

APPLICATION FOR
THE FIFTH DISTRICT COURT OF APPEAL



HEATHER L. HIGBEE

APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT COURT

(Please attach additional pages as needed to respond fully to questions.)

DATE: December 21, 2018 Florida Bar No.: 0886173
Social Security No.: _____

GENERAL:

1. Name Heather L. Higbee E-mail: ctjuh1@ocnjcc.org
Date Admitted to Practice in Florida: May, 1991
Date Admitted to Practice in other States: N/A

2. State current employer and title, including professional position and any public or judicial office.
Circuit Court Judge, Ninth Judicial Circuit

3. Business address: 424 North Orange Avenue Suite 2015
City Orlando County Orange State FL ZIP 32801
Telephone (407) 836-0598 FAX (407) 835-5212

4. Residential address: [REDACTED]
City Orlando County Orange State FL ZIP 32801
Since October 2014 Telephone (407) 921-0488

5. Place of birth: Wakefield, Rhode Island
Date of birth: August 17, 1965 Age: 53

6a. Length of residence in State of Florida: 40 years

6b. Are you a registered voter? Yes No
If so, in what county are you registered? Orange

7. Marital status: Married
If married: Spouse's name [REDACTED]
Date of marriage [REDACTED]
Spouse's occupation [REDACTED]

If ever divorced give for each marriage name(s) of spouse(s), current address for each former spouse, date and place of divorce, court and case number for each divorce.

[REDACTED] No: 92-4230-CA
[REDACTED]
[REDACTED] No: 2010 DR 718-AA

8. Children
 Name(s) Age(s) Occupation(s) Residential address(es)

9. Military Service (including Reserves)
 Service Branch Highest Rank Dates
 N/A

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____
 Service Branch Highest Rank Dates

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

10. Are you currently addicted to or dependent upon the use of narcotics, drugs, or intoxicating beverages? If yes, state the details, including the date(s).

No

11a. 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?

Yes No

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.

N/A

11b. 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 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered 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

Yes No

If yes, please explain.

N/A

12a. 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?

Yes No

12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

N/A

13. 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, give full details as to court, date and circumstances.

No

14. 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 law provisions.)

No

15. 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 use of 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

16. 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

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

No

EDUCATION:

18a. Secondary schools, colleges and law schools attended.

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Lake Highland Preparatory School	4 th in class	1979-1983	High School Diploma
Duke University	Top 1/3 in class, GPA 3.334	1983-1987	Bachelor of Arts
University of Florida College of Law	88th	1987-1990	Juris Doctorate

18b. List and describe academic scholarships earned, honor societies or other awards.

Duke University:
 President, Southgate Dormitory, (1983-1984)
 Member, Freshman Council of Presidents, (1983-1984)
 Senior Class President Duke University Class of 1987 (1986-1987)
 Recipient, 1987 Senior Leadership Award (one of ten awarded out of graduating class)
 Member, Alpha Omicron Pi Sorority (1984-present)
 Officer, Alpha Omicron Pi Sorority (1985-1986)
 Chair, Class of 1987 Reunion Committee (1987-1992)
 Liason, Class of 1987 Development (1987-1992)

NON-LEGAL EMPLOYMENT:

19. List all previous full-time non-legal jobs or positions held since 21 in chronological order and briefly describe them.

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
N/A	Only part time employment, full time student		

PROFESSIONAL ADMISSIONS:

20. List all courts (including state bar admissions) and administrative bodies having special admission requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have been suspended or resigned.

Florida Bar, Date of Admission May 1991 to present

U.S. Middle District of Florida, August 1997-2007 (did not renew membership after taking the bench)

LAW PRACTICE: (If you are a sitting judge, answer questions 21 through 26 with reference to the years before you became a judge.)

21. State the names, dates and addresses for all firms with which you have been associated in practice, governmental agencies or private business organizations by which you have been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment:

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Assistant State Attorney	8 th Judicial Circuit	P.O. Box 600 Gainesville, Fl 32602	1991-1996
Assistant Statewide	The Office of the Statewide	135 W. Central Avenue, Ste. 1000	1996-1997

Prosecutor	Prosecutor, Central Florida Bureau	Orlando, Fl 32801	
Attorney/President	Heather L. Higbee P.A.	56 Park Lake Street Orlando, Fl 32803	1997-1998
Attorney/Vice President	Melander and Higbee P.A.	56 Park Lake Street Orlando, Fl 32803	1998-1999
Attorney/Associate	Phillip Tatich, P.A.	341 North Maitland Avenue Suite 340 Maitland, Fl 32751	1999
Orange County Judge	Ninth Judicial Circuit	425 N. Orange Avenue, Orlando Fl 32801	2007-2011
Circuit Court Judge	Ninth Judicial Circuit	425 N. Orange Avenue, Orlando Fl 32801	2011- Present

22. 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.

I am currently serving as a Circuit Judge in the Ninth Judicial Circuit. Assigned to a Circuit Civil Division, I preside over a wide variety of civil causes of actions including but not limited to medical malpractice, automobile negligence, complex business court cases, foreclosure actions, construction, real property and collection matters. I have served in a variety of other divisions subsequent to my appointments to the bench which will be detailed later in this application.

Prior to my appointment to the County Court Bench, I owned and operated my own law firm, Heather L. Higbee, P.A. When I first opened the practice, I represented individuals charged with criminal offenses from misdemeanors to capital felonies. As my practice grew, I took on family law, commercial and transactional real estate matters. I carried an average caseload of fifty litigation files and many more simplified transactional matters. At the time of my appointment I was handling everything from complex financial dissolution matters to numerous uncontested and collaborative dissolutions, paternity and other family law related matters. I started a general practice from scratch and over a twelve year period it grew into a boutique law firm focused on complex financial and contested domestic relations actions.

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

Court		Area of Practice	
Federal Appellate	_____ %	Civil	<u>(02-07) 5</u> %
Federal Trial	_____ %	Criminal	<u>(02-07) 5</u> %
Federal Other	_____ %	Family	<u>(02-07) 90</u> %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>100</u> %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

24. In your lifetime, how many (number) of the cases you have tried to verdict or judgment were:

Jury?	<u>50+ (91-97)</u>	Non-jury?	<u>Approx. 35 in last 5 years of practice</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>0</u>

25. 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

26. 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 in full.

No

(Questions 27 through 30 are optional for sitting judges who have served 5 years or more.)

27a. For your last 6 cases, which were tried to verdict before a jury or arbitration panel or tried to judgment before a judge, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

1. Baker v. Sterrett: Case No: 2006 DR-2899-O, opposing counsel Norman Levin Esq.
407-834-9494

2. Chmielewski v. Chmielewski: Cas no.: 2003-DR-1956-O, opposing counsel N. Lee Sasser, Esq. (407-896-0491)
3. Payne v. Payne: Case No.: 1989-DR-3386-O, opposing counsel John Cain, Esq. (deceased)
- 4 Gaskin v. Aten: Case No.: 2004-DR-19068-O, opposing counsel William Barnett, Esq. (deceased)
5. Marion v. Farwell: Case No.: 2001-DR-1951-O, opposing counsel Samuel Filler, Esq. (407-772-0700)
6. Hurnovich v. Hurnovich: Case No.: 2006-DR-19922-O, opposing counsel Robert Grguric, Esq. 407-843-8055

27b. For your last 6 cases, which were 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).

1. Hershey v. Valent: Case No.: 2007-DR-14882-O (Orange County): opposing counsel Michael Morris, Esq. (407-316-7076), settled at mediation with Sam Weiss, Esq. (407-999-9500)
2. Withers v. Withers: Case No.: 2006-DR-15168-O (Orange County): opposing counsel Michael Walsh, Esq. (407-896-9431), settled at mediation with Sam Weiss, Esq. (407-999-9500)
3. Woodward v. Woodward: Case No.: 2003-DR-11908-O (Orange County): opposing counsel Amy Romaine, Esq. (321-574-1095), settled at mediation with Brenda Prewitt, Mediator (407-836-2004)
4. Young v. Young: Case No.: 2003-DR-3950 (Seminole County): opposing counsel Arlys Buschner, Esq. (407-823-8888), settled at mediation with Linda Schoonover Esq. (386-281-3340)
5. Mack v. Mack: Case No.: 2007-DR-1533-O (Orange County): opposing counsel Victor Mead (407-645-5352), went to mediation with Brenda Prewitt (407-836-2004) however it settled later on the eve of trial.
6. Codron v. Codron: Case No.: 2007-DR-453 (Seminole County): opposing counsel Jennifer Frank, Esq. (407-629-2208), settled at mediation with Nancy Webber Esq. (407-896-0491)

27c. During the last five years, how frequently have you appeared at administrative hearings? In the last five years that I practiced law, approximately once a month average times per month

27d. During the last five years, how frequently have you appeared in Court? In the last five years that I practiced law, approximately twelve times per month average times per month

27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants? N/A%

28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.

As an Assistant State Attorney, between 1991 and 1997, I appeared in Court almost every day. During my five years in Gainesville, I prosecuted cases in County, Traffic and Circuit Court. These cases ranged from second degree misdemeanors to homicides. By managing hundreds of cases at a time and trying jury and non-jury trials monthly I gained invaluable courtroom experience. In the past five years on the bench I have been in court almost every day as well.

29. For the cases you have tried to award in arbitration, during each of the past five years, indicate whether you were sole, associate or chief counsel. Give citations of any reported cases.

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number 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. Give the name of the court and judge, the date tried and names of other attorneys involved.

I have been a sitting judge for over eleven years. Please see responses to question 32(d)(iv) for significant cases as a judge.

31. Attach at least one example of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach writing for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Attached is a form Order that I created that is now used not only by myself, but by many of the Civil Judges as an "Order Preliminary to Attorneys' Fees". I authored this Order in its totality. Attached also find "Order Granting Defendant's, Walt Disney Parks and Resorts U.S., Inc., Motion for Summary Judgment" in 2015-CA-010434-O which I authored in totality.

The Final Summary Judgment on Paternity Claims in Case 2011-CA-010636. is available on line but was too lengthy to attach. That Judgment would not have been possible without a joint effort between myself and my staff attorney. It took us weeks to gather the history, the extensive cases cited and to parse through proposed Orders. I authored all of the analysis, a majority of the history, organized all of the components and authored the ruling.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

- 32a. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved and the dates of service or dates of candidacy.

I was appointed in October 2007 by Governor Charlie Crist to serve as an Orange

County Judge in Group Seven beginning November 13, 2007. In April 2010 I qualified and was elected without opposition to retain that seat. In October, 2011 I was appointed by Governor Rick Scott to serve as a Circuit Court Judge in Group Sixteen for a term beginning October 25, 2011. In May 2014 I qualified and was elected without opposition to retain that seat and still currently serve in this capacity.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
N/A		

Types of issues heard:

32c. Have you ever held or been a candidate for any other public office? If so, state the office, location and dates of service or candidacy.

No.

32d. If you have had prior judicial or quasi-judicial experience,

(i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.

Brian McClain, Esq. Morgan and Morgan, 20 N. Orange Ave., Orlando FL 32801 (407) 420-1414

Mayanne Downs, Esq, Gray Robinson, 301 E. Pine St. Orlando FL 32801 (407) 843-8880

Deb Barra, Chief Assistant State Attorney, Ninth Judicial Circuit 415 North Orange Avenue, Orlando, Florida 32801 (407) 836-4800

Jessica C. Conner, Esq. Dean, Ringers, Morgan & Lawton Attorneys at Law 201 East Pine Street, Suite 1200 Orlando, FL 32801 (407) 422-4310

Phillip Wallace, Esq. Grower Ketcham, P.O. Box 538065 Orlando, FL 32853 (407) 423-9545

Chad A. Barr, P.A. 986 Douglas Avenue Suite 100, Alamonte Springs, FL 32714 (407)-599-9036

(ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.

From October 2007 to December 2008: Ninth Judicial Circuit County Criminal Division 62: This was a general criminal county division which addressed approximately 3,875 over the 2007 year. Each month my average case count was 434 cases. These cases ranged from simple second degree misdemeanors and traffic cases to first degree misdemeanors with more complex defenses such as DUI.

From January 2009 to December 2009: Ninth Judicial Circuit Specialty Criminal Jail

Division: Statistics for this division are more difficult to establish. My role for this year was to preside over first appearances, in jail arraignments, and domestic violence preliminary hearings. Working a five day week initial appearance dockets ranged from 50 to 150 individuals per day. For each individual who appeared before me I addressed their charges, determined probable cause, established a bond when appropriate, set conditions of release and accepted pleas on the pleable offenses. I also addressed immigration status and collection court issues, conducted bond hearings, held domestic violence hearings, managed a mental health docket, conducted in-jail arraignments and addressed extradition matters. Using the statistics available to me, I estimate that I saw approximately 20,000 people over the course of that year.

From January 2010 to October 2011: Ninth Judicial Circuit County Civil Division 72: This docket covered a variety of County Court and Small Claims matters. My caseload included credit card actions, landlord tenant suits, post judgment actions, foreclosures, contract disputes and other matters dealing with \$15,000.00 or less. According to Clerk's Office statistics, I carried a docket of approximately 5,000 cases, tried approximately 100 non jury trials, two jury trials, and disposed of more than 3600 cases not including post judgment matters.

From October 2011 to December 2011: Ninth Judicial Circuit Court Specialty Domestic Violence Division: I do not have specific statistics for this division and was only in it for a short period of time. This division operated on a three week rotation. One week I was the signing judge for all individuals who apply for a domestic violence injunction. The second week I conducted hearings on the temporary injunctions that I granted and the third week I conducted other types of hearings addressing the domestic relations issues stemming from those domestic violence matters. On an average day I would review up to fifty domestic violence applications, conduct multiple hearings or work on orders in my chambers. Based on the statistics I have retrieved, There were approximately 200 new filings per month.

From January 2012 to December 2014: Ninth Judicial Circuit Court Domestic Relations Division 29: (Associate Administrative Judge 2014): This was a general domestic relations division. The statistics for this time period are less specific, however I reduced the caseload over my tenure and estimate that I resolved between 200 and 400 cases per month lowering my case load from almost 3800 cases to well under 3000. These cases included but were not limited to adoptions, parental rights, child support, child custody, dissolution actions, termination of parental rights and enforcement actions. During my third year as a domestic relations judge I also served as the Associate Administrative Judge in addition to my caseload, assisting the Administrative Judge with implementing improvements to this division, communicating with the clerks office and other entities as well as performing other administrative entities.

From January 2013 to December 2014: In addition to my other obligations, I served as the Administrative Judge for our Circuit Court Appellate Division. In this capacity I met with and supervised the various staff attorneys responsible for drafting our appeals, worked with the clerks office to institute a better mechanism for communication between their office case management system and ours, and addressed a backlog of appellate cases. We were able to become more efficient in our reporting of appellate decisions, work better as a team, and implement

better communication strategies over my tenure. I left this position voluntarily when I was re-assigned to the VOP division in 2015 as I did not feel I could properly continue my "hands on approach" from a jail division.

From January 2015 to December 2015: Ninth Judicial Circuit Court Criminal Specialty Violation of Probation Division 23: This division was a specialty criminal division out at the Orange County Correctional Facility on John Young Parkway. Due to a shortage of Judges as a result of a vacancy, I managed all of the Violations of Probations for Orange County for the first four months of 2015. I carried a docket of approximately 1800 cases during this time. I conducted arraignment proceedings, technical and substantive hearings, bond hearings, pleas, sentencings and addressed other administrative matters such as the execution of warrants and notices to appear. Offenses ranged from third degree felonies to capital offenses and violations ranged from small technical matters to new felony offenses. In May 2015 a downtown division opened to relieve me of approximately half of the cases, and in December 2015 I was responsible along with the Judge in the other division and our Chief Judge in dismantling the VOP divisions and restructuring the criminal divisions.

From January 2016 to December 2016: Ninth Judicial Circuit Criminal Division 14: This division was a general circuit criminal division that started out with approximately 700 cases in January 2016. I closed between 190 and 240 cases each month, and additionally focused on a backlog of old Violation of Probation Warrants that remained unserved. By the end of the year with some case management and work with the Clerk of Court to address the closing of old cases that still showed pending, the final docket numbers were closer to 400 when we left a year later. I did not try any non-jury trials this year, but according to my records I tried 23 Jury trials to verdict, including many first degree and capital cases.

From January 2017 to present: Ninth Judicial Circuit Civil division 35: I currently preside over a Circuit Civil division. For the first year my case load consisted of medical malpractice, tort, automobile negligence, contract, real property and collection actions. Since January 2018 complex business court cases have been added to the division as a result of the closing of the business court divisions. I have now presided over motion hearings, case managements, discovery disputes and non-jury trials on matters such as commercial and contract disputes between businesses, complex construction litigation, receiverships and other business related disputes. I have tried 24 Jury trials in 24 months, 14 of which were a week or more in duration. I have also tried 15 non jury trials of at least a day or longer and many more which were significantly shorter.

In September 2015 I had the honor of serving as an Associate Judge for the Fifth District Court of Appeals. I was assigned six cases, however three of them withdrew their request for Oral Argument at the time I served. Those three cases are included in the citations below.

(iii) List citations of any opinions which have been published.

Firstservice Residential Florida, Inc. v. Rodriguez, 2018 WL 6422087 ---So.3d--- (Fla. 5th DCA, 2018)

Nadeau v. Walt Disney Parks and Resorts US, Inc., 2018 WL 5778681 ---So.3d--- (Fla. 5th DCA, 2018)

Santiago v. U.S. Bank National Association, 2018 WL 5303451 --- So.3d.--- (Fla. 5th DCA, 2018)

Foley v. Asima Azam et al., 2018 WL 5090837 ---So.3d--- (Fla. 5th DCA, 2018)

Evins v. State, 254 So.3d 968 (Fla. 5th DCA, 2018)

Brown v. State, 254 So.3d 973 (Fla. 5th DCA, 2018)

Young v. People's Trust Insurance Company, 252 So.3d 249 (Fla. 5th DCA, 2018)

Vitaly v. Wells Fargo Bank, N.A. et al 189 So.3d 935 (Fla. 5th DCA, 2018)

Wilson v. State, 251 So.3d 904 (Fla. 5th DCA, 2018)

Blade of Orlando, LLC, v. Delsanter, 249 So.3d 797 (Fla. 5th DCA, 2018)

Pamphile v. State, 229 So. 3d 1270 (Fla. 5th DCA, 2017)

State v. Benjamin, 229 So.3d 442 (Fla. 5th DCA, 2017)

Lazard v. State, 229 So.3d 439 (Fla. 5th DCA, 2017)

Morency v. State, 223 So.3d 439 (Fla. 5th DCA 2017)

Ellis v. State, 221 So.3d 1287 (Fla. 5th DCA 2017)

Hogan v. State, 219 So.3d 1009 (Fla. 5th DCA 2017)

State v. Vance, 218 So.3d 499 (Fla. 5th DCA 2017)

Gray v. State, 220 So.3d 464 (Fla. 5th DCA 2017)

Hogan v. State, 209 So.3d 653 (Fla. 5th DCA 2017)

Peng v. State, 202 So.3d 459 (Fla. 5th DCA 2016)

Elvins v. State, 201 So.3d 212 (Fla. 5th DCA 2016)

Owens v. State, 199 So.3d 930 (Fla. 5th DCA 2016)

State v. Browne, 187 So.3d 377 (Fla. 5th DCA 2016)

Harris v. Harris, 162 So.3d 1108 (Fla. 5th DCA 2015)

Merkulova v. Elbouatmani, 150 So.3d 1271 (Fla. 5th DCA 2014)

Hedstrom v. Hedstrom, 123 So.3d 150 (Fla. 5th DCA 2013)

Kelly v. Hall, 123 So.3d 147 (Fla. 5th DCA 2013)

Robinson v. Dunbar, 102 So.3d 747 (Fla. 5th DCA 2012)

Strawcutter v. Strawcutter, 101 So.3d 417 (Fla. 5th DCA 2012)

State of Florida v. Robert Atkins et. al. 48 CT-673-E, 16 Fla. L. Weekly Supp. 251a

Hurley v. Odum, 18 Fla. L. Weekly Supp. 697b

PDQ Coolidge Formad LLC v Monroe, 18 Fla. L. Weekly Supp. 689b

Duncan v. Washington, 18 Fla. L. Weekly Supp. 608b

River v. Hodge, 18 Fla. L. Weekly Supp. 607e

Rodrigues v. Bello, 18 Fla. L. Weekly Supp. 595b

Advanced 3-D Diagnostics A/A/O Benit  Francois v. Liberty Mutual Insurance Co., 18 Fla. L. Weekly Supp. 552a

Awad v. Dreggers, 18 Fla. L. Weekly Supp. 296b

Emergency Physicians of Central Florida LLC v. State Farm Mutual Insurance Company, 18 Fla. L. Weekly Supp. 204b

Jean v. Moore, 18 Fla L. Weekly Supp. 115a

Forrest v. Darden, 18 Fla. L. Weekly Supp. 83a

V&T Investment Partners, LLC d/b/a Medview Imaging A/A/O Lorraine Powell v. State Farm Fire and Casualty Company, 17 Fla. L. Weekly Supp. 1110a

Preval v. Kitchen, 17 Fla. L. Weekly Supp. 1029b

I have 92 other unpublished opinions which were all affirmed.

- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.

Many of the cases that I would describe as significant are on appeal; as such I cannot list them here. The below cases are final.

1. 2011 DR-11136: David C., Petitioner/Husband v. Kimberly C., Responden/Wife In Re: K.M.C, David C., Plaintiff Counter Defendant and John E., Defendant/Counterclaimant: Judgment was issued September 18, 2013. This case was a Divorce case that was consolidated with a Paternity action and resolved by Final Summary Judgment. The attorneys were Mayanne Downs, Esq. and Kimberly D. Healy, Esq. with Gray Robinson, PA for the Husband, John W. Foster, Sr., Esq. and Joe L. Fore, Jr., Esq. with Baker & Hostetler LLP for John E., and Caryn M. Green, Esq. with West Green & Associates PL for the Wife.

In this matter a child was born of the marriage but was the biological child of man outside the marriage. This was a hotly contested case and I wrote an extensive Judgment finding Chapter 742 Florida Statutes to be Constitutionally valid. This case is significant not only because it is by far the longest Judgment that I have ever written, but because it was an exhaustive history of the relevant statute, and an example of my judicial application of that statute under the Florida Constitution.

2. DP12-631: In the Interest of E.C. and E.C. (The names of the parties are privileged in this matter and are not a matter of public record) Following the entry of a Judgment of Involuntary Termination of Parental Rights by Judge Latimore in the above referenced case, I had the privilege of presiding over these children's subsequent adoption. I knew of the parties and their long journey to become parents and was excited to be a part of the final chapter in their adoption story. Both children were born drug dependent, and both children had--and will always have-- a myriad of special emotional and physical needs. The couple sought permanency almost immediately and embarked on a four year journey before finally becoming the boys' legal parents. At the adoption hearing my large courtroom was completely full. Family, friends, and neighbors filled all the seats and it was standing room only. This case is significant to me because unlike the vast majority of cases that I have presided over, this one had a happy ending. These children who were previously neglected, addicted, abandoned and disregarded will forever be a part of a loving family. It was an opportunity to see grace in action; and it's moments like these that I have cherished as a trial judge. The lawyer for the adoption was Wayne Starr, of Wayne Starr, P.A. and the date of the adoption was May 18, 2016.

3. 2014 CF 016745: State of Florida v. Elizabeth Garcia: Attorneys Debra Barra Esq. and Ryan Williams Esq. for the State and Jonathan Rose for the Defendant. This case involved one charge of accessory after the fact to capital murder under Florida Statute 777.03(1)(C). I presided over the trial of this case in March of 2016. The Jury found the Defendant guilty of the charge and after a Pre-Sentence Investigation I presided over the sentencing on June 15, 2016. At the trial Defendant moved in limine to exclude alleged hearsay evidence, at the conclusion of the State's case the Defense moved for a Judgment of Acquittal; and at sentencing Defense counsel moved for a request for a juror interview pursuant to a late filed motion. This was an extremely serious case and hard fought. The facts in the case were troubling, violent and detailed; the underlying case was high profile and covered by the media. The Defense did everything they could to

paint the Defendant in a sympathetic light and to divert attention from the statutory guidelines. She had no prior record, and arguments were made that despite her involvement, the Court should improvise and enter a departure sentence where one was not statutorily appropriate. Here there was no ambiguity in the statute or sentence that should have been resolved in the Defendant's favor, The significance of this case is that I set aside any extraneous pressures and distractions, focused on the legal matters before me and did not let the emotionality or media coverage interfere with my decisions. I made rulings that were consistent with the evidence code and the rules of criminal procedure, and in February 2018 all pending issues on appeal were affirmed.

4. 5D18-2470: Eric Santiago v. U.S. Bank National Association as Trustee for Banc of America Funding Corporation Mortgage Pass-Thru Certificates, Series 2007-B: This was a Petition for Writ of Prohibition filed by Attorney Christopher M. Sprysenski on behalf of his client. The Bank was represented by David Rosenbert of Robertson, Anschutz & Schneid, P.L. This is a recent case where the Defendant petitioned the 5th District Court of Appeals to issue a writ of prohibition to prevent me from holding a hearing on Respondent's Motion for Release of the original promissory note and mortgage from the court file of a recently dismissed foreclosure action. Defendant argued that the Notice of Voluntary Dismissal filed by the bank divested the trial court of any further jurisdiction to consider the motion and that if the bank desired the original documents that it must file a new and separate lawsuit for "declaratory relief". Because the Bank was not requesting that the trial court grant substantive relief, and as under the Florida Rule of Judicial Administration 2.430(f)-(h) the Court can release exhibits or other parts of the court records that are the property of the party who placed them there, the writ was denied, I held the hearing, and the note was returned. This may seem like an relatively insignificant case, but it is a good example of the difference between "strict construction" and "textualism" in that the Defendant took the literal idea that because the case was closed, the Court had no power to render an appropriate ministerial function. As Justice Antonin Scalia stated in *K-Mart v. Cartier* in his concurrence "Words, like syllables, acquire meaning not in isolation but within their context, 486 U.S. 281, 319 (1988) .
5. Nadeau v. Walt Disney Parks and Resorts US, Inc. 5D17-2246: On October 30, 2018 I was affirmed in the above referenced case after awarding Summary Judgment to the Defendants. Matthew Posegay of Coker, Schickel, Sorenson & Posgay in Jacksonville represented the Plaintiff and Joseph P. Menello of Wicker Smith O'Hara, McCoy & Ford PA represented the Defendant. This case was a rare example of my having the right set of facts and law to render a Summary Judgment in a tort action and it was Per Curiam Affirmed at the appellate level. The facts involved a woman who miscalculated her step as a result of two colors of paint on the curb, fell, and was injured. I found that there was no dangerous condition despite the Plaintiff claiming that the reason she fell was an optical illusion of flatness created by the paint. I made a finding that some conditions were so open and obvious that as a matter of law they do not constitute a hidden dangerous condition. I list this case as an example of my ability to parse through facts to come to a clear conclusion and follow the law even when it might seem easier to allow a case to progress to trial and not risk being overturned. It's important that when the law is clear you find it and follow it.

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

No.

- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.

No.

- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

N/A

BUSINESS INVOLVEMENT:

- 33a. 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.

My husband and I are both members of a small family held LLC called Stock Options Media. This LLC was formed in 2016. When we travel, we take photographic images, process them and we sell them through stock photography agencies such as Getty and Adobe for market and also as fine art. Additionally we photograph community events, and perform photographic community service through this entity. This is a hobby business we enjoy together in our spare time. I do not intend to make any changes to this upon an appointment.

- 33b. Since being admitted to the Bar, have you ever been engaged in any occupation, business or profession other than the practice of law? If so, give details, including dates.

I was an adjunct professor for the legal studies department at the University of Central Florida from 2009 through 2014, a part time adjunct instructor for Webster University from 1993-1995 and a substitute adjunct professor for Sante Fe Community College during the same time frame. Other than teaching, the only other business is the family photography business listed above.

- 33c. State whether during the past five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise, institution, organization, or association of any kind. If so, identify the source of such compensation, the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

During the time I was an adjunct professor for the legal studies department at the University of Central Florida I received \$2,500.00 per semester. My last semester was in the fall of 2014.

Our hobby business has not made a profit since inception in 2016 but is running at a very small profit this year.

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.

There are no types of cases, groups of entities, or extended relationships or associations which limit the cases for which I sit as the presiding judge or could sit as the presiding judge for this position. In the past I have recused myself from cases where I previously represented one of the litigants, a few attorneys with whom I had close relationships with prior to my becoming a Judge, and a few cases with Gray Robinson where my son was previously employed.

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?

Yes _____ No No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35b. Have you pled nolo contendere or pled guilty to a crime which is a felony or a first degree misdemeanor?

Yes _____ No No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

35c. Have you ever had the adjudication of guilt withheld for a crime which is a felony or a first degree misdemeanor?

Yes _____ No No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.

No

36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?

No

36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.

No

37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?

No

37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.

No

38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.

I have been the Petitioner in two dissolution of marriage actions as previously disclosed in this application. In 2005 I changed my married name back to my maiden name creating an Orange County Court case number 1997-DR-5128-O.

In 2005 I petitioned for and was awarded Guardianship of an unrelated minor child in Orange County case number 2005-CP-1990-O. This child reached maturity in 2007 and the case was closed.

On January 10, 2018 I was sued along with The State of Florida, a general magistrate and several other judges by a plaintiff named "Montego El Xaymalali Bey" in Federal Court in Case 6:17-cv-2144-Orl-18DCA which was dismissed by Judge G. Kendall Sharp with prejudice on February 14, 2018.

39. 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, give the particulars.

No.

40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v).

No.

41. 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.

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

No.

43a. Have you filed all past tax returns as required by federal, state, local and other government authorities?

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

When I had my law firm I miscalculated a tax payment and had to pay a small penalty. I do not remember what year or quarter that was

In 2008 I inadvertently failed to provide on semester's 1099 from UCF to my accountant, and had to amend my return.

Yes No If yes, please explain what and why.

43c. Has a tax lien ever been filed against you? If so, by whom, when, where and why?

No.

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.

No.

45. List any honors, prizes or awards you have received. Give dates.

1997: Recognition Award for service performed as an Assistant Statewide Prosecutor on the "Fabozzi" case. 1997

2010: Distinguished Leadership Award for service performed as Chair of the Criminal Rules Committee at the County Judge's Convention

46. List and describe any speeches or lectures you have given.

2010: Orange County Bench and Bar Lecture, Domestic Relations

2011: Guest lecturer on "Family Matters" for the National Black Law Students Association at the University of Central Florida.

2010-present: Inside the Courts: Guest Speaker on a variety of areas including being a County Civil and Criminal Judge, Domestic Violence, Domestic Relations and Circuit Criminal.

2013-2014: Participated in multiple Orange County Bar Family Law Panels, exact topics and dates unknown.

2014: Co-instructor Advanced Judicial College: Damages in Civil Litigation

2017-present: Morning at the State Courthouse: Guest Speaker for young lawyers who spend the morning at the Courthouse followed by a luncheon.

2017 Judicial Panelist CFTLA Raising the Bar Seminar

While technically not a lecture or speech, I was a guest commentator for a morning radio show on WDBO 580 Several times before becoming a Judge. I addressed common legal issues that listeners might encounter and answered live questions on the air.

47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No

AV

PROFESSIONAL AND OTHER ACTIVITIES:

48a. List all bar associations and professional societies of which you are a member and give the titles and dates of any office which you may have held in such groups and committees to which you belonged.

Florida Bar Association (1991-present)

Eighth Judicial Circuit Bar Association: (1994-1996)

Orange County Bar Association: (1997-present)

Family Law Committee (1998-2011)

Legal Aid Society Volunteer Guardian Ad Litem (1997-2001)

Orange County Chamber of Commerce: (1997-1998)

Board of Directors of the Central Florida Branch of Women in Insurance and Financial Services (2003-2004)

Winter Park Chamber of Commerce: (2006-2007)

Central Florida Association of Woman Lawyers: (1997- present with some lapses in membership)

American Bar Association: (2002-2009)

Orange County Family Law Inns of Court: (2005-2015)

Executive Committee (2012-2014)

American Academy of Trial Lawyers: (2003-2009)

Hispanic Bar Association of Central Florida: (2007-present)

The George C. Young First Central Florida American Inn of Court: (2008-2014)

Family Law Inns of Court: (2012-2014)

Conference of County Court Judges of Florida

Chair: Criminal Rules Committee (2009-2010)

Vice Chair: Small Claims Rules Committee (2011-2012)

New Judges' Committee: Facilitator for New Judges Luncheon (2011-2012)

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Parent Teacher Association (Dommerich Elementary, Maitland Middle School, Winter Park High School) (1996-2008)

Parent teacher Association Auburn University (2008-2012)

Orlando Science Center (2004-2011)

City of Maitland Youth Soccer League: (1998-2005)

Team Manager/Treasurer U-16 boys select team (2004-2005)

Tiger Bay Club: (2006-2011)

League of Women Voters: (2006-2012)

Downtown Orlando Rotary Club: (2006-2015)

Rotary Youth Services Committee Chair (2007-2012)

Rotary Youth Leadership Award Committee Member (2007-2015)

Board of Directors, Downtown Orlando Rotary (2012 to 2014)

Paul Harris Fellow 2014

Rotary Youth Leadership Liason: Barry Law School Rotaract Club (2014-2015)

University Club of Orlando: (2008-2012)

University Club Advisory Board (2010-2011)

University Club Charitable Works Committee (2010-2011)

Board of Directors Orlando Safety Council (2010-present including ex officio years)

Executive Committee (2017-present)

University of Central Florida Legal Studies Advisory Board (2010-2014)

Citrus Club of Orlando: (2013-2015)

Patron and Committee Member for the Winter Park Autumn Art Festival (multiple years, approximately 2000-2006)

Daughters of the American Revolution: (2015-present)

Central Florida Camera Club: (2015-present)

The Federalist Society (2018-present)

Saint Margaret Mary Catholic Church: (1978-present)

Divorce Care Facilitator (2012)

Guest Speaker Catholic Divorce Fellowship (2012-2014)
Liturgy of the Word-Lector (2017-present)

48c. List your hobbies or other vocational interests.

I enjoy photography, art, and travel

48d. Do you now or have you ever belonged to any 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, national origin or sex? If so, detail 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.

I was in a sorority in college; membership was restricted to women only and I belong to the Daughters of the American Revolution which is also restricted to women.

48e. Describe any pro bono legal work you have done. Give dates.

Between 1997 and 2001 I handled approximately twelve Guardian Ad Litem matters on a pro-bono basis. In 2002 I volunteered with the Juvenile Justice Teen Court Program. Between 2003 and 2007 I represented at no charge or significantly reduced charges clients who could not afford my services, including but not limited to a liver transplant patient, college students, members of the performing arts, and a family with three special needs children. As a current member of the judiciary I can no longer perform pro bono legal work.

SUPPLEMENTAL INFORMATION:

49a. Have you attended any continuing legal education programs during the past five years? If so, in what substantive areas?

I have attended both the Circuit Judicial Conferences and the Advanced Judicial Studies courses over the past five years. Through these programs I have participated in substantive programs covering criminal, civil and domestic relations, docket management, trial practice, evidence and other topics. I attended Death Penalty Training for one week in 2016 and am qualified to preside over Death Penalty cases.

49b. Have you taught any courses on law or lectured at bar association conferences, law school forums, or continuing legal education programs? If so, in what substantive areas?

1992-1995 Instructor at Webster Educational Center for their Paralegal Program: I taught courses in Family Law, Research and Writing.

1994-1996 State of Florida Prosecutor's School: I was a DUI lecture leader and trial advocacy judge. I taught and critiqued young prosecutors and presided over mock trials.

2006-2013 Served as a Moot Court Competition Judge, Southeastern Championship

2008-2014: University of Central Florida Adjunct Professor: I taught a senior level "capstone class" for the legal studies department. This was a seminar that covered a variety of legal topics, and was designed to summarize their legal studies curriculum and prepare them for law school or other careers in law. Topics included criminal, civil, family law, big law, myers-briggs type personality analysis and had a heavy writing

component to assist in student writing proficiency.

2013: Instructor: "Deconstructing Damages" 2013 Florida College of Advanced Judicial Studies (co-lectured with Judge Alice Blackwell)

2013: Instructor; "Families in Court: Domestic Relations Fundamentals" 2013 Florida Judicial College Phase II

2014: Instructor "Evidence for Hearing Officers and Magistrates" 2014 Florida Judicial College Phase II

2014: Instructor "Families in Court: Domestic Relations Fundamentals" 2014 Florida Judicial College Phase II

50. Describe any additional education or other experience you have which could assist you in holding judicial office.

As a Circuit Judge I sit on multiple panels and preside over County Court appeals. I have found this to be intellectually rewarding both in the opportunity to provide judicial review over those decisions, but also in engaging in collegial discourse and debate. Being a trial judge is largely a solitary experience. I believe that having had the opportunity to work with others in an appellate capacity will assist me in the position I am seeking.

Serving as the Appellate Division Administrative Judge was an additional opportunity to assign judicial panels, review memoranda and draft opinions, and to gain a better understanding of how the appellate process works from an administrative perspective.

Serving as a Fifth District Court Associate Judge was a privileged opportunity to get a glimpse into what it would be like to serve on the Fifth District Court of Appeals. I enjoyed the opportunity very much, and found working in collaboration with the other judges to be intellectually stimulating.

I believe that all of the areas in which I have practiced as an attorney and all of the areas in which I have served as a Judge have brought me to the place I am now; where I have the maturity, experience, and legal knowledge to apply for the Fifth District Court of Appeals. As a judge we must balance the need to rule expediently with the litigant's right to be heard; to listen to the arguments being made but adhere to the rule of law in rendering clear and well reasoned opinions.

51. Explain the particular potential contribution you believe your selection would bring to this position.

I have experience both as a trial lawyer and as a Judge in civil, criminal and domestic relations matters, a reputation for hard work and a commitment to public service and the Constitution of The United States and the State of Florida. I have the judicial philosophy, experience, temperament and desire to continue to serve my community with a sense of humility and a love for the law.

52. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name of the commission and the approximate date of submission.

I submitted my application to the Judicial Nominating Commission for the Ninth Judicial Circuit on or about January 26, 2006, January 3, 2007, July 6, 2007 and September 1,

2010. This is a revised application.

53. Give any other information you feel would be helpful to the Commission in evaluating your application.

I grew up in a household that fostered intellectual debate and discussion. My father was raised by his grandfather who was a Circuit Judge and by his Uncle who operated their family's law firm. From the time that I was very small my father's circle of friends included several of our country's leaders who had a variety of opinions that were often very different from his. Despite their differences, they would share ideas and discourse over some of our most serious governmental and philosophical ideas into the early hours of the morning; coming together again at breakfast to share a cup of coffee and the morning paper. This intellectual curiosity, love for the law, reading and debate was ingrained in me and further honed by my education, work and family experiences. I have a firm understanding of the need for and importance of the balance of powers, judicial restraint and the role of government; and I also have a powerful desire to serve my country and my community.

It would be an honor to be appointed to the Fifth District Court of Appeals. While I greatly enjoy the challenges of being a trial court judge, the ability to have the time to apply well defined interpretive principals to a record at the appellate level would be very rewarding. I believe that I have a unique combination of prior experience, intellect and temperment to bring judicial fidelity to this position.

REFERENCES:

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

John Edward Jones, Esq.

The Law Offices of John Edward Jones, P.A.

5200 S. US Highway 17-92, Casselberry, FL 32707

(407) 834-5700 Office

Ms. Pamela Landwirth

President and CEO "Give Kids the World"

210 South Bass Rd. Kissimmee, Florida 34746

(407) 396-5325 Office

Mr. Joe Durso
Vice President for Public Affairs
Community Based Care of Central Florida Inc,
4001 Pelee Street, Orlando, FL 32817
(321) 441-1572 Office

The Honorable Jamie R. Grosshans
Florida Fifth District Court of Appeal
300 South Beach Street, Daytona Beach, FL 32114
(386) 947-1530 Office

Wendy Aikin, Esq.
Wendy Aikin, PA
2180 Park Avenue North
Building 100
Winter Park, FL 32789
(407) 644-4040 Office

Father Richard Walsh
Vicar General
Saint Margaret Mary Catholic Church
526 North Park Avenue
Winter Park, FL 32789
(407) 647-3392 Office

The Honorable John E. Jordan
Florida Ninth Judicial Circuit Court
425 N. Orange Avenue
Orlando, FL 32801
(407) 836-4709

Daniel B. Rettig, JD, M.Ed.
Managing Attorney Court Education Division
Office of the State Court Administrator
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399
(850) 922-1120 Office

Mr. Johnny Jallad
President
Accredited Bond Agencies, Inc.
320 N. Knowles Ave.
Winter Park, FL 32789

John T. Conner, Esq.
Shareholder
Dean, Ringers, Morgan & Lawton Attorneys at Law
201 East Pine Street,
Suite 1200
Orlando, FL 32801
(407) 422-4310 Office


CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(I), 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 21st day of December, 2018.

Heather L. Higbee
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
 List Last 3 years

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
 List Last 3 years

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

Current year to date

 List Last 3 years

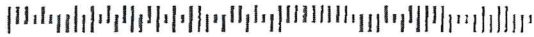
4. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

Current year to date

 List Last 3 years

*****AUTO**ALL FOR AADC 328 T2 P2 29 134

Hon Heather Lynn Higbee
Circuit Judge
Judicial Circuit (9th)
Elected Constitutional Officer
Orange Co. Courthouse
425 N Orange Ave Ste 460
Orlando, FL 32801-1544



ID Code



ID No. 219112

Conf. Code C

Higbee, Heather Lynn

CHECK IF THIS IS A FILING BY A CANDIDATE

PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2017 or a more current date. [Note: Net worth is not calculated by subtracting your reported liabilities from your reported assets, so please see the instructions on page 3.]

My net worth as of December 31, 2017 was \$ [REDACTED]

PART B -- ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)	VALUE OF ASSET
see exhibit "A"	

PART C -- LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
see exhibit "A"	

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
N/A	

PART D -- INCOME

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2017 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

I elect to file a copy of my 2017 federal income tax return and all W2's, schedules, and attachments.
 (If you check this box and attach a copy of your 2017 tax return, you need not complete the remainder of Part D.)

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
see exhibit "A"		

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

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

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

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

PART F - TRAINING

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

I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

STATE OF FLORIDA
 COUNTY OF Orange

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.

Sworn to (or affirmed) and subscribed before me this 31 day of

June, 2018 by Heather L. Hebble

(Signature of Notary Public) Donna Isaacson
 (Print, Type, or Stamp Commissioned Notary Public) 

Personally Known OR Produced Identification

[Signature]
 SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

Type of Identification Produced _____

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

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

N/A

Signature

Date

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

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

EXHIBIT "A": FINANCIAL DISCLOSURE AS OF December 31, 2017

ASSETS: Part "B"

[REDACTED]

Cash in Banks:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LIABILITIES: Part "C"

[REDACTED]

Income for 2017: Part "D"

State of Florida Salary

[REDACTED]

[REDACTED]

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

— If more than \$1,000 of income was gained from the sale of property, then you should list as a source of income the name of the purchaser, the purchaser's address, and the amount of gain from the sale. If the purchaser's identity is unknown, such as where securities listed on an exchange are sold through a brokerage firm, the source of income should be listed simply as "sale of (name of company) stock," for example.

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: 12/21/2018

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Heather Lynn Higbee

Current Occupation: Circuit Court Judge

Telephone Number: 407-836-0598 Attorney No.: 0886173

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic
 Hispanic
 Black
 American Indian/Alaskan Native
 Asian/Pacific Islander

County of Residence: Orange County

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.

Printed Name of
Applicant:

Heather Lynn Higbee

Signature of Applicant:



Date: 12/21/18

WRITING SAMPLES

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 2015-CA-010434-O

PAMELA NADEAU,

Plaintiff,

v.

WALT DISNEY PARKS AND
RESORTS U.S., INC., a Florida
Corporation,

Defendant.

**ORDER GRANTING “DEFENDANT’S, WALT DISNEY PARKS AND RESORTS U.S.,
INC., MOTION FOR SUMMARY JUDGMENT”**

THIS MATTER comes before the Court on the “Defendant’s, Walt Disney Parks and Resorts U.S. Inc., Motion for Summary Judgment,” filed on March 3, 2017 and heard on May 31, 2017. The Court, being duly advised in the premises, finds as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

The basic facts of this case are not in dispute. On April 1, 2014, Pamela Nadeau (“the Plaintiff”) fell off a sidewalk while walking to the street located within the Magic Kingdom at Walt Disney Parks and Resorts U.S., Inc. (“the Defendant”). As a result of the fall, she fractured her right arm.

On November 11, 2015, the Plaintiff filed a two-count complaint, alleging the creation of a dangerous condition (Count I) and failure to warn of said dangerous condition (Count II). During the Plaintiff’s deposition, she testified that the only reason that she fell was because the street and the curb were colored in such a way that they created an optical illusion of flatness,

and she had no other complaints regarding the curb. She also stated that no liquid contributed to her fall, and she had no problem seeing where she was going.

On March 3, 2017, the Defendant filed the instant Motion, and the Court heard the same on May 31, 2017. This Order follows.

ANALYSIS AND RULING

“Some conditions are so open and obvious, so common and innocuous, that they can be held as a matter of law to not constitute a hidden dangerous condition.” *Gorin v. City of St. Augustine*, 595 So. 2d 1062, 1063-4 (Fla. 5th DCA 1992); *see also City of Melbourne v. Dunn*, 841 So. 2d 504, 505 (Fla. 5th DCA 2003). As a result, summary judgment is proper here, as there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Sunshine State Ins. Co. v. Jones*, 77 So. 3d 254 (Fla. 4th DCA 2012).

The facts of the instant case are almost identical to *Rosenfeld v. Walt Disney World Co.*, 651 So. 2d 811, 812 (Fla. 5th DCA 1995), where the plaintiff fell off a street curb Walt Disney World and alleged that the street and sidewalk were artificially colored in such a way to create an optical illusion of flatness, which obscured the change of levels from the plaintiff's view and created a hazard. The Fifth District determined that

[C]hanges from ordinary curbs to streets do not subject a landowner to premises liability for injuries suffered by persons falling over the curbs and that an optical illusion of flatness created by the colors of the curb and the street **do[] not make them inherently dangerous or unreasonably dangerous, as a matter of law.**

Id. (emphasis added). The court also found that even though the fall occurred in an amusement park, because the streets were designed to be recreations of ordinary village and town streets and curbs, that fact alone was insufficient to remove Disney's ordinary streets and curbs from the category of open and obvious hazards. *Id.* (citing *Gorin*, 595 So. 2d at 1063-4 (holding “that an

ordinary sidewalk curb, without more, is inherently dangerous would make every municipality and business establishment the virtual insurer of the safety of every pedestrian’’)).

Additionally, the following exchange occurred during the Plaintiff’s deposition:

Q: Would it be fair to say that the - - that you just didn’t see the curb because the street blended in with the curb?

A: Yes.

Q: That’s the only reason; is that true?

Mr. Baskin: Object to form.

A: Yes.

Q: Is that true? Okay. So it’s your claim that the street and the sidewalk or the curb were colored in such a way that created an optical illusion of flatness?

A: Yes.

Q: Is that the only complaint that you’re making in this case as to the cause of your fall?

A: Yes.

(Ex. A of Def. Mtn. 33:16-25, 34:1-5). The Plaintiff’s answers to the questions asked demonstrate that the only reason that she fell is the exact reason that defeated the plaintiff’s motion for summary judgment in *Rosenfeld*. 651 So. 2d at 812. The Fifth District already determined as a matter of law that such allegations are insufficient to withstand a motion for summary judgment. *Id.* Because of the reasons set forth above, along with those in *Rosenfeld*, the Court finds that the Defendant is entitled to summary judgment as a matter of law.

Accordingly, it is hereby **ORDERED** that the “Defendant’s, Walt Disney Parks and Resorts U.S. Inc., Motion for Summary Judgment” is **GRANTED**.

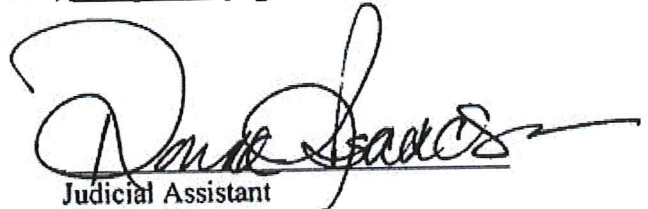
DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 7 day of June, 2017.


HEATHER L. HIGBEE
Circuit Court Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct ~~copy~~ of the foregoing order was furnished via 8 on this JUN day of 2017, to the following:

- Matthew N. Posgay, Coker, Schickel, Sorenson, Posgay, Camerlengo & Iracki, P.A., 136 East Bay Street, Jacksonville, Florida 32202; mnp@cokerlaw.com; skh@cokerlaw.com; dab@cokerlaw.com;
- Howard G. Butler & Drew W. Baskin, Butler Law Group, 1506 Prudential Drive, Jacksonville, Florida 32207; hgb@butlerlawgroup.net; dwb@butlerlawgroup.net; wje@butlerlawgroup.net; and
- Joseph P. Menello, Wicker, Smith, O'Hara, McCoy & Ford, P.A., 390 North Orange Avenue, Suite 1000, Orlando, Florida 32801; orlcrtpleadings@wickersmith.com.


Judicial Assistant

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

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

PAMELA NADEAU,

Appellant,

v.

Case No. 5D17-2246

WALT DISNEY PARKS AND RESORTS
US, INC.,

Appellee.

Decision filed October 30, 2018

Appeal from the Circuit Court
for Orange County,
Heather L. Higbee, Judge.

Terry D. Bork, of Law Office of Terry D.
Bork, Jacksonville, E. Aaron Sprague and
Matthew Posgay, of Coker, Schickel,
Sorenson & Posgay, Jacksonville, Howard
Butler and Drew W. Baskin, of Butler Law
Group, Jacksonville, for Appellant.

Michael R. D'Lugo and Joseph P. Menello
of Wicker Smith O'Hara McCoy & Ford,
P.A., Orlando, for Appellee.

PER CURIAM.

AFFIRMED.

TORPY, BERGER and GROSSHANS, JJ., concur.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER:
DIVISION 35

Plaintiff(s),

vs.

Defendant(s).

**ORDER FOR SCHEDULING CONFERENCE PRELIMINARY TO HEARING ON
MOTION TO TAX COSTS AND AWARD ATTORNEY'S FEES**

Pending before this Court is a *Motion to Tax Costs and Award Attorney's Fees* and to ensure an orderly and efficient presentation and/or resolution of this issue, counsel for the parties are Ordered to comply as follows:

1. **Mediation** – This case is hereby referred to mediation for resolution of the attorney's fee and cost issues. The parties will agree upon a mediator and a date for the mediation conference. In the event the parties cannot agree, the Court will select a mediator. Counsel for the moving party shall take lead in coordinating the mediation and submit a proposed order. Mediation shall be completed prior to the Attorney's Fees and Costs hearing. The parties involved in the pending motion shall share the costs of the mediation equally.
2. Within twenty (20) days of this **ORDER**, the Moving Party shall file a Schedule of All Exhibits which it intends to offer at the hearing and make available and provide to the opposing party, a copy of all invoices, time records, cancelled checks and other supporting documentation for any cost requested and all attorney/paralegal time records, evidencing services for which the party seeks payment, **along with a summary** of Attorney/paralegal billing time; suggested hourly rate(s), suggested expert witness fee rates and taxable costs for which the

- Moving Party seeks recovery for. Notice of Compliance shall be filed with the Clerk.
3. Within twenty (20) days of receipt of the Schedule of All Exhibits and supporting documents and summary referenced in paragraph 3, counsel for the Non-Moving party shall respond in writing to each item of costs and attorney fees. This response shall state whether counsel agrees or objects to said item. For each objection, counsel shall state the basis and cite the supporting authority. Non-Party shall file a Schedule of All Exhibits that it intends to offer at the hearing and provide copies to opposing party. Notice of Compliance shall be filed with the Clerk.
 4. Within ten (10) days of receipt of said response, the Moving Party shall reply in writing to each objection, stating whether said party concurs with the objection and if not, cite the contrary authority. Notice of Compliance shall be filed with the Clerk.
 5. In the event there is an agreement to a particular cost item or fee request, but disagreement with the amount, the Non-Moving Party shall state in writing the objection and the amount believed to be reasonable.
 6. **Multiplier** -- If the Moving Party is seeking a multiplier, it shall, within twenty (20) days of this ORDER, disclose in writing with Notice filed with the Clerk, the amount sought, the factual basis for such an award and the names/addresses of each witness expected to testify in support of a multiplier. The Non-Moving Party shall disclose in writing within twenty (20) days of receipt of written notice of Moving Party's intent to seek multiplier, the names/addresses of each witness, if any, expected to testify in opposition to the request for multiplier.
If requested, parties shall produce said "multiplier" witnesses for deposition without subpoena at a mutually convenient location, date and time. Non-Moving Party may depose Moving Party's witness(es) first. Said depositions to take place no later than fifteen (15) business days preceding the Scheduling Conference. Multiplier witnesses shall bring any documents they identify or rely on in support of a multiplier. In lieu of depositions, the Parties may request affidavits from

each multiplier witness disclosing their opinions and basis for an award of a multiplier.

7. Meeting of Attorneys and *pro se* Parties. No later than ten (10) days prior to Attorney's Fees and Costs hearing. Counsel that will try the case, and *pro se* parties, if any, shall meet together. **Attendance is mandatory!** Moving Party shall arrange a mutually agreeable date, time and place for this meeting. At the meeting the attorneys and *pro se* parties shall:

- a Discuss and attempt to settle the claim for Attorney's Fees and Costs.
- b Produce, examine and initial on back **every evidentiary exhibit** intended to be offered at hearing; agree on those which can be admitted as joint exhibits, those which can be admitted without objection, and identify those to which objection will be made and the grounds of each objection, and note this on a separate copy of each party's exhibit schedule. Objections not reserved or grounds not noted on such separate schedule will be deemed waived at hearing. The annotated separate copies of the schedules will be attached to and made a part of the Joint Statement. See §8(g) of this order.
- c Review the witness lists and in good faith note on a separate copy which witnesses and depositions will actually be used at hearing. The annotated separate copies of the witness list will be attached to the Joint Statement. See §8(g) of this order.
- d Discuss and stipulate as to those facts, which will require no proof at the hearing.
- e Discuss, clarify and frame all factual issues of fact to be heard.
- f Identify all issues of law, procedure or evidence to be decided by the Court prior to or during hearing.
- g Agree upon and draft a concise **Joint Statement of The Case** as to paragraphs 8 a-f, to present to the Court at the Scheduling Conference.

All attorneys and pro se parties shall sign the Joint Statement.

9. Each party shall disclose all other expert opinions in affidavit form at least thirty (30) days prior to the Scheduling Conference and make experts available for

depositions without necessity of subpoena. Said depositions to take place no later than fifteen (15) days preceding the Scheduling Conference. The Parties **must agree in writing** to use affidavits in lieu of live testimony.

10. *The Statewide Uniform Guidelines for Taxation of Costs in Civil Actions* shall be used in an attempt to resolve disputes over taxation of costs.
11. Counsel and the parties shall exercise good faith in complying with the terms of this **ORDER**. The Court may consider appropriate sanctions with regard to unreasonable requests for taxation of costs, requests for attorney's fees, and objections thereto. **Sanctions for failure to comply with this ORDER, include striking request for Multiplier, Attorney's Fees and/or Costs; reduction of any award and/or Attorney's Fees and Costs in favor of other party.**

DONE AND ORDERED at Orlando, Orange County, Florida this ____ day of _____ 2018.

HEATHER L. HIGBEE
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this ____ day of _____ 2017 by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePortal System.

Donna Isaacson, Judicial Assistant

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Court Administration, Orange County Courthouse, 425 N. Orange Avenue, Orlando, FL 32801, (407-8362303) at least 7 days before your scheduled court

appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.