



## JUDICIAL NOMINATING COMMISSION APPLICATION FOR APPOINTMENT

Date: 10/13/20

Email: neitzkelaw@gmail.com

1. Name: Eric Karl Neitzke

Attorney Number: 357871

2. Judicial Nominating Commission(s) requested (select all that apply):

Supreme Court  District Court of Appeal  Circuit

3. Home location (**list all**): Ormond Beach Volusia Seventh Fifth  
City County Circuit DCA

4. Are you applying for reappointment? Yes  No

5. Number of years admitted to The Florida Bar? 39 Age 66

6. List primary area(s) of practice: Family, Criminal and Personal Injury

7. Can you discharge the responsibilities of this position, with or without accommodations?

Yes  No

8. Commissioners are subject to the Florida Financial Disclosure Laws. Are you willing to file the appropriate form, if appointed? Yes  No

(This form can be viewed at [Florida Commission on Ethics](http://www.ethics.state.fl.us/) (<http://www.ethics.state.fl.us/>), Form 1 and is only required **after** appointment.)

9. Mobile Telephone Number: (386) 341-0707

\*10. Gender: Male

\*11. Race/Ethnicity: White (Non-Hisp)

**\*This information will be used solely to provide demographic statistics.**

## QUESTIONNAIRE FOR JUDICIAL NOMINATING COMMISSION APPOINTMENT

### General Information

1. Name: Neitzke Eric Karl  
Last First Middle

2. Employer: Eric K. Neitzke, P.A.

3. Business Address: 123 Live Oak Avenue

	<u>Street/P.O. Box</u>		
<u>Daytona Beach</u>	<u>Florida</u>	<u>32114</u>	<u>(386) 323-1900</u>
City	State	Zip Code	Phone Number

4. Residential Address: 19 Lost Creek Lane Ormond Beach

	<u>Street/P.O. Box</u>		
<u>Volusia</u>	<u>Florida</u>	<u>32174</u>	<u>(386) 672-9283</u>
County	State	Zip Code	Phone Number

Specify your preferred mailing address: Business  Residential

5. I am presently: Solo Practitioner  In a 2-10 lawyer office  In an 11-35 lawyer office   
 In a 35 or more lawyer office  Other

If Other, please explain:

6. List all your places of residence during the last 5 years:

<u>Address</u>	<u>City/State</u>	<u>From</u>	<u>To</u>
<u>19 Lost Creek Lane</u>	<u>Ormond Beach, Florida</u>	<u></u>	<u>10/14/21</u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>

7. Since what year have you been a continuous resident of Florida? 53

8. Are you a United States citizen? Yes  No

If No, please explain: \_\_\_\_\_

If you are a naturalized citizen, please provide the date of naturalization: \_\_\_\_\_

9. Are you a registered voter? Yes  No  County of registration: Volusia

10. Education:

	<u>Name and Location</u>	<u>Certificates/Degrees Received</u>
College:	<u>UF, Florida College of Liberal Arts/Sciences</u>	<u>Bachelor of Arts</u>
College:	_____	_____
Post College:	<u>UF, Florida, College of Law</u>	<u>Juris Doctor</u>
Post College:	_____	_____
Other:	_____	_____

**Professional History**

11. Admitted to practice before which courts?

All Courts of the State of Florida and United States District Court - Middle District of Florida

12. List any Florida Bar appointments presently held or previously held within the past 3 years:

Florida Bar member in good standing.

13. Please list all previous employers during the last 5 years:

<u>Employer's Name and City</u>	<u>Position</u>	<u>Period(s) of Employment</u>
<u>Eric K. Neitzke, P.A., Daytona Beach</u>	<u>Attorney/Owner</u>	<u>1985 to present</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. List any memberships in any national or local bar associations.

<u>Association</u>	<u>Date(s) of Service</u>	<u>Office(s) Held</u>
Florida Bar Association	12/23/82 - present	Member in Good Standing
Volusia County Bar Association	1974 - present	Member in Good Standing
Flagler County Bar Association	2019 - present	Member in Good Standing

15. Have you ever been elected or appointed to any public office in this state? Yes  No

If Yes, provide the following information:

<u>Office Title</u>	<u>Date of Election/Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>

16. Have you held or do you now hold an occupational or professional license or certificate in the state of Florida? Yes  No

If Yes, provide the following information, including any disciplinary action:

<u>License/Certificate Title and Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action and Date</u>
BT-32374	12/28/82	Florida Bar	

17. Name any business, professional, occupational, civic, or fraternal organization(s) of which you are now a member, or of which you have been a member during the past 3 years.

Provide the following information:

<u>Name</u>	<u>Address(es)</u>	<u>Office(s) Held and Term</u>	<u>Date(s) of Membership</u>
Volusia County Bar	123 W Indiana Ave, Deland FL	None	1984-present
Flagler County Bar	P.O. Box 353783, Palm Coast, FL	None	2019-present
Phi Beta Kappa		None	1979-present
NRA	11250 Waples Mill Rd Fairfax, VA	None	Lifetime

**Adverse Professional Actions**

18. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? Yes  No

If Yes, provide details (exclude traffic violations for which a fine or civil penalty of \$500.00 or less was paid):

<u>Date</u>	<u>Location</u>	<u>Nature</u>	<u>Disposition</u>
	Gainesville, FL		No charges were ever filed.

19. Has probable cause ever been found that you were in violation of Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees? Yes  No

If Yes, provide the following information:

<u>Date(s)</u>	<u>Nature of Violation(s)</u>	<u>Disposition</u>

20. Has probable cause ever been found against you in a Florida Bar Complaint? Yes  No

If Yes, provide the following information:

<u>Date(s)</u>	<u>Nature of Violation(s)</u>	<u>Disposition</u>
	I do not recall the details.	Law office management course.

21. Have you ever been suspended from any office by the Governor of the State of Florida?

Yes  No

If Yes, provide the following information:

<u>Title of Office</u>	<u>Date of Suspension</u>	<u>Reason for Suspension</u>	<u>Result</u>

### Miscellaneous

22. List 3 persons who have known you well within the last 5 years (exclude any relatives).

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/ Phone Number</u>
David Brill	17150 Royal Palm, Weston, FL	33326	[REDACTED]
Scott Schuler	644 Cesery Blvd. # 250, JAX, FL	32211	[REDACTED]
Horace Smith, Jr.	444 Seabreeze, Daytona Beach, FL	32118	[REDACTED]

23. State your experiences, interests or elements of your personal history that qualify you for this appointment.

Thirty-Eight years and ten months of experience as an attorney and a personal philosophy that every person who is involved in a lawsuit; a criminal case (either victim or Defendant); and family law cases are undoubtedly going through a circumstance that they find to be arduous and frightening.

Use this space to provide further detail(s) as desired – specify question number(s) followed by details.

### Additional Detail

During my lifetime, I have had the good fortune to be able to be able to work in many arenas where I have been able to help other people. For the past 38 years and 10 months, I have been a licensed practitioner with heavy emphasis on trial work. I have always prided myself on taking cases with unique legal problems or that have been originally handled by other lawyers unsuccessfully and were in need of a fresh and aggressive approach. Based on my practice, I believe I will have a wonderful background to call upon when it is my duty as a Judge to make rulings on evidence, procedure and legal points.

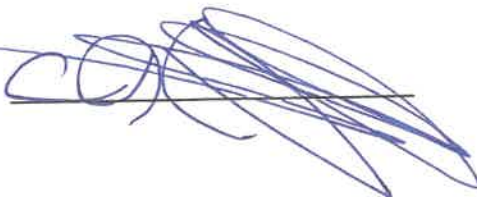
Having that understanding of litigants will enable me to rule within the law but with compassion and understanding for not only the parties standing before me, but also the family members, friends and community in general, that can be affected by the decisions of a Judge.

Another contribution or unique perspective I will bring to the Court, should I be selected, involves my long operation of a private law practice, as well as having been a Husband and Father at the same time. Many times, when I observe the operation of Courts, where the jurist has experience only as a prosecutor or other governmental attorney, they have little understanding of the difficulty that the average practitioner has in balancing time commitments, financial commitments, commitments made to clients and personal concerns. I believe I will not only have compassion for the litigants before me, but I also will be committed to making my Court accessible to attorneys and understanding of their needs.

**Under penalty of perjury, I declare the foregoing facts are true, correct, and complete to the best of my knowledge and belief.**

Date: 10/14/21

Signature: \_\_\_\_\_



## **HOW TO SUBMIT YOUR COMPLETED APPLICATION**

Follow these steps to complete the application process:

1. Open the saved application form, you saved to your computer.
2. Go to this web page: [Member Portal](#)
3. You will be prompted to login to your Member Portal account.
4. Answer the questions presented and upload your completed application and any other applicable documents (e.g. curriculum vitae, resume, letters of recommendation, etc.)

### **Questions?**

Contact Kristen Wilson at [kwilson@floridabar.org](mailto:kwilson@floridabar.org).



# APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT COURT

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

**Full Name:** Eric Karl Neitzke

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

**Florida Bar No.:** 357871

**Date Admitted to Practice in Florida:** 12/23/1982

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.

Eric K. Neitzke, P.A., Attorney, 123 Live Oak Avenue, Daytona Beach, Volusia County, Florida, 386-323-1900

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), and your preferred email address. 19 Lost Creek Lane, Ormond Beach, Volusia County, Florida 32174. I have lived at this location for the past 29 years and have been a resident of the State of Florida since 1968. My cell phone number is 386-341-0707. My preferred email address is: neitzkelaw@gmail.com.

3. State your birthdate and place of birth. 12/10/1955 in Mobile, Alabama.

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

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership. **Supreme Court of the State of Florida, December 28, 1982; United States District Court - Middle District of Florida, 1985 or 1986 to 1997 or 1998 then readmitted in 2021. Lapse was due to the fact that my practice had concentrated on family, criminal, and personal injury law and did not allow me time to practice before the Federal Court.**

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias. **No, I have not.**

## **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).

**May 1, 1982 – University of Florida, College of Law, Degree of Juris Doctor, GPA unknown, requesting information.**

**December 6, 1979 – University of Florida, Member of Phi Beta Kappa.**

**March 7, 1979 – University of Florida, The College of Liberal Arts and Sciences, Bachelor of Arts, GPA unknown, requesting same information.**

**1978-1979 – Police Standards and Training Course at Daytona Beach Community College, passed a pass or fail program.**

**1975-1976 – Attended EMT Training Program at Daytona Beach Community College (now Daytona State College). GPA unknown, requesting information.**

**1970-1974 – Mainland High School, Daytona Beach, Florida, High School Diploma; GPA 3.75.**

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.

**Member of Alpha Tau Omega Fraternity, 1976-1979.**

**Member of John Marshal Bar Association at University of Florida, College of Law, 1980-1982.**

## **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.

**1986 to Present: Eric K. Neitzke, P.A., Attorney and Owner, 123 Live Oak Avenue, Daytona Beach, FL 32114; 386-323-1900.**

**1982-1986: Dunn Smith Withers and Hart, Attorney, Daytona Beach, Florida**

**1982: Assistant State Attorney, State Attorney's Office for the Seventh Judicial Circuit Court, Florida.**

**1981: Legal Intern at State Attorney's Office, for the Eighth Judicial Circuit Court, Gainesville, Florida. (I served two internships, one for grades and one for part-time pay).**

**1978-1980: Patrolman (sworn Policeman) Ponce Inlet Police Department, Ponce Inlet, Florida.**

**1972-1978: Lifeguard/EMT for the Volusia County Beach Patrol.**

**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. Trial litigation in the areas of criminal, family law and personal injury. My typical clients are individuals seeking competent representation in divorce, custody issues, equitable distribution cases, paternity actions, felony-level criminal cases and complex civil litigation. I have also represented Ameritech Homes, Inc. from 1982 to the present in all phases of their business operation.**

**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	0 _____ %	Civil	25 _____ %
Federal Trial	5 _____ %	Criminal	30 _____ %
Federal Other	0 _____ %	Family	45 _____ %
State Appellate	0 _____ %	Probate	0 _____ %
State Trial	95 _____ %	Other	0 _____ %
State Administrative	0 _____ %		
State Other	0 _____ %		
<b>TOTAL</b>	<b>_____ 100 %</b>	<b>TOTAL</b>	<b>_____ 100 %</b>

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: **Not applicable.**

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

Jury?                      Approximately 38

Non-jury?                Approximately 200.

Arbitration? 0

Administrative Bodies? 5

Appellate? 6

**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.

**Julienne Jade Huftalen v. James Mathew Huftalen Jr., Case No.: 2020-30927-FMCI, Seventh Judicial Circuit, In and For Volusia County, Florida, Trial dates August 9 and 10, 2021.**

**Roseann F Jee v. Thomas Jefferson Jee, Case No.: 2018-30288-FMCI, Seventh Judicial Circuit, In and For Volusia County, Florida, Trial date February 14, 2020.**

**Tina Lynn Blaha v. George James Blaha, Case No.: 2015-11976-FMDL, Seventh Judicial Circuit, In and For Volusia County, Florida, Trial dates March 23 and 24, 2017 and May 16, 17, 18 and 19, 2017.**

**Stephen Wayne Povilaitis Jr, Et Al., v. Michele L Povilaitis, Case No.: 2014-10659-FMDL, Seventh Judicial Circuit, In and For Volusia County, Florida, Trial dates June 2, 3 and 5, 2015.**

**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, I have not.**

**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, I have not.**

**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.*

**Case No.: 2020-30927-FMCI, Jared Frankel, Esq., 386-317-4641,  
JFrankel@frankelfamilylaw.com**

Case No.: 2015-DR-2707 02D G, Michael J. Cortes, Esq., 407-915-4700  
[service@cortesfamilylaw.com](mailto:service@cortesfamilylaw.com)

Case No.: 2015-11976-FMDL, Dayanna Lopez, Esq., 386-246-0911, [dayannal@clsmf.org](mailto:dayannal@clsmf.org)

Case No.: 2015-100913-CFDL, John J. Martino, Esq., 386-822-6400, [martinoj@sao.org](mailto:martinoj@sao.org)

Case No.: 2015-10685-FMDL, Dayanna Lopez, Esq., 386-246-0911, [dayannal@clsmf.org](mailto:dayannal@clsmf.org)

Case No.: 2014-10659-FMDL, Christine J. Lomas, 407-622-5020, [chris@lomaslawpa.com](mailto:chris@lomaslawpa.com)

Case No.: 2013-31882-FMCI, Justin Loach, Esq., 800-673-1609, [jdloach@jdloach.com](mailto:jdloach@jdloach.com)

Case No.: 2009-34121-FMCI, Donald Dempsey, Jr., Esq., 386-738-1159,  
[donaldbdempsey@hotmail.com](mailto:donaldbdempsey@hotmail.com)

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.*

Case No.: 2021-301288-CFDB, Nancy Simpson, Esq., 386-239-7710, [simpsonn@sao7.org](mailto:simpsonn@sao7.org)

Case No.: 2021-DR-000214, Raven E. Sword, Esq., 386-439-2945,  
[ravenesword@gmail.com](mailto:ravenesword@gmail.com)

Case No.: 2020-10160-FMDL, Jeffrey A. Klein, Esq., 386-252-3061,  
[kleinlawfirm.fl@gmail.com](mailto:kleinlawfirm.fl@gmail.com)

Case No.: 2020-13462-CODL, Jennifer L. Reiss, Esq., 904-363-2769,  
[litigation@hidayricke.com](mailto:litigation@hidayricke.com)

Case No.: 2017-DR-004741-02D-G, Sharon L. Vollrath, Esq., 407-366-0087  
[Sharon@Vollrath-law.com](mailto:Sharon@Vollrath-law.com)

Case No.: 2017-DR-000948, Robert Stepniak, Esq., 386-253-4750,  
[service.robertstepniak@gmail.com](mailto:service.robertstepniak@gmail.com)

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. **Prior to COVID-19 Pandemic, I appeared between 30-50 times per month. During COVID-19 Pandemic, 1-3 times per month and recently,**

**resuming my pre-pandemic rate of practice.**

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. **Questions 16, 17 and 18 do apply to my practice.**
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.

**Tina Lynn Blaha v. George James Blaha, Case No.: 2015-11976-FMDL, Circuit Court Of The Seventh Judicial Circuit, In And For Volusia County, Florida, Honorable Elizabeth A. Blackburn, case opened June 29, 2015, Dayanna Lopez, Esq., 386-246-0911, [dayannal@clsmf.org](mailto:dayannal@clsmf.org). My client was George Blaha, a decorated Florida Fireman, in a dissolution of marriage case. This case was significant to me, because I grew to respect my client both personally and professionally. He was a gentle-natured, religious man, who was ambushed by his Wife, who tried to smear his good name by filing a frivolous injunction case against my client during their divorce proceedings. The case ended up with a six-day trial, during which we were able to prove my client's best qualities as a parent, resulting in him obtaining the shared parenting program he so desired.**

**Ryan Sebra, Etc., Et al v. Dylan Strembel, Etc., Et al., Case No.: 2010 30356 CICI, Circuit Court Of The Seventh Judicial Circuit, In And For Volusia County, Florida, Honorable Terrence Perkins, case opened on January 26, 2010, Gregory P. Durham, Sr., 321-327-5580 [gdurham@whitebirdlaw.com](mailto:gdurham@whitebirdlaw.com). My client was Ryan Sebra, who was seventeen by the time the trial occurred. His injuries came at a time when he was playing little league baseball at age twelve, suffering severe facial and oral injuries. This case was significant in my mind because the damages were so hard to prove. He had not yet had his face reconstructed at the time of trial and so we decided to focus on what he had lost in the form of his social life throughout middle school and high school. The jury responded with a favorable verdict, which enabled my client to ultimately pay for several reconstructive surgeries he could not afford up until the verdict. I was proud to have helped this fine young man.**

**State of Florida v. Edmund J. Lingo, Case No.: 1998-034465-CFAES, Circuit Court Of The Seventh Judicial Circuit, In And For Volusia County, Florida, Honorable Shawn Briese, case opened August 24, 1998, Steven deLaroche, Esq., 386-947-0909, [stevendelaroche@delaroche-law.com](mailto:stevendelaroche@delaroche-law.com), Sandy M. Desrosiers, Esq., 386-822-6400, [desrosierss@sao7.org](mailto:desrosierss@sao7.org). My 63-year old client, Edmund Lingo was facing two felony charges,**

including sexual molestation and battery on a child. During discovery, extensive depositions were taken, including out-of-state depositions. After trying the case for two days, my client was found not guilty. The significance of this case was that the alleged victim was his twelve-year old granddaughter and through other family members, we were able to prove that her mother had concocted the entire story as a means of attempting to get her father's estate. He had recently disinherited her.

**Dollie McGowan, et al. v. Sarah Rachel Samoraj**, Case No.: 16-2007-CA-001775, Circuit Court Of The Fourth Judicial Circuit, In And For Duval County, Florida, Honorable Jack M. Schermer, case opened February 27, 2007, Dennis Dore, Esq., 904-421-6900, [ddore@duttonlawgroup.com](mailto:ddore@duttonlawgroup.com). My clients were Dollie McGowan and her husband. I was brought in at the last minute as co-counsel by Scott Schuler, Esq. of Schuler & Lee. With only two weeks of familiarity and preparation, Mr. Schuler and myself tried this case over a three-day period. Although the case had been unsuccessfully tried once, we were able to obtain an extremely favorable verdict for our clients after the initial mistrial by other counsel. Of additional significance is the fact that our client had significant difficulties with communication skills.

**State of Florida v. Kevin G. Cushing, Jr.**, Case No.: 2006-32755-CFAES, Circuit Court Of The Seventh Judicial Circuit, In And For Volusia County, Florida, Honorable Julianne Piggotte, case opened on May 31, 2006, Kelly Wark, Esq., (deceased). My client was Kevin G. Cushing, Jr., who faced two felony cases of second-degree sexual battery and second degree lewd/lascivious battery. After a lengthy jury trial, my client was found not guilty of both counts. This case was difficult to try because the fifteen-year-old alleged victim made an impactful witness, however, on cross-examination, her testimony was demonstrated to be not only false, but also significantly different than her initial statements. I was also able to bring into Court, other witnesses who cast serious doubt on the truthfulness of the victim in this case. Apparently, she was angry at my client.

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.

**Attached please find a proposed Final Judgment Of Dissolution Of Marriage With Equitable Distribution and Child Issues, in case number 2020-30927-FMCI (recently submitted but not yet signed after a two-day trial); and Memorandum of Law Regarding Jury Selection in case number 2013-31130-CICI.**

**I was the sole writer of both documents.**



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

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results. **I ran for judicial office for the Seventh Judicial Circuit in 2010. Failed to be elected.**
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. **All information requested is unknown. Best recollection is that I was before the Seventh Judicial Circuit Nominating Committee in approximately 2010. All documentation and information was destroyed in Hurricane Irma.**
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. **No prior judicial experience.**
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. **No.**
30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances. **No, I have not.**



31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results. **No, I have not.**

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

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office. **I am an Officer of Brillzke Boyz, LLC, a corporation. The nature of the corporation is a holding company for the building out of which I practice law. I intend to resign all active involvement with this enterprise. My current duties with the corporation are property management and administrative matters, such as property taxes, etc. I am also an Officer of Eric K. Neitzke, P.A., a corporation out of which I practice law.**
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. **In 2000, I purchased land in Putnam County, Florida which I then developed into a family farm. Since 2000, I have purchased additional land adjacent to the farm, as well as a residence. From 2002 until approximately 2016, the farm was operated as a working horse farm by my Wife, Kathryn Neitzke and myself. As with many farms, the operation seldom showed a profit, although I recall receiving some compensation which was reported on my Federal Income Tax Returns. I have no records of this enterprise remaining as they were destroyed in Hurricane Irma. I still own the farm and have it leased out to a gentleman who is currently making improvements and who intends to keep cattle in the pastures. We have not yet discussed compensation.**

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

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself. **No there is not.**

#### **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. **I was published in the November, 1981 issue of the Florida Bar Journal. The title of the article was "Salt-Water Intrusion, Florida's Legal Response".**

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

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed. **I was the keynote speaker for the graduation class of 2013 at Florida Technical College, Deland Campus. The speech was given before approximately 2,500 graduates and family members at the Daytona News Journal Auditorium on Beach Street in Daytona Beach, Florida. I do not have the date it was delivered however, I am attempting to locate that information. I was also asked to give a eulogy at the funeral of Circuit Court Judge, Kellie Miles. I delivered that on July 21, 2017 at the Wayne G. Sanborn Activity Center in Deland, Florida. I have also lectured as a visiting instructor at Florida Technical College on various topics related to the law. Each was affiliated with a class. I do not have the dates, however, they were presented during 2012 and 2013. Also, I lectured Paralegal students as an Associate Professor at the Daytona State Community College between 1983 and 1985. I have also presented sections of various CLE Programs for National Business Institute (NBI), a private corporation dedicated to continuing legal education. These lectures were on topics ranging from jury selection, discovery and family law topics. During the period between 1982 and 1987, I also lectured under the supervision of Father Hugh Duffy, Associate Priest, at Our Lady of Lourdes Catholic Church in Daytona Beach on the topic of Baptismal Practices.**

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. **Please see my answer to question 37 above with reference to Daytona State Community College, I taught for approximately three semesters over a two-year period in the Paralegal Program. I have no materials or dates.**

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. **December 6, 1979 – University of Florida, Phi Beta Kappa; May 1979, graduated with honors, University of Florida. May, 1982, graduated with honors from University of Florida College of Law.**

39. Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned? **4.4/5.0 earned in 2011.**
40. 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. **Florida Bar, Member in Good Standing since December, 1982; Volusia County Bar Association since 1984; Flagler County Bar Association since 2019.**
41. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office. **None.**
42. 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. **None.**
43. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service. **Each year for the past 10 years, I have tried to provide quality legal services in the family law area to clients who are either indigent or of such limited financial resources that they deserve help.**
44. Please describe any hobbies or other vocational interests. **My hobbies include hunting, hiking, and riding motorcycles. As for other vocational interests, since approximately 2002, I have operated a horse farm in Putnam County, Florida which was shut down in 2016 and is currently being converted to an ornamental tree farm. I currently study and test my own seeds, seedlings and young trees primarily involving Japanese Plum Trees, also known as Loquat Trees (Eriobotrya japonica).**
45. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge. **No, I have not.**
46. 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.facebook.com/eric.neitzke.5>

## **FAMILY BACKGROUND**

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

**I am currently a widower.**

**Geraldine Fabricatore-Neitzke, date of marriage: November 5, 1983; divorced in September, 1996 in Volusia County, case number is unknown. Current address unknown. Current telephone number unknown.**

48. 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.

**Blaire Neitzke, Manager at Starbucks in Orlando, and attending College in Orlando; residential address to be provided, 386-299-5972.**

**Kyle E. Neitzke, Manager of Maintenance at Whisper Oaks, employed by TL3 Whispering Oaks Villas, LLC, 19 Lost Creek Lane, Ormond Beach, Florida, 386-214-8113.**

**Blake Neitzke, Captain in the United States Special Forces, U.S. Army, Fort Bragg, North Carolina, 386-341-0725. (Address cannot be provided due to security clearance.)**

## **CRIMINAL AND MISCELLANEOUS ACTIONS**

49. 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, I have not.**
50. 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, I have not.**
51. 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. **I was arrested in Gainesville, Florida in 1977. No charges were ever filed.**
52. 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.

**Ellen Sloan Purcell v. Eric Neitzke, Et. Al, Etc., Case No.: 2020 30883 CICI. Circuit Court, Of The Seventh Judicial Circuit, In And For Volusia County. My brother-in-law,**

**sister-in-law and myself were the Defendants in this case involving a complaint to partition property filed by another family member, Ellen Purcell, the Plaintiff. The case was settled during a final hearing.**

- 53.** To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part? **Yes. Luzdary Ramirez v. Eric K Neitzke, Et. Al., Case number: 2006 30842 CICI. This case was settled over the objections of myself and all other named Defendants for \$2,500.00 paid by our malpractice carrier. I believe that the insurance carrier was of the impression that it was better business practice to give a nuisance value settlement in exchange for complete releases.**
- 54.** 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. **Yes, see my answer to question number 53 above.**
- 55.** 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. **I do not recall the details, but I believe a finding of probable cause was made against me in a Florida Bar Complaint in approximately 2004 or 2005, which was resolved by attending a law office management course.**
- 56.** 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.**
- 57.** 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, I am not.**
- 58.** 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, I have not.**
- 59.** In the past ten years, have you been subject to or threatened with eviction proceedings? If yes, please explain. **No, I have not.**

60. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty, or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status. **I have complied with all Federal and State tax requirements. I have never had to pay a penalty and there has never been a tax lien filed against me.**

## HEALTH

61. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?  
**No, I am not.**

62. 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, I have not.**

63. 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.**

64. 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.**

65. 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, I have not.**

66. 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, I have not.**

67. 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, I have not.**

68. 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, I have not.**

69. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full. **No, I have not.**

#### **SUPPLEMENTAL INFORMATION**

70. Describe any additional education or experiences you have which could assist you in holding judicial office. **I completed both the certification courses for Emergency Medical Technician "EMT", and I completed the Police Standards and Training Program at Daytona Beach Community College, now known as Daytona State College. I was active in both areas prior to becoming an attorney. I spent seven years with the Volusia County Beach Patrol and a year and a half with the Ponce Inlet Police Department. I resigned my police certificate the day I graduated law school.**

71. 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. **During my lifetime, I have had the good fortune to be able to be able to work in many arenas where I have been able to help other people. For the past 38 years and 10 months, I have been a licensed practitioner with heavy emphasis on trial work. I have always prided myself on taking cases with unique legal problems or that have been originally handled by other lawyers unsuccessfully and were in need of a fresh and aggressive approach. Based on my practice, I believe I will have a wonderful background to call upon when it is my duty as a Judge to make rulings on evidence, procedure and legal points. I have also adopted the personal philosophy that every person who is involved in a lawsuit; a criminal case (either victim or Defendant); and family law cases are undoubtedly going through a circumstance that they find to be arduous and frightening. Having that understanding of litigants will enable me to rule within the law but with compassion and understanding for not only the parties standing before me, but also the family members, friends and community in general, that can be affected by the decisions of a Judge.**

**Another contribution or unique perspective I will bring to the Court, should I be selected, involves my long operation of a private law practice, as well as having been a Husband**

**and Father at the same time. Many times, when I observe the operation of Courts, where the jurist has experience only as a prosecutor or other governmental attorney, they have little understanding of the difficulty that the average practitioner has in balancing time commitments, financial commitments, commitments made to clients and personal concerns. I believe I will not only have compassion for the litigants before me, but I also will be committed to making my Court accessible to attorneys and understanding of their needs.**

## REFERENCES

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

1. David Brill, Esquire  
Brill & Rinaldi  
17150 Royal Palm  
Boulevard, Suite 2  
Weston, FL 33326  
[David@brillrinaldi.com](mailto:David@brillrinaldi.com)  
954-876-4344
2. Scott Schuler, Esquire  
Carl Scott Schuler, B.C.S.  
644 Cesery Blvd. Suite 250  
Jacksonville, FL 32211  
[scott@schulerlee.com](mailto:scott@schulerlee.com)  
904-813-5583
3. Mr. Michael Weremay  
956 Stone Lake Drive  
Ormond Beach, FL 32174  
[mweremay@cfl.rr.com](mailto:mweremay@cfl.rr.com)  
[REDACTED]
4. Honorable Judge Michael S. Orfinger  
Division 38  
125 E. Orange Avenue, Rm. 106  
Daytona Beach, FL 32114  
386-257-6099  
[mmacdonald@circuit7.org](mailto:mmacdonald@circuit7.org)



5. Honorable Judge Matthew M. Foxman  
Division 42  
251 N. Ridgewood Ave.  
Daytona Beach, FL 32118  
386-239-7793  
[division42@circuit7.org](mailto:division42@circuit7.org)
6. Honorable Judge Dawn May Fields (Retired)  
1103 Lakewood Park Drive  
Daytona Beach, FL 32117  
[REDACTED]  
[Dawnmay27@aol.com](mailto:Dawnmay27@aol.com)
7. Horace Smith, Jr., Esquire  
Horace Smith, Jr., P.A.  
444 Seabreeze Blvd., Suite 900  
Daytona Beach, FL 32118  
386-254-6875  
[hsmith@daytonalaw.com](mailto:hsmith@daytonalaw.com)
8. Mr. Michael Mullen  
Mullen Construction Town & Country Homes  
One Enterprise Drive  
Bunnell, FL 32110  
386-445-2222  
[michaelmullen30@hotmail.com](mailto:michaelmullen30@hotmail.com)
9. Mrs. Katrina Flagg  
160 Inglewood Court  
Ormond Beach, FL 32174  
[REDACTED]  
[katflagg@hotmail.com](mailto:katflagg@hotmail.com)
10. Dr. Steven G. Miles, MD  
c/o Radiology Associates  
1673 Mason Avenue  
Daytona Beach, FL 32117  
(386) 274-7118  
[smiles@radassociates.us](mailto:smiles@radassociates.us)

**CERTIFICATE**

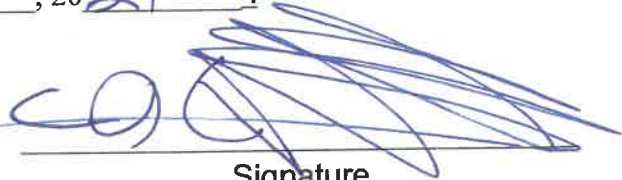
I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any 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 15<sup>th</sup> day of October, 2021.

Eric K. Neitzke

Eric K. Neitzke



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: 239,668

Last Three Years: 216,107    258,649    240,094

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: (40,848)

Last Three Years: 11,724    (12,108)    (65,233)

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.

*correct* →

Current Year-To-Date: 21,867

*50% of  
Bradley Potts  
1/2 of 2000 bonus*

Last Three Years: \_\_\_\_\_

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: \_\_\_\_\_

Last Three Years: \_\_\_\_\_

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: \_\_\_\_\_

Last Three Years: \_\_\_\_\_

ASSETS

Aggregate value of the household goods and personal effects \$ 823,000

122 Banana Lane  
Pomona Park, FL 32181 100% \$ 1,200,000  
(house w/3 bedrooms)

19 Lost Creek  
Ormond Beach, FL 32174 100% \$ 1,000,000

1082 Alpine Dr  
Blowing Rock, NC 28035 1/3 \$ 500,000

Adjacent to 3-90 Colony Ave  
Sanford, FL 32771 1/3 of 1/3 \$ 6,000,000

53rd Mortgage Escrow  
PO Box 630412  
Cincinnati, OH 45263 \$ 8,518

New Rez, LLC Escrow  
40 Shellpoint mortgage Services  
PO Box 740027  
Cincinnati, OH 45274-0027 \$ 1,730

Morgan Stanley - Personal Accts  
285 Clyde Morris Blvd S.100  
Ormond Beach, FL 32174 \$ 32,975

Morgan Stanley - IRAs  
285 Clyde Morris Blvd S.100  
Ormond Beach, FL 32174 \$ 259,138

New York Life Ins - Cash Value \$ 10,121  
PO Box 6914  
Cleveland, OH 44191

Brillzko Boys Enterprises  
123 Linn Dale  
Tampa, FL 33614 ?

Assets, cont'd

TD Checking	172,365.07
TD Savings	1,465.76
TD Savings	1,242.54

PO Box 1377  
 Lewiston, Maine  
 04243-1377

Eric & Neitzke PA 123 Live Oak Ave Dunwoody, Ga. 30328	250,000
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# Liabilities

5<sup>th</sup> Mortgage 32,165.00  
 PO Box 630412  
 Cincinnati OH 45262

5<sup>th</sup> Line of Credit 0,9,200  
 PO Box 74078  
 Cincinnati OH 45274-078

NewRez LLC Mortgage 15,935  
 GoShellpoint Mortgage Servicing  
 PO Box 740039  
 Cincinnati OH 45274-0039

City National Mortgage 50% of 223,200  
 25 W Flagler St 4<sup>th</sup> Floor  
 Miami, FL 33130

## 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: 10-15-21  
JNC Submitting To: Seventh Judicial Circuit

Name (please print): Eric K. Neitzke

Current Occupation: Attorney

Telephone Number: 386-341-0707 Attorney No.: 357871

Gender (check one):  Male  Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Volusia

*FLORIDA DEPARTMENT OF LAW ENFORCEMENT*

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)


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

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

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

Eric K. Neitzke

Printed Name of Applicant

  
Signature of Applicant



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): (Not available)

Table with 3 columns: NAME OF SOURCE OF INCOME EXCEEDING \$1,000, ADDRESS OF SOURCE OF INCOME, AMOUNT. Row 1: ERIC K. NEITZKE, F.A., 123 Live Oak, D.B., 120,000

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

Table with 4 columns: NAME OF BUSINESS ENTITY, NAME OF MAJOR SOURCES OF BUSINESS INCOME, ADDRESS OF SOURCE, PRINCIPAL BUSINESS ACTIVITY OF SOURCE. All cells are empty.

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

Table with 4 columns: BUSINESS ENTITY #1, BUSINESS ENTITY #2, BUSINESS ENTITY #3. Rows include: NAME OF BUSINESS ENTITY, ADDRESS OF BUSINESS ENTITY, PRINCIPAL BUSINESS ACTIVITY, POSITION HELD WITH ENTITY, I OWN MORE THAN A 5% INTEREST IN THE BUSINESS, NATURE OF MY OWNERSHIP INTEREST.

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

OATH

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

STATE OF FLORIDA

COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 15th day of October, 2021 by Eric Neitzke

(Signature of Notary Public—State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public Expires September 8, 2024 Bonded Thru Budget Notary Services



Personally Known [checked] OR Produced Identification

Type of Identification Produced

SIGNATURE (Handwritten signature)



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

KEVIN ARMSTRONG, JR., ET UX.,  
ET AL.,

Plaintiffs,

CASE NO.: 2013-31130CI

v.

CHRISSEY DOCK, INC., ETC., ET AL.,

Defendants.

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**MEMORANDUM OF LAW REGARDING JURY SELECTION**

The Plaintiffs in this action, KEVIN ARMSTRONG, JR., and TASIA ARMSTRONG, file this Memorandum of Law Regarding Jury Selection and, in furtherance thereof, state the following:

**I. SCOPE OF VOIR DIRE**

The fair and impartial jury as guaranteed by the Sixth Amendment of the United States Constitution, as well as Section 11 of the Florida Constitution, is crucial to the administration of justice under our legal system. Jurors, should, if possible, be not only impartial, but also beyond even the suspicion of partiality. In fact, it is well settled that when any reasonable doubt exists as to whether a juror possesses the state of mind necessary to render an impartial verdict based solely on the evidence submitted and the instructions on the law given by the Court, that potential

juror should be excused. Nash v. General Motors Corp., 734 So.2d 437 (Fla. 3<sup>rd</sup> DCA 1999).

Close cases involving challenges to the impartiality of a potential juror should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality. The Court has discretion to conduct some of the voir dire. The Court's discretion to conduct such voir dire is, however, primarily focused on whether or not a prospective juror is qualified to sit on a particular case. Voir dire of the attorneys in the matter should be given great latitude and should not be restricted from seeking information essential to the fair and just exercise of the right to challenge jurors, either peremptorily or for cause. Campbell-Eley v. State, 718 So.2d 327 (Fla. 4<sup>th</sup> DCA 1998). In Campbell v. Eley, the Fourth District Court of Appeal held that the Trial Court abused its discretion by forbidding defense counsel from asking prospective jurors whether they could be fair and impartial in a case in which the murder victim was pregnant and the fetus did not survive. The question if a juror could accept whether the killing of a mother and a fetus constituted one murder, was not permitted by the Trial Court. In that case, the Fourth District Court of Appeal recognized the defenses need to ask about matters relative to possible juror bias which is not necessarily limited to matters relevant to the elements of the case to be tried, and found it was proper to ask questions regarding the failure of the fetus to survive even

though it was not relevant to the material issues in the case. See Campbell v. Eley, *Supra*.

The Fourth District Court of Appeal in Walker v. State, 724 So.2d 1232 (Fla. 4<sup>th</sup> DCA 1999), evaluated the scope of voir dire in the context of obtaining a fair and impartial jury. The Fourth District Court of Appeal cited the controlling case of Lavado v. State, 492 So.2d 1322 (Fla. 1996). The Walker Court in upholding Lavado stated:

What is a meaningful voir dire, which will satisfy the constitutional imperative of a fair and impartial jury, depends on the issues in the case to be tried. The scope of voir dire therefore "should be so varied and elaborated as the circumstances surrounding the juror under examination in relation to the case on Trial would seem to require . . . (citations omitted) Thus, where a juror's attitude about a particular legal doctrine (in the words of the trial court, "the law") is essential to a determination of whether challenges for cause or peremptory challenges are to be made, it is well settled that the scope of the voir dire properly includes questions about and references to that legal doctrine even if stated in the form of hypothetical questions. Citing Pait v. State, 112 So.2d 380 (Fla. 1959).

In Walker, the Trial Court committed reversible error in refusing to allow a defendant's inquiry of prospective jurors regarding their willingness to accept the defense of entrapment. The Fourth District Court of Appeal held that inquiry into the jurors' feelings about this legal defense did not rise to the level of pre-trying the facts or attempting to elicit a promise from the jurors as to how they would weigh the evidence.

Voir dire should include the ability of counsel to ask prospective jurors any questions about their views on damages including non-economic

damages and the prohibition to do so is reversal error. Sisto v. Aetna Casualty and Surety Company, 689 So.2d 438 (Fla. 4<sup>th</sup> DCA 1997). In Sisto, the Plaintiff's counsel first questioned jurors who had indicated they had been involved in a law suit and had suffered an injury. The attempt to question prospective jurors about whether they had seen or heard anything concerning law suits or verdicts in general was summarily stopped by the Trial Court and Plaintiff's counsel was prohibited from going into that area. In reversing the Trial Court, the Fourth District Court of Appeal held that Plaintiff's counsel had the right to illicit from the jury panel whether any prospective jurors had any preconceived attitudes, opinions or beliefs concerning damage awards in general and, in particular, non-economic damages. At the very least, the Plaintiff's attorney should have been allowed the opportunity to explore the depths of their bias and attitudes in order to make a determination as to whether to exercise a peremptory or a for cause challenge.

Various areas of inquiry allowed to determine a juror's feelings as to matters that will be brought before him or her during a Trial include whether it is allowable to ask a prospective juror's personal life experiences and how that will affect him or her during a Trial, including whether the prospective juror feels that jury verdicts will have the potential to raise his or her insurance premiums. See Purdy v. Gulf Breeze Enterprises, Inc., 403 So.2d 1325 (Fla. 1981). It is appropriate to ask a prospective juror whether or not

they have negative attitudes or feelings towards the legal system due to previous unfavorable experience with lawsuits filed either against them or against members of their family or close circle of friends. See Levy v. Hawks Cay, Inc., 543 So.2d 1299 (Fla. 3<sup>rd</sup> DCA 1989). Additionally, it is appropriate to ask a prospective juror whether or not they could consider the evidence and apply the instructions of the Court free from influence of things that they have read or heard. See Smith v. State, 463 So.2d 542 (Fla. 5<sup>th</sup> DCA 1985).

In conclusion, the scope of voir dire can be broad and extensive depending on the facts on any particular case. The intent is to allow counsel to inquire of a prospective juror lines of questioning necessary to determine the extent of any bias or biases which would materially affect their ability to be a fair and impartial juror on the case at hand, as well as to allow counsel to inquire to a sufficient degree in order to determine whether to exercise either a peremptory challenge or a cause challenge.

## **II. GENERAL STANDARD FOR CHALLENGES BASED UPON CAUSE**

It is well settled that when any reasonable doubt exists as to whether a juror possesses the state of mind necessary to render an impartial verdict based solely on the evidence submitted and the instructions and law given by the Court, that juror should be excused. See Nash v. General Motors, *id* at 743 So.2d 437 (Fla. 3<sup>rd</sup> DCA 1999). The standard to be applied in all cases regarding challenges for cause as to prospective jurors is the

REASONABLE DOUBT STANDARD (emphasis added). Applying the reasonable doubt standard to a potential juror's qualifications means that if there is a reasonable doubt as to whether a juror's impartiality exists, then the juror should be dismissed for cause. Goldenberg v. Regional Import and Export Trucking Co., Inc., 674 So.2d 761 (Fla. 4<sup>th</sup> DCA 1996). In Goldenberg, the Trial Court committed reversible error in failing to excuse for cause in a personal injury action a juror who stated that she felt persons who sued in personal injury actions without substantial injuries were dishonest and later admitted that she might have difficulty being impartial in a cause which involved smaller injuries.

In considering whether or not a prospective juror's statements rise to the level of a challenge for cause, it also must be kept in mind that a prospective juror's promise that they would try to be impartial even though they were unsure of their ability to be impartial, did not guarantee a party's fair trial and would justify excluding him or her for cause. See Robinson v. State, 506 So.2d 1070 (Fla. 5<sup>th</sup> DCA 1987); Montozzi v. State, 633 So.2d 563 (Fla. 4<sup>th</sup> DCA 1994). This principle emphasizes the important concept that close cases involving challenges to impartiality of potential jurors must be resolved in favor of excusing the juror rather than leaving any doubt as to impartiality. See Goldenberg v. Regional Import and Export Trucking Co., Inc., as well as Nash v. General Motors Corp. cited previously. Moreover, where a juror initially demonstrates a predilection in a case, which, in the



juror's mind, might prevent him or her from impartially reaching a verdict, a subsequent change in that opinion, arrived at after further questioning by the parties' attorneys or the Judge, is properly viewed with some skepticism. See Club West v. Tropicgas of Florida, Inc., 514 So.2d 426 (Fla. 3<sup>rd</sup> DCA 1987).

THUS, REHABILITATION EFFORTS GENERALLY DO NOT WORK (EMPHASIS ADDED). For example, in Rodas v. State, 821 So.2d 1150 (Fla. 4<sup>th</sup> DCA 2002), at pages 1151 - 1152, the appellate court discussed its concerns regarding the following exchange which took place in voir dire:

DEFENSE LAWYER: Do you think it (the defendant's arrest) might influence your decision?

JUROR: I don't know.

DEFENSE LAWYER: Do you think the fact that he is on trial and got caught may make you less fair and impartial?

JUROR: Oh, I'd try to be fair.

DEFENSE LAWYER: But could you guarantee Mr. - ?

JUROR: No, I can't guarantee nothing.

The Fourth DCA reviewed the law on challenges for cause, including cases from the Florida Supreme Court, and held that these statements were "sufficiently equivocal" so as to require this juror to be excused for cause, despite the prosecutor's attempts to rehabilitate this juror. The Fourth DCA also stated "at page 1153": "Furthermore, the record does not show that they were sufficiently rehabilitated to serve on the jury". The prosecutor's

statement to the Court that she “asked all of the jurors if they had listened to the evidence and based their verdict on the evidence in the case, and everyone in this panel indicated that they would do that”, IS INADEQUATE TO OVERCOME THE REASONABLE DOUBT CREATED BY THESE INDIVIDUAL JURORS’ COMMENTS UPON THEIR ABILITY TO BE FAIR AND IMPARTIAL. THUS, THE COURT ERRED IN DENYING THE APPELLANT’S CHALLENGE FOR CAUSE AS TO THESE PROSPECTIVE JURORS. (Emphasis added).

Other reported grounds for cause challenges include repeated expressions of discomfort by a juror about service on any jury which was deemed to be sufficient to give rise to reasonable doubt as to whether that juror possesses or possessed the state of mind which would enable them to render a fair and impartial verdict. Graham v. State, 470 So.2d 97 (Fla. 1<sup>st</sup> DCA 1985). Additionally, where a juror vacillates between assertions of partiality and impartiality, a reasonable doubt has been created which would require that juror to be excused for cause. Plair v. State, 453 So.2d 917 (Fla. 1<sup>st</sup> DCA 1985); see also Sikes v. Seaboard Coastline R.R. Co., 487 So.2d 1118 (Fla. 1<sup>st</sup> DCA 1986).

Finally, any juror who indicates that they have any reservation about their ability to be totally fair should be excused for cause. Sikes v. Seaboard Coastline R.R. Co., 487 So.2d 1118 (Fla. 1<sup>st</sup> DCA 1986); see also City of Live Oak v. Townsend, 567 So.2d 926 (Fla. 1<sup>st</sup> DCA 1990); see also Levy v. Hawks Cay, Inc., Club West v. Tropigas, see citation above.

In conclusion, once reasonable doubt has been presented to the Court as to a juror's ability to set aside his prejudice, preconceived opinions, biases or allegiances concerning legal issues or factual issues, the appellate courts as well as the Florida Supreme Court, have given a clear message to the Trial Courts that the perspective juror MUST (emphasis added) be excused for cause. Courts are no longer allowed to presume a juror's impartiality.

The clear and overwhelming intent of inquiry by the Court and by counsel is to assure a fair trial for all parties involved in the litigation. This goal, can only be accomplished by an opportunity to inquire freely and broadly into not only the qualifications of the potential juror to sit on the case, but also into any preconceived notions, attitudes and beliefs that may give rise to a level that creates a reasonable doubt about that prospective juror's ability to be fair and impartial.

### **III. THE LAW OF JURY SELECTION**

#### **A. TIME LIMITATIONS.**

(i) The parties must be given adequate time to do jury selection and arbitrary time limitations are reversible. Cohn v. Julien, 574 So.2d 1202 (Fla. 3<sup>rd</sup> DCA 1991); see also Williams v. State, 424 So.2d 148 (Fla. 5<sup>th</sup> DCA 1982).

(ii) Without adequate voir dire, the Trial Judge's responsibility to remove jurors for cause who have partiality cannot be fulfilled. Connors

v. U.S., 158 U.S. 408, see 413 through 415 (1895); see also Lavado v. State, 469 So.2d 917 (Fla. 3<sup>rd</sup> DCA 1985).

B. APPROPRIATE QUESTIONS.

(i) Insurance and connection to insurance companies Purdy v. Gulf Breeze Enterprises, Inc., 403 So.2d 1325 (Fla. 1981); Lambert v. Higgins, 63 So.2d 631 (Fla. 1953); Sutton v. Gomez, 234 So.2d 725 (2<sup>nd</sup> DCA 1970); Holiday v. Holbrook, 168 So.2d 752 (Fla. 1<sup>st</sup> DCA 1964).

(ii) Questions concerning the “insurance crisis” or “lawsuit crisis” or “tort reform” should be permitted. Sutherlin v. Fenenga, 810 P. 2d 353 (N.W. CT App. 1991); Babcock v. Northwest Memorial Hospital, 767 S.W. 2<sup>nd</sup> 705 (Tex. 1989).

(iii) HYPOTHETICAL QUESTIONS THAT CORRECTLY STATE THE APPLICABLE LAW ARE PROPER (emphasis added). Pait v. State, 112 So.2d 380 (Fla. 1959); Lovado v. State, 469 So.2d 917 (Fla. 3<sup>rd</sup> DCA 1985) (decenting opinion adopted by the Florida Supreme Court) reversed at 492 So.2d 1322 (Fla. 1986); see also Moore v. State, 939 So.2d 1116 (Fla. 3<sup>rd</sup> DCA 2006).

C. IMPROPER QUESTIONS.

(i) Hypothetical questions incorporating evidence of the case and asking jurors how they would rule are improper. See Tampa Electric Company v. Bozmore, 96 So. 297 (Fla. 1923); see also Minor v. State, 763 So.2d 1169 (Fla. 4<sup>th</sup> DCA 2000).

(ii) Additionally, questions regarding the type of verdict the jury would render under a given set of circumstances are improper. See Smith v. State, 253 So.2d 465 (Fla. 1<sup>st</sup> DCA 1971); Renney v. State, 543 So.2d 420 (Fla. 5<sup>th</sup> DCA 1989).

D. Questions concerning the character of a party or witness are appropriate. See Carroll v. Dodsworth, 565 So.2d 346 (Fla. 1<sup>st</sup> DCA 1990).

E. Areas of inquiry:

(i) Damages:

A Plaintiff may ask prospective jurors questions about their views on economic as well as non-economic damages. See Sisto v. Aetna Casualty and Surety Company, 689 So.2d 438 (Fla. 4<sup>th</sup> DCA 1997).

(ii) Insurance:

Plaintiffs may question prospective jurors about any financial interests they might have in an insurance company in order to determine whether the juror would be biased or prejudice with respect to insurance issues. See Purdy v. Gulf Breeze Enterprises, Inc., 403 So.2d 1325 (Fla. 1981). Jurors may also be asked whether they are an agent, employee, officer, or stockholder or otherwise have an interest in any insurance company or insurance interests. See Springer v. Morris, 74 So.2d 781 (Fla. 1954), as well as Purdy v. Gulf Breeze Enterprises, Inc., 403 So.2d 1325 (Fla. 1981).

F. Challenges for Cause – Bias:

(i) Members of the venire related to a party or an attorney within the third degree. See Sikes v. Seaboard Coastline R.R. Co., 487 So.2d 1118 (Fla. 1<sup>st</sup> DCA 1986).

(ii) Jurors' friendly relationship with an attorney for a party. Johnson v. Reynolds, 97 Fla. 591, 121 So. 793 (1929); see also Sikes v. Seaboard Coastline R.R. Co., *supra*.

(iii) Any reasonable doubt as to whether a member of the venire has an ability to render an impartial verdict. See Leon v. State, 396 So.2d 203 (Fla. 3<sup>rd</sup> DCA 1981).

(iv) Favorable relationships between a member of the venire and a party.

(a) Employee of the party – Boca Teega Corp. v. Palm Beach County, 291 So.2d 110 (Fla. 4<sup>th</sup> DCA 1974); see also Henry v. State, 586 So. 2d 1335 (Fla. 3<sup>rd</sup> DCA 1991).

(b) Employed by hospital at which Defendant doctor is President and Chief of Staff. Martin v. State Farm, 392 So.2d 11 (5<sup>th</sup> DCA 1980).

(c) Close relationship with corporation. See Longshore v. Fronrath Chevrolet, Inc., 527 So.2d 922 (Fla. 4<sup>th</sup> DCA 1988).

(v) Previous adverse relationships with party or parties' attorney. Cantry v. State, 597 So.2d 927 (Fla. 3<sup>rd</sup> DCA 1992) ("nothing can

raise more doubts about a juror's impartiality than a previous contact or relationship with a party or their attorney).

(vi) Negative attitude toward the legal system. A juror can be stricken for cause where they have a negative attitude toward the legal system (see Levy v. Hawks Cay, Inc., 453 So.2d 1299 (Fla. 3<sup>rd</sup> DCA 1989).

(vii) Disapproval of personal injury lawsuits or money damages by a perspective juror can form challenge for cause. See Nash v. General Motors Corp., 743 So.2d 437 (Fla. 3<sup>rd</sup> CA 1999).

(viii) Partiality of a member of the venire to anything related to the particular cause of action.

(a) A venire member should be excused for cause if there is a reasonable doubt as to his or her ability to render an impartial verdict due to any sort of partiality towards the case or the cause of action. See Leon v. State, 396 So.2d 203 (Fla. 3<sup>rd</sup> DCA 1981); see also City of Live Oak v. Townsend, 567 So.2d 926 (Fla. 2<sup>nd</sup> DCA 1980); see also Johnson v. Reynolds, 97 Fla. 591, 121 So. 793 (1929).

(b) A venire member should be excused for cause where there is a suspicion as to their ability to be impartial with respect to a verdict. Leon v. State, 396 So.2d 203 (Fla. 3<sup>rd</sup> DCA 1981). See also O'Connor v. State, 9 Fla. 215 (1860); and Hill v. State, 477 So.2d 553 (Fla. 1985).

(ix) Attempts at rehabilitation by the Judge or by the opposing counsel DO NOT OVERCOME THE ORIGINAL STATEMENT CASTING DOUBT AS TO THE ABILITY OF THE PERSON ON THE VENIRE TO BE IMPARTIAL (emphasis added). Price v. State, 538 So.2d 486 (Fla. 3<sup>rd</sup> DCA 1989). See also Leon v. State, *supra*; and Sikes v. Seaboard Coastline, *supra*, and Longshore v. Franrath Chevrolet, 527 So.2d 922 (Fla. 4<sup>th</sup> DCA 1988), previously cited. For instance, the statement on the part of a potential juror that "I could try" to be fair and impartial does not constitute a sufficient cure to avoid a cause challenge. See Ortiz v. State, 543 So.2d 377 (Fla. 3<sup>rd</sup> DCA 1989), or, in another instance where a member of a jury who had previously stated a potential closed minded position was later cured after further questioning and said that they could "have an open mind", the cure was not regarded as legally sufficient to avoid a cause challenge. See Hamilton v. State, 547 So.2d 630 (Fla. 1989). Similarly, a venire member's assurance that he or she will be able to overcome their opinion which is otherwise prejudiced or biased is not dispositive and cannot, therefore, overcome a cause challenge. See Price v. State, 538 So.2d 486 (Fla. 3<sup>rd</sup> DCA 1989); as well as Hamilton v. State, *supra*. In addition, a venire member's subsequent change in his or her mind or his or her answers arrived at after further questioning by either the Judge or the opposing counsel, must be reviewed with some skepticism. See Fazzolari v. City of West Palm Beach, 608 So.2d 927, at Page 929 (Fla. 4<sup>th</sup> DCA 1992); review denied at 620 So.2d 760 (Fla.



1993). This decision was, however, receded from on completely separate grounds. See also Goldenberg v. Regional Import and Export Trading Company, Inc., 674 So.2d 761 at 764 (Fla. 4<sup>th</sup> DCA 1996); and Straw v. Associated Doctors' Health and Life, 728 So.2d 354 (Fla. 5<sup>th</sup> DCA 1999), in support of striking for cause a member who had changed positions only after rehabilitative inquiry.

(x) "Similarly, a juror is not impartial when one side or the other must overcome a preconceived opinion in order to prevail". See Hill v. State, 477 So.2d 553 (Fla. 1985).

(xi) Additionally, a potential juror's statement that he or she can and will return a verdict according to the evidence submitted and the law announced at the trial is not determinative of his competence, if it appears from other statements made by him or from other evidence that he or she is not possessed of a state of mind which will enable him or her to do so, and thus, despite the prospective jurors' good intentions, the spectre of bias looms in such a way that a challenge for cause should be granted. See Singer v. State, 109 So.2d 7 (Fla. 1959); as well as Longshore v. Fronrath Chevrolet, Inc., 527 So.2d 922 (Fla. 4<sup>th</sup> DCA 1988), cited previously.

(xii) The mere fact that a juror is acquainted with a lawyer in the case does not *per se* disqualify that juror. See McQuay v. State, 352 So.2d 1276 (Fla. 1<sup>st</sup> DCA 1977). However, if a juror has a friendly relationship with a party's lawyer and expresses equivocation as to whether

he could render a fair and impartial verdict against the lawyer's client, a challenge for cause should be granted even though the juror or prospective juror is subsequently rehabilitated. See Sikes v. Seaboard Coastline R.R. Co., 480 So.2d 1118 (Fla. 1<sup>st</sup> DCA 1986). Similarly an employee of the firm of a lawyer included in the case should be excused upon a challenge for cause. See Henry v. State, 586 So.2d 1335 (Fla. 3<sup>rd</sup> DCA 1991).

(xiii) The standard for evaluating a challenge for cause as to a prospective juror is, whether the juror can lay aside any bias or prejudice and render a verdict based solely on the evidence presented and the instructions given by the Court. See Farina v. State, 679 So.2d 1151 (Fla. 1996), *receded from on other grounds*; see Pacot v. Wheeler, 758 So.2d 1141 (Fla. 4<sup>th</sup> DCA 2000). However, despite the broad discretion accorded to trial courts in ruling on challenges for cause, if there is a reasonable doubt about a juror's impartiality, then the juror should be dismissed for cause, Pacot v. Wheeler, *supra*. In those cases, ANY QUESTIONS SHOULD BE RESOLVED IN FAVOR OF DISMISSING A JUROR FOR CAUSE RATHER THAN RUNNING THE DANGER OF LEAVING A POTENTIALLY PARTIAL JUROR ON THE PANEL (emphasis added). Pacot v. Wheeler; Montozzi v. State, 633 So.2d 563 (Fla. 4<sup>th</sup> DCA 1994); and Tizon v. Royal Caribbean Cruise Line, 645 So.2d 504 (Fla. 3<sup>rd</sup> DCA 1994).

(xiv) A juror is not impartial when one side must overcome a preconceived opinion in order to prevail. See Price v. State, 538 So.2d 486 (Fla. 3<sup>rd</sup> DCA 1989), previously cited.

(xv) Similarly, a juror who expresses a strong preconceived bias, and then later states that he thinks that he will be able to "judge the case by the facts" shall be excused for cause. See Davis v. State, 656 So.2d 560 (Fla. 4<sup>th</sup> DCA 1995); see also Henry v. State, 756 So.2d 170 (Fla. 4<sup>th</sup> DCA 2000). In this same vein, a juror who states that he or she will "try" to be fair or who "thinks" he or she can be fair should be excluded. See Longshore v. Fronrath Chevrolet, Inc., 527 So.2d 922 (Fla. 4<sup>th</sup> DCA 1988).

(xvi) In all cases where potential jurors who express negative attitudes against the legal system based on lawsuits filed against them or members of their family or members of their close circle, should be excused for cause. See Levy v. Hawks Cay, Inc., 543 So.2d 1299 (Fla. 3<sup>rd</sup> DCA 1989); see also Goldenrod v. Regional Import and Export Trucking Company, 674 So.2d 761 (Fla. 4<sup>th</sup> DCA 1996); as well as Tizon v. Royal Caribbean Cruise Line, 645 So.2d 504 (Fla. 3<sup>rd</sup> DCA 1994). However, in some instances, if negative feelings about personal injury lawsuits are not the product of personal or family experiences, the Judge may allow the potential juror to serve if it is apparent from the assurances of that potential juror that those biases can be set aside at trial.

(xvii) A potential juror's statement that he can and will return a verdict according to the evidence and the law is not necessarily determinative of his ability or his competence if it appears from other statements made by that same potential juror that he is not possessed of a state of mind that will enable him to be completely fair and impartial. See Singer v. State, 109 So.2d 7 (Fla. 1959), as well as Longshore v. Fronrath Chevrolet, Inc., 527 So.2d 922 (Fla. 4<sup>th</sup> DCA 1988).

(xviii) Similarly, efforts at rehabilitating a prospective juror are to be considered IN LIGHT OF WHAT THE JUROR FREELY SAID BEFORE THE REHABILITATION EFFORTS BEGIN (emphasis added). See Montozzi v. State, 633 So.2d 563 (Fla. 4<sup>th</sup> DCA 1994). For example, if a juror's assurances do not necessarily persuade the Court beyond a reasonable doubt that the juror can set aside their biases, the juror should be excused. See Club West, Inc. v. Tropigas of Florida, Inc., 514 So.2d 426 (Fla. 3<sup>rd</sup> DCA 1987).

(xix) In Pacot v. Wheeler, 758 So.2d 1141 (Fla. 4<sup>th</sup> DCA 2000), the appellate court stated that the test for challenging a juror for cause is whether the juror is able and willing to lay aside any bias or prejudices and can abide by the law as well as the Court's instructions and the Court should be able to ask the prospective juror about theories and whether or not those theories follow the law or conflict with the law with respect to the instructions.

(xx) In yet another complex analysis, the Court in Goldenberg v. Regional Import and Export Trucking Company, Inc., 674 So.2d 761 (Fla. 4<sup>th</sup> DCA 1996), the Court held that CLOSE CASES INVOLVING CHALLENGES FOR CAUSE DUE TO THE IMPARTIALITY OF A POTENTIAL JUROR SHOULD BE RESOLVED IN FAVOR OF EXCUSING THE JUROR (emphasis added) rather than leaving any doubt as to impartiality. The SEMINAL case previously and repeatedly cited is Nash v. General Motors Corp., 734 So.2d 437 (Fla. 3<sup>rd</sup> DCA 1999), where the Court held that the statement "I think I could be fair" is far from sufficient in demonstrating the ability of a potential juror to set aside biases and should result in that juror being stricken for cause. See also Sikes v. Seaboard Coastline R.R. Co., 487 So.2d 1118 (Fla. 4<sup>th</sup> DCA 1986); and Robinson v. State, 506 So.2d 1070 (Fla. 5<sup>th</sup> DCA 1987).

#### CONCLUSION

These citations and the guidance that they provide are the basis on which the trial courts of this State and this Nation are expected to guarantee that the litigants who come before them receive the fair and impartial jury intended by the Sixth Amendment of the United States Constitution, as well as Section 11, of the Florida Constitution. It is respectfully submitted by counsel for the Plaintiffs herein that whenever an issue arises concerning the potential of a challenge for cause or the use of a preemptory challenge where cause simply cannot be supported, it is respectfully suggested that these guidelines be carefully and judiciously applied with the intent and the

purpose in mind of challenging the juror for cause, rather than running the very great risk of leaving a juror on the panel who cannot be impartial, no matter how well intentioned.

It is perhaps best said in Singer v. State, *supra*, p. 24, “[i]t is difficult for any person to admit that the [or she] is incapable of being able to judge fairly and impartially.” It is for this reason that each and every trial Judge who dons a black robe must at all cost closely and carefully guard the quintessential goal of ensuring impartiality even at the cost of hurt feelings and lost time.

#### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on November 8, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ePortal system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notices of Electronic Filing generated by the ePortal system or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.



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

In RE: THE MARRIAGE OF

CASE NO.: 2020 30927 FMCI

JULIENNE JADE HUFTALEN,

Petitioner/Wife,

and

JAMES MATHEW HUFTALEN, JR.,

Respondent/Husband.

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**FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE  
With Equitable Distribution and Child Issues**

**THIS CAUSE** having come before the Court for Final Hearing on the Wife's Petition for Dissolution of Marriage and for Other Relief (with Minor Children); [docket #2] and on the Husband's Answer and Counterpetition [docket #10], as well as a Joint Pretrial Stipulation as to Issues and Certain Facts in Lieu of Documentary Evidence [docket #82] and the Court having in addition, taken extensive testimony and having reviewed voluminous evidence, most of which was stipulated into evidence as relevant and material, and the Court being otherwise fully advised in the premises, makes the following findings, directives and Orders:

**I. FINDINGS**

1. **MARRIAGE:** The marriage of the parties was entered into on June 4, 2011 at St. Augustine, St. John's County, Florida.



2. **FILING DATE:** The Wife's Petition for Dissolution of Marriage, which included a prayer for durational alimony, was filed May 18, 2020. Accordingly, the parties stipulated, and the Court so finds that the duration of the marriage was eight (8) years, eleven (11) months for purposes of durational alimony. (107 months).

3. **JURISDICTION:** This Court has absolute jurisdiction over the subject matter and the parties hereto and in particular, notes that while the child, Ella Huftalen, was born August 24, 2014 in Knoxville, Knox County, Tennessee, said child has been a resident of 35 Caladium Drive, Ormond Beach, Volusia County, Florida since November 17, 2014 and for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act is therefore subject to the jurisdiction of this Court.

4. **CHILDREN:** There was only one child born as issue of this marriage, to wit: Ella Huftalen, who, as noted above, was born on August 24, 2014 and was accordingly, six years and eleven months of age, as of the date of the final hearing. (Now age 7).

5. **IRRETRIEVABLY BROKEN:** The Wife has requested that the Court grant her a dissolution of marriage based upon her allegations that this marriage is irretrievably broken. The Court notes that if for no other reason, the contentious nature of the litigation would demonstrate that this marriage is irretrievably broken, however, due to the request for relief in the form of alimony, also made by the Wife, including lump sum, rehabilitative and

durational, the Court recites certain additional findings which bear both upon the irretrievably broken status of the marriage and the issue of fault, which, while generally not relevant, becomes both material and relevant with respect to equitable distribution, alimony and attorney fees under the totality of the circumstances. Williamson v. Williamson, 353 So.2d 880 (Fla 1DCA 1978), McClelland v. McClelland, 318 So.2d 160 (1DCA 1975); Martin v. Martin, 366 So.2d 475 (3DCA 1979). Specifically, adultery is relevant as to alimony. To this end, the Court finds that there is ample evidence of the Husband's marital infidelities and adulterous behavior involving extensive travel, money and time spent with numerous paramours, which the Court finds to be exclusively the fault of the Husband and one of the reasons why this marriage is irretrievably broken.

6. **EQUITABLE DISTRIBUTION ISSUES:** The Court conducted a pretrial meeting with the respective attorneys for the parties, who worked together in order to avoid unnecessary litigation and reached a stipulation as to the items of assets the Court should consider as well as the values this Court should place on those assets and certain additional information bearing upon those assets which was not in dispute. Accordingly, the Court adopts the following chart as a finding of fact as to the assets subject to equitable distribution and their values: [see docket #82]

### Equitable Distribution

		Value
A.	<p>35 Caladium Drive (former marital residence) [this asset was sold and is currently pending closing]</p> <p>The parties have agreed to the following supplemental information; the sale price, see Wife's Exhibit 24. The house was sold for \$260,000.00 less the current mortgage payoff of \$218,017.26 and in addition, less projected closing costs of \$2,000.00 leaving a net balance of \$40,000.00 (approximately).</p>	\$40,000.00 (Cash) [Exhibit 25]
B.	<p>Retirement Assets</p> <p>i. TIAA Embry Riddle 401k account. ii. PSA Fidelity 401k iii. 401k for Pilots. Marital Value at filing. [*Note the parties conceded that during the litigation without first obtaining a court order or an agreement of the Wife, the Husband withdrew \$65,000.00 from the 401k for Pilots and deposited \$30,000.00 cash into his Chase Savings Account in his name alone and \$28,500.00 cash into his Chase Checking Account in his name alone and kept \$6,500.00 for his own use. (Finally, whatever sum remains in this account is marital in that, there has been no evidence of deposits by either party after the filing of the Petition.)</p>	<p>\$9,899.58 \$62.84 \$98,650.00 [See Docket #82]</p>
C.	<p>Automobiles:</p> <p>i. The Wife has a 2011 Ford Edge ii. Husband has a 2016 Volvo</p>	<p>\$5,128.00 [Exhibit 22] \$13,371.00 [Exhibit 23]</p>
D.	<p>Personal property: By stipulation of the parties, the issue of personal property shall not be considered by the Court in view of the fact that they have resolved that issue between them.</p>	\$0.00
E.	Husband's RobinHood account	Undisclosed [Exhibit 33]
F.	Husband's Resolut account	Undisclosed [Exhibit 34]
G.	Husband's Chase Savings account as of June 17, 2021	\$19,084.11 [Docket #82]
H.	Husband's Chase Checking account as of June 21, 2021	\$14,681.72 [Docket #82]
I.	<p>The parties also have a joint Wells Fargo Checking account which they stipulate is used to pay family bills and accordingly, has a value which vacillates depending upon Husband's deposits from earned income at the beginning of the month and any remaining balance at the end. (Note: The parties have agreed that this account will not be considered for purposes of equitable distribution.)</p>	[Deposition testimony of the parties]

\*The Court further finds that for purposes of determining the total value available for equitable distribution, only the sum of \$98,650.00 as to the 401k for Pilots will be considered toward the total value of the marital assets as of the date of filing. [Docket \*82] The Court recognizes the fact that the Husband has unilaterally moved cash funds that were clearly marital in nature into accounts in his name alone in order to exert total dominion and control. These actions will be addressed below. [See Docket #82 at paragraph 1G.i. on pages 4 and 5]

7. **FINDINGS AS TO ALIMONY AND ENTITLEMENT TO ATTORNEY FEES:** The Court incorporates by reference and attaches hereto as part of its findings of fact, the Wife's Memorandum of Law as to the issue of alimony. [Docket #92] With respect to said Memorandum, the Court specifically incorporates the chart at page 8 of said document as an aid to assist the Court in defining the comparative earnings histories of the parties from January, 2017 through the first one hundred and sixty-six (166) days of calendar year 2021, based upon I.R.S. documents, W-2's, Tax Returns and Social Security Earnings histories and the most recent paystubs available (Husband's June, 2021 American Airlines stub). [Wife's Exhibits 9, 10, 12, 13, 17, 18, 19, 20 and 24] In addition, the Husband and Wife both testified and verified these yearly earnings during trial. The Court specifically refers to the documentary exhibits jointly admitted into evidence, all of which clearly support the exact figures contained in the chart at page 8 of the Wife's

Memorandum. [Docket #92 at II.c.] With respect to the chart, the Court notes that as to calendar year 2017, the Husband's W2 form for that year from his only known employer (PSA Airlines, Inc.) showed wages of \$89,702.09. [Wife's Exhibits 9 and 10] In that year, the Court also notes that the Wife's Internal Revenue Service earnings history representing all W2s filed on her behalf for that year was a total of \$10,493.00. [Wife's Exhibit 13] Therefore, comparatively in 2017, the Husband had 89.52% of the household income. [Wife's Exhibits 9, 10, 13]

8. With respect to calendar year 2018, the Husband's W2 form from his only known employer in that year, (PSA Airlines, Inc.) demonstrated Social Security wages of \$109,384.55. [Wife's Exhibits 9 and 10] The Wife's income for that year was depicted in her Internal Revenue Service Earnings History for calendar year 2018, [Wife's Exhibit 13] as well as her Social Security Statement for that year, both of which demonstrated her total earnings of \$5,360.00 for calendar year 2018. [Wife's Exhibits 13 and 20] Accordingly, the Husband earned 95.329% of the household earnings.

9. As to calendar year 2019, the Husband had earnings from two sources to wit: PSA Airlines in the amount of \$16,945.35 and American Airlines in the amount of \$73,453.65. [Wife's Exhibits 9 and 13] These amounts are also demonstrated on the Husband's Internal Revenue Service Earnings History for calendar year 2019 which shows total gross earnings of \$90,399.00. [Wife's Exhibit 13] Additionally, in calendar year 2019, the

Husband, who testified he prepared the parties' annual income tax return, reported that the Wife had zero income for calendar year 2019. [Wife's Exhibit 10] The Wife's internal revenue service history and her Social Security earnings history for that year also reflect zero income. [Wife's Exhibits 13 and 20] Therefore, in calendar year 2019, the Husband had 100% of the family's gross income. [Wife's Exhibits 9, 10, 13 and 20]

10. With respect to calendar year 2020, the evidence entered into the Court's file demonstrates that the Husband had only one employer in calendar year 2020 but had additional income he reported for a total gross income listed on his 2020 personal income tax return (which he filed as a married man filing separate), having total gross income of \$168,052.00. [Wife's Exhibits 12 and 44] The Husband's 2020 American Airlines W2 was also entered into evidence and demonstrated from that source alone, the Husband had \$106,935.00 in wages and in addition, the Husband's 2020 1040 Income Tax Return reflected at line 5b an additional \$65,000.00 for a total equaling \$168,052.00 as noted above. [Wife's Exhibits 9, 12, 13 and 44] In calendar year 2020, the Wife's personal income tax return, as well as all earned income reported totaled \$3,578.35. [Exhibits 13, 19 and 20] Therefore, in calendar year 2020, the Husband had 97.9% of the total household income.

11. Finally, the Court has taken into evidence and has reviewed the Husband's most recent American Airlines pay stub for calendar year 2021 (June, 2021). [Wife's Exhibit 17] That stub, which represents his total pay

through the one hundred and sixty-sixth (166) day of the year was \$80,300.26. [Wife's Exhibit 17] The Wife earned a total of \$5,490.00 as of the one hundred and sixty-sixth day, according to her trial testimony and the trial testimony of Wayne Smith, her employer. Therefore, through the one hundred and sixty-sixth day of 2021, the Husband earned 93.61% of the total income of these parties. As noted in the Wife's Memorandum incorporated herein, based upon the documentary evidence placed within the Court file, which is incontrovertible, the Husband has historically earned 95.3% of the family income on average between January 1, 2017 and the present.

12. The Court further finds that the figures enumerated above, while important, and informative, are not necessarily the only evidence to be considered in an award of either alimony or attorney fees. Rather, as statutorily mandated by Section 61.08 of the Florida Statutes, in considering an award of alimony, a Court shall "first make a specific factual determination as to whether either party has an actual need for alimony, maintenance or attorney fees and whether either party has the ability to pay alimony, maintenance and attorney fees." Certainly, the figures enumerated above demonstrate that the Husband's earning capacity is vastly superior to that of the Wife and has historically been 95.3% of the family income on average since January 1, 2017.

13. The Court has also considered the fact that the parties have filed a Contract for the sale and purchase of the former marital residence to Michael

Weremay (the Wife's Stepfather). The sale of this home has had a two-fold effect on the overall issue of need and ability. First, when the sale closes, the Husband will no longer be obligated to pay \$1,382.00 on the monthly mortgage for the marital residence. At the same time, the parties agreed upon the use of a residential home rental agent (Caryn Baker) who provided the only evidence in the Court file as to the fair rental value of the house which the Wife will begin leasing upon this Court granting a dissolution. [Wife's Exhibit 16] The monthly lease price listed within the joint exhibit relating to fair market rental value is \$1,900.00 per month. [Wife's Exhibit 16] The Court finds that in order to continue the standard of living to which she has become accustomed during the marriage, the Wife should be entitled to lease either the former marital residence or a home of commensurate quality. To this end, the Wife has placed the sum of \$1,900.00 as an estimated cost on her Financial Affidavit. (Wife's Exhibit 5) The Court has also reviewed photos of the marital residence [Wife's Exhibit 14], the Wife's Financial Affidavit and has heard testimony from friends, family and the parties as to the standard of living maintained by the parties during the course of the marriage, as well as reviewing additional information concerning the monthly cost of living that has been consistent throughout the marriage. The Court finds that the Wife's claim for current monthly expenses of \$7,941.25 is neither unusual nor unreasonable in the community where the parties have resided since 2014.



The Wife established this sum as her reasonable need after the divorce is complete through substantial, competent evidence.

14. Given the fact that the Wife has reasonable monthly expenses of \$7,941.25 but has historically never earned more than \$10,493.00 in any given year since December 31, 2016, [Wife's Exhibit 20] it is therefore the findings of this Court that the Wife has clearly demonstrated a need for financial assistance in order to help with both her living expenses and the attorney fees and costs she has incurred throughout this rather contentious dissolution proceeding.

15. The Court next turns to the issue as to whether or not the other party (James Huftalen) "has the ability to pay alimony". This Court makes the following probative findings on this topic. First, there has been uncontroverted testimony and evidence presented that the Wife was instrumental in encouraging, supporting and assisting the Husband in the pursuit of obtaining an education to become a Pilot, as well as being a help mate, wife, mother and team player during the period of time when the Husband was struggling to obtain his goal of joining the airlines. [Trial testimony of Husband, Wife, Michael Weremay and Kerri Korros], (as well as deposition testimony of Husband). [Wife's Exhibit 1 at pages 184-186] The Wife was with him in the early stages of their marriage when he was a flight instructor struggling to build flight hours in order to get employment in the airline industry. She also accompanied him in a move to Knoxville, where he obtained his first

substantial employment as a pilot for PSA, a commuter airline. During this period, she worked full time as a dental assistant through her pregnancy with the parties' child until just three days prior to the birth of that child. At the same time the Husband was flying and building flight experience and hours while the Wife cooked, cleaned, maintained the house, ran errands and generally supported his efforts. The Parties worked together toward the goal of an airline career for the Husband.

16. At or about the time that the child was born, the Husband was beginning to earn more with his employer, PSA Airlines, Inc., a regional carrier affiliated with American Airlines. Three months after the birth of their child, the parties were able to return to the Volusia County area, in part because they could afford to purchase the marital residence and set up housekeeping in what the Wife believed would be an idyllic future in an upscale neighborhood. [Trial testimony of Wife, Husband, Kerri Korros and Michael Weremay.]

17. The Court has also taken testimony of witnesses and reviewed evidence demonstrating that the Wife's work history became limited at best, after the birth of the child in view of the fact that the Wife became a stay-at-home wife, mother and emotional support for a husband who was building his career, gaining flight hours and earning a substantially greater income than they ever had before. This was confirmed in part by both Husband's deposition testimony [Wife's Exhibit 1 at pages 184-186] and Husband's trial

testimony. After the return to Volusia County, Florida, November 17, 2014, things remained unchanged from this status for the next four or five years until, after building enough hours and gaining enough experience in order to build his career, the husband landed his goal job with American Airlines, the major carrier position he wanted. This of course, came with a brief period of additional training which accounted for a slight decrease in the husband's earnings in 2019, when his gross earnings dipped from \$120,000.00 per year to \$90,399.00 [Wife's Exhibits 9 and 10] as he transitioned from the regional carrier (PSA Airlines) to his goal job with American Airlines.

18. The trial testimony of the Husband and the evidence presented revealed that as with any major air carrier, the first contract year during which the Pilot goes through a brief training period to bring him into familiarity with flying larger equipment, there is a slight earnings decrease. The Parties, nevertheless, enjoyed an upper, middle-class lifestyle. The Wife did not have to work outside the home, however, there was some evidence and testimony that except for calendar year 2019, when she had no reported income, the Wife did work in order to earn spending money used by both Parties. As noted, calendar year 2020 saw the Wife's earnings limited to \$3,578.35. [Exhibit 20]

19. During calendar year 2020, as the Husband's first American Airlines contract year expired in April, his income pursuant to his contract, (Wife's Exhibit 26) automatically increased substantially to an amount where

according to his testimony and that of the Wife, it was projected that he would earn approximately \$135,000.00 per year. The testimony and evidence has also revealed that the Husband takes benefit of a collective bargaining agreement [Wife's Exhibit 26] (477 pages of digital evidence) entered into by and between his union and the airline at which he is employed. That agreement calls for automatic, guaranteed, contractual annual increases which will increase his income each year on April 13<sup>th</sup>, according to the Husband's testimony. The evidence is uncontroverted that within ten days after the Husband received his first substantial increase, he left the Wife, the child, and the former marital residence after he disclosed to the Wife, he was having an extramarital relationship, and that he "no longer was attracted to the Wife". [Trial testimony of both Parties] (See also, Husband's deposition testimony, Wife's Exhibits 1 and 2)

20. The Husband testified in deposition that at first, he went to a shared apartment he had taken in Miami with other Pilots. Then he moved to an apartment he rented in his own name in Port Orange, Florida. The Husband testified that he had in fact been contemplating this housing for quite some time and had in fact been shopping for apartments in order to provide housing for himself after separation. The Husband also testified in his deposition that, unknown to the Wife, his apartment hunt had begun "months before" the actual separation which as noted, was timed ten days after he received his first substantial increase in pay.

21. The Court takes note of some additional factors with respect to the Husband's ability to pay. First, he will continue to have increases on the annual date and in fact, according to his testimony during the course of this litigation, has had another substantial increase on April 13, 2021, which has now been reflected in his June, 2021 paystub, on which his year-to-date earnings for the first 166 days of \$80,300.26 are reflected. [Exhibit 17] Based upon this and other factors, the Court notes that the Husband has more than ample earnings to not only provide himself with the ability to pay the stipulated \$4,500.00 monthly alimony but also the Wife's attorney fees. Provided that the Husband does not live extravagantly and does not unreasonably dissipate his income through waste and artifices, he should be able to continue to live the same marital lifestyle, while at the same time, providing sufficient support necessary to assist the Wife in maintaining hers at the stipulated durational alimony amount of \$4,500.00 per month from September 1, 2021 through May 31, 2026, after which the amount shall be automatically reduced to \$3,000.00 per month until the Husband has paid a total of 107 consecutive months of alimony. The Parties reached this resolution mid-way through the second day of trial after substantial evidence and testimony.

22. The Court finds this stipulation to be supported by the facts and the evidence. Accordingly, the Court finds the stipulation to be appropriate for ratification.

23. The Court has also heard the announcement on the record that the issues raised by the pleadings concerning the Wife's prayer for rehabilitative alimony and durational alimony have been completely resolved as noted above with stepped-down, **non-modifiable durational alimony** in the amount of \$4,500.00 per month for each consecutive month beginning September 1, 2021 and continuing through and including May 31, 2026, after which the amount shall be automatically reduced (stepped-down) to \$3,000.00 per month until the Husband has paid a total of 107 consecutive months, after which the durational alimony shall automatically terminate. This stepped-down durational alimony is in the best interests of the parties and the minor child involved and the fact that the parties have agreed to it as being non-modifiable as to both duration and amount is deemed by this Court to be appropriate under the facts and the evidence as presented at trial.

24. Life Insurance per Section 61.08(3): In view of the fact that the parties have agreed upon alimony payable to the Wife for support and maintenance for a period totaling 107 total months, the Court further finds that said alimony should be protected by a policy of life insurance which shall at all times material hereto, be maintained by the Husband on his life in the amount of One Million Dollars (\$1,000,000.00) naming the Wife as sole beneficiary in the event of the Husband's demise prior to the time that he has paid his entire alimony obligation. Said insurance shall also protect whatever child support the Husband is to pay to the Wife as and for the support and

maintenance of the minor child at issue herein. There shall, accordingly, be no need for a second life insurance policy. Said policy of insurance shall continue in full force and effect with proof thereof being provided to the Wife on an annual basis on the anniversary of this Judgment, that the policy is in good standing until the Husband is no longer to pay durational alimony, child support or any other financial obligation as directed by this Judgment. Once that event has occurred, the Husband may terminate the policy or in the alternative, have the Wife's name removed as sole beneficiary. At his discretion, the Husband may use any form of life insurance to fulfill this obligation under the Order, including but not limited to, "whole life", "term life", "universal life", or any combination thereof, or in the alternative, the Husband at his discretion, may use any other form of life insurance so long as the face value of the policy guarantees the Wife a One Million Dollar (\$1,000,000.00) payout upon his untimely demise. The Court finds evidence of special circumstances in support of life insurance to protect the alimony as follows:

- (a) Husband is a Pilot for American Airlines.
- (b) Husband has chosen to embark on world travel during a world-wide pandemic at risk to his person.
- (c) Husband has travelled during this litigation to Mexico, Belize, Croatia and has gone to the United Kingdom at least ten times by his own account.

(d) "Term Life Insurance" is readily available to the Husband through both his Union and his employer at reasonable costs according to the evidence. (See the 744-page Collective Bargaining Agreement submitted electronically).

(e) One-million dollars in life insurance is needed to protect the alimony award, as well as any child support the Husband is required to pay.

(f) The Husband's current income and his contractual yearly pay increases leave him with ample disposable income to pay for life insurance.

(g) Due to her sacrificing her career goals to help the Husband reach his, the Wife is ill-equipped to replace the alimony, should Husband die and would have to rely on Welfare or the generosity of others. Sager v. Sager, 291 So.3d 965 (4DCA 2020).

## **II. BRIDGE THE GAP ALIMONY**

25. In addition to the Wife's prayers for rehabilitative and durational alimony, in her Petition (docket #2) the wife also requested both lump sum and bridge the gap alimony, distinctive types of alimony, which statutorily, have specific purposes. [See Memorandum at docket #92].

26. The Wife has filed a detailed Memorandum concerning all forms of alimony requested in this case. [Docket #92]



27. The Court has taken judicial notice of the pleadings, including the Memorandum of Law on the issue of alimony. [Docket #92]

28. Bridge the gap alimony is to assist a party with certain, legitimate, short-term needs during the transition from being married to being divorced and is non-modifiable as to both amount and duration. Nugent v. Nugent, 225 So.3d 994 (5DCA 2017).

29. In the instant case, the Wife presented uncontroverted evidence concerning certain, legitimate, short-term needs she had as a direct result of her impending transition from being married to being divorced. Included in the testimony of Michael Mullen, a building contractor with over 40 years of residential and commercial building experience in the Volusia County area, were his opinions as to the cost of certain repairs needed to protect the health and safety of the Wife and child. The Husband offered no evidence to contradict these opinions. Mr. Mullen was cross-examined and supported his testimony, as well as his written report with factual, competent and substantial evidence. At the conclusion of his testimony, this Court admitted into evidence over the objection of counsel for the Husband, Mr. Mullen's report. [Wife's Exhibit 45]

30. Through the testimony of Mr. Mullen, the Wife established a need for immediate home repairs required for health and safety purposes in order to keep the residence (to be occupied by herself and the minor child of the

parties) in a habitable condition commensurate with the lifestyle enjoyed during the marriage.

31. These repairs are legitimate and constitute a short-term need brought about by the Wife's imminent transition from being married to being divorced.

32. The testimony was also uncontroverted that the Wife had already borrowed \$1,000.00 from her father in order to complete one of the needed repairs, the replacement of a household water heater. [Wife's Exhibit 46]

33. Both the testimony and the report of witness Michael Mullen [Wife's Exhibit 45] established the need for an additional \$18,535.00 in imminent repairs needed, including the repair and replacement of the well-pump and sprinkler system for \$1,350.00; a much needed roof replacement of \$12,250.00; exterior paint, caulking and weather-proofing/wood replacement for \$4,100.00; and other repairs totaling another \$835.00 for such things as the replacement of a broken window and correction of a poorly completed drywall repair in the garage. [Wife's Exhibit 45]

34. The testimony of both the Wife and her stepfather, Michael Weremay, who is in the process of purchasing the residence from the parties, was uncontroverted that both the Wife and the minor child of the parties intend to stay in the house located in the child's school district, under a lease to purchase agreement.

35. In addition to maintaining her lifestyle, the Wife has had a vested interest in maintaining the house as a valuable asset. This is yet another legitimate need on a short-term basis.

36. The Wife stated in her uncontroverted testimony that her 2011 Ford Edge automobile was badly in need of repair and/or replacement. Pursuant to the stipulations of the parties, her vehicle, worth only \$5,128.00 [Exhibit 22] has a lien of \$7,677.52. (Docket #82 at paragraph 1.F.(i)) and [Husband's Exhibit 20]

37. Accordingly, there is a legitimate, short-term need to replace said vehicle, brought about as a direct result of the imminent transition of both the Wife and the minor child from being in a marriage to being divorced.

38. The Wife will need reliable, safe transportation for herself and the minor child.

39. The Wife testified that she would need \$20,000.00 to get into a newer used car in order to keep her payments at the current \$273.74 amount.

40. Bridge the gap alimony to support these legitimate, short-term needs is required in order to do equity between these parties.

41. Accordingly, the Court finds that the Husband's 50% share of the net sale proceeds from the imminent/pending sale of the marital residence should be used as a one-time, lump sum payment to the Wife as and for bridge-the gap alimony to assist with a portion of these legitimate, short-term needs totaling almost \$40,000.00 that have been demonstrated by the Wife.

42. The Husband's share of the net sale proceeds is estimated to be approximately \$20,000.00 and should be distributed to the Wife at the time of the closing on the former marital residence as lump sum/bridge the gap alimony.

43. That transaction is outlined in Wife's Exhibit 25 and is scheduled to close within the next thirty days from this date. Southern Title, the title company handling the closing, shall be furnished a copy of this ruling and shall proceed accordingly.

### **III. LUMP-SUM ALIMONY**

44. The need for this form of alimony (lump-sum) has been obviated by the ruling of the Court in Section II above.

### **IV. WITNESS CREDIBILITY**

45. The Court finds that "Witness Credibility", while not an issue raised by the pleadings, is nevertheless required by the Florida Rules of Evidence as an essential consideration to be given great weight in guiding the Court to render an equitable judgment for the Parties.

46. The Wife called four (4) corroborating witnesses to support her assertions bearing upon the issues raised by the pleadings. To the contrary, the Husband called no corroborating witnesses.

47. The corroborating witnesses called by the Wife were:

- i. Kerri Korros;
- ii. Michael Mullen;
- iii. Michael Weremay; and
- iv. Wayne Smith.

48. Both Parties also testified and therefore, the credibility of the Parties as witnesses is a factor to be considered by the Court.

49. James Huftalen testified to a number of facts on which he relied for his positions and assertions as to the issues raised. The Court found discrepancies on a number of the Husband's claims as compared to documentary evidence and the testimony of credible witnesses. These discrepancies include, but are not necessarily limited to, the following:

a. Husband testified that he had "never before the trial heard the Wife express a desire to become a nurse." This claim was discredited and is contrary to the testimony of Kerri Korros (who the Court found credible), as well as the testimony of both Michael Weremay (who the Court found credible) and the Wife. In fact, Kerri Korros gave substantial, competent testimony that the Wife had expressed desire to become a nurse openly during discussions in the presence of the Husband both before and after the Parties married. Ms. Korros, who had been a friend to both Parties from prior to their marriage gave a very credible account of these conversations. The Husband's testimony was not worthy of belief.

b. The Husband also testified that he obtained an "emergency loan" from the "Allied Pilots Association", which he claimed was needed to meet his 2020 expenses. The Court finds this claim to lack credibility in view of the Husband's 2020 Federal Income Tax Return, which

showed the Court that the same year he claimed he needed \$10,000.00, he had "adjusted gross income" of One Hundred and Sixty-Eight Thousand and Fifty-Two Dollars (\$168,052.00).

c. The Husband's credibility was further eroded during cross-examination by Wife's counsel when the Husband conceded he had "cashed" the \$10,000.00 check from the Pilot's Association loan, which he stated as an explanation as to why it did not appear on any bank deposit, however, when further pressed, he could not explain what he had spent the money on and had no receipts supporting his claim. Therefore, the actual use of the \$10,000.00 loan is questionable, and Husband's claim is not worthy of belief.

d. The Husband was also evasive under cross-examination and could not explain why a document he had proffered in evidence [Husband's Exhibit 33] was, on its face, showing the loan from the Allied Pilots Association being received in October of 2020, but the note was not signed by the Husband until May 6, 2021. The lack of an explanation of this discrepancy by the Husband in view of the Wife's objection to the document and as to the loan being included as a marital debt, draws the validity of the Husband's claim concerning the loan into question and certainly further damages Husband's credibility as a witness.

e. Of perhaps the greatest concern to the Court when looking at the Husband as a witness, is the fact that throughout the pendency

of the litigation, the Wife's attorney requested production of the Husband's work contract and his Collective Bargaining Agreement on four (4) separate occasions over an eleven-month period. When asked, the Husband could not explain why he waited until five (5) business days before the trial to give his own attorney a 477-page Contract and Collective Bargaining Agreement in order to have it turned over to counsel for the Wife. This is disingenuous and certainly reflects badly on the Husband's credibility.

f. The Husband also testified initially that his average of six overnights per month with his daughter during the course of the divorce litigation was due to difficulties scheduling things with the Wife. This claim was inconsistent with the greater weight of other substantial, competent and credible evidence. For example, the Husband conceded that in addition to being a pilot and having to travel for work, he also traveled out of the Country to England on at least ten occasions, usually staying between three and five days; as well as one ten-day vacation in Croatia; a nine-day trip to Mexico in December, 2020 and a later trip to Belize in 2021. The Husband also conceded that during the three-month period of time he was hosting his paramour, Diana Gharbieh, at his Port Orange apartment while she visited him from London, England, they had traveled extensively, including trips to Rhode Island, Nashville Tennessee, Dallas Texas, Phoenix Arizona, Miami Florida and one trip to

Belize. The Husband also conceded that except for the Wife withholding the child from him during a mandatory fourteen-day quarantine in the early stages of this case, the Wife had usually agreed to the schedules he sent her. Therefore, the Court finds Husband's testimony that his limited overnights were due to the actions of the Wife to lack credibility. Despite the fact that the Parties reached resolution during the trial as to issues bearing upon the child, the evidence and testimony demonstrating discrepancies in the Husband's claims, are nevertheless relevant to the case for purposes of determining credibility.

g. As previously noted, the Husband unilaterally withdrew \$65,000.00 dollars over the Wife's objections from a \$98,650.00 asset. Much of the Husband's testimony during his attempt to justify this unilateral decision demonstrated a lack of credibility. As noted, prior, the Husband's attempted justification for this action was an impending "possibility" that he "may be laid off or furloughed". The fact that it later came out that the Husband had the Zero Timeline Program available to continue working, and that the airline never laid him off, nor did he ever miss a paycheck, proved the reality of the situation, which was that the Husband merely wanted control of the money and wanted to deprive the Wife of her \$49,325.00 share of the asset by depleting it. The entire topic of the \$65,000.00 withdrawal is in fact, demonstrative



of Husband's disingenuous claims and therefore, damages the Husband's credibility.

h. The Husband also testified that he had unilaterally chosen not to respond to the request by Wife's attorney to produce his work schedule for the previous year. The Husband's only explanation for this wonton and willful violation of the Rules of Discovery was that he claimed that his "status" as a Federal Flight Deck Officer made his previous years scheduling off limits to discovery. The Court finds this to be completely unworthy of belief, particularly in view of the fact that the Husband's schedule was of critical importance to issues relating to child support, shared parenting time, exclusive use of the residence raised by the Wife and other such issues. The Court notes that pilot's schedules are frequently entered into evidence in cases involving pilots.

i. The Husband also testified and claimed within his pleadings, that he had been "kicked out of the house." This claim was disproved by substantial, competent evidence testified to at trial by Michael Weremay (who the Court found credible), as well as the Wife (who the Court also found credible). What is of significance is the fact that the Husband claims to have been "kicked out of the house" not by the Wife, but by her mother and only after he admittedly was already packing his belongings after having informed the Wife that he "no longer loved her, was not attracted to her, and was moving out". The Husband's own

testimony also demonstrated that for months before the final breakup of the marriage, he had already been exploring alternative living arrangements for himself in the Volusia County/Port Orange area. The Court finds the fact that the maternal mother-in-law may have yelled at the Husband to "get out" was certainly not the reason why he left. His claims to the contrary are not worthy of belief. Rather, the fact that he had been seeking alternate living arrangements, the fact that he told the Wife that he no longer loved her and wanted a divorce, the fact that he admitted to an adulterous affair and the fact that the Husband was already in the process of packing his belongings to leave before the mother-in-law uttered the words, clearly demonstrates that the greater weight of the evidence, and certainly the most credible reason for his departure, was his own decision to do so. This should also be taken in light of the fact that by the testimony of Michael Weremay, the Wife and Kerri Korros, it was well-established that the Parties had been working for years towards a goal where they would be financially independent because the Husband had received significant increases in compensation resulting from his employment with a major airline. The Husband's departure within ten (10) days after receiving the increase in pay he had been anticipating, is certainly demonstrative of the Husband's prior intent and planning to leave.

j. The Court also looks to the testimony of Kerri Korros for another important piece of evidence concerning the Husband's disingenuous behavior and lack of credibility. Ms. Korros, who, while disillusioned with the Husband was nevertheless, candid and credible before the Court, testified as to an anecdotal incident, during which the Husband lied to his family, his Wife, Ms. Korros and those persons gathered at the marital home for Christmas, about the need to leave for a short period. The Husband's excuses were both calculated for his benefit and untrue in view of the fact that his actual purpose for departing was to go to an isolated location, take a photograph of himself and to send it to a female acquaintance, surreptitiously on his telephone. These events came to light after the woman who had apparently received his self-admiring photograph, sent a responsive text to Mr. Huftalen after he had returned home and had set his telephone down within view of others.

k. Of similar importance are the numerous, extra-marital affairs carried out by the Husband during the course of the marriage, to which he admitted during deposition. As to these affairs, he admitted that he had lied to the Wife and hid the truth. He also conceded that although he was seeing Diana Gharbieh, he was still "attempting to "hook-up" on Tinder, thereby making his actions towards Ms. Gharbieh

to be equally disingenuous. Evidence of Husband's general lack of candor demonstrates that his credibility is questionable.

50. Based upon these credibility factors and others of lesser importance, the Court finds that Mr. Huftalen's testimony was generally lacking in credibility and was at times, unworthy of belief.

51. With respect to the testimony of the Wife, this Court did not notice any circumstances which would be indicative that the Wife was being untruthful or disingenuous. Even under cross-examination by counsel for the Husband, the Wife's testimony was at all times given in an even, candid and truthful manner. She neither exaggerated her role as a housewife and mother during the Husband's career development, nor did she dramatize or exaggerate about the long-standing goals of the family and her efforts to support the Husband's goals. The Wife was also accurate when testifying as to figures that could be verified through other documentary evidence presented to the Court. To this end, the Court was favorably convinced by the Wife's testimony during cross-examination concerning the gradual increases on her Financial Affidavit as to the costs of living and additional financial burdens that were added and/or increased. The Wife was also extremely credible with respect to describing the Husband's cavalier attitude about traveling back and forth between the United States and London, England, even during periods when London was on lock down, and he could only enter that Country by showing his credentials as a pilot. To this end, the

disparate positions of the parties with respect to travel and their minor child were also convincingly testified to by the Wife. For his part, the Husband seemed to merely be telling the Court that the child should be allowed to travel out of the Country because he wanted her to “experience the world”. The Court has some concern not only about the COVID-19 virus and its variants, but also that both the Husband and the Wife conceded that the child does not even like to get in the car to go to Disney World. As to this item, therefore, the Court foreshadows its decision to deny the Husband’s request for decision-making authority concerning travel outside the Continental United States. Those decisions will be left up to the Wife until further Order of the Court.

52. The Court finds with respect to the Parties as witnesses, that the Wife’s testimony was credible and worthy of belief.

## **V. EQUITABLE DISTRIBUTION**

53. This Court next turns its attention to the facts and circumstances bearing upon the equitable distribution of the assets and liabilities of these parties as of the date of filing.

54. Each of the parties has submitted to the Court, a chart and equitable distribution plans. [Docket #'s 96, 101, 102, and 103]

55. As noted above, the Court has chosen to grant the Wife’s prayer for bridge the gap/lump sum alimony in order to address an imminent, legitimate need during the Wife’s transition from being married to being divorced. Therefore, the \$40,000.00 projected, net proceeds from the sale of

the former marital residence has been eliminated as an asset subject to distribution.

56. The Court finds that pursuant to the Joint Stipulation as to Pretrial Issues [Docket #82] the Parties had an asset described as the "American Airlines 401k" worth \$98,650.00 on the date of filing.

57. According to the stipulation adopted here as a finding, [Docket #82] the Husband withdrew \$65,000.00 from that account after the filing of the Petition over the Wife's objections. [See Docket #82 at Section 1G(i), page 4] (and Husband's deposition testimony) [Wife's Exhibit 2].

58. The Husband testified that he withdrew this sum due to his concern that he "may be laid off or furloughed" during the COVID-19 pandemic of 2020.

59. The Husband's claim he needed \$65,000.00 lacks credibility because documentary evidence and testimony at trial showed that the Husband was in fact, not laid off and although furloughed for a short time between November, 2020 and the beginning of January, 2021, managed to continue flying for the same airline under a program called "Zero Timeline". (See Wife's Exhibit 2 at pages 251 through 254).

60. Husband's 2020 W-2 form from his employer, American Airlines, showed Social Security income during calendar year 2020 of \$106,935.89. [Wife's Exhibit 9] This was a substantial increase in income which created uncontroverted evidence that disproved Husband's testimony that he needed

the \$65,000.00 to pay his ongoing household expenses for his household and the household of the Wife and child. Husband's claim that he "needed the \$65,000.00 for household expenses" is therefore, not worthy of belief.

61. Similarly, the Court finds that the Husband's 2020 personal Income Tax Return [Wife's Exhibits 12 and 44] showed that he reported the \$65,000.00 withdrawn from the 401k as income that year. The Court, therefore, further finds that the Husband used an existing marital asset worth \$98,650.00 on the date of filing and converted \$65,000.00 of it to his own personal income, thereby depleting that asset.

62. Husband testified at trial that he paid \$11,000.00 as an immediate penalty for the early withdrawal and set aside another \$14,000.00 which he would be required to pay the IRS in taxes on the \$65,000.00 income.

63. This latter tax obligation was also demonstrated by documentary evidence supplied by both Parties, [Wife's Exhibit 11] which was four (4) IRS form 1040-ES Payment Vouchers for \$3,442.00 each, totaling \$13,768.00 in taxes paid in 2020 on the \$65,000.00 he unilaterally chose to withdraw.

64. Accordingly, the Court finds that the Husband's unilateral decision cost the Parties \$24,768.00 in squandered assets as a direct result of his unilateral decision to withdraw funds from the "American Airlines 401k for Pilots" over the objections of the Wife which she made prior to the withdrawal.

65. This constitutes and the Court so finds that the Husband perpetrated/committed an intentional dissipation of marital assets as defined by Section 61.075(1)(i) (Fla. Stats. 2020).

66. On the trial date, the Husband testified, and the Parties stipulated, [Docket #82] that he had deposited \$30,000.00 of the sum he withdrew into a personal savings account at Chase Bank and another \$28,500.00 into a personal checking account, also at Chase Bank. The Husband also conceded that \$6,500.00 of the funds withdrawn from the 401k was converted for his own use for which he had no accounting according to his testimony at trial.

67. For his part, the Husband testified about specific household bills he paid which, when added together, only added up to approximately \$13,000.00 for "household expenses for both his own household and that of the Wife's, including the needs of the Wife and child during the divorce" and a portion of his attorney fee.

68. The Court further finds, however, that this claim on the part of the Husband is merely an **artifice** because the Husband offered no testimony or evidence to explain why his greater earned income in calendar year 2020 (\$106,935.89) could not have paid all of the "household bills for both Parties".

69. The Court will take into consideration as part of the equitable distribution plan to be ordered, the factor of the Husband's dissipation, waste and depletion of a marital asset within two (2) years prior or after the filing of the Petition herein. (See Florida Statute Section 61.075(1)(i)).



70. The Court will also take into consideration, the finding that Husband's testimony concerning this withdrawal is not worthy of belief and lacks credibility.

71. The Court finds that the appropriate, applicable caselaw with respect to the \$65,000.00 withdrawal states the following:

"If a spouse intentionally dissipates a marital asset, the trial court has the authority and discretion to assign the dissipated asset to the dissipating spouse." Martinez v. Martinez, 219 So.3d 259 (5DCA 2017).

72. The dissipated portion of the "401k for Pilots" in the amount of \$65,000.00 is therefore awarded to the Husband and will be balanced by an award of equal value comprising other assets to the Wife.

73. The Court next addresses the \$10,000.00 loan the Husband testified he obtained from the Allied Pilots Association. (See paragraph 49.b. above).

74. This is not a marital debt. Further, the debt itself is suspect due to the discrepancies noted in the documentation submitted by the Husband and admitted into evidence by the Court over the objections of counsel for the Wife. This debt will not be considered in the equitable distribution scheme below, since the Husband unilaterally obtained the loan after separation and testified that he "cashed the check" rather than depositing it into an account that could be documented and then "spent it on items he could not account for". Young v. Young, 677 So.2d 1301 (5DCA 1996).

75. As to the assets and liabilities associated with the respective automobiles, the Court leaves the Parties as the Court found them. Specifically, the Husband shall be responsible for the debt which he both testified to and listed on his Financial Affidavit as a "lien" on the 2016 Volvo automobile. Similarly, the Wife shall be responsible for the \$7,677.52 loan on the Ford Edge, which shall remain her asset. Any disparity between the value of the asset received and the lien on that asset shall not be considered in view of the nebulous circumstances with regard to trading and acquiring the vehicles.

76. Using the Husband's equitable distribution chart filed during the Trial [docket number 101], the Court makes the following distributions after removing: a) the proceeds from the marital home; b) any disparities with respect to the automobiles; and (c) the \$10,000.00 APA loan from the equitable distribution scheme for the reasons previously stated.

77. (1) **ASSETS:**

a. The Husband will receive the \$65,000.00 portion he unilaterally removed from the 401k for Pilots account. [Martinez, supra]

b. The Wife will receive the remaining \$33,650.00 balance of the 401k for Pilots, which shall be distributed to her by separate Court Order (QDRO), the cost of which shall be equally divided between the Parties.

c. The Wife will also receive the TIAA 401k worth \$9,899.33, which shall be distributed to her by separate Court Order (QDRO), the cost of which shall be equally divided between the Parties.

d. Husband will retain the \$62.84 PSA Fidelity 401k account as his sole property.

e. Husband will receive the weight bench, exercise equipment, tools and the dresser located in the garage of the former marital residence (which shall be removed by the Husband within thirty (30) days of the date of this Final Judgment.

f. With respect to the two accounts currently held in the sole name of the Husband in the Chase Bank, the Court finds that both the Husband's testimony and the stipulation entered into by the Parties prior to trial, (which was filed as a Joint Pretrial Stipulation, [docket #92] represents the remaining balance of the \$65,000.00 unilaterally withdrawn from the 401k for Pilots already awarded to the Husband, and will therefore, remain as his part of that distribution. For purposes of this equitable distribution scheme, the Court notes that the Joint Pretrial Stipulation as to Issues [Docket #92] listed the Chase savings account as having \$19,084.11 and the checking account as having \$14,681.72. The Court shall take these values as stipulated facts according to that document. [See docket number 92, at subparagraph 1.I.i and ii on pages 7 and 8 of the document]. Because these two

accounts represent the remaining balance of the \$65,000.00 withdrawal already awarded to the Husband, these amounts shall not be separately calculated into the assets being received by the Husband a second time.

g. The Wife shall retain as her sole property and possession, the remainder of the household furniture and fixtures currently in the former marital residence. Note: The Parties have previously stipulated that the personal property items will not be assigned values for equitable distribution purposes.

(2) **LIABILITIES-HUSBAND:** The Husband shall be responsible for the following marital debts and shall hold the Wife harmless therefrom:

- a. Husband's Chase account ending in 0616 -  
balance: \$7,007.23.
- b. Husband's Barkleys account ending in 0131 -  
\$9,942.23.
- c. Husband's American Express account ending in 31005  
- \$5,085.51.
- d. Joint Vystar account ending in 2415 - \$19,386.38.
- e. Husband's Vystar account ending in 6922 - \$5,740.28.

**Total:** \$47,161.63

In order to do equity and provide justice for these Parties under the circumstances of this case, the Husband shall hold the Wife harmless from

these debts and shall protect her credit and in so doing, shall be responsible for any attorney fees she may incur in either the enforcement or the defense of any claim against her by these creditors.

(3) **LIABILITIES-WIFE:** The Wife shall be responsible for the following marital debts and shall hold the Husband harmless therefrom:

- a. Discover card ending in 5548 - \$6,434.72.
- b. USAA account ending date May 15, 2020 - \$53.36.
- c. Paypal account ending March 6, 2020 - \$965.72.
- d. Michael Weremay debt - \$21,300.00.
- e. John Thomas debt - \$9,500.00.

**Total: \$38,253.80**

78. The above-described distribution of assets and liabilities leaves the Wife with a net (assets minus liabilities) of \$5,296.08 and the Husband with a net of \$17,963.00, resulting in a difference between the parties wherein the Husband receives \$12,604.00 more than the Wife, which must be cured by the Husband making a one-time, equalizing payment of \$6,302.75, within thirty (30) days of the date of this Judgment.

79. As for the findings concerning the equitable distribution scheme, the Court notes that the monthly payments listed on the respective Financial Affidavits of the Parties with respect to the liabilities, reveals that the Husband will have ample income to continue paying the monthly payments while the

Wife will undoubtedly struggle with hers. For this reason, the equalizing payment of \$6,302.75 represents the most equitable method of doing justice by these Parties. The Wife may utilize this one-time payment to entirely liquidate one or more of her debts in order to ease her monthly burden.

80. Finally, with respect to the equitable distribution scheme, the Court finds that just prior to leaving the Wife, the Husband unilaterally chose to “consolidate” both his own non-marital debt and some marital debts into a Vystar account ending in 2415. The Husband shall therefore be compelled, in order to “best achieve equity and justice for these Parties” to pay in full the Vystar account ending in 2415, out of the liquid assets he has received and shall show proof that said account has been closed or that the Wife’s name has been removed within thirty (30) days of this Judgment, in order to best protect the Wife’s future credit.

#### **VI. RESTORATION OF WIFE’S MAIDEN NAME**

81. The Wife included in her Petition, a prayer for the restoration of her maiden name. The Wife has now withdrawn that request and accordingly, the Court finds that the Wife’s name shall hereafter be JULIENNE JADE HUFTALEN.

#### **VII. PARENTING PLAN AND TIMESHARING SCHEDULE**

82. This Court finds that the Parties placed documents into evidence and testified before the Court, about substantial and competent evidence

necessary for the Court to make its ruling with respect to the minor child of the Parties.

83. The Parties had one minor child of this marriage, to wit: E.H.

84. During the second day of trial, the Parties reached an amicable resolution as to the majority of the issues concerning their minor child. [Docket number 104].

85. The Court finds, based upon the substantial, competent evidence submitted that the Parenting Plan and Timesharing Scheduled filed in the Court file at docket number 104, is in the best interests of the minor child of the Parties and also serves the best interests of the Parties hereto. The Parenting Plan and Timesharing Schedule executed by the Parties and dated August 10, 2021, is hereby ratified and approved and is accordingly, attached hereto, made a part hereof, and incorporated herein by reference as though fully set forth in this Final Judgment.

86. The Court notes that the Parties stipulated that they had resolved all parenting issues and/or issues relating to their child, as reflected in docket number 104 with the exception that they could not reach accord as to which Party would have decision-making authority with respect to the future international travel of the minor child out of the continental United States. The Court therefore heard specific testimony as to this issue and further, took judicial notice of the current status of foreign travel with respect to the current "Delta variant" of the COVID-19 virus. The Court found that the Husband had

exercised poor judgment with respect to exposing the child to potential COVID infection by traveling out of the country to England (at times when the Country was locked down); Croatia; Mexico and Belize, after which the Husband had expectations to immediately exercise his contact with the minor child. The Husband in fact complained that this was the one time that he could say the Wife refused to allow him to see the child by denying him access until he had completed the mandatory fourteen-day quarantine. The Court also heard testimony from both Parties that their child is reluctant to travel and in fact, according to the Wife, is such a homebody, that the minor child resists even getting into an automobile to drive approximately sixty miles to go to Disney World. The Wife seems attuned to the child's needs and the wisdom of protecting the child. Accordingly, the Court finds that the child shall not be allowed to travel out of the continental United States until further Order of the Court and further finds it is in the best interests of the minor child for the Wife to have sole decision-making authority with respect to when and where the minor child travels out of the continental United States. The Court does note, however, that the Wife shall not unreasonably deny out of the Country travel, once the pandemic has ceased to be a threat and the minor child has reached an age where she can be relied upon to reach out and call for help when she is in danger.



### **VIII. ATTORNEY FEES, SUIT MONIES AND COSTS**

87. As noted in the Alimony section (paragraph 7 above), the Wife placed before the Court, substantial, competent evidence proving that between January 1, 2016 and the first 166 days of 2021, the Husband has earned 95.89% of the total income of the Parties. [See paragraphs 7-12 above.] The Wife has also demonstrated, through the entry into evidence of Promissory Notes [Wife's Exhibits 31 and 32], as well as through the Wife's testimony, that she has incurred substantial debt with respect to her attorney fees and costs and that in addition, she owes her attorney considerable sums. The Court has also taken into consideration, the Wife's relative lack of an ability to earn a sufficient income necessary to contribute towards her fees until sometime in the distant future when she finally completes nursing school and even then, the Court has doubt that the Wife will be completely free of the need to have the Husband contribute to her attorney fees. For his part, the Court finds that the Husband has a substantial income which will continue to increase on April 13, of each year, pursuant to his contractual arrangement with the airline where he works. [Wife's Exhibit 26] (and Husband's trial testimony). The Court also takes into consideration, the testimony both in the Husband's deposition and at trial, which revealed that the Husband has sufficient disposable income and financial ability to travel between the United States and England, at least ten times during the divorce litigation, as well as traveling (as noted above) to Croatia, Mexico and Belize, and had ample

income to host his new significant other, Ms. Diana Gharbieh of London, England, for a period of three months, during which the Husband and Ms. Gharbieh also traveled extensively within the continental United States. These factors demonstrate that not only has the Husband had the ability to maintain his lifestyle during the dissolution but has actually improved and enhanced that lifestyle in many ways and on many occasions. These facts clearly demonstrate that the Husband has the ability to contribute to the Wife's attorney fees.

88. Accordingly, the Court finds that the Wife has, by substantial and competent evidence, demonstrated that she has an actual need for financial assistance with respect to her attorney fees and that the Husband, who has the vastly superior income and earning ability, is financially capable of paying those fees.

89. By request of counsel for the Husband, the amount of attorney fees to be awarded was not included as part of the evidence presented at trial in this matter.

90. Rather, the Court stated at the pretrial conference, that it would schedule a separate hearing to determine the amount of fees to be awarded, as well as the amount of any costs being sought by the Wife within thirty (30) days of this Final Judgment. Accordingly, this Judgment shall not include an amount of attorney fees to be paid by the Husband to the Wife, however, the Court does specifically find that the fees to be awarded were incurred either

through litigation of alimony, maintenance or support issues or were incurred through litigation of issues so tied in with the obligation of support as to be in the nature of being inexorably intertwined. Segall v. Segall, 708 So.2d 983 (4DCA 1998).

91. Because of this stipulation announced at the pretrial conference, the amount of fees to be awarded shall be determined separately and shall be the subject of a separate Court Order.

**ON THESE ABOVE FINDINGS, IT IS ORDERED AND ADJUDGED AS FOLLOWS:**

1. **JURISDICTION:** This Court has jurisdiction over the subject matter and the Parties hereto, including the minor child, E.H.

2. **DISSOLUTION OF MARRIAGE:** The marriage between the Parties is hereby dissolved because it is irretrievably broken.

3. **WIFE'S NAME:** The Wife's name, to wit: JULIENNE JADE HUFTALEN, shall not be restored to her maiden name and accordingly, she shall continue to be known as JULIENNE JADE HUFTALEN.

4. **CHILD/CHILDREN:** There was one child born as issue of this marriage, to wit: E.H., whose date of birth is August 24, 2014. The Court incorporates herein, attaches hereto, and makes a part hereof, the Parenting Plan and Timesharing Agreement entered into by the Parties as though it were fully set forth in this Judgment. The Parties are hereby ordered to comply

with all of the terms and conditions contained therein subject to the contempt authority of this Court.

**5. DECISION-MAKING AUTHORITY/INTERNATIONAL TRAVEL BY CHILD:** Pursuant to the findings contained within paragraph 86 above, the Court hereby orders that the Wife shall have sole decision-making authority with respect to when and where the minor child travels out of the continental United States. The Wife shall not unreasonably deny out of country travel once the pandemic has ceased to be a threat and the minor child has reached an age where she can be relied upon to reach out and call for help when in danger. The Wife's sole decision-making authority shall remain in full force and effect until further Order of this Court.

**6. DURATIONAL ALIMONY:** The Parties reached an accord concerning the Wife's request for durational and rehabilitative alimony and the Court hereby ratifies that accord as follows:

a. Beginning September 1, 2021, (nunc pro tunc) the Husband, JAMES MATHEW HUFTALEN, JR., shall pay to the Wife, JULIENNE JADE HUFTALEN, the sum of Four Thousand, Five Hundred Dollars (\$4,500.00) per month, through and including May 31, 2026.

b. Beginning June 1, 2026 and continuing until the Husband has paid in full, a total of 107 consecutive months of durational alimony, the Husband, shall pay to the Wife, the sum of Three Thousand Dollars (\$3,000.00) per month.

c. Provided that the Husband has not missed payments and has made consecutive monthly payments of durational alimony, between September 1, 2021 and continuing for 107 consecutive months, he shall be obligated to pay until April 31, 2030, after which, provided that the Husband has made all of his payments in full, the durational alimony shall automatically cease. The Court hereby directs that this durational alimony shall be non-modifiable both as to duration and amount. Accordingly, the duration for each of the two, separate amounts, shall also be non-modifiable, provided that the Husband has made all of his payments in full on a timely basis. The durational alimony shall also be terminable upon the death of either Party.

7. **BRIDGE-THE-GAP ALIMONY:** The Husband, JAMES MATHEW HUFTALEN, JR., shall execute whatever documents are necessary to transfer all of his right, title and interest in the net proceeds from the sale of the former marital residence to the Wife, a sum of approximately \$20,000.00, as and for bridge-the-gap alimony in order to serve a legitimate short-term need brought about by the Wife's imminent transition from being married to being divorced.

8. **LIFE INSURANCE PER SECTION 61.08(3) FLA. STAT.:** The Husband, JAMES MATHEW HUFTALEN, JR., shall continuously carry a policy of life insurance with a face value payout of One-Million Dollars (\$1,000,000.00) naming the Wife as sole beneficiary in the event of the Husband's demise, prior to the time that he has paid his entire alimony obligation. Further, the

insurance shall remain in full force and effect so long as the Husband is obligated to make support payments of any type in this action. The Husband shall show proof that the insurance is valid and has continuously been in force each year, on the anniversary date of this Judgment.

9. **OTHER FORMS OF ALIMONY:** Because of stipulations entered into by the Parties, the Wife waived permanent periodic alimony and the Court hereby determines that permanent periodic alimony would not be appropriate in this action. Similarly, because the Parties stipulated to durational alimony, the Wife abandoned her claim for rehabilitative alimony in view of the fact that the non-modifiable, durational alimony will continue beyond the date of her projected graduation from nursing school. Except as to the durational alimony and bridge-the-gap alimony ordered herein, the Court rules that no other forms of alimony would be warranted or appropriate in this action now or in the future.

10. **AUTOMOBILES/VEHICLES:** The Husband shall receive as his sole property and possession, the 2016 Volvo automobile as well as the non-marital 2004 Harley Davidson motorcycle. The Husband shall take with the Volvo automobile, any lien on that vehicle which he represented to exist both in his Financial Affidavit and his testimony. The Wife shall receive as her sole property and possession, the 2011 Ford Edge automobile, together with any lien or obligation thereon. Each of the Parties are hereby ordered to hold the

other harmless from any obligation on the respective vehicle they are receiving.

11. **EQUITABLE DISTRIBUTION:** For the reasons set forth in the above findings, the Court hereby orders and adjudges that the Parties shall receive the following assets and liabilities:

**I. ASSETS**

A. Husband: The Husband shall receive in his equitable distribution, the Sixty-Five Thousand Dollar (\$65,000.00) portion of the American Airlines 401k, for Pilots that he withdrew after the filing of the Petition herein. Accordingly, the Husband shall retain his Chase Bank savings account in his name alone, as well as his Chase Bank checking account in his name alone, which represents the remaining funds from that \$65,000.00 withdrawal.

The Husband shall also receive the PSA Fidelity 401k account with Sixty-Two Dollars and Eighty-Four Cents (\$62.84), as well as the weight bench and exercise equipment, tools and the dresser located in the garage of the former marital residence, each of which shall be removed by the Husband within thirty (30) days of the date of this Judgment.

B. Wife: The Wife shall receive as her sole property and possession, the remaining Thirty-Three Thousand, Six Hundred and Fifty Dollars (\$33,650.00) balance in the 401k for Pilots, which shall be distributed to her by separate Court Order (Qualified Domestic Relations Order), which shall be

arranged by the Parties through their respective counsel, the cost of which shall be equally divided between them.

The Wife shall also receive the TIAA 401k worth Nine Thousand, Eight Hundred and Ninety-Nine Dollars and Thirty-Three Cents (\$9,899.33), which shall be distributed to her by separate Court Order (Qualified Domestic Relations Order), to be arranged by the Parties through their respective counsel, the cost of which shall be equally divided between them.

## **II. LIABILITIES**

A. Husband: The Husband shall receive the following debts which shall be his sole responsibility and for which he shall hold the Wife harmless.

1. The Chase account ending in 0616 with a balance of: \$7,07.23.
2. The Husband's Barkleys account ending in 0131 with a balance of \$9,942.23.
3. The Husband's American Express account ending in 31005 with a balance of \$5,085.51.
4. The joint Vystar account ending in 2415 with a balance of \$19,386.38.
5. Husband's Vystar account ending in 6922 with a balance of \$5,740.28

**Total: \$47,161.63.**

B. Wife: The Wife shall be responsible to the following marital debts and shall hold the Husband harmless therefrom:

1. Discover Card ending in 5548 with a balance of \$6,434.72.
2. USAA Account ending as of May 1, 2020, with a balance of \$53.33.



3. PayPal Account as of March 6, 2020, with a balance of \$965.72.
4. Debt to Michael Weremay in the amount of \$21,300.00.
5. Debt to John Thomas in the amount of \$9,500.00.

**Total: \$38,253.80**

The above-described distribution of assets and liabilities leaves the Wife with a net (assets minus liabilities) of \$5,296.08 and the Husband with a net (assets minus liabilities) of \$17,963.00, resulting in a difference between the Parties wherein the Husband receives \$12,666.92 more than the Wife, which must be cured by the Husband making a one-time, equalizing payment of \$6,333.46 within thirty (30) days of the date of this Judgment. It is ordered and adjudged that the Husband shall make this payment because it is the most equitable way of doing justice by the Parties.

C. Special Provisions Concerning Vystar Account Ending In 2415:  
During the Course of the trial, and during the depositions of the respective Parties, it became apparent that the Husband had, without the consent or knowledge of the Wife, consolidated a considerable amount of his non-marital and marital debt into an account on which the Wife's name appears as an obligor. In order to do justice and equity for the Parties, it is the Order of this Court that the Husband shall utilize some of the liquid assets that he is receiving to pay off this entire debt obligation on which the Wife's name appears as an obligor. The Husband may either show proof within thirty (30) days that the account has been paid in full and closed or in the alternative, to

show proof that he has made other arrangements and that the Wife's name has been removed from the account as an obligor. McClelland v. McClelland, 318 So.2d 160 (Fl. 1DCA 1975).

12. **CHILD SUPPORT:** The Husband, JAMES MATHEW HUFTALEN, JR., shall pay to the Wife, JULIENNE JADE HUFTALEN, the sum of \$334.17 per month as and for support and maintenance of the minor child, beginning on the first day of September, 2021, (nunc pro tunc), and continuing until the minor child for whom the support is being paid, marries, dies, or becomes emancipated by any other means. (Wife's Child Support Guidelines Worksheet attached hereto as Exhibit 1).

13. **ATTORNEY FEES, SUIT MONIES AND COSTS:** It is hereby ordered and adjudged that the Husband, JAMES MATHEW HUFTALEN, JR., shall be responsible to pay a portion of the Wife's attorney fees and costs, because she has demonstrated through substantial, competent evidence, a genuine need for financial assistance in order to pay her fees and through depositions, evidence and the testimony offered during trial, the Wife has also demonstrated through substantial, competent evidence, that the Husband has sufficient financial resources and income and is therefore in a position where he is financially able to pay for a portion of the Wife's attorney fees and costs. The amount of attorney fees and costs shall be ordered by separate Order after the Court conducts a further evidentiary hearing on the sole issue of the

Wife's attorney fees, which shall be scheduled within thirty (30) days of the date of this Judgment.

14. **RETAINED JURISDICTION:** With the exception of the dissolution of marriage granted herein, this Court hereby retains jurisdiction over the subject matter and the Parties hereto to enter such additional Orders as may from time to time, become necessary in order to do equity and justice between the Parties. The Court shall retain jurisdiction for the purpose of conducting evidentiary and/or legal argument for the purpose of enforcement, modification or clarification. The Court further orders that in the event that either Party must seek enforcement through the Courts of the terms and conditions of this Final Judgment, the Party seeking enforcement in any form shall be entitled to reasonably incurred attorney fees and costs associated with those proceedings should they prevail.

**DONE and ORDERED** in Chambers, at Daytona Beach, Volusia County, Florida, this \_\_\_\_\_ day of September, 2021.

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HONORABLE STASIA WARREN  
CIRCUIT JUDGE

cc: Eric K. Neitzke, Esquire, [neitzkelaw@gmail.com](mailto:neitzkelaw@gmail.com)  
Jared Frankel, Esquire, [jfrankel@frankelfamilylaw.com](mailto:jfrankel@frankelfamilylaw.com)  
Julienne Jade Huftalen, Petitioner/Wife  
James Mathew Huftalen, Jr./Respondent/Husband