

Benjamin J. Rich

[REDACTED]

(904) 501-8683

Mr. Terrence M. White, Chair
Seventh Circuit Judicial Nominating Commission
1400 Hand Avenue, Suite D
Ormond Beach, FL 32174

Dear Mr. White and Honorable Commissioners,

Thank you very much for your service and consideration of my application for Circuit Court Judge. I believe that my accomplishments and record as an attorney, prosecutor and managing attorney for the Office of the State Attorney in St. Johns County are indicative of my preparedness for the challenges of serving as Circuit Court Judge. I have litigated cases throughout the Seventh Judicial Circuit while in private practice as well as an assistant state attorney. The cases that I have handled in my career have been diverse. I have represented clients in county civil matters, circuit civil matters, family law, landlord/tenant, civil traffic, and all levels of criminal matters.

I am committed to diligently and honorably serving the people of Seventh Judicial Circuit and all those who enter the doors of the courthouse. My ties to this community are profound. I have lived in St. Johns County since the age of fifteen and have chosen to raise my family here. I am a graduate of St. Augustine High School and St. Johns River College. Even while attending the University of Central Florida and Florida Coastal School of Law, I chose to commute rather than move out of the Seventh Circuit. Simply, my life is here in the Seventh Circuit and I am devoted to keeping our circuit a great place to live, work, and raise our families.

I will continue to work hard and prove myself worthy of the position I seek while my application is considered by the commission. I ask that you send my name to the Governor for his consideration and I pledge that I will not disappoint the committee should I be given the opportunity to serve as the Seventh Judicial Circuit's newest circuit judge.

Again, thank you for your service on the Seventh Circuit Judicial Nominating Commission and for your consideration.

Sincerely,



Benjamin J. Rich



APPLICATION FOR NOMINATION TO THE CIRCUIT COURT

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

Full Name: Benjamin Joseph Rich **Social Security No.:** [REDACTED]

Florida Bar No.: 13894 **Date Admitted to Practice in Florida:** 9/22/2005

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.

I am currently employed by the Office of the State Attorney, Seventh Judicial Circuit, as the Managing Assistant State Attorney for the St. Johns County Office. My business address is 4010 Lewis Speedway, Suite 2022, Building A, St. Augustine, Florida 32084. My office telephone number is (904) 209-1626.

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.

I currently reside at [REDACTED]. My Wife and I have lived in our home for over 17 years since its purchase in November of 2005. I have lived in St. Johns County, Florida for over 28 years after moving to St. Augustine at the age of 15 from Brunswick, Georgia. The best telephone number to reach me is (904) 501-8683.

3. State your birthdate and place of birth.

I was born on March 8, 1979 in Salisbury, Maryland.

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.

I am currently a member of the Florida Bar. I was admitted with full privileges on September 22, 2005 after graduating from Florida Coastal School of Law in May of 2005. I am a member in good standing and have no history of discipline.

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

Ben J. Rich 1979 to Present
Benjy Rich 1979 to Present
Benjamin J. Rich 1979 to Present

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

Florida Coastal School of Law 8/2002 – 5/2005 Juris Doctor
GPA: 2.86 Class Standing: 83 of 237

University of Central Florida 1/2000 – 12/2001 Bachelor of Science
GPA: 3.450 Class Standing: N/A

St. Johns River Community College 6/1997 – 12/1999 Associate in Arts
GPA: 3.048 Class Standing: N/A

St. Augustine High School 1/1995 -5/1997 High School Diploma

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Republican National Lawyers Association
Member – 2003 through 2006.

Phi Delta Phi (Harding Inn Chapter)
Member – Initiated January 31, 2003

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.

Employer: Office of the State Attorney, Seventh Judicial Circuit, Florida
Job Title: Managing Assistant State Attorney (St. Johns County)
Dates of Employment: February 2010 – Present
Address and Phone: 4010 Lewis Speedway, St. Augustine, FL 32084; (904) 209-1620

Employer: McCune Law, P.A.
Job Title: Attorney
Dates of Employment: August of 2007 – February 2010
Address and Phone: 38 Grant Street, St. Augustine, FL 32084; (904) 808-0426

Employer: The Law Offices of Alexander Christine, Jr., P.A.
A.K.A. Christine & Christine, P.A.

Job Title: Attorney
Dates of Employment: September of 2005 - August of 2007

Address and Phone: N/A (The firm no longer exists.)

Employer: Alexander Christine, P.A.

Job Title: Law Clerk

Dates of Employment: January of 2004 through September of 2005

Address and Phone: N/A (The firm no longer exists.)

Employer: R.J. Larizza, P.A.

Job Title: Intern/Law Clerk

Dates of Employment: June of 2003 – August 2003 and January 2004 – April 2005

Address and Phone: N/A (the firm no longer in exists.)

Employer (non-legal): Jacobson Stores, Inc.

Job Title: Logistics Associate

Dates of Employment: November of 2001 – June of 2002

Address and Phone: N/A (Company is defunct.)

Description of Duties: As a logistics associate I was responsible for the shipping and receiving of various items of retail merchandise.

Employer (non-legal): Historic City Wireless

Job Title: Sales Associate

Dates of Employment: January of 2001 - November of 2001

Address and Phone: N/A (Company is defunct.)

Description of Duties: As a sales associate I was responsible for assisting customers with the purchase of wireless devices and services.

Employer (non-legal): Jacobson Stores, Inc.
Job Title: Giftwrap Supervisor (seasonal employment)
Dates of Employment: November of 2000 - January of 2001
Address and Phone: N/A (Company is defunct.)
Description of Duties: Supervise and manage seasonal giftwrap associates.

Employer (non-legal): KMART Inc.
Job Title: Loss Prevention Associate
Dates of Employment: March of 2000 - May of 2000
Address and Phone: N/A (Company is defunct.)
Description of Duties: As a loss prevention associate I was responsible for the detection, investigation, and apprehension of customers and employers committing acts of theft and/or fraud.

Employer (non-legal): Belk, Inc.
Job Title: Sales Associate
Dates of Employment: November of 2000 (seasonal employment)
Address and Phone: 2121 US-1 South, St. Augustine, FL 32086; (904) 797-5033
Description of Duties: As a sales associate I was responsible for operating a POS terminal and assisting customers with their shopping experience.

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

My current practice is multifaceted and involves all levels of criminal prosecution to include misdemeanor, juvenile, and felony divisions. As the Managing Assistant State Attorney for St. Johns County, I also handle civil actions involving bond validations for Community Development Districts ("CDD") as well as Baker Act proceedings. In addition to my prosecutorial duties, I also have primary responsibility for all administrative duties in the St. Johns County office, which includes supervising staff, interns, attorneys, and investigators totaling close thirty people. My management duties also require involvement in several community-based organizations and committees. I represent the State Attorney's Office for Public Safety Council meetings, Sexual Assault Response Team (SART) meetings, and Multi-Disciplinary Team (MDT) meetings, and Batterer Accountability Board meetings. I frequently lecture and participate in trainings for local law enforcement agencies and community service providers on topics ranging from stalking and domestic violence to constitutional issues involving search and seizure. I have also provided trainings on ethics in prosecution for the prosecutors of the Seventh Judicial Circuit.

As an assistant state attorney I have had the honor of pursuing justice for victims of crime, who are too often specifically targeted because they are seen by perpetrators as weak or helpless. My time as a prosecutor in the Seventh Judicial Circuit has provided numerous opportunities to gain invaluable experience and insight. I have learned that each person processes trauma differently, each case is unique, and it is important to listen and remain professional even during very emotionally charged interactions. Having the opportunity to serve my community and the people of the State of Florida has been a blessing for me personally and professionally.

Prior to joining the State Attorney's Office, I was a private practitioner and concentrated mainly in the areas of criminal defense, family law, and general civil litigation. I also participated in pro bono services through St. Johns County Legal Aid and received that organization's "Pro Bono Award" in 2007. My experiences in private practice have provided me with valuable awareness concerning potential collateral consequences that can arise from criminal prosecutions. My typical clients were seeking counsel and representation during some of the most stressful and traumatic events in their lives whether it was an arrest, a dissolution of marriage, or to seek an injunction for protection against violence.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was:

	Court		Area of Practice
Federal Appellate	_____ %	Civil	<u>2</u> %
Federal Trial	_____ %	Criminal	<u>98</u> %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>100</u> %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

My prior practice before joining the Office of the State Attorney was more concentrated on family and civil law than my current practice.

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

Jury?	<u>16</u>	Non-jury?	<u>8</u>
Arbitration?	_____	Administrative Bodies?	_____
Appellate?	<u>2</u>		

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.

S.D.T. v. Bundle of Hope Ministries, Inc., 949 So.2d 1132 (Fla. 1st DCA 2007).

Published opinion attached hereto as Addendum # 1.

Benjamin J. Rich, Alexander R. Christine, Jr., and Maureen Sullivan Christine for Appellant

Rebecca Bowen Creed, 865 May Street, Jacksonville, FL 32204; Phone Number: 904-350-0075; Email: rcreed@appellate-firm.com and Judy Setzer for Appellees

Sinclair v. Urbanska, 976 So.2d 1124 (Fla. 5th DCA 2008). (Unpublished PCA)

Attorney for Appellant: James J. Egan, c/o the Mailbox #5705, P.O. Box 523882, Miami, FL 33152-3882; Phone Number: 599-556-2137; Email: jegan9@caribserve.net

Attorneys for Appellee: Alexander R. Christine, Jr. and Benjamin J. Rich

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

No.

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

No.

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

State of Florida v. Joseph John Devenuta, Sr. (Jury Trial)

St. Johns Clerk No.: 21000767CFMA

Prosecution: Samuel Eliot Frazier
410 Saint Johns Ave.
Palatka, FL 32177
fraziers@sao7.org
(386) 326-7721

Defense: Mitchell Adam Stone
1830 Atlantic Blvd.
Jacksonville, FL 32207
mitch@jacksonvilledefense.com
(904) 396-3335

Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Rose Marie Karadsheh Preddy
12627 San Jose Blvd. Ste 102
Jacksonville, FL 32223
rpreddy@preddylaw.com
(904) 665-0005

State of Florida v. Delvin Ronald Berg (Jury Trial)

St. Johns Clerk No.: 18000485CFMA

Prosecution: Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Defense: Terry Jon Shoemaker
200 Malaga St., Ste. 1
St. Augustine, FL 32084
terry@theshoelaw.com
(904) 814-7540

State of Florida v. S.S.K. (Non-Jury Trial)

St. Johns Clerk No.: 13000367CJMA

Prosecution: Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Defense: Laurie James Arnold, IV
P.O. Box 1570
Green Cove Springs, FL 32043
arnoldlawyers@gmail.com
(904) 284-5618

State of Florida v. Gary Lagrue (Jury Trial)

St. Johns Clerk No.: 13000045CTMA

Prosecution: Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Defense: Pro Se
Address Unknown
Email Unknown

State of Florida v. Alison Scitticatt (Jury Trial)

St. Johns Clerk No: 12000003CTMA

Prosecution: Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Defense: John M. Henderlite, III
218 E. Ashley Street
Jacksonville, FL 32202
jay@watsonhenderlite.com
(904) 356-5336

City of St. Augustine v. Frederick Anthony Fields (Non-jury Trial)

St. Johns Clerk No.: 12000135MOMA

Prosecution: Benjamin Joseph Rich
4010 Lewis Speedway
St. Augustine, FL 32084
richb@sao7.org
(904) 209-1626

Defense: Earl Mayberry Johnson, Jr.
P.O. Box 40091
Jacksonville, FL 32203
Email Unknown (disbarred)

Isabelle C. Lopez
P.O. Box 210
St. Augustine, FL 32085
ilopez@citystaug.com
(904) 825-1052

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.*

As the Managing Assistant State Attorney for the St. Johns County office I am often asked to aid in the resolution of cases in which the assigned prosecutor and defense counsel have reached an impasse or coverage of an absent prosecutor is necessary. As I am most often not the prosecutor of record in these cases they are nearly impossible to recollect. More often than not, these types of cases are resolved with the assistant public defenders of the St. Johns County office or regional conflict counsel. The names of the assistant public defenders I most often work with are Tyler Williams, Craig Atack, Alyssa Novak, and J.W. Hubbard who may all be reached at 904-827-5699. Scott Westbrook, Regional Counsel, can be reached at 904-797-8111.

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

I have appeared in Court approximately 20 times per month on average during the past five years.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

N/A.

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

N/A.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

State of Florida v. Aleem Ali

St. Johns County Clerk No.: 05000334CFMA

St. Johns Circuit Court – Judge Michael Traynor

Date(s) of Trial: July 24 – July 25, 2006

Prosecution: Carlos Mendoza, U.S. Courthouse, 401 W. Central Blvd., Orlando, FL 32801;
(407) 835-4310; chambers_flmd_mendoza@flmd.uscourts.gov
Adam Dale Warren, P.O. Box 263002, Daytona Beach, FL 32126;
(386) 944-9107; adamwarrren386@gmail.com

Defense: Alexander Christine, 4010 Lewis Speedway, St. Augustine, FL 32084
(904) 827-5613; achristine@circuit7.org
Benjamin J. Rich, 4010 Lewis Speedway, Bldg. A, St. Augustine, FL 32084
(904) 209-1626; richb@sao7.org

This case was my first jury trial. I was co-counsel for the defense in this case. Alexander Christine was lead trial counsel for the defense and Mr. Mendoza was lead trial counsel for the State. My client, Mr. Ali, was charged with one count of Sexual Activity with a Child (Multiple Perpetrators) and one count of Sexual Battery Upon a Child by Person in Familial/Custodial Authority in violation of Florida Statutes §794.011(8)(b) and §794.011 respectively. After an arduous two days of trial, a jury found Mr. Ali not guilty of the first count and guilty of the second count. He was subsequently sentenced by the Honorable Judge Traynor to life in prison.

This case was significant due to its complexity and difficulty from a defense perspective. The discovery process was extremely lengthy as multiple jurisdictions were involved in the initial investigation. The State's case was difficult to defend against as there were multiple confessions in this case and overwhelming physical evidence to include DNA.

State v. Errol D. Jones

St. Johns County Clerk No.: 11002767MMMA

St. Johns County Court – Judge Charles Tinlin

Dates of Trial: March 19 – March 20, 2012

Prosecution: Benjamin J. Rich, 4010 Lewis Speedway, Bldg. A, St. Augustine, FL 32084
(904) 209-1626; richb@sao7.org
Jason S. Lewis, 2446 Dobbs Rd., St. Augustine, FL 32086
(904) 209-1300; lewisj@sao7.org

Defense: Patrick T. Canan, 1030 N. Ponce De Leon Blvd., St. Augustine, FL 32084
(904) 824-9402; pcanan@cananlaw.com
Andrew Morgan, 1030 N. Ponce De Leon Blvd., St. Augustine, FL 32084
(904) 824-9402; amorgan@cananlaw.com

This case was significant due to the nature of the Defendant's employment and the media coverage the case received. Mr. Jones was a sitting commissioner for the St. Augustine City Commission at the time of his arrest in this case. The defense team consisted of two of the most skilled trial attorneys in Northeast Florida and the trial of this matter was challenging. Ultimately, after convincing closing arguments from both sides, the jury returned a verdict of guilty.

Price v. Harrod

St. Johns County Clerk No.: CA050019

St. Johns Circuit Court – Judge Michael Traynor

Client: Mary Harrod (Defendant)

Date of Trial: March 5 – March 6, 2009

Plaintiff's Counsel: Brandon Beardsley, 254 Paseo Reyes Drive, St. Augustine, FL 32095
(904) 877-3663; bbeardsley@brandonbeardsleylaw.com
Daniel A. Mowrey, 2801 N. 3rd Street, St. Augustine, FL 32084
(904) 824-7799; dan@mowreylaw.com

Defense Counsel: James P. McCune, 38 Grant Street, St. Augustine, FL 32084
(904) 808-0426; james.mccunelaw@gmail.com
Benjamin J. Rich Benjamin J. Rich, 4010 Lewis Speedway, Bldg. A, St. Augustine, FL 32084; (904) 209-1626; richb@sao7.org

This case arose from the sale of Ms. Harrod's home after the death of her husband. After purchasing the home, the Plaintiff filed suit against Ms. Harrod alleging three (3) counts of fraud. This case was significant because Ms. Harrod had very limited financial resources to defend against the lawsuit considering her status as an elderly widow. Thankfully, the jury carefully weighed the evidence presented by both sides and found Ms. Harrod not guilty on all counts.

State of Florida v. Kim Michelle Johnston

St. Johns County Clerk No.: 18001850CFMA

St. Johns Circuit Court – Judge Howard M. Maltz

Date of Sentence: December 6, 2020

Prosecution: Benjamin J. Rich, 4010 Lewis Speedway, Bldg. A, St. Augustine, FL 32084
(904) 209-1626; richb@sao7.org

Defense: Joshua T. Mosely, 4010 Lewis Speedway, Ste. 1101, St. Augustine, FL 32084
(904) 827-5699; mosley.joshua@pd7.org

This case arose from a tragic traffic crash that occurred on Interstate 95 in which Ms. Adams, a JSO Deputy, was killed and her husband, Mr. Adams, also a JSO Deputy, was seriously injured in presence of their two minor children. The Adams family were on their way home from an event in Orlando when their vehicle was struck by Ms. Johnston who was drunk and driving erratically. After refusing to provide a sample of her breath to determine its alcoholic content, I assisted law enforcement in obtaining a warrant for Ms. Johnston's blood, which was found to have an alcohol level of 0.127 six hours after the crash. After litigating the case, Ms. Johnston entered into a plea agreement that provided she would be sentenced 15 years in prison, the statutory maximum for DUI Manslaughter. She also stipulated to \$200,000.00 in restitution payments to the Adams family. This resolution was significant because it provided justice within the bounds of the law and closure for the victims without further traumatizing the Adams children who had already been through so much.

State of Florida v. William Keith Leary

St. Johns County Clerk No.: 15000623CFMA

St. Johns Circuit Court – Judge R. Lee Smith

Date of Sentence: July 9, 2021

Prosecution: Benjamin J. Rich, 4010 Lewis Speedway, Bldg. A, St. Augustine, FL 32084
(904) 209-1626; richb@sao7.org

Defense: Terry Jon Shoemaker, 200 Malaga St., Ste. 1, St. Augustine, FL 32084;
(904) 814-7540; terry@theshoelaw.com
Tim A Pribisco, Jr., 200 Malaga St., Ste. 1, St. Augustine, FL 32084;
(904) 872-7463; tim@theshoelaw.com

This case was significant because the victims in this case consisted of eight families. The victims were swindled out of an aggregate amount of over \$400,000.00. The majority of the victims were elderly and many of them had used their life savings to purchase manufactured homes from the defendant. The case was also complicated by the fact that the defendant filed for bankruptcy during the prosecution of this case. After litigating this case, the defendant was convinced to sell his home and the proceeds of the sale were distributed to the victims in pro rata shares. The victims were extremely grateful for the monies recovered.

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.

Writing Sample I – I am the sole author of this document.

Writing Sample II – I am the sole author of this document.

Writing Sample III – I am the sole author of this document.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

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

No.

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

In August of 2021, I submitted an application to the Seventh Judicial Circuit Judicial Nominating Commission to be considered for a County Court Judgeship in St. Johns County. My name was certified to the Governor's Office for consideration.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

N/A.

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

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

N/A.

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

N/A.

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

N/A.

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

No.

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

No.

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

No.

NON-LEGAL BUSINESS INVOLVEMENT

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

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

I am currently a member of the Board of Directors for the Betty Griffin Center, a local nonprofit providing shelter, counseling, and other services for the victims of domestic and sexual violence. My duties include attending board meetings, fund raising, and promoting awareness of the Betty Griffin Center and the services they provide. I receive no financial compensation as a board member. If I am appointed or elected to judicial office I intend to resign my position on the board.

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

No.

POSSIBLE BIAS OR PREJUDICE

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

I can think of no types of cases, other than those which the law or rules would require recusal that I would not be comfortable presiding over.

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

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

None.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

N/A.

- 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.

Stalking Awareness Panel – Flagler College January 24, 2013. As a panel participant I lectured on the law concerning stalking, aggravated stalking, cyber stalking, and injunctions against stalking. I answered questions from the audience and shared examples of experiences that I have had in prosecuting stalking cases.

I have participated in numerous trainings and lectures to local law enforcement agencies concerning investigative techniques, statutory updates, and other matters relevant to successful criminal prosecutions. These lectures were typically given at the Office of the State Attorney or in the briefing rooms of law enforcement agencies.

- 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.

Ethics in Prosecution – Power Point presentation and Bar Accreditation are attached hereto as Addendum 2.

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

2007 Pro Bono Award – St. Johns County Legal Aid

2012 Florida Assistant State Attorney of the Year – Florida Retail Federation

2015 Office of the State Attorney Intake Top Gun Award

2016 Office of the State Attorney Intake Top Gun Award

2017 Office of the State Attorney Intake Top Gun Award

2017 Law Enforcement Commendation Medal – The National Society of the Sons of the America Revolution

2018 Office of the State Attorney Intake Top Gun Award

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

N/A.

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

Florida Bar – Member in good standing – September 22, 2005 to present.

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Fraternal Order of Police - (Associate Member – 2018 – 2021)

Betty Griffin Center Board of Directors – Board Member (January 28, 2019 – Present)

St. Johns County Memorial Garden Steering Committee – September 2020 – 2022)

I have also served on multiple steering committees during my tenure as an assistant state attorney to include, but not limited to, St. Johns County Juvenile Drug Court Steering Committee, St. Johns County Adult Drug Court Steering Committee, St. Johns County Public Safety Council, and Circuit Seven DJJ Advisory Council.

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

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

I have not been able to participate in any significant pro bono legal work in the past 10 years as I have been employed as an assistant state attorney for almost 13 years.

45. Please describe any hobbies or other vocational interests.

My family is my priority. When not working I am almost always spending invaluable time with my family. We enjoy fishing, boating, shooting, and the abundance of outdoor activities that

Northeast Florida has to offer. I also appreciate the satisfaction of personally maintaining our family vehicles and yardwork.

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

N/A.

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

<https://www.facebook.com/benjamin.rich.7>

FAMILY BACKGROUND

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

I am married to Jennifer ("Jenny") Jade Rich. We were married at San Sebastian Catholic Church located in St. Augustine, Florida on November 18, 2006. Jenny is employed as a nurse for Community Hospice and Palliative Care where she has worked since September 4, 2007. I am also blessed to have my parents living in St. Johns County, Florida as well.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

S██████ L██████ R██████ 9 years old 4TH Grade Student

CRIMINAL AND MISCELLANEOUS ACTIONS

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

I have complied with all legally required tax return filings. For tax year 2020 a tax penalty was assessed in the amount of \$90.00 due to insufficient payroll withholding.

HEALTH

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

- 68.** In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No.

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

No.

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

No.

SUPPLEMENTAL INFORMATION

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

As an assistant state attorney I have had the opportunity to participate in countless court proceedings. Additionally, I have been fortunate to attend multiple Florida Prosecuting Attorney Association trainings, including management training. In private practice I had the pleasure of serving as the assistant municipal attorney for the Town of Welaka located in Putnam County, Florida and attend a multiple day training concentrating on municipal legal issues. My experiences include litigating thousands of difficult cases and working with attorneys from all over Florida. I have also been blessed to have mentors that have always stressed the importance of maintaining professionalism and respect for all parties involved in the legal system.

As a managing prosecutor I am often tasked to deal with extremely complicated and sensitive situations that can mean the difference between life and death. These experiences have taught me patience and poise in extremely stressful and emotional situations. It is important to lead by example and to do my very best to ensure that the legal rights of all people are protected. This is of paramount importance to ensure our legal system continues to be respected and trusted by our citizenry.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

Should I have the honor of being selected to serve as circuit court judge for the Seventh Judicial Circuit, my commitment to the position would be unyielding. I am committed to serving my community and the citizenry of the Seventh Judicial Circuit with respect and honor. I pledge that I will never bring dishonor to myself, my family, or the bench. I commit to civility and to treat all those who may appear before me with respect and professionalism. The people of the Seventh Judicial Circuit and the State of Florida deserve no less than the finest.

My years of service in administrative and management capacities has given me a depth of understanding into the mechanisms of government. I understand how to operate efficiently with limited resources and to provide my community with the best possible service. I shall remain committed to excellence, public safety, and protection of the United States and Florida Constitutions.

REFERENCES

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

R.J. Larizza

State Attorney, Seventh Judicial Circuit

Address: 4010 Lewis Speedway, St. Augustine, FL 32084

Email: rlarizza@sao7.org

Telephone: (386) 235-5591

Alexander Christine

St. Johns County Court Judge

Address: 4010 Lewis Speedway, Rm. 247, St. Augustine, FL 32084

Email: achristine@circuit7.org

Telephone: (904) 827-5613

Charles Tinlin

St. Johns County Court Judge (Retired)

Address: 4010 Lewis Speedway, Rm. 205, St. Augustine, FL 32084

Email: ctinlin@circuit7.org

Telephone: (904) 827-5611

John Alexander

Circuit Court Judge (Retired)

Address: c/o 4010 Lewis Speedway, St. Augustine, FL 32084

Telephone: (904) 540-0336

Ronald Faircloth

President of the Fraternal Order of Police, Lodge #113

Address: 5050 Inman Road, St. Augustine, FL 32084

Email: rfaircloth@sjsso.org

Telephone: (904) 669-5430

Christopher France

Circuit Court Judge, Seventh Judicial Circuit

Address: 1769 E. Moody Blvd., Bldg. 1, Bunnell, FL 32110

Email: cfrance@circuit7.org

Telephone: (386) 313-4515

Christopher Ferebee

Circuit Court Judge, Seventh Judicial Circuit

Address: 4010 Lewis Speedway, Rm. 344, St. Augustine, FL 32084

Email: cferebee@circuit7.org

Telephone: (904) 827-5647

Dennis Hollingsworth

St. Johns County Tax Collector

Address: 4030 Lewis Speedway, St. Augustine, FL 32084
Telephone: (904) 209-2269

Howard Maltz

Circuit Court Judge, Seventh Judicial Circuit

Address: 4010 Lewis Speedway, Rm. 365, St. Augustine, FL 32084
Email: hmaltz@circuit7.org
Telephone: (904) 827-5600

Commander Travis Harrell

St. Augustine Beach Police Department

Address: 2300 A1A South, St. Augustine Beach, FL 32080
Email: harrelltg@sabpd.org
Telephone: (904) 471-3600

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 24th day of January, 2023.

Benjamin J. Rich

Printed Name



Signature

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

FINANCIAL HISTORY

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

Current Year-To-Date: \$0

Last Three Years: 2022: \$131,045.54 **2021:** \$111,471.48
2020: \$93,836.18

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: \$0

Last Three Years: 2022: \$127,044.68 **2021:** \$108,060.83
2020: \$90,964.79

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

Current Year-To-Date: N/A

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

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

Current Year-To-Date: N/A

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

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

Current Year-To-Date: N/A

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

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

PART A – NET WORTH

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

My net worth as of January _____, 2023 was \$ ^{409,746.41}

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$ 108,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Vystar Savings Account	\$105,040.41
Vystar Checking Account	\$4,587.22
██████████ (Home)	\$350,400.00

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

Capital One Auto Finance 7933 Preston Road, Plano, TX 75024-2302	\$6,360.60
Vystar Credit Union Mortgage P.O. Box 45085, Jacksonville, FL 32232	\$136,632.10
American Education Services (Student Loan) P.O. Box 65093, Baltimore, MD 21264-5093	\$14,668.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

--	--

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida (2022)	200 E. Gaines Street Tallahassee, FL 32399	\$131,045.54

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

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

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY			
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.

[Handwritten Signature]
SIGNATURE

STATE OF FLORIDA

COUNTY OF St. Johns

Sworn to (or affirmed) and subscribed before me this 24 day of Jan, 2023 by _____

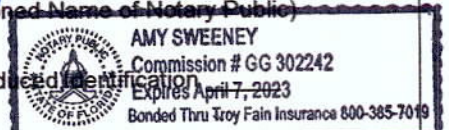
(Signature of Notary Public—State of Florida)

Amy Sweeney

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

Personally Known ✓ OR Produced Identification _____

Type of Identification Produced _____



INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

- Value each asset by its fair market value on the date used in Part A for your net worth.
- Jointly held assets: If you hold real or personal property jointly with another person, your interest equals your legal percentage of ownership in the property. However, assets that are held as tenants by the entirety or jointly with right of survivorship must be reported at 100% of their value.
- Partnerships: You are deemed to own an interest in a partnership which corresponds to your interest in the equity of that partnership.
- Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.
- Real property may be valued at its market value for tax purposes, unless a more accurate appraisal of its fair market value is available.
- Marketable securities which are widely traded and whose prices are generally available should be valued based upon the closing price on the valuation date.
- Accounts, notes, and loans receivable: Value at fair market value, which generally is the amount you reasonably expect to collect.
- Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by “buy-out” agreements. It is suggested that the method of valuation chosen be indicated in a footnote on the form.
- Life insurance: Use cash surrender value less loans against the policy, plus accumulated dividends.

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

- Generally, the amount of the liability is the face amount of the debt.
- If you are the only person obligated to satisfy a liability, 100% of the liability should be listed.
- If you are jointly and severally liable with another person or entity, which often is the case where more than one person is liable on a promissory note, you should report here only the portion of the liability that corresponds to your percentage of liability. *However*, if you are jointly and severally liable for a debt relating to property you own with one or more others as tenants by the entirety or jointly, with right of survivorship,

report 100% of the total amount owed.

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

(2) You received more than \$1,000 in gross income from that business entity during the period.

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

Examples:

— You are the sole proprietor of a dry cleaning business, from which you received more than \$1,000 in gross income last year. If only one customer, a uniform rental company, provided more than 10% of your dry cleaning business, you must list the name of your business, the name of the uniform rental company, its address, and its principal business activity (uniform rentals).

— You are a 20% partner in a partnership that owns a shopping mall and your gross partnership income exceeded \$1,000. You should list the name of the partnership, the name of each tenant of the mall that provided more than 10% of the partnership's gross income, the tenant's address and principal business activity.

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: January 24, 2023

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Benjamin J. Rich

Current Occupation: Assistant State Attorney

Telephone Number: (904) 209-1626 Attorney No.: 0013894

Gender (check one): Male Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: St. Johns

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Benjamin J. Rich

Printed Name of Applicant



Signature of Applicant

Date: January 24, 2023

WRITING SAMPLE I

IN THE CIRCUIT COURT, OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: CF2100768

Vs.

LUCAS EARL HEDETNIEMI-HART
_____ /

**STATE'S TRAVERSE AND DEMURRER TO DEFENDANT'S
MOTION TO DISMISS**

Comes now the State of Florida by and through the undersigned assistant state attorney and files this response pursuant to Florida Rule of Criminal Procedure 3.190(d) to Defendant's Motion to Dismiss filed pursuant to Florida Rule of Criminal Procedure 3.190(c)(4), and requests this Honorable Court deny Defendant's Motion to Dismiss and as grounds therefore alleges as follows:

1. Defendant, LUCAS EARL HEDETNIEMI-HART, (hereinafter referred to as "Defendant Hart"), has filed a motion to dismiss pursuant to Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure.
2. Defendant Hart's motion seeks the dismissal of Counts IV, V, and VI of the State's Information filed in the above styled cause.
3. Defendant Hart's motion to dismiss omits material incriminating facts as stated below.

STATEMENT OF FACTS

4. On or about May 14, 2020, Defendant Hart operated a Ford F-150 in St. Johns County, Florida in the area of U.S. Highway ("US-1") and State Road 16 (S.R. 16) within St. Johns County, Florida in a reckless manner which resulted in a fatal traffic crash.
5. Multiple witnesses provided sworn testimony as to their observations of Defendant Hart's aggressive/reckless driving leading up to the crash that occurred at the intersection of

Woodlawn Rd. and S.R. 16, and which resulted in the untimely deaths of [REDACTED]

[REDACTED] (hereinafter referred to as "victims").

6. On the early evening of May 14, 2020, Defendant Hart was observed traveling on US-1 in the Northbound lanes approaching the intersection of S.R. 16 by Robert Hardwick. Mr. Hardwick provided sworn testimony that he observed Defendant Hart operating a Ford F150 truck on US-1 in an "aggressive"¹ manner and elaborated that Defendant Hart was "tailgating, weaving in and out of traffic"², and in fact "cut off" Mr. Hardwick and then "brake checked" him. A copy of the transcript of Mr. Hardwick's deposition is attached hereto as "Exhibit A".

7. Upon reaching the intersection of US-1 and S.R. 16, Defendant Hart made a left hand turn onto S.R. 16 traveling westbound and continued his aggressive driving pattern.

8. S. R. 16 is a four-lane highway with two eastbound lanes and two westbound lanes.

9. Within moments of turning westbound on S.R. 16, Defendant Hart began "antagonizing" Anthony Devenuta, (hereinafter referred to as "Defendant Devenuta"), who was driving a white 2008 Sprinter van. The driving pattern of Defendant Hart and Defendant Devenuta was observed by Dean Zimmerman who stated he witnessed them "pulling in front of him, slamming their brakes on, switching lanes"³ and driving recklessly. A copy of the transcript of Mr. Zimmerman's deposition is attached hereto as "Exhibit B".

10. Defendant Hart continued to drive in a reckless manner and "antagonize" Defendant Devenuta while traveling westbound on S.R. 16 for approximately 1.4 miles at which time Defendant Hart drove off of the roadway and into the grass median and drove past Defendant Devenuta on S.R. 16.

¹ Deposition of Robert Hardwick, Pg. 7, Line 14

² Deposition of Robert Hardwick, Pg. 7, Lines 15 - 17

³ Deposition of Dean Zimmerman, Pg. 7, Lines 10 - 12

11. Surveillance footage was obtained by law enforcement from a NAPA Auto Parts store located at 2801 N. First Street, St. Augustine, Florida, which is approximately .68 miles from the intersection of S.R. 16 and Woodlawn Road. The surveillance footage depicts Defendant Hart driving his truck in a reckless manner in the grass median and overtaking Defendant Devenuta's van. A true and correct still-capture of said video is attached hereto as "Exhibit C" and incorporated herein by reference.

12. After leaving the roadway and passing Defendant Devenuta's van, Defendant Hart drove back onto the roadway of S.R. 16 and occupied the right-hand/northern westbound lane of travel and Defendant Devenuta and Defendant Hart "both started speeding ahead"⁴ and "pulling away from traffic"⁵ continuing to engage each other "in a road rage incident"⁶ while traveling toward the intersection of S.R. 16 and Woodlawn Road.

13. Defendant Hart and Defendant Devenuta continued speeding westbound on S.R. 16 approaching the intersection of S.R. 16 and Woodlawn Road in furtherance of the road rage incident, where a vehicle occupied by three people, [REDACTED] and [REDACTED] [REDACTED] was lawfully stopped for the red-light in the northern westbound lane of S.R. 16.

14. The intersection of S.R. 16 and Woodlawn Road is equipped with unobstructed illuminated traffic signals/lights, which were functioning properly at all times relevant. The speed limit for S.R. 16 in the area of the crash is 55 miles per hour.

15. Upon approaching the intersection of S.R. 16 and Woodlawn Road, Defendant Hart swerved from the right-hand/northern westbound lane of S.R. 16 into the left-hand/southern westbound lane and sped through the red light at approximately "77.19"⁷ miles per hour, which

⁴ Deposition of Dean Zimmerman, Pg. 7, Lines 18 - 19

⁵ Deposition of Robert Hardwick, Pg. 27, Lines 22 - 23

⁶ Deposition of Robert Hardwick, Pg. 28, Line 5

⁷ FHP sworn Investigative Report, Pg. 27

was captured on a traffic camera as well as surveillance video from the Florida Highway Patrol Station located adjacent to the intersection of S.R. 16 and Woodlawn Road. A copy of the FHP THI sworn investigative report is attached hereto as "Exhibit D".

16. Defendant Devenuta did not swerve and continued traveling above the speed limit westbound in the right-hand/northern westbound lane of S.R. 16 when he impacted the rear of the vehicle occupied by the victims.

17. The violent force of the impact caused by Defendant Devenuta's van striking the vehicle occupied by the victims resulted in the victims' vehicle being pushed through the intersection and coming to rest in the crosswalk of the eastbound lanes west of the intersection. A photograph taken of the victims' vehicle at final rest is attached hereto as "Exhibit E".

18. Defendant Hart stated in his interview that he witnessed Defendant Devenuta attempting to photograph his license plate as well as the subsequent the crash, but continued westbound on S.R. 16 to his home.

19. [REDACTED] and [REDACTED] were all killed as a direct result of the crash.

20. Defendant Devenuta's van was rendered inoperable as a result of the crash and he remained on scene during the initial portion of the criminal investigation.

21. Defendant Devenuta confessed in a statement to law enforcement that he was fixated on trying to obtain a photograph of Defendant Hart's license plate and did not notice the red light nor the victims' vehicle in front of him prior to the collision.

22. Defendant Hart's reckless and aggressive driving and engaging Defendant Devenuta in this "road rage" incident created the condition of peril which resulted in the crash and subsequent deaths of [REDACTED] and [REDACTED].

23. Defendant Devenuta's actions of attempting to match Defendant Hart's speed as well as Defendant Devenuta's preoccupation with obtaining a photograph of Defendant Hart's license plate was a foreseeable response to Defendant Hart's conduct. The subsequent crash resulting in the deaths of the three (3) victims reasonably followed in the natural sequence of events.

ARGUMENT

A. DEFENDANT HART'S CONDUCT CAN BE FOUND THE PROXIMATE CAUSE OF THE COLLISION AND DEATHS RESULTING THEREFROM.

24. Defendant Hart has been charged by Information with three counts of Vehicular Homicide pursuant to Fla. Stat. §782.071(1)(a), as a result of his participation in a "road rage" incident that resulted in Defendant Devenuta's vehicle violently colliding into the rear of the victims' vehicle.

25. "When a party creates a condition of peril by his wrongful conduct, his actions can be found the proximate cause of the resulting injury, even if later events combined to cause such injury, so long as the later acts reasonably followed in the natural sequence of events. See Reaves v. State, 979 So.2d 1066, (Fla. 1st DCA 2008); State v. Gensler, 929 So.2d 27, 31 (Fla. 3rd DCA 2006); M.C.J. v. State, 444 So.2d 1001, 1005 (Fla. 1st DCA 1984).

26. In Defendant Hart's case, he began "antagonizing" and engaging Defendant Devenuta on S.R. 16 approximately two miles from the crash site. He continued to drive recklessly and engage Defendant Devenuta in an incident described by multiple witnesses as "road rage" until Defendant Devenuta's vehicle was disabled as a result of crashing into the rear of the victims' lawfully stopped vehicle.

27. Defendant Hart's wrongful and unlawful conduct of "antagonizing" and engaging in "road rage" with Defendant Devenuta created a foreseeable condition of peril. It was

reasonably foreseeable that Defendant Devenuta would respond in kind and that a serious or fatal crash could result. Because Defendant Devenuta's actions reasonably followed in the natural sequence events, Defendant Hart's willful and wanton recklessness can be found the proximate cause of the victims' deaths.

28. The proximate cause of the victims' deaths in this case was the willful, wanton, and reckless actions of Defendant Hart and Defendant Devenuta to engage in "road rage".

B. SUFFICIENT ADDITIONAL FACTS HAVE BEEN ASSERTED TO ESTABLISH A PRIMA FACIE CASE AGAINST DEFENDANT.

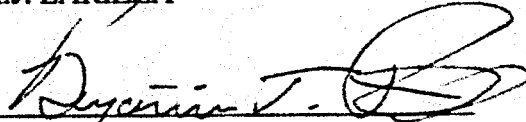
29. To successfully traverse Defendant Hart's Motion to Dismiss filed under Rule 3.190(c)(4), the "[S]tate is not required to oppose a defendant's motion to dismiss with an affidavit in order to avoid dismissal. Rather, it is sufficient if the State's traverse specifically denies a material fact alleged in the defendant's motion, or asserts additional material facts that establish a prima facie case. See Florida v. Seward, 188 So.3d 927 (Fla. 5th DCA 2016).

30. The State has asserted additional material facts that establish a prima facie case against Defendant Hart for three (3) counts of vehicular homicide.

WHEREFORE, the State moves this Honorable Court to deny Defendant Hart's Motion to Dismiss based on the facts and information stated above. In the alternative, the State moves this Honorable Court to rule that Defendant Hart's Motion to Dismiss has been successfully traversed by the State as allowed under 3.190(d) and State v. Seward that provides that a traverse that, with specificity, denies under oath the material fact or facts alleged in the motion to dismiss or asserts additional material facts that establish a prima facie case.

Respectfully submitted by:

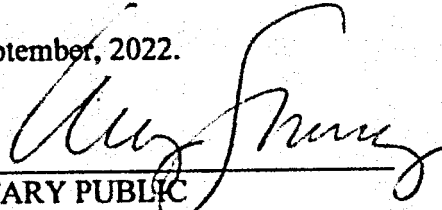
FOR THE STATE ATTORNEY
R.J. LARIZZA



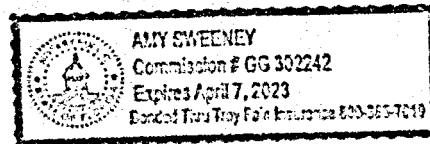
BENJAMIN J. RICH
ASSISTANT STATE ATTORNEY
FLA BAR #: 0013894
4010 LEWIS SPEEDWAY
ST. AUGUSTINE, FL 32084
904-209-1620
ESERVICESTJOHNS@SA07.ORG

Personally appeared before me Benjamin J. Rich, Assistant State Attorney, for the Seventh Judicial Circuit of Florida, known to me to be the foregoing prosecuting officer, who being duly sworn, says that allegations set forth in the foregoing traverse and demurrer are based upon facts that have been sworn to as true. Subscribed to in good faith. Said facts based upon testimony and evidence.

SWORN and subscribed to me this 16th day of September, 2022.

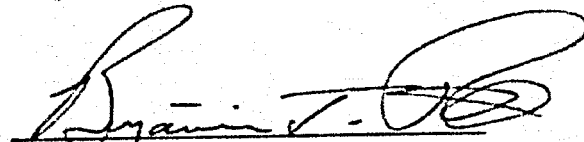


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery to: Christina Opsahl, Esq., at opsahl@opsahl1law.com this 16th day of September 2022.



BENJAMIN J. RICH
ASSISTANT STATE ATTORNEY

WRITING SAMPLE II

OFFICE OF THE STATE ATTORNEY

SEVENTH JUDICIAL CIRCUIT OF FLORIDA
VOLUSIA, FLAGLER, PUTNAM & ST. JOHNS COUNTIES

R.J. LARIZZA
STATE ATTORNEY



4010 LEWIS SPEEDWAY
BUILDING A, SUITE 2022
ST AUGUSTINE, FL 32084
PHONE: (904) 209-1620
FAX: (904) 209-1621

August 1, 2021

MEMO: SHANNA STARR KUENZI; MM1627545A03
AGENCY CASE #: SAPD160000029702

This memorandum reflects a review of a September 14, 2016 incident wherein William Ross Cesery, III was arrested by the St. Augustine Police Department for "Attempted Kidnapping" in violation of § 787.01(1), Florida Statutes. The arrest took place within the "downtown" area of the City of St. Augustine after SAPD received a 911 call from the alleged victim, Shanna Star Kuenzi. Ms. Kuenzi alleged that a white male subject with curly blond hair traveling in a white suburban with a black push bar grabbed her and attempted to force her into his vehicle. She also states that a resident of one of the homes on Orange Street may have observed a portion of the incident. SAPD made contact with Ms. Kuenzi and she was placed into the back of a patrol car to be transported to the police station for an interview. On the way to the station, SAPD made contact with the suspect vehicle and the suspect as he was approaching another young female pedestrian. Ms. Kuenzi identified Mr. Cesery as the individual that attempted to force her into his vehicle and he was arrested and taken to the St. Johns County jail.

After taking Mr. Cesery into custody, an affidavit was provided by Ms. Kuenzi wherein she stated that Mr. Cesery initially made contact with her while she was walking west on Orange Street in the downtown area of St. Augustine. Ms. Kuenzi's affidavit states that Mr. Cesery was in a "white suburban" and asked her if she needed a ride. Ms. Kuenzi declined Mr. Cesery's offer and continued walking west on the sidewalk adjacent to Orange Street. The affidavit further alleges that Mr. Cesery pulled ahead of Ms. Kuenzi and parked. Mr. Cesery then exited his vehicle and engaged Ms. Kuenzi in conversation. Mr. Cesery began to tell Ms. Kuenzi how beautiful she was and offered for her to smoke "weed" with him. Ms. Kuenzi states that she declined his offer as she does not do drugs and told Mr. Cesery to leave her alone. Ms. Kuenzi reported that Mr. Cesery then "grabbed my arm forcefully telling me just come with me". Ms. Kuenzi reported that Mr. Cesery's actions scared her and she pushed him back and walked away, but Mr. Cesery reentered his vehicle and continued to follow her still "begging" until the motorist behind him began honking the horn, which resulted in Mr. Cesery driving away from the scene.

On September 15, 2016, the day after Mr. Cesery's arrest, Mr. J. Kalb who resides 57 Orange Street, St. Augustine, Florida 32084 responded to the SAPD Station and met with

Officer K. Carroll. J. Kalb explained that he thought it prudent to provide evidence after he learned of the incident from watching the news. J. Kalb provided Officer Carroll with surveillance video from his home at 57 Orange Street as well as "dash-cam" footage from his vehicle. J. Kalb also provided an affidavit wherein he stated, in part, that he saw the suspect vehicle pull into the driveway of his home and observed a young woman and the "driver" engaged in conversation. J. Kalb told the parties that his driveway is "not a parking spot". The young lady responded that "he is not parking". The driver then entered his vehicle and traveled west on Orange Street in the direction of the young woman and J. Kalb followed in his vehicle, which was equipped with a "dash cam". J. Kalb observed the suspect stop on Orange Street to again talk to the young woman and J. Kalb sounded his vehicle's horn, which results in the suspect driving west on Orange Street and turning South onto Riberia Street.

The surveillance video provided by J. Kalb from his home is of excellent quality, but does not have audio. The camera faces west and provides a clear view of the drive way of 57 Orange Street as well as the sidewalk and street. The following is a brief synopsis of the video provided by J. Kalb:

- The video is date and time stamped and begins at approximately 1:19 pm September 14, 2016 (it is unknown if the time stamp is accurate).
- At 1:19 pm Mr. Cesery can be seen pulling his vehicle into the driveway of 57 Orange Street.
- Ms. Kuenzi can be seen approaching the vehicle as Mr. Cesery steps out.
- The two can be seen engaged in conversation for approximately 36 seconds on the sidewalk before Ms. Kuenzi and Mr. Cesery hug one another (the hug does not appear to be forced or coerced).
- After hugging, the two begin holding hands while still engaged in conversation for approximately 20 seconds before Ms. Kuenzi appears to pull her hand away from Mr. Cesery.
- Ms. Kuenzi and Mr. Cesery continue to converse and Ms. Kuenzi walks past Mr. Cesery and stands behind his vehicle while Mr. Cesery moves toward the open driver's door of his vehicle.
- The two continue to engage in conversation for approximately 26 seconds until J. Kalb exits his home and confronts Mr. Cesery for parking in his driveway.
- Ms. Kuenzi can be observed emerging from behind Mr. Cesery's vehicle and appears to address J. Kalb.
- Ms. Kuenzi and Mr. Cesery then engage in brief conversation and Ms. Kuenzi then continues walking at a normal pace westbound on the sidewalk toward Riberia Street. Mr. Cesery reenters his vehicle and backs out of the driveway and drives west on Orange Street in the same direction of travel as Ms. Kuenzi.
- Both parties leave of the field of vision and J. Kalb can be seen backing his vehicle out of the driveway and traveling in the same direction as the parties.
- The entire interaction between the parties captured on the home surveillance video lasts for approximately 2 minutes 8 seconds.

The dash cam video captured by J. Kalb and provided to SAPD provides a view from the front of Mr. Kalbs vehicle as well as a view from the rear (front facing camera as well as

rear facing camera). The following is a brief synopsis of the contents of the relevant portion of the video:

- The video is date and time stamped beginning with Mr. Kalb backing out of his driveway at approximately 1:23 pm on September 14, 2016 (the accuracy of the timestamp is unverified).
- Mr. Cesery can be seen from the rearview camera departing 57 Orange Street and traveling west.
- Mr. Kalb backs out of his driveway and gets directly behind Mr. Cesery.
- Mr. Cesery can be seen stopping his vehicle in the roadway as Ms. Kuenzi walks on the sidewalk. As Mr. Cesery stops his vehicle, Ms. Kuenzi slows her pace.
- Within seconds, Mr. Kalb sounds his horn and Mr. Cesery pulls away driving West on Orange Street.
- Mr. Cesery turns left onto Riberia Street, and Mr. Kalb follows.
- Mr. Cesery continues South on Riberia and turns right onto King Street West bound leaving the field of view as Mr. Kalb continues on across King Street on Riberia Street South bound.
- Mr. Kalb parks his vehicle at a location on Riberia and exits the vehicle.
- At 1:52 pm while traveling North on Riberia close to the corner of Riberia and Orange Street, Mr. Kalb gets behind Mr. Cesery again. Mr. Cesery appears to be traveling very slowly and attempting to engage another young female pedestrian in conversation.
- Mr. Cesery can be observed on the video pulling his vehicle over into a parking area on the North side of Riberia across from the female pedestrian.
- Mr. Kalb slows next to the female pedestrian and yells at her "tell him to go get a room".
- After pulling past Mr. Cesery's vehicle, Mr. Kalb stops his vehicle at the corner of Riberia and Orange Streets; Mr. Cesery can be seen backing his vehicle out of the parking area and back onto Riberia Street.
- While at the Stop sign; Mr. Kalb sees a SAPD patrol vehicle and complains to the officer that Mr. Cesery had parked in his driveway and keeps stopping in the street. The SAPD vehicle can be seen initiating a traffic stop on Mr. Cesery's vehicle before Mr. Kalb pulls away and the rear facing camera loses field of view.

After obtaining the video from Mr. Kalb, Detective Trotzke and Sgt. Etheredge of the SAPD provided a copy to the Office of the State Attorney to review. Detective Trotzke then re-interviewed Ms. Kuenzi in an interview room at the SAPD station concerning the incident that occurred at 57 Orange Street. The interview room was equipped with video and audio, which captured Ms. Kuenzi's interview. During her interview, Ms. Kuenzi stated that she believed that Mr. Cesery was trying to pull her toward his car. After the interview was concluded Detective Trotzke completed a charging affidavit charging Ms. Kuenzi with False Reports of Commission of Crimes contrary to Florida Statute §817.49.

ANALYSIS

On September 16, 2016, a sworn charging affidavit was completed by Detective Trotzke charging Ms. Kuenzi with False Reports of Commission of Crimes, contrary to §817.49.

§817.49 False Reports of Commission of Crimes

Whoever willfully imparts, conveys or causes to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed, shall upon conviction thereof shall be guilty of a misdemeanor of the first degree.

While Ms. Kuenzi's statements to law enforcement are not consistent with the other evidence in this case, they are also not totally inconsistent with the evidence when viewed in the light most favorable to her. It is clear from the evidence in this case that Ms. Kuenzi embellished the events that took place at 57 Orange Street on September 14, 2016. She contends that she was in shock from the incident and deeply disturbed by Mr. Cesery's aggressiveness. Ms. Kuenzi asserted that she truly believes that Mr. Cesery's intent was to force her into his vehicle. It is clear in the video, that she did pull her hand/arm back and away from Mr. Cesery. Mr. Cesery did hold Ms. Kuenzi by the hand and/or wrist and after approximately 20 seconds she did pull away from his grasp. The video provided by J. Kalb does not include audio, so it cannot be ascertained whether Mr. Cesery did or did not "forcefully" tell Ms. Kuenzi to go with him. In her call to 911, Ms. Kuenzi appeared to be under severe emotional distress and she stated in her second interview that she was in "shock" after the incident at 57 Orange Street. In her second interview with law enforcement Ms. Kuenzi also alluded to past traumas that she has experienced. Past trauma, youth, and emotional distress likely influenced Ms. Kenzi's perception of the events on September 14th on Orange Street.

CONCLUSION

In conclusion, the video evidence in this case conflicts with Ms. Kuenzi's account of her interaction with Mr. Cesery on September 14, 2016; however, those conflicts do not rise to the level providing willful false information concerning the event. After considering all of the evidence and testimony concerning this particular incident, given the totality of the circumstances in this case, the evidence does not meet the standards established for criminal prosecution.

BENJAMIN J RICH
ASSISTANT STATE ATTORNEY

WRITING SAMPLE III

OFFICE OF THE STATE ATTORNEY

SEVENTH JUDICIAL CIRCUIT OF FLORIDA
VOLUSIA, FLAGLER, PUTNAM & ST. JOHNS COUNTIES

R.J. LARIZZA
STATE ATTORNEY



4010 LEWIS SPEEDWAY
BUILDING A, SUITE 2022
ST AUGUSTINE, FL 32084
PHONE: (904) 209-1620
FAX: (904) 209-1621

April 25, 2016

MEMO: JEFFREY MARCUS GRAY / MM1600558
AGENCY CASE #: SJSO16OFF002880

This memorandum reflects a review of the March 14, 2016 incident wherein Jeffrey Marcus Gray was arrested by the St. Johns County Sheriff's Office for "trespassing within school safety zone" in violation of § 810.0975, Florida Statutes. The arrest took place on a public sidewalk just outside of St. Augustine High School located at 3205 Varella Ave., St. Augustine, Florida. Mr. Gray's arrest was videotaped by a member of the St. Johns County Sheriff's Office. The video indicates that at the time of his arrest Mr. Gray was in possession of an Apple iPhone, Canon camera with video capability, and a large sign. The sign had the following handwritten statements: "Public Records Access IS Not A Crime" as well as "The First Amendment Is Not A Crime".

The arrest video reflects law enforcement making contact with Mr. Gray and informing him that he was trespassing within the "500 foot school safety zone". Law enforcement also informs Mr. Gray that he has been previously warned not to trespass within the school safety zone. Mr. Gray responds to law enforcement that he is engaged in a lawful protest and not violating the law. Mr. Gray is then taken into custody and transported to the St. Johns County Jail where he was booked on one count of "trespass within school safety zone" in violation of Florida Statute § 810.0975.

Prior to the March 14th arrest of Mr. Gray outside of St. Augustine High School, the Superintendent of Schools for the St. Johns County School District as well as the Principal of St. Augustine High School delivered written trespass warnings to Mr. Gray. The written trespass warnings informed Mr. Gray that he was not authorized, licensed or invited to enter onto any property of the St. Johns County School Board and that any entry onto School Board properties would constitute a trespass. The warnings also provided that Mr. Gray was not to enter or remain within the "School Safety Zone" pursuant to Florida Statute § 810.0975. The written warnings did provide that Mr. Gray would be allowed entry onto St. Johns County School Board properties for the purposes of attending School Board meetings or other duly-noticed public meetings, to submit public records requests at the School Board headquarters, and to drop off/pick up his children. The trespass warning from the superintendent also provided that the principal could consider entry upon school property for the purpose of visiting the Mr. Gray's child[ren]'s schools for other legitimate purposes upon advanced request.

The sidewalk where Mr. Gray is alleged to have trespassed is not St. Johns County School Board property. The sidewalk is a public sidewalk and within the 60 foot right-of-way; however, where Mr. Gray was standing at the time of his arrest was approximately 40 feet from the front doors of the St. Augustine High school. Mr. Gray was well within the 500 foot School Safety Zone as defined by F.S. § 810.0975.

Florida Statute § 810.0975 School safety zones; definition; trespass prohibited; penalty

(1) For the purposes of this sections, the term “school safety zone” means in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education.

(2)(a) Each principal or designee of each public or private school in this state shall notify the appropriate law enforcement agency to prohibit any person from loitering in the school safety zone who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone.

(b)1. During the period from 1 hour prior to the start of a school session until 1 hour after the conclusion of a school session, it is unlawful for any person to enter the premises or trespass within a school safety zone or to remain on such premises or within such school safety zone when that person does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone.

2. a. Except as provided in sub-subparagraph b., a person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

b. A person who violates this subsection and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c)1. Except as provided in subparagraph 2., a person who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone who shall willfully fail to remove himself or herself from the school safety zone after the principal or designee, having reasonable belief that he or she will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests him or her to leave the school safety zone commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who violates subparagraph 1. and who has been previously convicted of any offense contained in chapter 874 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section does not abridge or infringe upon the right of any person to peaceably assemble and protest.

(4) This section does not apply to residents or persons engaged in the operation of a licensed commercial business within the school safety zone.

F.S. § 810.0975 does have negative history. In GRAY v. KOHL, 568 F.Supp.2d 1378 (2008), a U.S. District Court in southern Florida found provisions of § 810.0975 unconstitutionally vague as to violate due process. Specifically, the Court held that “[s]ubsections 2(a) and 2(b) of § 810.0975, Florida Statutes, are declared unconstitutionally vague” and “permanently enjoined” the State of Florida and its officers from enforcing those subsections. It should be noted that GRAY v. KOHL is not controlling, but is persuasive authority.

Furthermore, review of the legislative history of § 810.0975 gives insight concerning the intent of the statute. It was the legislature’s intent in the construction of this law to protect children by creating a 500 foot buffer zone around all schools so that “persons such as drug dealers, gang members, or pedophiles” could be kept a safe distance from children while arriving to, attending, or leaving school. See also J.L.S. v. STATE, 947 So.2d 641 (Fla. 3rd DCA 2007). In the case at hand, there is no evidence that would lead one to a reasonable suspicion that Mr. Gray was engaged in any of the conduct sought to be prohibited by § 810.0975.

In 2013, § 810.0975 was amended adding subsections (3) and (4) were made to § 810.0975. The addition of these subsections was to ensure that the 1st Amendment rights of Florida’s citizens would not be infringed upon by the enactment and enforcement of § 810.0975. Pertinent to this case is subsection (3) which permits peaceful protest within the school safety zone.

In conclusion, there is no evidence that at any point during the March 14, 2016 incident Mr. Gray entered or remained on St. Johns County School Board property after having been warned not to trespass, therefore, § 810.09 (Trespass in structure or conveyance) and § 810.08 (Trespass on property other than structure or conveyance) do not apply as Mr. Gray did not enter onto the premises of St. Augustine High School or any of its structures. Second, at the time of his arrest, Mr. Gray was standing on a public sidewalk within the school safety zone holding a sign in protest. There is no evidence or testimony that could lead a person to a reasonable belief that Mr. Gray was preparing to commit a crime or was engaged in harassing students, and therefore, § 810.0975(c)1 does not apply. There is no testimony or evidence that Mr. Gray's conduct disrupted or disturbed any of the students of St. Augustine High School on March 14, 2016. After considering all of the evidence and testimony concerning this particular incident, given the totality of the circumstances in this case, the evidence does not meet the standards established for criminal prosecution.

BENJAMIN J RICH
ASSISTANT STATE ATTORNEY

ADDENDUM - I

949 So.2d 1132
District Court of Appeal of Florida,
First District.

S.D.T., In the **Adoption** of: Infant
Male T., a Minor, Appellant,

v.

BUNDLE OF HOPE MINISTRIES, INC.,
and Other Unknown Guardians, Appellees.

No. 1D06-2137.

Feb. 28, 2007.

Synopsis

Background: Unwed father filed motions to intervene, for relief from judgment, to set aside the judgment terminating parental rights, and for rehearing. The Circuit Court, Duval County, Linda F. McCallum, J., denied father's motions, and he appealed.

[Holding:] The District Court of Appeal held that, where father's petition for parentage was filed after the **adoption** agency filed its petition seeking termination of father's rights, but before the entry of an **adoption** order, the subsequent hearing conducted by trial court on father's motions established the fact that the minor was father's biological child, thereby authorizing the court to confirm the previously entered order terminating father's parental rights.

Affirmed.

Benton, J., filed dissenting opinion.

West Headnotes (2)

- [1] **Adoption** ⇌ Rehearing or new trial
- Adoption** ⇌ Judgment, order, or decree
- Infants** ⇌ Parents and relatives
- Infants** ⇌ Rehearing and new trial
- Infants** ⇌ Determination and findings

Where unwed father's petition for parentage was filed after **adoption** agency filed its petition seeking termination of father's rights, but before entry of an **adoption** order, the subsequent hearing conducted by trial court on father's motions to intervene, for relief from judgment, to set aside the judgment terminating parental rights, and for rehearing established the fact that minor was father's biological child, thereby authorizing court to confirm previously entered order terminating father's parental rights pending **adoption**; despite fact that no finding had been made that father was child's biological father at time of entry of termination order, the court was not precluded from making a finding to such effect following hearing on father's motions. West's F.S.A. §§ 63.062(1)(b), 63.142(4).

[2] **Infants** ⇌ Pleading, notice, and process

Since father's status as the child's biological parent was never in dispute and he was identified in the petition seeking termination of his rights as the child's biological father, any earlier lack of notice to father by reason of **adoption** agency's failure to serve him with a copy of the petition for termination of his parental rights was cured by father's appearance and testimony at the later proceeding, which, although designated as one seeking relief from judgment, met all the requisites essential for a hearing conducted on a petition to terminate parental rights pending **adoption**. West's F.S.A. § 63.089.

Attorneys and Law Firms

*1133 Alexander R. Christine, Jr., Maureen Sullivan Christine, and Benjamin J. Rich of Alexander Christine & Maureen Sullivan Christine, P.A., St. Augustine, for Appellant.

Rebecca Bowen Creed of Mills & Creed, P.A., and Judy Setzer, Jacksonville, for Appellees.

Opinion

PER CURIAM.

Appellant S.D.T., an unmarried biological father, appeals a final order denying his Motion to Intervene, Motion for Relief from Judgment and to Set Aside Judgment Terminating Parental Rights, and Motion for Rehearing. The issues raised on appeal are (1) whether the trial court possessed jurisdiction to terminate appellant's parental rights because those rights had never been established in accordance with statutory procedures; (2) whether the trial court erred in entering a final judgment of **adoption** and denying appellant's motions while a paternity action was pending; and (3) whether the trial court's findings of fact are supported by the record. We affirm the trial court's order.

On November 22, 2005, the appellee, Bundle of Hope Ministries, Inc., the "**adoption entity**" as defined in ***1134** section 63.032(3), Florida Statutes (2005), filed its report with the trial court of its intended placement for **adoption** of the minor child, Infant Male T., who was born the same day in St. Johns County to M.T., the mother. Thereafter, on January 9, 2006, appellee filed in Duval County a petition for termination of parental rights pending **adoption**.¹ Although appellant was named in the petition as the natural father of the child, he was not served with the petition. On February 8, 2006, judgment was entered terminating parental rights as to both the mother and appellant pending **adoption**. In so doing, the court expressly found that appellant "has not been established by court proceedings to be the father of the child."

On February 9, 2006, appellant filed a paternity claim with the Florida Putative Father Registry. On February 21, 2006, appellant filed a petition for determination of paternity in the St. Johns County Circuit Court. The petition alleged that appellant provided the mother with reasonable financial support in the form of food and shelter while he lived with the mother; the mother promised she would contact him and provide the time and place of the child's birth but did not do so; and when appellant located the mother, she advised him she was "**adopting** the child out" but was otherwise vague and misleading and would not reveal the child's location. Appellant requested that the court establish the child's paternity by ordering proper scientific testing, adjudicating parental responsibility, adding his name to the birth certificate, changing the child's name, and awarding him sole parental responsibility.

On March 8, 2006, appellee filed its final post-placement report and recommendation, describing the infant as thriving and recommending that the prospective **adoptive** parents be approved for finalization of the **adoptive** process. The **adoption** entity and the prospective parents filed a petition for **adoption** of the child, which was granted by the final judgment of **adoption** filed March 8, 2006, in Duval County.

On March 9, 2006, appellant filed motions to intervene, for relief from judgment, to set aside the judgment terminating parental rights, and for rehearing. This was the first notice given to the Duval County Circuit Court of the paternity action previously filed in St. Johns County. Thereafter, the trial court conducted a hearing on appellant's motions during which appellant's counsel stipulated that appellant's paternity claim was not timely filed but alleged that the late filing was due to the mother's actions. According to appellant's counsel, the mother promised appellant she would advise him as to the ***1135** date, time, and place of the child's birth, but she deliberately relocated and withheld her new location from him. When the child was born, the mother allegedly refused to disclose any information regarding the birth of the child until early December 2005. Counsel further stated the mother's assertion that she was not cohabiting with a man during her pregnancy was not truthful because she was living with appellant at the time of her pregnancy. Both appellant and the mother subsequently testified regarding appellant's level of involvement before and after the child's birth.

Following the hearing, the trial court entered an order denying appellant's motions. Based on the testimony presented, the trial court made factual findings concerning appellant's lack of involvement with the child and the child's mother. This appeal followed.

The issues raised by appellant involve questions of statutory interpretation. Therefore, we apply a *de novo* standard of review. See *Wegner v. State*, 928 So.2d 436, 438 (Fla. 2d DCA 2006) ("Statutory interpretation raises an issue of law, and we review the trial court's ruling *de novo*"). Because of the similarity between some of the facts in the instant case and those in *In re Adoption of Baby A.*, 944 So.2d 380 (Fla. 2d DCA 2006), *review denied*, *Gift of Life Adoptions, Inc. v. A.S.*, 944 So.2d 344 (Fla.2006), we **adopt** much of the same interpretation given the pertinent statutes by the Second District in *Baby A.*, in which the court held that despite the provisions of section 63.054(1), Florida Statutes (2004), requiring that an unmarried biological father file a claim of paternity before the date a petition for termination of rights is

filed, the father who files such a claim is nonetheless entitled to the resolution of such claim before the conclusion of an **adoption** proceeding.

[1] In *Baby A.*, as here, the father's petition for parentage was filed after the **adoption** agency filed its petition seeking termination of the father's rights but before the entry of an **adoption** order. If there had been no hearing conducted on appellant's motions, we could be constrained to reverse because, similar to the facts in *Baby A.*, at the time the order was entered terminating appellant's parental rights, he did not fit into any of the categories of persons delineated in section 63.062(1)(b), Florida Statutes (2005), which specifies the conditions under which a father's parental rights may be terminated without his written consent.² As a consequence, appellant was then neither a parent nor a person whose consent to the **adoption** of the child was required by that statute as a prerequisite to a termination of parental rights, and because appellant could not then be deemed a statutory parent, under the reasoning of *Baby A.*, he *1136 had no parental rights that could be terminated.³ See *Baby A.*, 944 So.2d at 394; see also *In re Baby R.P.S.*, 942 So.2d 906, 908 (Fla. 2d DCA 2006) (holding that the trial court erred in terminating the appellant's parental rights given that the appellant, an unmarried biological father, was not a parent under the Florida **Adoption** Act). We nevertheless affirm the order appealed because, in our opinion, the subsequent hearing conducted on appellant's motions established the fact that the minor was appellant's child, as required by section 63.062(1)(b) 3., thereby authorizing the court to confirm the previously entered order terminating appellant's parental rights.⁴

Despite the fact that no finding had been made that appellant was the child's father at the time of the entry of the termination of rights order, the trial court was not precluded from making a finding to such effect following the hearing on appellant's motions. Section 63.142(4), Florida Statutes (2005), provides that a judgment of termination on which the later judgment of **adoption** is based is voidable, not void, if it is found by the court in considering a motion for relief from judgment that the judgment did not comply with the requirements of chapter 63. Although there was no explicit finding by the court establishing appellant as the child's statutory parent in its order denying appellant's motions, we consider the court implicitly found, by addressing the motions on their merits and tracking the provisions of section 63.089(4), Florida Statutes (2005), relating to a father's abandonment of his child, that appellant's status in such regard had been established during the later proceeding. As this Court

recognized in *B.B. v. P.J.M.*, 933 So.2d 57, 59 (Fla. 1st DCA 2006), the requirement in section 63.062(1)(b) 3. that the minor be established by court proceeding to be the father's child is not limited to a formal paternity adjudication under chapter 742, Florida Statutes, but encompasses any court proceeding in which a material determination is made to such effect. We further pointed out that material facts may be established either by resolving disputed facts or by the presentation of undisputed facts, *i.e.*, uncontested material facts that are judicially accepted as true, and such acceptance could "be implied or express." *Id.* at 60.

[2] Appellant's status as the child's parent was never in dispute. Appellant was identified in the petition seeking termination of his rights as the child's biological father, and he confirmed such fact in both his pleadings and his testimony at the hearing conducted on the motions. Thus, any earlier lack of notice to appellant by reason of appellee's failure to serve him with a copy of the petition for termination *1137 of his parental rights⁵ was cured by his appearance and testimony at the later proceeding, which, although designated as one seeking relief from judgment, met all the requisites essential for a hearing conducted on a petition to terminate parental rights pending **adoption** under section 63.089. Moreover, in making factual findings that track the provisions of the abandonment statute, the trial court essentially determined that appellant had, in fact, abandoned the child. Given that this determination is supported by competent, substantial evidence and that abandonment is a basis for the termination of parental rights, we affirm the trial court's order.

AFFIRMED.

DAVIS, J., and ERVIN, III, RICHARD W., Senior Judge, concur; BENTON, J., dissents with opinion.

BENTON, J., dissenting.

The majority points out that S.D.T.'s "status as the child's parent was never in dispute." *Ante* p. 1136. See *B.B. v. P.J.M.*, 933 So.2d 57, 60 (Fla. 1st DCA 2006) ("Appellant's identity as J.M.'s father ... was agreed to by all interested parties and accepted as true by the court throughout the ... proceedings.").

S.D.T. was therefore entitled to notice of and full participation in the proceedings that led to termination of his parental rights. See *In re Adoption of Baby A.*, 944 So.2d 380, 396 (Fla. 2d DCA 2006), *review denied sub nom. Gift of Life*

Adoptions, Inc. v. A.S., 944 So.2d 344 (Fla.2006) (“Section 63.062(1)(b)(3) provides that a petition to terminate parental rights may be granted only after written consent or notice to a ‘father’ under circumstances where ‘[t]he minor has been established by court proceeding to be his child.’ ”); *B.B.*, 933 So.2d at 60.

S.D.T. received no such notice here. When he found out about the already ongoing proceedings and sought to intervene, moreover, the trial court denied his motion to intervene, ruling

that he “ha[d] no legal rights in the instant action that would require the Court to allow him to intervene.” This was error.

The order denying motion to intervene, motion for relief from judgment and motion for rehearing should be reversed, and the cause should be remanded for further proceedings. Accordingly, I respectfully dissent.

All Citations

949 So.2d 1132, 32 Fla. L. Weekly D571

Footnotes

1 The petition states in part:

3. Venue is proper in Duval County pursuant to § 63.087(4)(a)(3), *Fla. Stat.*, as the location of the **Adoption** Entity is in said county and the birth mother has waived venue. The child is less than six (6) months old.

6. The child's mother is **M.T.** and she has consented to the termination of her parental rights for the purpose of placing the child for **adoption**. Her consent is now binding and irrevocable. The consent is filed herein.

7. The child's biological father is **S.T.** The birth mother is not married and was not married at the time of conception or at the time of the birth of the child, and the biological father has not provided her with any financial or emotional support during the pregnancy. The biological father has not **adopted** or sought to **adopt** the child. The biological father has not been established by court proceedings to be the father of the child. The biological father has not filed an affidavit of paternity pursuant to *Fla. Stat.* 382.013(2)(c). The biological father has not filed an acknowledgment of paternity with the Office of Vital Statistics of the Department of Health.... Pursuant to § 63.062, *Fla. Stat.*, the consent of the birth father is not required.

2 This provision states in part:

(1) Unless supported by one or more of the grounds enumerated under s. 63.089(3), a petition to terminate parental rights pending **adoption** may be granted only if written consent has been executed as provided in s. 63.082 after the birth of the minor or notice has been served under s. 63.088 to:

....

(b) The father of the minor, if:

1. The minor was conceived or born while the father was married to the mother;

2. The minor is his child by **adoption**;

3. The minor has been established by court proceeding to be his child;

4. He has filed an affidavit of paternity pursuant to s. 382.013(2)(c); or

5. In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor, has filed such acknowledgment with the Office of Vital Statistics of the Department of Health within the required timeframes, and has complied with the requirements of subsection (2).

3 In so saying, we reject appellee's argument that appellant did not preserve the issue of the trial court's statutory authority to terminate his parental rights for the reason he never argued that he was not a parent for purposes of a termination proceeding. The burden of showing that an unmarried biological father meets the definition of a parent in order for his rights to be terminated is, in our judgment, placed on the party seeking termination. See § 63.089(2)(a) 3., *Fla. Stat.* (2005).

4 Unlike the facts at bar, no finding was ever made in *Baby A.* of the father's status as a statutory parent. There, motions for summary judgment were filed by the father on his petition for determination of paternity and by the **adoption** agency on its petition for termination of parental rights. A simultaneous hearing was conducted in both cases, and the trial court considered first the **adoption** agency's motion, granted it because of the father's failure to comply with chapter 63 requirements, and thereafter dismissed the parentage action as moot.

5 Neither section 63.088, Florida Statutes (2005), relating to proceedings to terminate parental rights, nor section 63.062(3) (a), pertaining to **adoption** proceedings, requires an **adoption** agency to provide notice of same to an unmarried

biological father who does not have the status of parent as defined in chapter 63. Although appellant raised the issue of the statutes' constitutionality before the lower court, he has not pursued those arguments in this appeal.

End of Document

© 2021 Thomson Reuters. No claim to original U.S.
Government Works.

ADDENDUM - II



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

Certificate of Accreditation for Continuing Legal Education

255738
State Attorney's Office - 7th Judicial
Kenneth J. Janesk II
251 N Ridgewood Ave
Daytona Beach, FL 32114-3275

February 3, 2020

Reference Number: 2001056N
Title: Ethics in Prosecution
Level: Basic
Approval Period: 01/23/2020 - 07/31/2021

CLE Credits

General	1.0
Ethics	1.0

Certification Credits

ETHICS IN PROSECUTION




THE FLORIDA BAR vs. THE COMMISSION ON ETHICS

- **THE FLORIDA BAR**

- Is an official arm of the Supreme Court.
- Regulates and disciplines **all** FL lawyers.
- Sets forth the rules regulating all FL lawyers (*see <https://www.floridabar.org/rules/rrtfb/>*).
- Investigates alleged violations of FL Bar Rules.
- Recommends/Imposes penalties for verified violations of Fla. Bar Rules.

- **THE COMMISSION**

- Established by Fla. Stat. 112.320 & 112.321 and governed by Art. II, Sec. 8, FL Constitution.
 - Investigates complaints alleging breach of public trust by **public officers** and **employees**.
 - Investigates violations of the Code of Ethics for Public Employees.
 - Recommends or imposes penalties (*see Fla. Stat. 112.317*).
- 

WITH GREAT POWER COMES GREAT RESPONSIBILITY – The Peter Parker Principle

A prosecutor has unique and vast power. These unique responsibilities are recognized by the Florida Bar, which has codified special responsibilities pertaining to prosecutors. (*See Fla. Bar Rule 4-3.8: **SPECIAL RESPONSIBILITIES OF A PROSECUTOR***)



FLORIDA BAR RULE 4-3.8

The prosecutor in a criminal case **shall:**

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as a right to a preliminary hearing;
- (c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations such as making a reasonable effort to assure that the accused has been advised of the right to and the procedure for obtaining counsel and has been given a reasonable opportunity to obtain counsel so that guilt is decided upon the basis of the sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. Florida has adopted the American Bar Association Standards of Criminal Justice Relating to Prosecution Function.” (*Comment section of Rule 4-3.8*).



American Bar Association – Criminal Justice Standards for the Prosecution Function

- Standard 3-1.2 Functions and Duties of the Prosecutor
- (a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function.

A.B.A. Standard 3-1.2 Functions and Duties of the Prosecutor

(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgement to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interest of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

A.B.A. Standard 3-1.4: The Prosecutors Heightened Duty of Candor

- (a) In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office. *(see also Fla. Bar Rule 4-3.6 Trial Publicity)*.
- (b) The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor's representation of material fact or law that the prosecutor reasonably believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder. *(see also Fla. Bar Rule 4-3.3 Candor Toward The Tribunal and Rule 4-4.1 Truthfulness in Statements to Others)*
- (c) The prosecutor should disclose to a court legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecutor's position and not disclosed by others. *(see also Fla. Bar Rule 4-3.3 Candor Toward The Tribunal)*



A.B.A. Standard 3-1.5: Preserving the Record

At every stage of representation, the prosecutor should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offer of proof and proffers of excluded evidence.

A.B.A. Standard 3-1.6 Improper Bias

- (a) The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority.

A.B.A. Standard 3-1.7 Conflicts of Interest

The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues.

A prosecutor who has formerly represented a client should not use information obtained from that representation to the disadvantage of the former client. (*Fla Bar rules strictly prohibit this. see also Fla. Bar Rule 4-1.8, 4-1.9 Conflict of Interest*)

The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

The prosecutor should disclose to appropriate supervisory personnel any facts or interests that could reasonably be viewed as raising a potential conflict of interest.

The prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor.



A.B.A. Standard 3-1.9 Diligence, Promptness and Punctuality

The prosecutor should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victim(s), and witnesses. *(see also Fla. Bar Rule 4-3.2 Expediting Litigation)*

The prosecutor should not **unreasonably** oppose requests for continuances from defense counsel.

The prosecutor should know and comply with timing requirements applicable to criminal investigation and prosecution, so as not to prejudice a criminal matter. *(ex. Statute of limitations, speedy file/trial rules).*

The prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others.



Standard 3-1.10 Relationship with the Media

The prosecutor's public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

The prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused..... *(see also Fla. Bar Rule 4-3.6 Trial Publicity)*

The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

*****Food for thought:**

Please consult the SAO 7th Policy and Procedure Directive concerning public statements/media statements.



Standard 3-1.11 Literary or Media Rights Agreements Prohibited

The prosecutor should not enter into any agreement or informal understanding by which the prosecutor acquires an interest in a literary or media portrayal or account based on or arising out of the prosecutor's involvement in a matter until all aspects of the matter have concluded. *(Failure to adhere to this rule could also result in a Comm. Ethics complaint as well as an actionable conflict of interest under the Bar Rules.)*

The prosecutor should not allow prosecutorial judgment to be influenced by the possibility of future personal literary or other media rights.

In creating or participating in any literary or other media account of a matter in which the prosecutor was involved, the prosecutor's duty of confidentiality must be respected even after government service is concluded. When protected confidences are involved, a prosecutor or former prosecutor should not make disclosure without consent from the prosecutor's office.



Standard 3-1.12 Duty to Report and Respond to Prosecutorial Misconduct

When a prosecutor reasonably believes that another person associated with the prosecutor's office intends or is about to engage in misconduct, the prosecutor should attempt to dissuade the person. If the attempt fails or is not possible, and the prosecutor reasonably believes that misconduct is ongoing, will occur, or has occurred, the prosecutor should promptly refer the matter to higher authority in the prosecutor's office including, if warranted by the seriousness of the matter, to the chief prosecutor.

***** Fla. Bar Rule 4-8.3 REPORTING PROFESSIONAL MISCONDUCT**

(a) Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects **must** inform the appropriate professional authority.

******* Consider also reporting the issue to your supervisor immediately.



MOST COMMON ETHICAL PROBLEMS FACED BY PROSECUTORS:

- **Discovery Violations**
- **Lack of Diligence**
- **Lack of Candor to the Court**
- **Lack of Victim Contact**
- **Improper Closing Argument**
- **Civility**
- **3.850 Waivers**
- **Conflicts of Interest**
- **Gifts**

RESOURCES AND REFERENCE MATERIALS

The Florida Bar Rules of Professional Conduct:

https://www-media.floridabar.org/uploads/2019/09/Ch-4-from-2020_03-SEP-RRTFB-9-19-19-3.pdf

American Bar Association Standards of Criminal Justice Relating to Prosecution Function:

https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/

The Florida Bar Ethics Opinions

<https://www.floridabar.org/ethics/etsubj/>

ETHICS AND THE PROSECUTOR by the Hon. William M. Hoeverler

Stetson Law Review, Vol. XXIX, pg. 195 – 198.

When in doubt concerning a question of ethics, CALL THE FLORIDA BAR ETHICS HOTLINE!!!!

800-235-8619