - LIABILITIES**

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Bank of England Mortgage	\$446,328.91
Mohela (Student Loans)	\$148,684.68
Honda Financial Services	\$31,000

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

**PART D - INCOME**

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Fidelity Information Services, LLC	601 Riverside Ave., Jacksonville, FL 32204	\$102,500
Tein Malone PLLC	3059 Grand Avenue, Coconut Grove, FL 33133	\$1,345

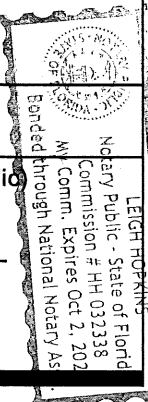
**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

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

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY	N/A		
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			

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

<p align="center"><b>OATH</b></p> <p>I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.</p>	<p align="center"><b>STATE OF FLORIDA</b></p> <p><b>COUNTY OF</b> <u>St. Johns</u></p> <p>Sworn to (or affirmed) and subscribed before me this <u>15<sup>th</sup></u> day of <u>August 20 21</u> by <u>Lauren Blocker</u></p> <p align="center"><i>[Signature]</i></p> <p>(Signature of Notary Public—State of Florida)</p> <p align="center"><u>Leigh Hopkins</u></p> <p>(Print, Type, or Stamp Commissioned Name of Notary Public)</p> <p>Personally Known _____ OR Produced Identification <u>X</u></p> <p>Type of Identification Produced <u>FIDL</u></p>
<p align="center"><i>Lauren Blocker</i></p> <p align="center"><b>SIGNATURE</b></p>	

## JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: August 2, 2021

JNC Submitting To: 7th Circuit

Name (please print): Lauren Blocker

Current Occupation: Attorney

Telephone Number: [REDACTED] Attorney No.: 88558

Gender (check one):  Male  Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: St. Johns

*FLORIDA DEPARTMENT OF LAW ENFORCEMENT*

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Lauren Blocker

Printed Name of Applicant

---

*Lauren Blocker*

Signature of Applicant

---

Date: August 2, 2021

**WRITING SAMPLE 1**

2018 WL 2945613

Only the Westlaw citation is currently available.  
United States District Court, M.D. Florida,  
Fort Myers Division.

MID-CONTINENT CASUALTY  
COMPANY, a foreign corporation Plaintiff,  
v.  
G.R. CONSTRUCTION MANAGEMENT,  
INC. and Dana M. Dicarlo, Defendants.

Case No: 2:17-cv-55-FtM-38CM

Signed 05/25/2018

**Attorneys and Law Firms**

Nicole Di Pauli Gould, Pedro E. Hernandez, Ronald L. Kammer, Hinshaw & Culbertson, LLP, Coral Gables, FL, for Plaintiff.

Christine A. Gudaitis, Ver Ploeg & Lumpkin, PA, Miami, FL, Justin M. Thomas, Alexander Brockmeyer, Boyle & Leonard PA, Ft. Myers, FL, for Defendants.

**REPORT AND RECOMMENDATION**<sup>1</sup>

CAROL MIRANDO, United States Magistrate Judge

\*1 This matter comes before the Court upon review of G.R. Construction Management, Inc.'s Verified Motion for Attorney's Fees (Doc. 51)<sup>2</sup> filed on November 10, 2017 and G.R. Construction Management, Inc.'s Supplement to its Verified Motion for Attorney's Fees (Doc. 52) filed November 16, 2017. Defendant G.R. Construction Management, Inc. (GRC) requests attorney's fees and costs in the amount of \$43,325.00<sup>3</sup> as the prevailing party under Florida Statutes section 627.428. Docs. 51, 52. Plaintiff Mid-Continent Casualty Company (MCC) filed Plaintiff Mid-Continent Casualty Company's Memorandum of Law in Opposition to G.R. Construction Management, Inc.'s Verified Motion for Attorney's Fees (Doc. 55) on December 8, 2017, opposing the request and disputing GRC's entitlement to attorney's fees. GRC filed a reply (Doc. 58) on December 29, 2017, and a second supplement to the Motion (Doc. 59) on January 5, 2018. The matter is ripe for judicial review.

**I. Background**

Defendant Dana M. Dicarlo, as Trustee of the Dana M.

Dicarlo revocable trust dated February 1, 2006 (Dicarlo), filed suit against Defendant GRC, among others, in state court on April 23, 2015 (the "Underlying Action"), alleging GRC was negligent in performing work and supervising subcontractors performing work on its behalf to remodel Dicarlo's property. Doc. 30-4. GRC had four separate commercial general liability policies (collectively "the Policies") from MCC that combined covered a four-year span. Docs. 30, 30-1 to 30-3. While defending GRC under a reservation of rights in the Underlying Action, MCC filed this case seeking declaratory relief regarding its obligations to indemnify GRC under the Policies based on certain exclusions, definitions, and endorsements. Doc. 30.

On motions from both GRC (Doc. 36) and Dicarlo (Doc. 37), the district judge dismissed the case for lack of ripeness because the Underlying Action was still pending. Doc. 47 at 4-7. The district judge explained: "Because the state court case is ongoing, MCC is concerned with a potential future injury that is neither real nor immediate at this time. If GRC is found not liable then there is no need for MCC to indemnify it." Doc. 47 at 4. The Clerk of Court then entered the Judgment dismissing the case without prejudice. Doc. 48.

**II. Analysis**

**a. Entitlement to Fees**

\*2 Parties generally are required to bear their own litigation expenses regardless of who wins or loses. *Fox v. Vice*, 563 U.S. 826, 832 (2011). Exceptions exist, however, where Congress has authorized courts to deviate from this rule in certain types of cases by shifting fees from one party to another. *Id.* And "in diversity cases a party's right to attorney's fees is determined by reference to state law." *Prime Ins. Syndicate, Inc. v. Soil Tech Distributors, Inc.*, 270 F. App'x 962, 963 (11th Cir. 2008). Section 627.428(1), Florida Statutes, provides, in pertinent part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any ... insured ... under a policy or contract executed by the insurer, the trial court ... shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the ... attorney prosecuting the suit in which the recovery is had.

This provision applies regardless of which party brought suit. *Prime Ins. Syndicate*, 270 F. App'x at 963 (citing *Roberts v. Cater*, 350 So. 2d 78, 79 n.6 (Fla. 1977)). It also does not require the insured to prevail on the merits. *Id.* at 964. Nor does it require a finding of coverage or money judgment in favor of the insured. *Rodriguez v. Government Employees Ins. Co.*, 80 So. 3d 1042, 1044-45 (Fla. 4th DCA 2011). Instead, a dismissal of an insurance



company's claim or counterclaim against an insurer is "the rendition of a judgment" against an insurer in favor of an insured referenced in [section 627.428\(1\)](#). *Dawson v. Aetna Cas. & Sur. Co.*, 233 So. 2d 860, 861 (Fla. 3d DCA 1970).

[Section 627.428](#)'s purpose "is to discourage the contesting of valid claims against insurance companies and to reimburse successful insureds for their attorney's fees when they are compelled to defend or sue to enforce their insurance contracts." *Ins. Co. of N. Am. v. Lexow*, 602 So. 2d 528, 531 (Fla. 1992). It therefore "is a one-way street offering the potential for attorneys' fees only to the insured or beneficiary." *Danis Indus. Corp. v. Ground Improvement Techniques, Inc.*, 645 So. 2d 420, 421 (Fla. 1994).<sup>4</sup> Because the statute is penal in nature, courts strictly construe its language. *Fireman's Fund Ins. Co. v. Tropical Shipping & Constr. Co.*, 254 F.3d 987, 1010 (11th Cir. 2001) (citing *Great Southwest Fire Ins. Co. v. DeWitt*, 458 So. 2d 398, 400 (Fla. 1st DCA 1984)). But where a suit fits within [section 627.428](#), the entry of an award of attorney's fees is mandatory and non-discretionary. *Citizens Property Ins. v. Bascuas*, 178 So. 3d 902, 904 (Fla. 3d DCA 2015); See also *Lexow*, 62 So. 2d at 531 ("If the dispute is within the scope [section 627.428](#) and the insurer loses, the insurer is always obligated for attorney's fees."). In determining the amount of the fee award, the Court "may take into account the fact that the insured or beneficiary has not prevailed on all issues and the degree to which this has extended the litigation or increased its costs." *Danis Indus. Corp.*, 645 So. 2d at 421.

\*3 GRC contends that the district court's Order and subsequent judgment in its favor entitles it to attorney's fees under the plain language of [section 627.428](#). MCC responds that a motion for attorney's fees is premature, arguing this case is no different than ones in which the courts chose to stay cases rather than dismiss them. Doc. 55 at 1–2. It argues it should not be penalized because the district court chose to dismiss its case. Doc. 55 at 1–2. MCC contends that awarding attorney's fees in this case where courts have declined to do so in cases where the actions are stayed would violate the Equal Protection Clause. Doc. 55 at 2–4. It also contends that all but one of the cases GRC cites to support GRC's entitlement to fees are distinguishable. Doc. 55 at 4.

MCC's arguments are unavailing. As to equal protection, even if MCC were attempting to make a genuine equal protection argument, which it does not appear to be based on its acknowledgement that such a claim is not properly before the Court and its failure to fully brief the issue, the basis of the claim is incorrect: that entitlement to attorney's fees depends on whether a court decides to stay or to dismiss a case. The fact that a resolution on the merits of an insurer's claim will be made later or in another forum does not eliminate entitlement to fees under [section 627.428](#). In *Travelers Home and Marine Insurance Company v. Calhoun*, 2014 WL 1328968 (M.D. Fla. April 2, 2014), the district court dismissed the action on

abstention grounds, and the defendant was entitled to fees having succeeded on a motion to dismiss, regardless of whether it met the prevailing party standard, or there had not yet been a determination that the insurer acted in bad faith. *Id.* at \*6–7; see also *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. F. Vicino Drywall II, Inc.*, No. 10–60273–CV, 2011 WL 13214289, at \*2–3 (S.D. Fla. Aug. 22, 2011), *report and recommendation adopted*, No. 10–60273–CV, 2011 WL 13214290 (S.D. Fla. Sept. 13, 2011) (rejecting argument that fee issue was premature where the district court dismissed the case for failing to present a "case or controversy").

In contrast, in *Founders Insurance v. Cortes–Garcia*, No. 8:10–cv–02286–T–17AEP, 2013 WL 461731 (M.D. Fla. Feb. 7, 2013), the district court had entered partial summary judgment as to the duty to defend but had not yet resolved the duty to indemnify when the insured moved for attorney's fees. Even though the claims were severable, the court denied the motion for fees as premature, because that same court would have had to rule on a second motion for fees if it later entered judgment as to the duty to indemnify. *Id.* at \*7. The court explained, "[I]t appears that while technically a judgment has been entered in the case and can be the basis for an insured to recover fees under the statute, that if an appeal is pending or other issues remain unresolved, the proper procedure is to deny the motion for fees and costs pending a final resolution in the case." *Id.* In *Axis Surplus Ins. Co. v. Contravest Constr. Co.*, 877 F. Supp. 2d 1268 (M.D. Fla. 2012), the district court similarly ruled the motion for attorney's fees was premature because the insured sought fees for both its claim on the duty to defend and the duty to indemnify, even though the latter claim was unresolved. *Id.* at 1270–71. If the court had not deferred ruling, it would have been to avoid ruling twice, and if the insured lost the indemnity issue, it would have to reduce the insured's award. Here, MCC will have to refile if necessary to determine coverage upon resolution of the Underlying Action. As the court noted in *Founders*, there is a distinction between unresolved issues that will take place in a wholly separate proceeding, and in that circumstance, attorney's fees should be decided on the conclusion of the current proceeding. *Founders*, 2013 WL 461731, at \*9.

\*4 MCC also attempts to distinguish *Prime Insurance Syndicate* based on the grounds for dismissal—lack of diversity instead of lack of ripeness. Doc. 55 at 4. Such an argument is based on a distinction without a difference. In either case, the insurer's suit will be litigated again—one in a different time (after resolution of the underlying action) and the other in a different place (state court). If the second suit results in liability against the insurer, it will again be liable for additional attorney's fees under [section 627.428](#). Similarly, there is no significant difference in the case of *GEICO Gen. Ins. Co. v. Gould*, No. 8:12–CV–1066–T–35TBM, 2014 WL 12617796 (M.D. Fla. Oct. 20, 2014). There, the insurer's case was dismissed because the insured was an improper party. *Id.* at \*1–2. Although MCC

is correct the insured will not later become a proper party in that proceeding, it ignores the critical fact determinative of entitlement to fees: that the insured “successfully defended [its] case and ‘obtained ‘total and complete’ recovery through the dismissal of the action.” *Gould*, 2014 WL 12617796, at \*3. As in *Gould*, the insured here was compelled to defend itself and obtained complete recovery by way of dismissal of MCC’s case. *See id.* The purpose of the statute is to discourage lawsuits in which insureds have to litigate against their own insurance companies, either prosecuting a lawsuit to obtain payment under a policy or having to defend against an unnecessary lawsuit. Here, MCC chose to file a case before it was ripe for review. There is no reason for the Court to distinguish this case from cases in which an insurer chose to file a case in a court that did not have jurisdiction or against an improper party. Based on section 627.428, as between the insurance company and the insured, the insurance company should bear the cost of that ultimately unnecessary suit. Accordingly, the Court recommends finding GRC is entitled to fees under section 627.428.

#### b. Reasonableness of Fees<sup>5</sup>

A reasonable attorney fee is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate, *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), and a “reasonable hourly rate” is “the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation,” *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988). In determining the reasonable amount of hours, the Court may conduct an hour-by-hour analysis or it may reduce the requested hours across the board. *Bivins v. Wrap It Up, Inc.*, 548 F.3d 1348, 1350 (11th Cir. 2008). The court must exclude hours that were not reasonably expended and hours that are redundant, excessive, or otherwise unnecessary. *Hensley*, 461 U.S. at 434. The party requesting the fee should submit documentation in support of the request. *Id.* at 433. If the documentation in support of the request is inadequate, the court may reduce the award accordingly. *Id.*

When a party, or as in this case, a claimant, makes a claim for fees, it is the claimant’s burden to establish entitlement and document the appropriate hours and hourly rate. *Am. Civil Liberties Union of Georgia v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) (citing *Norman*, 836 F.2d at 1303). Moreover, “fee counsel should have maintained records to show the time spent on the different claims, and the general subject matter of the time expenditures ought to be set out with sufficient particularity so that the district court can assess the time claimed for each activity.” *Barnes*, 168 F.3d at 427.

#### 1. Reasonable Hourly Rates

In support of its request, GRC verified its motion, submitted invoices containing time sheets, and documentation stating the background and qualifications of both attorneys that worked on this case. Doc. 51 at 8–10, Doc. 51–5, Doc. 51–6, Doc. 52–1, Doc. 59–1. MCC did not address the reasonableness of GRC’s requested fees. Doc. 55. Nevertheless, the burden is on the fee applicant “to produce satisfactory evidence” that the rate is in line with those prevailing in the community. *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984). *See also Norman*, 836 F.2d at 1299 (defining a reasonable hourly rate as “the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation”). The prevailing market rate in this case is Fort Myers, Florida, or the surrounding counties in the Fort Myers Division of the Middle District of Florida. *See Olesen-Frayne v. Olesen*, 2:09-cv-49-FtM-29DNF, 2009 WL 3048451, at \*2 (M.D. Fla. Sept. 21, 2009).

<sup>5</sup> Upon review of the time sheets, the Court finds that the requested rates should be reduced. GRC requests \$300 per hour for associate Ashley Jordan and \$475 per hour for partner Christine Gudaitis. Doc. 51 at 9–10. “If a fee applicant desires to recover the non-local rates of an attorney who is not from the place in which the case was filed, he must show a lack of attorneys practicing in that place who are willing and able to handle his claims.” *Barnes*, 168 F.3d at 437. GRC has not made such a showing. Although such rates may prevail in the Miami area where both attorneys practice, they are not the prevailing market rates in Fort Myers. This district previously has determined that an hourly rate of \$225.00 per hour is a reasonable rate for an associate practicing for 9 years in the Fort Myers, Florida market. *See Hamprecht v. Hamprecht*, No. 2:12-cv-125-FtM-29DNF, 2013 WL 1155675, at \*4 (M.D. Fla. Mar. 14, 2013). As Ms. Jordan’s experience is comparable having practiced for 8 years, \$225 is a reasonable hourly rate. *See id.* As for partners, this Court previously has determined that \$400.00 per hour is a reasonable rate in the Fort Myers, Florida market for an attorney with 15 years of experience and language skills. *See id.* at \*3–4. Thus, the Court finds that a fee of \$400 is reasonable for Ms. Gudaitis, given her length of practice and specialization.

#### 2. Reasonable Hours

An attorney should exercise proper “billing judgment” and exclude those hours that would be unreasonable to bill a client or opposing counsel, *Duckworth v. Whisenant*, 97 F.3d 1393, 1397 (11th Cir. 1996) (citing *Norman*, 836 F.2d

at 1301). It does not appear from the time sheets that any reductions were made prior to submitting them to the Court.<sup>6</sup> Having conducted a thorough review of the invoices containing GRC’s counsel’s time sheets, the Court finds several categories of reductions are necessary. Except as noted below, the Court finds the remainder of the billed hours requested to be reasonable.

**a. Multiple Attorneys**

Fee applicants also must exercise “billing judgment” and exclude “excessive, redundant, or otherwise unnecessary [hours].” *Barnes*, 168 F.3d at 428 (quoting *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). These hours tend to occur when more than one attorney represents a client. *Id.* at 432

(citation omitted). While “ [t]here is nothing inherently unreasonable about a [claimant] having multiple attorneys,” it is the claimant’s burden to show that the time spent by those attorneys reflects a distinct contribution by each lawyer to the case. *Id.* (citation omitted). Here, there are a number of billing entries reflecting communication between Ms. Jordan and Ms. Gudaitis that do not support a finding that each made a distinct contribution. Indeed, a number of time entries appear to be the attorneys explaining to each other what they have done, are doing, or are going to do. Such entries are either excessive, redundant, or otherwise unnecessary. The Court therefore recommends reducing the requested fees by eliminating the entries with calls or emails between the two attorneys, which include the following:

03/27/17	CAG	Additional revisions to draft motion to dismiss, confer with ABJ via email re: additional edits	1.50
03/27/17	ABJ	Email exchanges with CAG re: edits to motion to dismiss/stay	0.20
03/27/17	ABJ	Draft email memo to CAG outlining updated case plan	0.10
04/25/17	ABJ	Draft email to CAG outlining updated task list	0.20
04/27/17	ABJ	Telephone call with CAG re: drafting letter to client re: budget going forward and Rule 26 initial disclosures	0.10
04/28/17	ABJ	Several rounds of revisions to letter to client re: budget going forward and other matters, incorporating CAG revisions	0.90
05/02/17	CAG	Review/analyze revised motion to dismiss, review cases and draft memo to ABJ with requested changes/additions	0.50
05/02/17	ABJ	Telephone call with CAG re: drafting motion to dismiss/stay MCC’s amended complaint and other matters	0.20

05/03/17	CAG	Communicate (in firm) with ABJ re: edits to motion to dismiss	0.20
05/04/17	CAG	review/analyze ABJ's edits to motion to dismiss, request additional edit, and approve to send to client <sup>7</sup>	0.50
05/05/17	CAG	Final revisions to motion, confer with ABJ re: same	0.40
05/05/17	ABJ	Email exchanges with CAG re: revisions to motion to dismiss/stay amended complaint	0.10
05/15/17	CAG	Review/analyze deadlines and draft memo to ABJ re: Rule 26 Disclosures	0.20
05/16/17	ABJ	Email exchanges with CAG re: drafting Rule 26 initial Disclosures	0.10
05/16/17	ABJ	Draft memo to CAG outlining updated case plan	0.10
05/23/17	CAG	Communicate (in firm) with ABJ re: strategy, direction to call client re: mediation and defense counsel	0.20
06/29/17	ABJ	Draft email memo to CAG outlining updated case plan	0.10
06/30/17	CAG	Review/analyze ABJ's memo re: her call with defense counsel	0.10
10/11/17	ABJ	Call with CAG re: next steps re: 627.428 fee issue	0.10
10/11/17	ABJ	Draft email memo to CAG outlining case plan	0.10
10/11/17	ABJ	Draft email memo to CAG outlining client's entitlement to 627.428 fees & recommendations re: next steps	0.60

10/19/17	ABJ	Draft email memo to CAG outlining basis for entitlement to Section 627.428 fees	0.40
10/30/17	CAG	Communicate (in firm) with ABJ re: fee motion	0.10
10/30/17	ABJ	Call with CAG re: motion for fees	0.10
11/02/17	ABJ	Call with CAG re: fee motion deadlines and reviewing fee bills	0.10
11/06/17	ABJ	Draft memo to CAG outlining updated task list	0.10
11/07/17	ABJ	Email exchanges with CAG re: order granting motion; for extension of time to file motion for fees & motion for fees	0.20
11/08/17	ABJ	Draft email to CAG with recommendations re: filing affidavit in support of fee motion	0.40
11/09/17	ABJ	Draft email to CAG re: redactions to fee bill and providing recommendations re: same	0.30
11/10/17	ABJ	Call with CAG re: further edits to motion for fees	0.20
11/13/17	CAG	Communicate (in firm) with ABJ re: status	0.20
11/13/17	ABJ	Draft memo to CAG outlining updated case plan	0.10
12/11/17	CAG	Communicate (in firm) with ABJ re: filing reply memo	0.10
12/11/17	ABJ	Call with CAG re: drafting reply in support of motion for fees & case strategy	0.10

12/17/17	ABJ	Draft email memo to CAG outlining updated task list pertaining to fee motion	0.10
12/21/17	ABJ	Email exchanges with CAG re: 627.428 legislative history	0.20
12/29/17	ABJ	Email exchange and call with CAG re: revisions to reply brief	0.30

Doc. 51–5 at 2–5, Doc. 52–1 at 2–4, and Doc. 59–1 at 2–3. These amount to a total reduction of 5.5 to Ms. Jordan’s hours and 4 to Ms. Gudaitis’s hours.

**3. Time Spent Litigating Fees**

Statutory fees under [section 627.428](#) “may be awarded for litigating the issue of attorney’s fees but not the amount of attorney’s fees.” *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 833 (Fla. 1993). GRC cites *Palma* but does not acknowledge the distinction or reduce its fee request accordingly. Although the Court is not able to distinguish whether hours billed for working on the original motion relate to entitlement or the amount of fees, both supplements relate solely to the amount of attorney’s fees.<sup>8</sup> Doc. 52, Doc. 59. Ms. Jordan spent 4.8 hours on the first supplement.<sup>9</sup> Doc. 52–1 at 3. Therefore, the Court concludes that any hours spent as to either supplement are not awardable. Additionally, the Court finds the 3.5 hours Ms. Jordan spent drafting and the 0.2 hours Ms. Gudaitis spend revising a motion for an extension of time to file a fees motion that resulted from GRC’s attorneys’ failure to calendar the deadline for the motion to file fees should be reduced from the total hours spent litigating entitlement to fees. Doc. 52–1 at 2–3.

\*6 While the Court recognizes MCC contested entitlement to fees, it finds that the amount of time submitted to litigate attorney’s fees, which include both entitlement to and the amount of fees, to be unreasonable. GRC submitted an invoice for 50.8 total hours for everything except attorney’s fees and 48.5 total hours solely for attorney’s fees. Combined with the supplement for filing a reply to MCC’s response and yet another supplement, which total 25.4 hours, the time spent for the requested attorney’s fees (73.9) exceeds the hours spent defending the case. Therefore, the Court will reduce the amount requested as to the first supplement, after eliminating the unreasonable specific time entries, by twenty-five (25) percent.

**4. Miscellaneous Additional Charges**

The following charges are either too vague for the Court to determine reasonableness or appear to relate to the Underlying Action, and therefore, are not reasonable fees incurred in defense of this action:

03/10/17	CAG	Research re: Judge Postell [sic]	0.20
05/18/17	CAG	Confer with ABJ re: upcoming mediation in underlying case/strategy for same	0.10

05/18/17	ABJ	Telephone call with CAG re: mediation strategy	0.10
05/23/17	ABJ	Email exchanges with CAG re: underlying case mediation and related matters	0.20
05/25/17	ABJ	Telephone call to client re: upcoming mediation of underlying action	0.10
05/30/17	ABJ	Telephone call with Mr. Rogero re: upcoming mediation of underlying action and other related matters	0.30
05/30/17	ABJ	Telephone call with Mr. Anderson re: request for mediation statements	0.10
05/30/17	ABJ	Draft emails to CAG summarizing calls with Mr. Rogero & Mr. Anderson	0.20
05/30/17	ABJ	Draft email to CAG outlining call with Mr. Anderson re: recent mediations and arbitration	0.20

### III. CONCLUSION

Based on the foregoing, the Court recommends the following adjustments to GRC's requested attorneys' fees, divided by invoice for ease of reference.

Initial Invoice Requested Hours	Recommended Reduction	Attorney and Rate	Remaining Hours	Total
29.40	3.20	CAG @ \$400/hour	26.20	\$10,480.00
21.40	3.30	ABJ @ \$225/hour	18.10	\$4,072.50

Supplement 1 Requested Hours	Recommended Reduction	Attorney and Rate	Remaining Hours	Total
3.90	1.35	CAG @ \$400/hour	2.55	\$1,020.00
44.60	19.50	ABJ @ \$225/hour	25.10	\$5,647.50

Supplement 2 Requested Hours	Recommended Reduction	Attorney and Rate	Remaining Hours	Total
0.50	0.10	CAG @ \$400/hour	0.40	\$160.00
24.90	0.70	ABJ @ \$225/hour	24.20	\$5,445.00

ACCORDINGLY, it is hereby

**RECOMMENDED:**

G.R. Construction Management, Inc.'s Verified Motion for Attorney's Fees (Doc. 51) be **GRANTED in part and DENIED in part** and Defendant be awarded \$26,825.00 in attorney's fees.

**DONE and ORDERED** in Fort Myers, Florida on this 25th day of May, 2018.

**All Citations**

Not Reported in Fed. Supp., 2018 WL 2945613

Footnotes

<sup>1</sup> A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See [11th Cir. R. 3-1](#).

<sup>2</sup> Disclaimer: Documents filed in CM/ECF may contain hyperlinks to other documents or Web sites. These hyperlinks are provided only for users' convenience. Users are cautioned that hyperlinked documents in CM/ECF are subject to PACER fees. By allowing hyperlinks to other Web sites, this court does not endorse, recommend, approve, or guarantee any third parties or the services or



products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.

- 3 GRC seeks \$20,385.00 for the time its attorneys spent litigating the case, and \$15,232.50 for litigating attorney's fees. Doc. 51 at 11–12, Doc. 52 at 3. It also seeks an additional \$7,707.50 for filing a reply to MCC's response. Doc. 59.
- 4 In *Danis*, the Florida Supreme Court explained:  
[W]e agree with the lower courts that a "prevailing insured or beneficiary" is one who has obtained a judgment greater than any offer of settlement previously tendered by the insurer. *Danis*, 629 So.2d at 987. Absent that, the insured or beneficiary is entitled to no fee award.  
*Danis Indus. Corp.* 645 So. 2d 420, 421 (Fla. 1994). This reasoning applies to cases initiated by the insured to enforce the insurance policy and recover the proceeds. The insured is required to recover more than the insurer was already willing to pay prior to the action to be entitled to attorney's fees. The reasoning in *Danis*, however, is inapplicable where an insurer initiates a declaratory action, forcing the insured to defend against the insurer. *Coppola v. Federated Nat. Ins. Co.*, 939 So. 2d 1171, 1174 (Fla. 4th DCA 2006). In such cases, "Florida courts routinely award attorney's fees," and no monetary recovery is required because dismissal amounts to a total recovery. *GEICO Gen. Ins. Co. v. Gould*, No. 8:12-CV-1066-T-35TBM, 2014 WL 12617796, at \*2–3 (M.D. Fla. Oct. 20, 2014). Such a distinction is consistent with section 627.428's purpose to penalize an insurer for unnecessarily forcing an insured into litigation, whether as the plaintiff or the defendant.
- 5 GRC notes that MCC does not dispute the reasonableness of its requested fees and contends that such a failure amounts to a concession, citing an unrelated and unpublished criminal case. Doc. 58 at 6 (citing *United States v. Crawford*, No. 2:12-cr-20-FtM-29SPC, 2013 WL 1629218 (M.D. Fla. Apr. 16, 2013) ). Even if MCC had not responded to GRC's motion at all, however, the Court has an independent obligation to review fee motions before it to determine reasonableness of the hourly rates and the number of hours. *Valley v. Ocean Sky Limo*, 82 F. Supp. 3d 1321, 1325 (S.D. Fla. 2015); see also *Norman*, 836 F.2d at 1304.
- 6 Although GRC argues it has reduced its fees by 10% to demonstrate its vetting of the entries and removal of purely administrative work, Doc. 51 at 11, such a reduction cannot be found on the time sheets. They appear to be invoices as would have been sent to the client, without any reductions noted.
- 7 By way of illustration, the Court notes that CAG's independent review of the motion to dismiss, billed as a separate entry from the same day for 0.4, is not redundant. Doc. 51–5 at 4.
- 8 Each supplement is 6 pages long and contains sections largely copied from the initial motion, with the exception of the additional hours listed for litigating attorney's fees. Doc. 52 at 3; Doc. 59 at 3.
- 9 No hours appear to have been billed for drafting the supplement to the reply. Doc. 59–1.

**WRITING SAMPLE 2**

Only the Westlaw citation is currently available.  
United States District Court, M.D. Florida,  
Fort Myers Division.

Anthony M. JORDAN, Plaintiff,

v.

The UNITED STATES DEPARTMENT  
OF EDUCATION and The University of  
South Florida, Defendants.

Case No: 2:17-cv-683-FtM-99CM

Signed 05/08/2018

**Attorneys and Law Firms**

Anthony M. Jordan, Cape Coral, Fl, pro se.

**ORDER**

CAROL MIRANDO, United States Magistrate Judge

\*1 This matter comes before the Court upon review of Plaintiff's Application to Proceed in District Court without Prepaying Costs or Fees (Doc. 2) filed on December 12, 2017, construed as a Motion to Proceed *In Forma Pauperis*. Plaintiff requests leave to proceed *in forma pauperis* in this case without the prepayment of the filing fees and costs pursuant to 28 U.S.C. § 1915. Doc. 2. For the reasons stated herein, Plaintiff's motion for leave to proceed *in forma pauperis* is **DENIED**. Plaintiff is directed to file pay the filing fee and file an amended complaint in accordance with this Order.

**I. Indigency**

When considering a motion filed pursuant to 28 U.S.C. § 1915(a), "[t]he only determination to be made by the court ... is whether the statements in the affidavit satisfy the requirement of poverty." *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004). A person need not be "absolutely destitute" or reduce himself to a public charge in order to proceed *in forma pauperis*; rather "an affidavit will be held sufficient if it represents that the litigant, because of his poverty, is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents." *Id.* A district court may not deny an *in forma pauperis* motion without first

comparing the party's assets and liabilities in order to determine whether the party has satisfied the poverty requirement. *Id.* at 1307-08.

Upon review of Plaintiff's Motion, the Court finds that he has not satisfied the requirements to proceed *in forma pauperis* in this matter. Here, Plaintiff states he is retired but receives \$879.00 a month in Social Security benefits. Doc. 2 at 1. He has no dependents. *Id.* at 2. He owns a house with an estimated value of \$135,000.00 and a vehicle with an estimated value of \$1,250.00. *Id.* Plaintiff does not list any mortgage for his home or outstanding loan for his vehicle. He also owns cash in the amount of \$1,350.00. *Id.* Plaintiff makes the following monthly payments: electric (\$95.00), water (\$72.00), phone (\$59.00), cable (\$56.00), internet (\$30.00), "cell"—presumably cellular telephone service (\$25.00), food (\$120.00), taxes (\$65.00), and insurance (\$108.00). *Id.* He also makes a monthly credit card payment of \$60 per month—although he does not provide the remaining balance—bringing his total monthly expenses to \$690.00. *Id.* Based on the information provided, Plaintiff's monthly income exceeds his monthly expenses, and his assets well exceed his liabilities. *Id.* at 1-2. Plaintiff is able to support and provide necessities for himself, and he has no dependents. *Martinez*, 364 F.3d at 1307. He therefore has not satisfied the poverty requirement.

**II. Sufficiency of the Complaint**

Even if an application for leave to proceed *in forma pauperis* demonstrates sufficient economic eligibility on its face, the Court must proceed to determine the sufficiency of Plaintiff's claims. Under Section 1915 of Title 28 of the United States Code, the Court shall dismiss an action if it is deemed frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). The Court has reviewed Plaintiff's Complaint (Doc. 1) to determine whether any of the three statutory factors for dismissal are presented.

\*2 A complaint is deemed frivolous if the Court finds that it lacks arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Eleventh Circuit has held that a lawsuit is deemed frivolous when the plaintiff's "realistic chances of ultimate success are slight." *Clark v. State of Ga. Pardons and Paroles Bd.*, 915 F.2d 636, 639 (11th Cir. 1990). The Supreme Court has affirmed that "[t]he frivolousness standard, authorizing sua sponte dismissal of an *in forma pauperis* complaint 'only if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief,' is a 'more lenient' standard than that of Rule 12(b)(6)." *Neitze*, 490 U.S. at 322-23 (citation omitted). A case may be frivolous even if it states a claim under Rule 12(b)(6), however, if there

exists an affirmative defense that would defeat the action like the expiration of the statute of limitations. *Clark*, 915 F.2d at 640 & n.2. “When the defense is apparent from the face of the complaint or the court’s records, courts need not wait and see if the defense will be asserted in a defensive pleading.” *Id.* at 640 n.2.

With respect to whether a complaint “fails to state a claim on which relief may be granted,” section 1915(e)(2)(B)(ii) mirrors the language of *Federal Rule of Civil Procedure 12(b)(6)*, so courts apply the same standard in both contexts. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Labels and conclusions” or “a formulaic recitation of the elements of a cause of action” that amount to “naked assertions” will not do. *Id.* (quotations and citation omitted). Instead, a complaint must “contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory.” *Roe v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 683-84 (11th Cir. 2001) (internal quotation and citation omitted).

Rule 8(a) requires that a pleading set forth a claim of relief and contain a short and plain statement in which the pleader is entitled to relief. *Fed. R. Civ. P. 8(a)*. This requirement ensures that the defendant is given fair notice of what the claim is and the grounds upon which it rests. *Bell Atlantic Corp.*, 550 U.S. at 561-63 (abrogating *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

Although the Court holds pro se complaints to a less stringent standard than pleadings drafted by attorneys, *Ortiz v. Degrees*, No. 210-cv-278-FtM-29SPC, 2010 WL 2889773, at \*1 (M.D. Fla. June 28, 2010), a pro se litigant is still bound to follow the pleading requirements set forth in the Federal Rules of Civil Procedure. See *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1161 (11th Cir. 1993). “Where allegations are vague and ambiguous, leaving the reader to guess at precisely what the plaintiff was claiming, the judge should require the plaintiff to replead his claims.” *McFarlin v. Douglas Cnty.*, 587 F. App’x 593, 595 (11th Cir. 2014) (citations omitted).

#### a. Background

As alleged in the Complaint, Plaintiff graduated from the University of South Florida (USF) with a degree in

business in 1979 and a master’s degree in 1981. Doc. 1 ¶¶1-2. To obtain his graduate degree, he took out student loans totaling \$10,000. Doc. 1 ¶2. His loans went into default at some point after graduation, at which point USF put a permanent hold on the release of his official transcripts from 1983 until at least November 2015. Doc. 1 ¶¶3-4. Although the Department of Education (the Department) “became holder of the notes during the period 8/6/84-3/27/85[, it] never attempted to enforce collection until July 2001,” after which it obtained \$17,609.89 through wage garnishments and offsets from social security payments. Doc. 1 ¶¶5-7. Plaintiff alleges, through these collection efforts, the Department violated his constitutional rights. Doc. 1 at 3-5. He alleges the Department also was negligent in failing to report the collection of funds to USF. Doc. 1 at 6. He alleges USF breached a contract with him, converted his property, violated intellectual property laws, and was negligent when it withheld his transcripts, rendering him unable to find higher paying employment and resulting in losses of \$250,000. Doc. 1 at 5-7.

#### b. Form of the Complaint

\*3 Rule 8 of the Federal Rules of Civil Procedure requires pleadings to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” *Fed. R. Civ. P. 8(a)(1)*. Claims or defenses should be presented “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” *Fed. R. Civ. P. 10(b)*. “Shotgun” pleadings are cumbersome, confusing complaints that do not comply with these pleading requirements.” See *Yeyille v. Miami Dade Co. Pub. Sch.*, 643 F. App’x 882, 884 (11th Cir. 2016). The Eleventh Circuit has identified four types of shotgun pleadings: (1) pleadings where each count adopts the allegations of all preceding counts; (2) pleadings that contain “conclusory, vague, and immaterial facts not obviously connected to any particular cause of action”; (3) pleadings that do not separate each cause of action or claim for relief into a different count; and (4) pleadings that assert multiple claims against multiple defendants without specifying which claim applies to which defendant. *Id.*

Plaintiff’s Complaint presents the third type of shotgun pleading because he appears to assert more than one claim, at times against more than one defendant, in the same count. In Count I, Plaintiff asserts that the Department violated several constitutional rights and “a particular statute of limitations.” (Doc. 1 at 3-5). Although Plaintiff alleges a claim for breach of contract against USF in Count II, he vaguely alleges the Department worked in conjunction with USF to prevent him from “the very performance that would be needed to repay the debt,” which may or may not be a separate claim (Doc. 1 at 5-6). Plaintiff also appears to assert at least two claims against

USF in Count III for conversion and “a violation of intellectual property laws.” (Doc. 1 at 6). While the allegations in Count IV are clearer as to which claim relates to which Defendant, Plaintiff again improperly includes more than one claim in a single count. (Doc. 1 at 6-7).

Accordingly, the Complaint is a prohibited “shotgun pleading” that Plaintiff must correct to adhere to the Federal Rules of Civil Procedure. *See Yeyille*, 643 Fed. App’x at 884. In revising his Complaint, Plaintiff should ensure he complies with [Rules 8 and 10 of the Federal Rules of Civil Procedure](#) by limiting each count to assert a single, clearly identified claim.

### *c. Violation of Plaintiff’s Constitutional Rights*

Count I of Plaintiff’s Complaint does not state a plausible claim. Plaintiff alleges the Department violated his Fourth Amendment right to be free from unreasonable seizures and his Fifth Amendment right to due process by collecting on his student loans. Doc. 1 at 3. Although not referenced, he appears to be asserting a *Bivens* claim. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court recognized an implied cause of action for damages against federal officers to redress a constitutional violation. *Bivens* claims are similar to those made under [42 U.S.C. § 1983](#) (“[Section 1983](#)”), and courts therefore generally apply [Section 1983](#) law to them. *Topping v. U.S. Dep’t of Educ.*, 510 F. App’x 816, 818 (11th Cir. 2013). [Section 1983](#) provides a person “with the right to sue those acting under color of state law for violations of federal constitutional and statutory provisions,” but the statute “is merely a vehicle by which to bring these suits; it does not create any substantive federal rights.” *Williams v. Bd. of Regents*, 477 F.3d 1282, 1299 (11th Cir. 2007). To state a claim under [Section 1983](#), a plaintiff must allege that a violation of a specific constitutional right or federal statutory provision was committed by a person acting under color of state law. *Doe v. Sch. Bd. of Broward Cty., Fla.*, 604 F.3d 1248, 1265 (11th Cir. 2010). Under *Bivens* and [Section 1983](#), “a plaintiff may bring a cause of action against an officer acting in his or her individual capacity, but not against a federal or state government agency.” *Topping*, 510 F. App’x at 818.

\*4 A plaintiff can only recover damages in a *Bivens* action where: “(1) a plaintiff has no alternative means of obtaining redress and (2) no special factors that counsel hesitation are present.” *Id.* at 819. Where a plaintiff has a right to judicial review under the Administrative Procedures Act, he is not entitled money damages under *Bivens*. *Id.* Additionally, the statute of limitations within which a plaintiff must assert a *Bivens* claim in Florida is 4 years. *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003).<sup>1</sup> This limitations period begins to run when the

cause of action accrues, which does not occur until a plaintiff knows or should know “(1) that they have suffered the injury that forms the basis of their complaint and (2) who has inflicted the injury.” *Id.*

Here, Plaintiff’s claim against the Department is implausible because it is a federal agency that cannot be sued under *Bivens*. *Topping*, 510 F. App’x at 819. He also cannot maintain a claim for damages given his allegations that the Department collected on his student loan “by means of administrative wage garnishments and offset social security payments.” Doc. 1 at 3. Such administrative proceedings would have provided him with an alternative means of redress. *See Topping*, 510 F. App’x at 819.

It also appears that, absent allegations supporting tolling or a continuing violation,<sup>2</sup> any claim of a constitutional violation under *Bivens* would be frivolous as barred by the statute of limitations. Plaintiff alleges the Department began taking wage garnishments and offsets towards his loan in July of 2001, almost 17 years ago. Doc. 1 at 3. Plaintiff would have been aware of the alleged constitutional infringements and who inflicted them at least as of that date, far beyond the 4-year period preceding the filing of this case. *See Chappell*, 340 F.3d at 1283.

Whether Plaintiff is attempting to assert any additional claims within Count I is unclear. He appears to challenge the constitutionality of the Higher Education Technical Amendments of 1991 (HETA), [20 U.S.C. § 1091a\(a\)](#), which eliminated a six-year statute of limitations for collecting on student loan debt. Doc. 1 at 3-4. Plaintiff alleges the HETA is an unconstitutional ex post facto law. *Id.* at 4-5. Such a claim is not plausible. The Ex Post Facto Clause only applies to criminal or penal proceedings. *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). Thus, any claim seeking to challenge the HETA on that basis, would be frivolous.

### *d. Breach of Contract*

\*5 To sufficiently allege a claim for breach of contract under Florida law, a plaintiff must allege “facts that support the existence of a contract, a material breach, and resulting damages.” *Mink v. Smith & Nephew, Inc.*, 860 F.3d 1319, 1332 (11th Cir. 2017) (quoting *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010) ). Florida law requires a plaintiff to “point toward an express provision in the contract that creates the obligation allegedly breached.” *Brush v. Miami Beach Healthcare Grp. Ltd.*, 238 F. Supp. 3d 1359, 1367 (S.D. Fla. 2017). Otherwise, when a plaintiff fails to do so, “it is unclear what provision or obligation under the contract has been violated,” and a court must dismiss the claim. *Id.* at 1366–67.

Plaintiff generally alleges that USF makes an agreement

with every student to provide a certificate or degree upon successful completion of the requirements of a chosen field of study. Doc. 1 at 5. Plaintiff's conclusory allegation is insufficient to establish that Plaintiff individually has a contract with USF. Plaintiff also fails to cite the particular provision of the alleged contract USF breached. Although Plaintiff suggests USF had no legal obligation to assist the Department with its collection efforts, he does not allege that USF's placement of a hold on his transcripts breached a particular provision or obligation of the contract. Instead, he vaguely asserts that USF's actions prevented him from furthering his education. Doc. 1 ¶14. This is insufficient to state a claim for breach of contract under Florida law. *See Brush*, 238 F. Supp. 3d at 1366–67.

#### e. Conversion

“Under Florida law, the elements of conversion are ‘(1) an act of dominion wrongfully asserted; (2) over another’s property; and (3) inconsistent with his ownership therein.’” *Joe Hand Promotions, Inc. v. Creative Entm’t, LLC*, 978 F. Supp. 2d 1236, 1241 (M.D. Fla. 2013) (internal citations omitted). It is unclear whether Plaintiff asserts a claim against USF for conversion of a physical copy of his transcripts, his diploma, the money he borrowed for tuition, or something else. The Court is unable to determine what facts, if any, from the background allegations relate to this claim and the unspecified violation of “intellectual property laws.” Doc. 1 at ¶¶18–19. As a result, the Complaint lacks “either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under” each alleged legal theory. *Roe*, 253 F.3d at 683–84 (internal quotation and citation omitted).

#### f. Negligence<sup>3</sup>

A claim for negligence must allege (1) a duty, (2) breach of that duty, (3) causation, and (4) damages. *Virgilio v. Ryland Group, Inc.*, 680 F.3d 1329, 1339 (11th Cir. 2012). Plaintiff alleges the Department failed to notify USF of its collection efforts. Doc. 1 ¶20. Plaintiff fails to allege the Department owed him a duty to notify USF that it began garnishing his wages such that the failure would constitute a breach of that duty. Nor does Plaintiff allege the Department's breach caused his damages.<sup>4</sup> Similarly, Plaintiff alleges USF never attempted to verify whether the Department was receiving payments but fails to allege USF owed him the duty to do so.

#### g. Subject matter jurisdiction

\*6 Plaintiff alleges that the Court has jurisdiction over this case because his Complaint alleges several constitutional issues and his claims against USF “have intertwined, overlapping claims.” Doc. 1 at 2. Plaintiff appears to be alleging the court has federal question jurisdiction over Count I of the Complaint and supplemental jurisdiction over the remaining counts. Federal question jurisdiction exists when actions arise under the Constitution, laws or treaties of the United States. 28 U.S.C. § 1331.

Here, the Complaint does not sufficiently establish the Court's federal question jurisdiction. Doc. 1. “[I]t is well settled that a federal court is obligated to inquire into subject matter jurisdiction sua sponte whenever it may be lacking.” *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). “[T]he district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States.” *Bell v. Hood*, 327 U.S. 678, 681 (1946). Plaintiff, as the party invoking the Court's jurisdiction, “bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction.” *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002). Claims not subject to federal jurisdiction are dismissed. *See Ex parte McCordle*, 74 U.S. 506, 514 (1868) (declaring that “[w]ithout jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause”).

The United States Supreme Court has stated that “where the complaint ... is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions ... must entertain the suit.” *Bell*, 327 U.S. at 681–82. Those exceptions are that a lawsuit “may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous.” *Id.* at 682–83. These two exceptions apply when “the claim has no plausible foundation or if the court concludes that a prior Supreme Court decision clearly forecloses the claim.” *Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1353 (11th Cir. 1998).

Here, in their current state, Plaintiff's Bivens claims are implausible and frivolous, and it is unclear whether Plaintiff's Bivens claim can be amended to correct these deficiencies. As noted, the Complaint attempts to assert time-barred Bivens claims against a government agency. Doc. 1. If the Complaint lacks a plausible foundation for Plaintiff's claims, the Court may not have subject matter jurisdiction to entertain these claims. *See Blue Cross & Blue Shield of Ala.*, 138 F.3d at 1353. Absent the Court's original jurisdiction over the Bivens claim, the Court lacks jurisdiction to entertain Plaintiff's additional causes of

action arising under Florida law. Doc. 1 at 5–7. Only when the Court has original jurisdiction, it has “supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367.

**comply with this Order will result in the Court recommending that this matter be dismissed.**

**DONE and ORDERED** in Fort Myers, Florida on this 8th day of May, 2018.

#### All Citations

Not Reported in Fed. Supp., 2018 WL 7502038

### III. Conclusion

\*7 Because Plaintiff’s Complaint, as written, suffers from numerous deficiencies as outlined herein, and in light of his *pro se* status, he will be permitted an opportunity to file an amended complaint consistent with the directives in this Order. Failure to follow the Court’s directives may lead to the Court recommending that this case be dismissed.

The Court therefore strongly encourages Plaintiff to attempt to retain counsel admitted to practice before this Court to assist him with litigating this matter. *See Schebel v. Charlotte Cnty.*, 833 F. Supp. 889, 890 (M.D. Fla. 1993) (“strenuously” encouraging *pro se* plaintiff in civil action to retain legal counsel); *see also Montgomery v. Brickell Place Condo. Ass’n*, No. 11-24316-CIV, 2012 WL 1203837, at \*3 (S.D. Fla. Apr. 11, 2012) (encouraging *pro se* plaintiff to “retain legal counsel and, failing that, to diligently research how to prosecute” a case in federal court because *pro se* parties are responsible for discovery, complying with scheduling orders and following federal and local rules).

Although the Court recommends that Plaintiff retain counsel, in the event he is unable to do so, before preparing any further pleadings, Plaintiff is encouraged to visit the “Proceeding Without a Lawyer” section of this Court’s website at [www.flmd.uscourts.gov](http://www.flmd.uscourts.gov). The website includes tips, frequently asked questions, sample forms, and a “Guide for Proceeding Without a Lawyer” under the “Handbook” link. Additionally, Plaintiff may access several forms that are available to *pro se* litigants in federal court. Specifically, the following website, <http://www.uscourts.gov/forms/pro-se-forms>, contains sample complaint forms. Plaintiff, if he does not retain the services of an attorney, is encouraged to utilize these resources in drafting an amended complaint and any related motions so that he may properly set forth his claims and requests for relief to the Court.

ACCORDINGLY, it is hereby

#### ORDERED:

Plaintiff’s Application to Proceed in District Court without Prepaying Costs or Fees (Doc. 2), construed as a Motion to Proceed In Forma Pauperis is **DENIED**. Plaintiff must pay the filing fee and file an amended complaint in accordance with this Order on or before **June 8, 2018**. **Failure to**

## Footnotes

- 1 Actions brought under *Bivens*, like actions under [Section 1983](#), which does not contain a specific statute of limitations, are subject to the state statute of limitations for personal injury actions. *Kelly v. Serna*, 87 F.3d 1235, 1238 (11th Cir. 1996). Where multiple statutes for personal injury actions exist, the general or residual personal injury statute of limitations applies to actions filed in federal court in that state. *Owens v. Okure*, 488 U.S. 235, 236 (1989). In Florida, this statute limits general personal injury claims to those brought within 4 years. *Chappell*, 340 F.3d at 1283; Fla. Stat. § 95.11(3)(p).
- 2 The continuing violation doctrine constitutes an exception to the statute of limitations bar. “The critical distinction in the continuing violation analysis... is whether the plaintiffs complain of the present consequence of a one time violation, which does not extend the limitations period, or the continuation of that violation into the present, which does.” *Knight v. Columbus, Ga.*, 19 F.3d 579, 580–91 (11th Cir.1994). The doctrine of continuing violations, however, is limited in application to “situations in which a reasonably prudent plaintiff would have been unable to determine that a violation had occurred.” *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1335 (11th Cir. 2006).
- 3 Count IV of the Complaint purports to assert a claim of contributory negligence against USF. Doc. 1 at 6. Contributory negligence is defense to claim of negligence rather than an independent claim itself based on the principle that a plaintiff should not recover for injuries avoidable with the exercise of reasonable care. *West v. Caterpillar Tractor Co.*, 336 So. 2d 80, 90 (Fla. 1976). The Court construes Plaintiff’s claims of contributory negligence against USF as an additional claim for negligence.
- 4 Plaintiff again alleges the Department’s attempts to collect his student loan should be barred as untimely, this time “based upon the principle of *Laches*.” Doc. 1 ¶20. If Plaintiff is attempting to assert a third claim within Count IV, the Court directs Plaintiff to plead such a claim in a separate count in compliance with [Rules 8](#) and [10](#) and articulate a legally sufficient basis for such a claim.
- 5 In his Civil Cover Sheet, Plaintiff indicates the basis for jurisdiction is the United States as a defendant. Doc. 1 at 8. Under [28 U.S.C. § 1346\(a\)](#), district courts have original jurisdiction over civil actions for the recovery of taxes or “[a]ny other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation ..., or upon any ... contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort,” with certain exceptions. Even if Plaintiff’s claims fell within those enumerated in [§ 1346\(a\)\(2\)](#), they exceed \$10,000. The Court therefore would not have jurisdiction on this basis and accordingly construes Plaintiff’s jurisdictional allegations within the Complaint as invoking the Court’s federal question jurisdiction.