

APPLICATION

OF

RANDELL H. ROWE, III

FOR NOMINATION TO THE FIFTH DISTRICT COURT OF APPEAL

December 18, 2018

Randell H. Rowe, III
Circuit Judge
Volusia County Courthouse
101 North Alabama Avenue
DeLand, Florida 32724
(386) 736-5946

APPLICATION FOR NOMINATION TO THE APPELLATE COURT

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

DATE: December 18, 2018 Florida Bar No.: 0750352

GENERAL: Social Security No.: REDACTED

1. Name Randell H. Rowe, III E-mail: REDACTED

Date Admitted to Practice in Florida: May 13, 1988

Date Admitted to Practice in other States: n/a

2. State current employer and title, including professional position and any public or judicial office.

State of Florida, Circuit Judge, Seventh Judicial Circuit

3. Business address: Volusia County Courthouse, 101 North Alabama Avenue

City DeLand County Volusia State FL ZIP 32724

Telephone (386) 736-5946 FAX (386) 943-7076

4. Residential address: REDACTED

City REDACTED County Volusia State FL ZIP 32724

Since December 1994 Telephone REDACTED

5. Place of birth: Madison, Florida

Date of birth: REDACTED Age: 57

6a. Length of residence in State of Florida: Lifetime (except for period residing out-of-state during law school).

6b. Are you a registered voter? Yes
If so, in what county are you registered? Volusia

7. Marital status: Married

If married: Spouse's name REDACTED

Date of marriage August 16, 1986

Spouse's occupation Homemaker

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.

n/a

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
REDACTED	27	Attorney	REDACTED
REDACTED	23	Teacher	REDACTED

9. Military Service (including Reserves): n/a

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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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?

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.

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

No

If yes, please explain.

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?

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?

n/a

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

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>
Madison High School Madison, Florida	Honors Graduate	1975-1979	Diploma
Stetson University DeLand, Florida	Not provided by the university – doesn't rank its students.	1979-1983	BBA in Finance
Duke University Durham, North Carolina	n/a	summer school 1982	n/a
Cumberland School of Law of Samford University Birmingham, Alabama	Unknown (somewhere in the middle?)	1983-1987	JD

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

High School:

Academic scholarship to North Florida Community College
Principal's Cup (awarded for highest G.P.A. in most academic subjects).
Mildred Almand History Award (awarded for highest G.P.A. in history courses).
First place (blue ribbon) in school science fair
Beta Club
Student Council
Editor-in-Chief of school newspaper
Honor Roll

Honors Graduate

College and Law School:

Dean's list and honor roll

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>
Jan. - Aug. 1985	Credit Manager	Broyhill Furniture Company	Birmingham, Alabama

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.

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
United States Supreme Court	1997
United States District Court, Middle District of Florida	1993
The Florida Bar and all state courts in Florida	1988

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 County Attorney	County of Volusia Legal Department	123 W. Indiana Ave. DeLand, FL 32720	July 1994 to Jan. 2006
Judicial Staff Attorney	State of Florida Seventh Judicial Circuit	Flagler County Cthse. Bunnell, FL 32110	Nov. 1988 to July 1994
Research Attorney (part-time)	Flagler County Legal Department	1200 E. Moody Blvd. Bunnell, FL 32110	May 1992 to July 1994

Business Law
Adjunct Professor

Daytona State College

1200 W. International
Speedway Blvd.
Daytona Beach, FL

Jan. 1994 to
May 1995

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 have been a circuit judge since the end of 2005. For nearly 12 years prior to that, I was a local government attorney for the County of Volusia. In that capacity I represented the County government in a wide variety of matters in the state and federal courts and before administrative quasi-judicial tribunals. My litigation practice was primarily civil and appellate in nature and included cases involving land use and annexation disputes, personal injury lawsuits, breach of contract matters, tax deed disputes, and foreclosure defense. Also, I handled all collections litigation for the County and collected approximately \$2.5 million total.

Additionally, for 11 years I supervised County staff prosecution of thousands of cases before the Volusia County Code Enforcement Board. I handled the litigation of all such cases that were appealed, and I filed and litigated more than 100 code enforcement lien foreclosure lawsuits. For most of my tenure as a county attorney, I was solely responsible for approving petitions for payment of fees and costs filed by public defenders and court-appointed attorneys representing indigent criminal defendants. Finally, I was solely responsible for all County of Volusia bankruptcy claim litigation in federal court. Most of those cases were in the Middle District of Florida. However, I also was admitted *pro hac vice* to litigate bankruptcy claims in federal court in the District of Connecticut, Western District of Massachusetts, and Southern District of New York.

My clients for which I was solely responsible as a county attorney included the Clerk of the Circuit Court, the County tax collector, department of accounting and financial services, code enforcement division, community services department, veterans services division, public library system, animal control department, and the three advertising authorities in Volusia County.

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	<u>0</u>	%	Civil	<u>60</u> %
Federal Trial	<u>0</u>	%	Criminal	<u>0</u> %
Federal Other	<u>3</u>	%	Family	<u>0</u> %
State Appellate	<u>3</u>	%	Probate	<u>0</u> %
			Other (Administrative Tribunals)	<u>40</u> %
State Trial	<u>94</u>	%		
State Administrative	<u>0</u>	%		
State Other	<u>0</u>	%		
	<u> </u>			<u> </u>

TOTAL

100 %

TOTAL

100 %

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

Jury? 0

Non-jury? 9

Arbitration? 0

Administrative Bodies? 25-30

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).

Having served as a judge for the past 13 years, I do not recall the case numbers or trial counsel information for my last six cases tried.

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).

Same as above.

27c. During the last five years, how frequently have you appeared at administrative hearings?
n/a average times per month

27d. During the last five years, how frequently have you appeared in Court?
n/a average times per month – (but almost every weekday as a sitting judge).

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. n/a

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.

1. In Re: WorldCom, Inc., 2003 WL 23861928 (Bankr. S.D.N.Y. 2003).

As a county attorney, in 2002-2003 I litigated a large tax claim on behalf of the County of Volusia in the famous WorldCom bankruptcy case. I prevailed on my initial petition to allow the County's belated tax claim to be filed under the bankruptcy rules. Thereafter, I monitored the proceedings and eventually was able to reach a settlement that allowed the full amount of the tax claim to be treated along with other such claims under the bankruptcy plan. The court was the United States Bankruptcy Court for the Southern District of New York, and the judge was the Hon. Arthur J. Gonzalez. The law firm representing WorldCom was Weil, Gotshal & Manges (Houston and New York offices). I consider this case to be significant because, at the time, it held the distinction of being the largest and most controversial bankruptcy case in the history of the United States. There were participants from all over the world, and I interacted with similarly situated tax claimants from all around the country.

2. Klenk v. County of Volusia, No. 2000-31509-CICI (Fla. 7th Cir. Ct. June 4, 2001), cert. denied, No. 5D01-1910 (Fla. 5th DCA Oct. 8, 2001).

The litigation of this case originated in a one-day administrative trial held before the Volusia County Code Enforcement Board on June 7, 2000. Mary Hansen was my opposing counsel representing Mr. Klenk, who owned and operated a major landfill located in a large residential area near the Port Orange and South Daytona boundary. Hundreds of residents in two neighborhoods abutting the landfill were being adversely affected by the landfill activities, and residents had been bitterly complaining to County officials for years that their quality of life was being ruined by the odors, noise, and heavy dust generated by the landfill operations. The neighbors mounted an organized campaign to pressure the County to take action, and the Klenk landfill soon became a very political and highly publicized topic.

In response to the barrage of complaints, the County mounted a difficult legal challenge against Klenk to shut down the landfill. I personally prosecuted him in the trial before the Code Enforcement Board for a violation of "exceeding the scope of a county approved permit for a legal nonconforming excavation." I prevailed, and the Board found Klenk to be in violation as cited. He appealed the Board's decision to the circuit court, and I handled the appeal for the County. Following a two-hour oral argument, Judge David Walsh entered a written ruling on June 4, 2001, affirming the Board's decision. Klenk sought further review in the Fifth District Court of Appeal, and I briefed the case for the County. On October 8, 2001, the appellate court entered an Order denying certiorari review.

Klenk still refused to comply, and the Code Enforcement Board fines imposed against him quickly accumulated. I filed a lien foreclosure lawsuit against Klenk and obtained a large

judgment against him. Ultimately, I helped orchestrate a complex political settlement between Klenk, the County, and the City of South Daytona which led to the closure of the landfill and complete restoration of the property.

This case is significant because an entire residential area was rescued from an unbearable situation. This was a major legal and political victory for the County of Volusia which enabled the County officials to come through for the citizens to whom they are responsible.

3. Elam v. State of Florida, 689 So. 2d 1232 (Fla. 5th DCA 1997), review denied, 698 So. 2d 839 (Fla. 1997), cert. denied, 522 U.S. 1007, 118 S. Ct. 584, 139 L. Ed. 2d 422 (1997).

Elam was a convicted felon who filed a motion in the circuit court seeking appointment of legal counsel and payment of costs, at taxpayer expense, in order for him to prepare for filing a motion for postconviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. I opposed the motion on behalf of the County of Volusia, and Judge Michael Hutcheson denied the motion. The other attorneys involved were Jerrel Phillips, representing Elam, and Kellie Nielan, Assistant Attorney General, representing the State of Florida.

Elam appealed the ruling to the Fifth District Court of Appeal. The basis of his appeal was the claim that he was discriminated against because, as an indigent noncapital inmate, he was not provided with free court-appointed legal counsel, investigators, and support staff (as are indigent capital inmates) to assist him in the investigation, preparation, and filing of a motion for postconviction relief. He also claimed discrimination because he was not provided with public records at no cost to him for his use in filing the postconviction relief motion. I filed an appellate brief in opposition.

On March 14, 1997, the appellate court issued an opinion affirming Judge Hutcheson's ruling. The appellate court held that neither the due process clause nor the equal protection clause requires appointment of counsel for preparation of postconviction relief motions by indigent prisoners. Also, the court ruled that indigent prisoners, who are not entitled to free records under the Public Records Act, are not thereby denied any constitutional rights. The court further held that the State of Florida is not required to provide counsel and expenses to indigent prisoners not under the sentence of death merely because it provides the same to indigent prisoners who are under a sentence of death.

Elam sought further review in the Supreme Court of Florida, but the Supreme Court denied review on July 31, 1997. Then Elam sought certiorari review in the Supreme Court of the United States. On behalf of the County of Volusia, I filed a Brief in Opposition to Petition for Writ of Certiorari. On December 1, 1997, the United States Supreme Court denied Elam's Petition for Writ of Certiorari.

I believe this case is very significant because the U.S. Supreme Court declined to expand the right to court-appointed counsel. Had Elam prevailed, it could have resulted in an enormous financial strain on the public funds of the County and State in order to provide such legal counsel and expenses to all indigent noncapital prisoners for postconviction motion preparation. Alternatively, it possibly could have resulted in the State taking away the statutory right of indigent capital prisoners to have such free legal counsel so that the State could avoid a constitutional violation of not equally providing the same to the indigent noncapital prisoners.

4. Gaskin v. State of Florida, 798 So. 2d 721 (Fla. 2001).

Pursuant to statute, the Office of the Capital Collateral Regional Counsel (CCRC) is responsible for providing the collateral representation of any person convicted and sentenced to death in Florida and is to be responsible for the payment of all necessary costs and expenses related to postconviction matters. There are no statutory provisions that impose an obligation on the counties of this state to pay the costs of this collateral representation.

However, in 2001 the CCRC mounted legal challenges in Volusia County to try to shift these costs onto the counties. The CCRC filed petitions in the circuit court on behalf of three indigent capital inmates seeking to have Volusia County ordered to pay certain costs. I opposed these petitions and argued the issues in three hearings. The three circuit judges, David A. Monaco, R. Michael Hutcheson, and William C. Johnson, each entered orders denying the petitions and ordering that CCRC was financially responsible for the costs. CCRC appealed all three rulings to the Supreme Court of Florida, and I filed briefs on behalf of the County of Volusia and Diane M. Matousek, Clerk of the Court. The other attorneys involved in the cases were Peter James Cannon, Assistant CCRC, and Scott Browne and Kenneth Nunnelley, Assistant Attorneys General.

The Supreme Court consolidated the three cases and affirmed all three circuit court rulings. The Supreme Court held that CCRC, not the counties, was responsible for paying court reporter fees associated with transcription of capital postconviction proceedings; and that CCRC, not the counties, was required to pay statutory clerk's fees assessed to prepare the record on appeal in capital postconviction proceedings, as the legislature had designated CCRC as responsible for payment of all necessary costs and expenses in such matters. The Court further ruled that trial courts lacked authority to waive clerk's fees associated with preparation of the record on appeal in capital postconviction proceedings where defendants are represented by CCRC.

This ruling was a significant financial victory for the counties and clerks of the circuit courts throughout Florida because it spared the counties from CCRC's massive cost shifting attempt, and it protected a major revenue source for the offices of court clerks in holding that the clerks' fees for preparation of the record on appeal cannot be waived.

5. County of Volusia v. Nowicki, No. 2002-10776-CIDL (Fla. 7th Cir. Ct. Jan. 7, 2003).

The litigation of this case also began with a one-day administrative trial held before the Volusia County Code Enforcement Board on June 20, 2001, with Mary Hansen again as my opposing counsel representing Mr. Nowicki. Nowicki lived on a lake in an upscale neighborhood in the Deltona area. Much to the horror of his neighbors, Nowicki purchased a parrot breeding business and relocated it to his yard. Anyone who knows how loud one parrot can squawk would probably be overwhelmed by the thought of how loud Nowicki's 276 parrots could be! His neighbors began bombarding County officials with calls and letters complaining about the constant noise from the parrots. They complained that the parrots kept them awake all night and that they could not open their windows or sit on their porches during the day because of the loud raucous. Even the neighbors on the other side of the lake said that the noise traveling across the lake made them prisoners in their own homes.

In response to the neighborhood complaints, the County cited Nowicki for maintaining an illegal aviary in zoning where not permitted and for building pole barns for the parrots without permits and safety inspections. Nowicki steadfastly refused to cooperate with the County in any way and seemed uninterested in any attempts to try to resolve the matter. Therefore, I successfully prosecuted Nowicki in a trial before the Code Enforcement Board. Fines were

imposed and began accumulating, which Nowicki completely ignored. Eventually, I had to file a petition in circuit court to enforce the Code Board's orders and liens. Judge Edwin Sanders dismissed a counterclaim filed by Nowicki and granted a summary final judgment in favor of the County on January 7, 2003. Judge Sanders entered a break order and directed the Sheriff of Volusia County to immediately execute the order and levy upon all of the parrots, other birds, cages, and related equipment.

This case is significant for several reasons. It resulted in one of the largest County government inter-departmental operations in memory. To the enormous relief of an entire grateful neighborhood, the County conducted a massive two-day operation to seize 276 parrots. A small army of deputies, code enforcement officials, and animal control officers entered the property and found two parrots per cage in cages each the size of a small automobile. The parrots were being housed out in the open in freezing winter temperatures. A convoy of large rental trucks had to be obtained to transport the cages, and inmates from the county jail were brought in to lift the cages into the trucks. A building at the County Fairgrounds had to be procured to house the parrots, space heaters were purchased to keep them warm at night, and a security guard was hired to guard the valuable birds. A bird expert had to be found to take care of baby parrots. The media and curious public had to be dealt with. Then an auctioneer had to be hired to auction off the birds. One month later, people from all over the country came to the auction to bid on the parrots. All the birds were sold for a total of \$155,000. The auction was a huge success. The County's judgment was satisfied, and all the neighbors were happy. On May 1, 2003, the County Manager hosted a luncheon to honor all the participants in this huge logistical undertaking and cooperative effort and to celebrate the successful auction.

Thereafter, Nowicki filed a total of three lawsuits against the County of Volusia in federal court. Each lawsuit was dismissed. I solely handled all the litigation involving Nowicki and fully participated in all phases of the above-described operation.

6. Decker v. County of Volusia, 743 So. 2d 1125 (Fla. 5th DCA 1999).

Decker sued the Volusia County Property Appraiser alleging numerous violations of the Florida Public Records Act as well as fraudulent alteration of Decker's property record cards by Property Appraiser officials. I defended the Property Appraiser in a non-jury trial before Judge Joseph Will in 1999. Opposing attorneys representing Decker were Michael Woodward and John Key.

Decker claimed that the public records law required appraisers inspecting properties to retain their notes taken in the field. These handwritten notes traditionally had been discarded after the information was inputted into the office computers. He also sought a ruling expanding the public records law to require appraisers to create materials he wanted and to provide written interpretations of records he did not understand. Judge Will entered a final judgment in favor of the County on all issues. Decker appealed certain of the public records issues to the Fifth District Court of Appeal.

On September 17, 1999, the appellate court issued its ruling affirming the circuit court's judgment. I consider this case to be somewhat significant in that the courts declined to expand the interpretation of the public records law to include Decker's issues and requirements. Also, the common practice by appraisers of making informal field notes and then discarding them after putting the finalized information in the computer was not found to violate the public records law.

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.

The following three examples of legal writing which I personally and solely authored are attached hereto at "Attachment A:"

1. Appellate Opinion in case of State Farm Mutual Automobile Insurance Company v. All Family Clinic of Daytona Beach, Inc., 25 Fla. L. Weekly Supp. 579b (Fla. 7th Cir. Ct. September 14, 2017).
2. Appellate Opinion in case of Harbor View Daytona Condominium Association, Inc. v. Strachan, 23 Fla. L. Weekly Supp. 894a (Fla. 7th Cir. Ct. December 22, 2014).
3. Order denying "Stand Your Ground" motion to dismiss murder charge in case of State of Florida v. Angela Faye Stoldt, 22 Fla. L. Weekly Supp. 542c (Fla. 7th Cir. Ct. October 27, 2014), affirmed, No. 5D15-67 (Fla. 5th DCA April 5, 2016).

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.

Appointed by Gov. Jeb Bush to the Circuit Court of the Seventh Judicial Circuit (2006-2009).

Elected to the Circuit Court of the Seventh Judicial Circuit (2009-2015).

Re-elected to the Circuit Court of the Seventh Judicial Circuit (2015-present).

- 32b. List any prior quasi-judicial service: n/a

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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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.

1. Mark M. O'Mara, Esq., 221 NE Ivanhoe Blvd., Suite 200, Orlando, FL 32804; 407-898-5151.
2. David P. Gillespie, Office of Statewide Prosecution, 135 W. Central Blvd., Suite 1000, Orlando, FL 32801; 407-245-0893.
3. Cheney Mason, Esq., 250 S. Park Ave., Suite 200, Winter Park, FL 32789; 407-843-5785.
4. Frank B. Gummey, III, Esq., 3 Oceans West Blvd., Daytona Beach Shores, FL 32118; 386-717-3745.
5. J. Peyton Quarles, Esq., 125 Basin St., Suite 215, Daytona Beach, FL 32114; 386-255-0305.
6. James R. Disinger, Esq., 227 Seabreeze Blvd., Daytona Beach, FL 32118; 386-255-1400.

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

I have presided over thousands of cases in my 13 years as a circuit judge. Most of the cases have been in the areas of civil, criminal, and family law, and I have conducted hundreds of jury and non jury trials while presiding in those divisions.

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

Wells Fargo Bank v. Pacific Financial Corp., 26 Fla. L. Weekly Supp. 632a (Fla. 7th Cir. Ct. September 6, 2018).

Potter v. Shell Oil Company, 26 Fla. L. Weekly Supp. 274a (Fla. 7th Cir. Ct. April 23, 2018).

HMC Assets, LLC v. Home Outlet, LLC, 26 Fla. L. Weekly Supp. 17b (Fla. 7th Cir. Ct. April 9, 2018).

O'Reilly v. City of New Smyrna Beach, 26 Fla. L. Weekly Supp. 628b (Fla. 7th Cir. Ct. March 20, 2018).

Meritt v. Vickers, 25 Fla. L. Weekly Supp. 1007a (Fla. 7th Cir. Ct. March 5, 2018).

State Farm Mutual Automobile Insurance Company v. All Family Clinic of Daytona Beach, Inc., 25 Fla. L. Weekly Supp. 579b (Fla. 7th Cir. Ct. September 14, 2017).

Cedar Creek Shellfish Farms, Inc. v. State of Florida, Department of Environmental Protection, 24 Fla. L. Weekly Supp. 331a (Fla. 7th Cir. Ct. August 9, 2016).

Edgewater – New Smyrna Beach Amvets Post 2, Inc. v. City of Edgewater, 24 Fla. L. Weekly Supp. 481a (Fla. 7th Cir. Ct. August 24, 2016).

Provitola v. Comer, 24 Fla. L. Weekly Supp. 421a (Fla. 7th Cir. Ct. August 2, 2016).

Harbor View Daytona Condominium Association, Inc. v. Strachan, 23 Fla. L. Weekly Supp. 894a (Fla. 7th Cir. Ct. December 22, 2014).

Portfolio Recovery Associates, LLC v. Cordero, 23 Fla. L. Weekly Supp. 392b (Fla. 7th Cir. Ct. July 23, 2015).

State v. Moreno, 23 Fla. L. Weekly Supp. 321a (Fla. 7th Cir. Ct. September 4, 2015).

State v. Stoldt, 22 Fla. L. Weekly Supp. 542c (Fla. 7th Cir. Ct. October 27, 2014).

State v. Roman, 21 Fla. L. Weekly Supp. 319a (Fla. 7th Cir. Ct. November 12, 2013).

State v. Narvaez, 19 Fla. L. Weekly Supp. 1018a (Fla. 7th Cir. Ct. August 8, 2012).

State v. Pierre, 18 Fla. L. Weekly Supp. 855b (Fla. 7th Cir. Ct. July 11, 2011).

State v. Stanaitis, 18 Fla. L. Weekly Supp. 1138b (Fla. 7th Cir. Ct. March 14, 2011).

In Re: The Name Change of Jeffrey Stuart Davis, 16 Fla. L. Weekly Supp. 314b (Fla. 7th Cir. Ct. February 25, 2009).

Bergen v. Key Bank USA, National Association, 16 Fla. L. Weekly Supp. 48a (Fla. 7th Cir. Ct. November 17, 2008).

Stein v. The Joseph L. Riley Anesthesia Associates, P.A., 15 Fla. L. Weekly Supp. 805a (Fla. 7th Cir. Ct. May 31, 2008).

Aqua Sun Investments, Inc. v. Kruse International, Inc., 14 Fla. L. Weekly Supp. 1047a (Fla. 7th Cir. Ct. July 5, 2007).

Citizens and Neighbors Devoted to Ormond v. City of Ormond Beach, 14 Fla. L. Weekly Supp. 161a (Fla. 7th Cir. Ct. August 22, 2006).

Dougherty v. Philip Morris, Inc., 14 Fla. L. Weekly Supp. 151a (Fla. 7th Cir. Ct. Oct. 9, 2006).

Ormond Beach Aviation, Inc. v. City of Ormond Beach, Florida, 14 Fla. L. Weekly Supp. 324a (Fla. 7th Cir. Ct. January 23, 2007).

Webb v. Department of Highway Safety and Motor Vehicles, 14 Fla. L. Weekly Supp. 519a (Fla. 7th Cir. Ct. February 14, 2007).

Fowler v. Department of Highway Safety and Motor Vehicles, 14 Fla. L. Weekly Supp. 7a (Fla. 7th Cir. Ct. November 14, 2006).

McKinney v. Department of Highway Safety and Motor Vehicles, 14 Fla. L. Weekly Supp. 6a (Fla. 7th Cir. Ct. October 13, 2006).

Daniels v. Department of Highway Safety and Motor Vehicles, 13 Fla. L. Weekly Supp. 855a (Fla. 7th Cir. Ct. 2006).

- (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.

1. State of Florida v. Angela Faye Stoldt, 22 Fla. L. Weekly Supp. 542c (Fla. 7th Cir. Ct. October 27, 2014), affirmed, No. 5D15-67 (Fla. 5th DCA April 5, 2016).

Following two lengthy evidentiary hearings and rulings on a motion to suppress and a “Stand Your Ground” motion [see third legal writing example attached at Tab A], I presided over the first-degree murder trial of this case in December 2014. The Defendant was convicted of drugging her neighbor, driving him to a remote cemetery, and then killing him by brutally stabbing him in the eyes with an ice pick and then strangling him with a “tree climber” garrote while she straddled his body in the front seat of her car. She then wrapped the victim’s face and head in plastic wrap and drove his body back to her house. The following morning the Defendant, utilizing a hacksaw, completely dismembered the victim’s body on the floor of her garage. After that she took the body parts inside her kitchen and cooked them in the oven and on the stove. The courtroom audience appeared stunned when the Defendant testified about how she had to pull out the ice pick from the victim’s eye so that his head would fit in one of the pots on the stove! Thereafter, the Defendant bagged up all the body parts in trash bags and enlisted the help of her children to put the bags in her car and drive around disposing of them in the cemetery and in dumpsters behind a restaurant.

The attorneys involved in the trial were prosecutors Ryan Will and Heatha Trigones and public defender James Valerino. I consider this case to be significant in part because it was by far the most gruesome and bizarre trial over which I ever presided. Also, the trial made national and international news due to its sensational nature. I read online news media articles about the case from all over the world. The case captured the attention of a Hollywood television producer, and in 2015 a television camera crew and reporters came to film an episode about the case. On July 17, 2016, the episode first aired on the Oxygen Network’s television show “Snapped,” and it has been shown repeatedly since then.

2. The Joseph L. Riley Anesthesia Associates, P.A. v. Amanda Stein and Florida Health Care Plan, Inc., 27 So. 3d 140 (Fla. 5th DCA 2010).

The litigation in this case involved a challenge to Florida’s Health Maintenance Organization (“HMO”) Act. The disputed issue concerned the billing practice of a group of anesthesiologists (“JLR”). For its exclusive anesthesia services provided at a local hospital, JLR had the practice of sending bills to the Florida Health Care HMO and then, after receiving payment, sending invoices directly to Florida Health Care’s subscribers for the difference between the amount paid by Florida Health Care and the total amount billed by JLR. This practice is referred to in the healthcare industry as “balance billing.” A group of 52 medical patients who were subscribers to the Florida Health Care HMO filed separate lawsuits seeking a declaratory judgment that JLR’s balance billing violated Florida’s HMO Act. All 52 lawsuits were consolidated into this case.

The issue presented to the Court for determination was whether a hospital-based, but non-contracted, provider of health care services to the subscribers of an HMO plan may balance bill the subscribers for the unpaid portion of its invoices for medical services that have not been paid by the HMO. Following a non jury trial, I ruled that the pertinent language of the HMO Act was not ambiguous and entered Final Judgment declaring that JLR’s balance billing of the subscribers

was prohibited by Section 641.3154 of the Florida Statutes. The appellate court affirmed this ruling with a lengthy opinion.

The attorneys involved in the case were James Talley, Karina Gonzalez, and Anthony Schoder, Jr. I believe the case is significant because the ruling upheld and protected the integrity of Florida's HMO Act. Had the ruling gone the other way, it would have seriously undermined the Act.

3. State of Florida v. Agustin Moreno, 23 Fla. L. Weekly Supp. 321a (Fla. 7th Cir. Ct. September 4, 2015).

For a period of more than a year, I worked with the lead task force agent in a multi-agency long term investigation of members of an international drug trafficking organization. The drug traffickers were bringing drugs in from Mexico and selling them in the Central Florida area. The primary agencies involved were the Volusia Bureau of Investigation, Department of Homeland Security, and U.S. Immigration and Customs Enforcement. I was designated as the lead judge in the jurisdictional area for the purpose of periodically reviewing thousands of pages of investigation reports and affidavits, issuing court-ordered interceptions of wire communications of landline and cell phones of suspected drug traffickers, and issuing search warrants and arrest warrants. Ultimately, the Office of Statewide Prosecution filed multiple drug trafficking related charges against the above-named defendant and numerous co-defendants. This case and several others like it were assigned to my criminal felony division.

The allegations against this particular defendant were that he and his co-defendants were receiving shipments by UPS of drugs from Tijuana, Mexico, and they were sending money for the drugs to an unknown seller in California. Testimony showed that payments to the seller were made by depositing money in a Bank of America account in Flagler County, and the funds were electronically transferred to an account in California. The defendant sought dismissal of the charges on the ground that he and the involved co-defendants lived in the same judicial circuit, and, therefore, the Office of Statewide Prosecution had no jurisdiction to prosecute him because the crimes did not occur in multiple circuits. The Statewide Prosecutor argued that the defendants' use of the Internet online banking to electronically transfer the deposited drug money to California gave his office jurisdiction to prosecute under the applicable statute.

The pertinent portion of the applicable statute gives the Statewide Prosecutor authority to prosecute drug crimes when "the offense is facilitated by or connected to the use of the Internet." Recognizing the multi-jurisdictional nature of the Internet, the Legislature amended the statute to add language that such crimes are deemed to occur simultaneously in every judicial circuit in Florida. In the absence of any reported case law interpreting this portion of the statute, I analyzed the legislative history and intent, along with the wording of other similar statutes, and ruled that the statutory language encompassed electronic bank transmittals. Thus, I denied the defendant's motion to dismiss the charges in ruling that the offenses charged were "facilitated by or connected to the use of the Internet" via electronic banking to transfer the deposited drug money, and, by such use, they were deemed to have occurred in multi-judicial circuits.

The attorneys involved were Gary Malak, Assistant Statewide Prosecutor, and Michael Tuma, defense counsel. I consider the case to be of significance because, at the time of the ruling, it appeared to be a case of first impression recognizing the jurisdiction and authority of the Statewide Prosecutor to prosecute under the stated provision of the statute.

4. Citizens and Neighbors Devoted to Ormond v. City of Ormond Beach, 14 Fla. L. Weekly Supp. 161a (Fla. 7th Cir. Ct. August 22, 2006), appeal dismissed, No. 5D06-3105 (Fla. 5th DCA December 27, 2006).

The petitioners in this case were a political committee and individual residents who had submitted to the respondent, City of Ormond Beach, a controversial proposed amendment to the city charter which would limit the height of buildings in the city to 75 feet. The petitioners had compiled the requisite number of signatures for their initiative petition, the chief elections officer of the city had approved the form of the initiative petition, and the Supervisor of Elections for Volusia County had certified the signatures on the petition. However, the city commission subsequently adopted a resolution expressing its “doubt” regarding the legal sufficiency of the proposed initiative, and the city refused to direct its chief elections officer to place the initiative on the ballot for a vote of the electors at the next election.

The petitioners then filed a petition in my court seeking declaratory relief and a writ of mandamus commanding the city to place the initiative on the ballot. The city raised several defenses including an argument that the initiative was facially unconstitutional and violated certain statutes. Following a non jury trial, I ruled that pursuant to statutes the electors of a city may propose an amendment to any part or to all of their charter except that part setting the boundaries of the city, that the electors’ power to legislate by amending the charter through initiative or referendum is co-extensive with the city’s power to act on the charter amendments, and that the pertinent statute reserves to the people the right to amend the city’s charter without approval of the governing body. Holding that the proposed initiative was not unconstitutional and did not violate any Florida Statutes, I granted the writ of mandamus and ruled that the petitioners had a clear legal right, and the city had a clear legal duty, to have the initiative placed on the ballot for a vote.

The attorneys participating in this case were James A. Fowler, Carole J. Barice, Thomas G. Pelham, and City Attorney Randal Hayes. I consider this case to be significant because the right of the electorate to vote was protected and the will of the voters was upheld. Evidencing the local importance of the issues, on November 6, 2016, the Daytona Beach News-Journal published an article commemorating the 10th anniversary of the ruling and passage of the charter amendment.

5. Aqua Sun Investments, Inc. v. Kruse International, Inc., 14 Fla. L. Weekly Supp. 1047a (Fla. 7th Cir. Ct. July 5, 2007), appeal dismissed, Nos. 5D07-2672, 5D07-2673, 5D07-2675 (Fla. 5th DCA April 16, 2008).

This case, dubbed “the Batmobile case” by local news media, involved litigation between a classic car museum, an auctioneer, and famed Hollywood celebrity car designer George Barris. The plaintiff’s car museum, located in Daytona Beach, was going out of business and hired the defendant auctioneer to sell off all its inventory. Third-party defendant George Barris appeared at the auction solely as a celebrity at the request of both the plaintiff and defendant who believed Barris’ celebrity status would contribute to the auction and increase sales. A Batmobile car designed by Barris was the centerpiece of the auction and attracted the most buyer interest. The Batmobile car was purchased at the auction by the owner of a car museum in Tallahassee. Afterwards, an unsuccessful bidder began spreading rumors that the Batmobile that was sold was a fake. When this story was picked up and reported by the local news media, the purchaser became concerned that the negative publicity about the car would have adverse effects on his

museum where the car would be shown. He complained to the auctioneer and demanded the return of his money. Without obtaining the consent of the plaintiff, the defendant auctioneer refunded the money to the purchaser and took possession of the Batmobile car. The auctioneer subsequently transported the car to his personal museum at the auctioneer's headquarters in Indianapolis where he intended to try to sell it later to recover the money for the plaintiff. The car was never sold, and the plaintiff filed suit against the auctioneer to recover the purchase price of the car.

The auctioneer then filed a third-party complaint against Barris seeking recovery for indemnity arising from the auction of both the Batmobile car and a Ghostbusters ambulance. The auctioneer claimed that at the auction Barris made misrepresentations to the public that the Batmobile and Ghostbusters vehicles were the original cars used in the filming of the television series and movie. I presided over a five-day non jury trial in which Barris testified extensively about how the several different original Batmobile cars were made and how they were used in connection with the TV and movie series. Barris also explained in detail about the market for "exhibition" Batmobiles that only he could authorize to be built for sale to others. It was very interesting to learn from his testimony that Barris owned the number one original Batmobile which he kept at his private Hollywood museum located in his house. (Barris sold that car at a fiercely competitive auction in 2013 for \$4.62 million.).

There was much testimony at trial about the many mistakes and misrepresentations printed in the auctioneer's catalog about the Batmobile, Ghostbusters ambulance, and other vehicles. Several witnesses testified they told the auctioneer about the mistakes but that he did nothing to correct them. Barris testified that he took issue with the auction catalog's description of the Batmobile and Ghostbusters cars as being original vehicles used in the TV series and/or movies. He stated that he told the auctioneer that these were "exhibition vehicles" only and that he would not represent or agree with any representation by the auctioneer at the sales podium that these were original vehicles. I found after extensive testimony that there was no credible evidence whatsoever of any misrepresentations made by Barris, and the auctioneer even conceded this. I entered judgment in favor of the plaintiff and Barris and against the defendant auctioneer.

The attorneys involved in the trial were Arthur Graham, R. Michael Kennedy, Robert E. Austin, Jr., and Steven J. Guardiano. The only reason this case is significant to me is because it was fun, and it has become one of my most memorable trials. All the media attention was interesting, and watching Mr. Barris walking all over the courthouse giving out autographed posters and photos was quite a spectacle. After the appeals were over, Mr. Barris, through his attorney, sent me one of his autographed books with a very nice personalized note.

- (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.

Not to my knowledge.

- (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.

I am the managing member of Rowe Timberlands, LLC, a family business in which I have a 25% ownership interest. The nature of the business concerns generally the holding of real property, cutting and selling existing timber on the property, and reforesting the land. As general manager, I manage all aspects of the timber business operations, including entering into contracts, supervising activities of our forest manager, and performing all accounting related functions. I do not intend to resign upon appointment, as there will be no conflicts of interest.

- 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.

Yes. In addition to the activity described in answer to the previous question, in the 1990's I was engaged in part-time teaching of legal related courses through the Flagler County School District Adult Education Program and at Daytona Beach Community College as a business law adjunct professor.

- 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.

None

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.

None. As a judge, I have on very rare occasions recused myself from cases in which I had been involved as an attorney of record, in which I was related to an attorney in the case, and in which a legally sufficient motion for disqualification was filed.

MISCELLANEOUS:

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

Yes _____ 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 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 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.

Yes, very briefly in 1996. In Alphonso Roundtree v. Randell Rowe, III and County of Volusia, Case Nos. 96-10650-CIDL & 96-10861-CIDL, I was named as a defendant in my official capacity as an assistant county attorney.

Plaintiff Roundtree was known as a frequent filer of pro se lawsuits. He had a total of 12 lawsuits against the County of Volusia and its sheriff over a four-year period. His 11th such lawsuit against the County was assigned to me as an assistant county attorney to defend against. In that lawsuit Roundtree claimed that a circuit judge had entered an illegal foreclosure judgment against him. He sued the County of Volusia because he erroneously thought the judge was a County employee. That lawsuit was almost identical to two previously dismissed lawsuits Roundtree had filed against the same judge in federal and state courts. Circuit Judge Richard Orfinger dismissed with prejudice Roundtree's 11th lawsuit, ruling that there was "a complete

absence of a justiciable issue in the Plaintiff's complaint." Finding Roundtree's action against the County to be "clearly frivolous," Judge Orfinger entered a Final Judgment in favor of the County awarding attorney fees against Roundtree pursuant to Section 57.105 of the Florida Statutes.

Roundtree was angry about Judge Orfinger's ruling and retaliated by filing the above-styled pro se complaints against the County and me personally. Both complaints were nearly identical and alleged violations of Roundtree's rights due to his 11th lawsuit being dismissed. However, Judge John Doyle quickly dismissed both of these lawsuits, closed the case files, and ordered the complaints to be sent back to Roundtree because Roundtree refused to pay the clerk of court filing fees. Thus, no summons was issued, and I was never served with either complaint and never had to respond to them.

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

- 43b. Have you ever paid a tax penalty?

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.

Lot Maintenance Liens as a Code Enforcement Tool, The Agenda, Vol. XXIX, No. 1, September 2005.

Counties and Clerks Spared from Capital Collateral Regional Counsel Cost Shifting Attempt, The Agenda, Vol. XXVI, No. 1, January 2003.

U.S. Supreme Court Declines to Expand Right to Court-Appointed Counsel, The Government Lawyer Section Reporter, Vol. VI, No. 1, Summer 1998.

Judge Hammond's Bagpipes Help Him Keep His Sanity, The Florida Bar News, Vol. 21, No. 11, June 1, 1994, at 20.

Numerous circuit court opinions published in the Florida Law Weekly Supplement. [See question #32d. (iii).]

Numerous newspaper articles published in 1982-83 as the News Editor of the Stetson University Reporter and in 1977-78 as Editor-in-Chief of high school newspaper.

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

Volusia County Teen Court Distinguished Service Awards (2005, 2004, 2003 & 2002).

Volusia County Bar Association plaques for Dedicated Service as Secretary (2000-2001) and as Board of Directors member (1997-2000).

Rotary International, Rotary Youth Leadership Program, Outstanding Service Award (2008).

DeLand Rotary Club Special Appreciation plaques (1999-2000 & 1998-1999); Paul Harris Fellow award (2014).

Florida Council of Bar Association Presidents service award (1992).

Volusia County Government Certificate of Appreciation for dedicated service (2005).

Volusia County Mock Trial Competition Award of Participation (presented by Chief Judge in May of 2001 & 2000).

Volusia County Clerk of Circuit Court's Certificate of Appreciation for "outstanding legal representation of the Clerk's Office" (1999).

Volusia County Manager's Certificate of Appreciation "for outstanding performance and lasting contribution" (presented May 1, 2003, at honorary luncheon).

Flagler County School District Certificate of Cooperation for participation in the Flagler Legal Training Program (1990).

Academic awards and honors listed in answer to question #18b.

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

Co-hosted mock trial event at Volusia County Courthouse, which included speaking and answering questions, for high school students from all over the state as part of the 2018 Rotary Youth Leadership Awards Conference.

Spoke to students as member of a Law Panel of the Phi Alpha Delta Florida State Pre-Law Conference hosted by Stetson University.

Served as a judge and lecturer at Stetson University Mock Trial Competition.

Gave keynote speaker address at Flagler County Bar Association Annual Membership Meeting in Palm Coast.

Participated with State Attorney R.J. Larizza and Sheriff Ben Johnson on a criminal justice panel for the Leadership West Volusia Class of 2013 co-sponsored by Stetson University and the DeLand Area Chamber of Commerce.

Participated annually as a Teen Court judge and lecturer in the Rotary Youth Leadership Program (2006-2010 & 2018).

Spoke to elementary students from Boston Avenue Charter School.

Spoke to Freedom Elementary School students for Law Week.

Spoke to Orange City Elementary School student government representatives and participated in mock trial.

Spoke to Blue Lake Elementary School student government representatives and participated in mock trial.

Met with and spoke to students at various times from Stetson University, Florida Technical College, DeLand School of Government, and Leadership DeLand.

Participated annually in team presentations at the Dunn-Blount Inn of Court meetings (2006-2018).

Lectured at the Florida Department of Community Affairs/Florida Housing Coalition Workshop on Recovering Affordable Housing Stock.

As a former county attorney, I lectured to several county government appointed boards and committees on Florida's Sunshine Law and Public Records Law.

As a Volusia County Teen Court Program volunteer, I occasionally have lectured and instructed at student volunteer orientations. I helped train the teen court mock trial team for the Northeast Florida Teen Court Mock Trial Competition in 2017.

I gave many course lectures to students in my teaching capacity over a period from 1990 to 1995. I taught business law at Daytona Beach Community College and torts, constitutional law, legal research & writing, and ethics in the Flagler Legal Training Program of the Flagler County School District Adult Education Center.

I presided over and spoke at all meetings of the Flagler County Bar Association as President and Chairman of the Board of Directors from 1990 through 1992.

As former Program Chairman of the DeLand Rotary Club, I delivered prepared introductions of numerous dignitaries whom I personally invited to speak to the club, including former Governor Jeb Bush and former Florida Supreme Court Chief Justice Major Harding.

47. Do you have a Martindale-Hubbell rating? No

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.

The Florida Bar: The Florida Bar Journal and News Editorial Board (1995-98); Rules of Judicial Administration Committee (1991-94); Government Lawyer Section, Executive Council; City, County and Local Government Law Section.

Volusia County Bar Association: Secretary and Board of Directors (1997-2001); Circuit Representative on The Florida Bar Government Lawyer Section Executive Council (1997-2001); Inaugural Florida Bar All-Bar Conference Delegate (1990).

Flagler County Bar Association: President and Chairman of Board of Directors (1990-91, re-elected for 1991-92 term); Law Week Committee Chairman (1990-91).

Florida Conference of Circuit Judges

American Inns of Court, Volusia-Flagler Chapter (Dunn-Blount Inn of Court).

Alpha Kappa Psi Professional Business Fraternity

Delta Theta Phi Law Fraternity

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.

DeLand Rotary Club: Paul Harris Fellow; Program Committee Chairman

The Federalist Society

Tiger Bay Club of Volusia County

Florida Forestry Association

Volusia County Law Library Board of Trustees

Florida Association of Code Enforcement (1996-2006)

Florida Supreme Court's Self-Help Workgroup of the Commission on Trial Court Performance and Accountability and the Steering Committee on Families and Children in the Court (2009-10)

Volusia County Teen Court volunteer

Bar/Clerk/Judiciary Committee of Volusia County (2000-05)

Pro Bono Committee of the Seventh Judicial Circuit (Appointed by Chief Judge: 1993-97)

Florida Council of Bar Association Presidents (1990-93)

DeLand Middle School and Freedom Elementary PTA member (2000-05)

Cub Scouts Troop 556 parent volunteer (1998-99)

Flagler Legal Training Program: Executive Committee – Secretary (1990-94)

Habitat For Humanity of Flagler County (1993-94)

Flagler County Literacy Advisory Committee (1991-94)

Rotary Club of Flagler County (1991-94)

Palm Coast Jaycees (1991-94)

Flagler County Law Library Board of Directors (1990-92)

American Bar Association (1989-1995)

48c. List your hobbies or other vocational interests.

Gardening, reading, travel, family activities.

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.

No

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

Although I cannot perform pro bono legal services as a member of the judiciary, in the past I have provided pro bono services through my participation as a volunteer in the Volusia County Teen Court Program.

SUPPLEMENTAL INFORMATION:

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

Yes. I earn all of my continuing judicial education hours through the Florida Conference of Circuit Judges. Within the past five years, I have attended programs in civil and criminal law and have completed the Handling Capital Cases course to remain certified 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?

Yes. I have taught courses in the past on business law at the Daytona Beach Community College (now Daytona State College) at the Flagler/Palm Coast, New Smyrna Beach, and Main campuses. Also, I used to teach numerous law courses in the areas of torts, constitutional law, legal research & writing, and ethics in the Flagler Legal Training Program, which was a part of the Flagler County School District Adult Education Program. More recently, I have lectured as a panel member to students and other groups at various forums.

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

When I became a circuit judge after having served for over 11 years as a county government attorney, I brought to the bench many years of knowledge and experience in land use law and local government law, which most of my judicial colleagues did not have. Just as this background benefitted me as a circuit judge, I believe it would assist me on the appellate court. With its ever-expanding rate of growth, Florida has seen an increase in litigation involving annexation, zoning, and environmental regulation disputes. My local government experience in handling such complex litigation matters would be a unique contribution that I feel would assist me as an appellate judge in better understanding and ruling upon such cases.

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

I believe my particular potential contribution would be my strong legal research and writing skills as well as my experience in writing appellate opinions. Throughout my 13 years on the circuit court bench, I have presided over randomly assigned appeals from the county court and administrative tribunals. I have presided over numerous appellate oral arguments and have authored many appellate opinions both affirming and reversing rulings by the county judges and various quasi-judicial boards and hearing officers. I write all of my own appellate rulings after having thoroughly researched the issues and case law. Having this substantial amount of judicial experience in an appellate capacity would benefit me greatly on the appellate court and should provide a significant contribution to the court.

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.

Fifth District Court of Appeal Judicial Nominating Commission; February 17, 2017 & May 11, 2018. (Nominated both times.)

Seventh Circuit Judicial Nominating Commission; July 22, 2005 & September 16, 2005.

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

I have been told by judicial colleagues and many attorneys who practice before me that they believe I have an excellent judicial temperament and that I have a reputation of being extremely patient and also completely fair and impartial in ruling on matters that come before me as a judge. If appointed to the appellate court, I would continue trying to live up to these expectations and would strive to treat everyone appearing before me with respect, courtesy, and equality. Also, I would make every effort to issue well-reasoned, thoroughly researched, and fair appellate decisions without delay. In my rulings I pledge to interpret the law as it is written and to follow and apply the plain meaning of the text of statutes. Finally, to the extent possible, I would continue to make myself available to participate in school and community activities or programs designed to educate the public about the law and the judicial system.

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.
1. R.J. Larizza, State Attorney, 251 N. Ridgewood Ave., Daytona Beach, FL 32114; (386) 239-7714.
 2. James S. Purdy, Public Defender, 251 N. Ridgewood Ave., Daytona Beach, FL 32114; (386) 239-7730.
 3. David P. Gillespie, Office of Statewide Prosecution, 135 W. Central Blvd., Suite 1000, Orlando, FL 32801; (407) 245-0893.
 4. Daniel D. Eckert, County Attorney of Volusia County, 123 W. Indiana Ave., DeLand, FL 32720; (386) 736-5950.
 5. Mori Hosseini, 2379 Beville Rd., Daytona Beach, FL 32119; (386) 222-3115.
 6. Jacob V. Stuart, Jr., Esq., 1521 Mount Vernon St., Orlando, FL 32803; (407) 434-0330.
 7. David L. Jancha, Esq., NeJame Law, PA, 189 S. Orange Ave., Suite 1800, Orlando, FL 32801; (407) 245-1232.
 8. Hon. Dawn D. Nichols, Circuit Judge, 101 N. Alabama Ave., DeLand, FL 32724; (386) 822-5744.
 9. Frank B. Gummey, III, Esq., 3 Oceans West Blvd., Daytona Beach Shores, FL 32118; 386-717-3745.
 10. Hon. Elizabeth A. Blackburn, Circuit Judge, 101 N. Alabama Ave., DeLand, FL 32724; (386) 736-5848.

* I am pleased and honored that numerous individuals have provided letters of support to the Judicial Nominating Commission on my behalf. Please see these letters of reference attached at "Attachment B." Many of these letters were attached to my previous application and are submitted again with permission.

CERTIFICATE

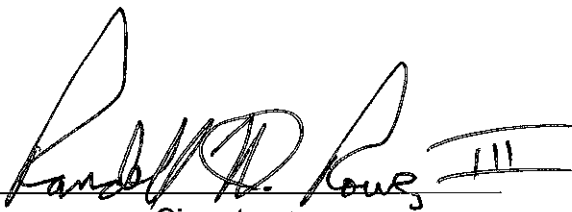
I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any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

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

Dated this 18th day of December, 2018.

Randell H. Rowe, III

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	\$147,297		
List Last 3 years			
(judicial salary)	\$149,732	\$146,080	\$146,080

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	\$119,304		
List Last 3 years			
(judicial salary)	\$119,039	\$115,558.50	\$115,874

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	\$112,715		
List Last 3 years	2017	2016	2015
Interest:	\$1,439	\$930	\$926
Dividends:	\$13,524	\$10,919	\$10,828
Capital gains/losses:	\$(15,548)	\$(39,384)	\$(19,536)
LLC gains/losses:	\$(4,632)	\$(3,808)	\$(3,591)

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	\$112,715		
List Last 3 years	2017	2016	2015
Interest:	\$1,439	\$930	\$926
Dividends:	\$13,524	\$10,919	\$10,828
Capital gains/losses:	\$(15,548)	\$(39,384)	\$(19,536)
LLC gains/losses:	\$(4,632)	\$(3,808)	\$(3,591)

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

PART A – NET WORTH

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

My net worth as of December 31, 2017 was \$2,213,391.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$46,500.

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

SEE ATTACHED LIST.

PART C – LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NONE

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NONE

PART D – INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and*

attachments, OR (2) file a sworn statement identifying each separate source and amount of income which exceeds \$1,000 including secondary sources of income, by completing the remainder of Part D, below.

I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.

(if you check this box and attach a copy of your latest tax return, you need not complete the remainder of Part D.)

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St., Tallahassee, FL 32399	\$160,688

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

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSIENSS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
Rowe Timberlands, LLC	Canfor Southern Pine	P. O. Box 1337, Thomasville, GA 31792.	timber/lumber

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

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

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

OATH

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

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

Sworn to (or affirmed) and subscribed before me this 27 day of ~~February, 2017~~ April, 2018 by Randell H. Rowe, III.

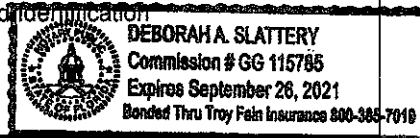
Deborah A. Slattery
(Signature of Notary Public—State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced

Randell H. Rowe III
SIGNATURE



Assets Individually Valued at Over \$1,000:

<u>Description of Asset</u>	<u>Value of Asset</u>
House, REDACTED	\$ 168,251
120-Acre Property, SE River Road Madison County, FL	47,166
Rowe Timberlands, LLC	497,349
Bank of America Accounts	230,633
Bank of America CD	22,478
Ameris Bank CD	36,631
Hancock Bank CD	62,201
Mainstreet Bank CDs	215,942
Fidelity Contrafund	31,045
Janus Fund	19,897
Franklin Mutual Quest Fund – Class Z	6,085
Merrill Lynch Investment Accounts	511,852
T. Rowe Price – Deferred Comp.	320,880

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: December 18, 2018

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Randell H. Rowe, III

Current Occupation: Circuit Judge

Telephone Number: (386) 736-5946 Attorney No.: 0750352

Gender (check one): Male

Ethnic Origin (check one): White; non Hispanic

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

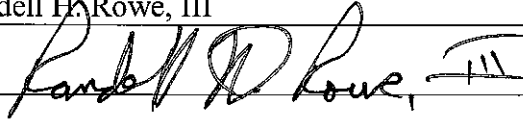
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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

Printed Name of
Applicant:

Randell H. Rowe, III

Signature of Applicant:



Date: December 18, 2018

LEGAL WRITING ATTACHMENTS

Attachment A

25 Fla. L. Weekly Supp. 579b

Online Reference: FLWSUPP 2507ALLF

Insurance -- Personal injury protection -- Coverage -- Medical expenses -- Reasonableness of charges -- Insurer did not waive opportunity to litigate reasonableness of provider's charge for MRI when its adjuster used computerized auto-pay process

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellant, v. ALL FAMILY CLINIC OF DAYTONA BEACH, INC., etc., Appellee. Circuit Court, 7th Judicial Circuit in and for Volusia County. Case No. 2016-10002-APCC. September 14, 2017. Appeal from the County Court Volusia County. Shirley Green, Judge. Counsel: Nancy W. Gregoire, Fort Lauderdale; Brooke L. Boltz, Orlando; and Mark D. Tinker, St. Petersburg, for Appellant. Kimberly P. Simoes, DeLand, for Appellee.

[Lower court order published at 23 Fla. L. Weekly Supp. 1050a.]

OPINION OF THE COURT

(ROWE, Judge.) This matter came before this Court in its appellate capacity for review of a Final Judgment entered on December 28, 2015, by the County Court. The Court has considered the briefs filed, reviewed the record on appeal, and heard oral argument of counsel.

The record on appeal reflects that on November 12, 2012, Appellee All Family Clinic provided medical treatment to Appellant State Farm's insured by performing a cervical spine MRI. All Family Clinic timely billed State Farm \$1,835.24 for this service. On December 4, 2012, State Farm paid \$1,006.02 for the MRI, leaving a balance of \$892.22. The record indicates that State Farm's stated explanation was that its subject payment was based on a reasonable amount under the terms and conditions of the insurance policy as well as Section 627.736(5)(a)1, Florida Statutes, "which permits, when determining a reasonable charge for a service, an insurer to consider usual and customary charges and payments accepted by the provider, reimbursement levels in the community and various federal and state fee schedules applicable to automobile and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service." State Farm further explained that its reduced payment for the MRI service was based upon 200% of the 2007 Participating Level of Medicare physician fee schedule for the region in which the services were rendered. On June 3, 2015, two and a half years later, All Family Clinic filed the underlying lawsuit against State Farm seeking recovery of the balance of its bill.

It was undisputed that State Farm processed and paid the subject bill by utilizing its "auto process tool," or "auto-pay system," which automatically pays medical bills at the predetermined 200% of Medicare Part B rate set forth in Section 627.736(5)(a)2. All Family Clinic filed a motion for summary disposition in the trial court claiming that State Farm's conduct in placing the MRI bill on the auto-pay system was conclusive and indisputable evidence of State Farm's clear intention to relinquish its 30-day statutory right to investigate whether the medical service was reasonable, related or necessary, and that this relinquishment of rights resulted in a waiver of State Farm's statutory right to challenge reasonableness, medical necessity and relatedness of the MRI services. In ruling in favor of All Family Clinic, the trial court expressly agreed with the argument that "State Farm had waived its right to investigate the bill and to challenge whether the charge was a reasonable charge and was related and medically necessary." The trial court ruled that State Farm's conduct in placing All Family Clinic's bill on the auto-pay system evidenced "a knowing and voluntary waiver of its right to

investigate the MRI bill and, therefore, State Farm cannot challenge the bill as being unreasonable, unnecessary or unrelated at this juncture.” The trial court entered Final Judgment against State Farm for the \$829.22 balance of the MRI bill plus prejudgment interest, and State Farm filed the instant appeal.

On appeal State Farm argues that it was both factually and legally incorrect for the trial court to have held that State Farm did not “adjust” the subject MRI bill within the initial 30-day statutory investigation period simply because the adjuster used the computerized auto-pay process, and that State Farm, therefore, waived its ability to defend itself against All Family Clinic’s lawsuit. Citing to the *Black’s Law Dictionary* definition of the term “adjust” as being “[t]o determine the amount that an insurer will pay an insured to cover a loss,” State Farm argues that its adjuster elected to use the auto-pay process to make that determination of what amount State Farm would pay, which was 200% of what Medicare would pay for the same service, and that the bill was then adjusted and paid in accordance with that reasonable rate determination. The mere fact that State Farm paid only \$1,006.02 of the \$1,835.24 bill would suggest that the bill was “adjusted” by any definition of the word.

In any event, State Farm correctly points out that its use of a computer database system as its internal method of gauging reasonableness of a provider’s bill is not something the court should have considered. In *State Farm Mutual Automobile Insurance Co. v. Sestile*, 821 So. 2d 1244, 1246 (Fla. 2d DCA 2002) [27 Fla. L. Weekly D1757a], the appellate court ruled that “it is not a court’s function to determine, across the board, that [State Farm’s] internal method of gauging reasonableness does or does not comply with the statute. The fact-finder must construe the word ‘reasonable’ and determine whether the insurance company’s evaluation of medical bills fits the definition on a case-by-case basis. . . . In some cases, a computer database may accurately assess the reasonableness of a medical provider’s bill; in other cases, it may be far from the mark. But this is the insured’s burden to prove.”

More importantly though, this Court agrees with State Farm’s ultimate argument that “while State Farm disagrees that it has never ‘adjusted’ this claim, no matter what it is not precluded from contesting reasonableness or, more to the point, defending this lawsuit where All Family is claiming that some other amount is reasonable.” Section 627.736(4)(b)(6) allows an insurer to dispute the reasonableness of charges at any time, including after payment of the claim or after the 30-day period for payment. *Coral Gables Chiropractic PLLC v. United Automobile Insurance Company*, 199 So. 3d 292, 295 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D687a]. Under that statute, even after a provider’s claim is reduced, an insurance company may still defend against a lawsuit by the provider claiming additional amounts on the grounds that the service was not medically necessary or that the amount was not reasonable. *Northwoods Sports Medicine and Physical Rehabilitation, Inc. v. State Farm Mutual Automobile Insurance Company*, 137 So. 3d 1049, 1057 (Fla. 4th DCA 2014) [39 Fla. L. Weekly D491a], citing *United Automobile Insurance Company v. Rodriguez*, 808 So. 2d 82, 87 (Fla. 2001) [26 Fla. L. Weekly S747a] (holding that insurer’s failure to pay PIP benefits within the 30-day statutory period does not forever bar it from contesting the claim). See also *January v. State Farm Mutual Insurance Co.*, 838 So. 2d 604, 607 (Fla. 5th DCA 2003) [28 Fla. L. Weekly D484a] (holding that an insurer does not become automatically obligated to pay a claim when the 30-day period has passed, and the insurer may contest the claim after the 30 days), also citing *Rodriguez*.

The Fifth District Court of Appeal recently ruled on the issue of “waiver” in *Progressive Select Insurance Company v. Emergency Physicians of Central Florida, LLP*, 202 So. 3d 437 (Fla. 5th DCA 2016) [41 Fla. L. Weekly D2145a]. In that case Progressive argued that it did not waive its opportunity to litigate the reasonableness of the provider’s bills when it paid the bills based on the fee schedule. The appellate court agreed, ruling that Progressive’s payment of personal injury protection

benefits according to the Medicare fee schedule without specifically electing in its policies to use the fee schedule did not result in a waiver of an opportunity to litigate the reasonableness of the medical provider's bills. *Id.* at 438. The appellate court further held that, “in ruling otherwise, the lower court's decision constitutes a violation of clearly established principles of law resulting in a miscarriage of justice.” *Id.* See also *State Farm Mutual Automobile Insurance Company v. World Health Wellness, Inc.*, 2017 WL 1322938 (Fla. 9th Cir. Ct. April 3, 2017) (holding that based on *Progressive Select* State Farm was not later precluded from litigating, and should have been allowed to litigate, the reasonableness of the provider's PIP charges, even though it had relied on a fee schedule).

Based on the statutory and case law authority discussed herein, this Court rejects All Family Clinic's argument that State Farm waived its right to litigate the reasonableness of the MRI bill. The lower court erred in ruling that State Farm had waived its right to challenge whether All Family Clinic's MRI bill was a reasonable charge and was related and medically necessary. The lower court should not have granted the motion for summary disposition, as there clearly was a triable issue for a jury to consider -- that of reasonableness. All Family Clinic maintains that its bill is reasonable, and State Farm disputes that the amount claimed is reasonable. This is an issue that must be tried, and State Farm was unlawfully deprived of its right to defend itself against All Family Clinic's lawsuit.

For the foregoing reasons, the lower court's Final Judgment is hereby

REVERSED, and this matter is **REMANDED** to the trial court for further proceedings consistent with this opinion.

* * *

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

CASE NO.: 2013-10044-APCC

HARBOR VIEW DAYTONA
CONDOMINIUM ASSOCIATION, INC.,

Appellant,

v.

KATHERINE STRACHAN AND
JOHN F. STRACHAN,

Appellees.

Appeal from the County Court
Volusia County, Florida

Cole, Scott & Kissane, P.A., Miami, Florida
For Appellant

Rice & Rose, P.A., Daytona Beach, Florida
For Appellees

CLERK OF THE CIRCUIT
& COUNTY COURT VOLUSIA COUNTY, FL
CC 49

2014 DEC 22 AM 9:44

FILED

OPINION OF THE COURT

On September 28, 2012, the Appellees, Katherine Strachan and John F. Strachan (“the Strachans”), filed a complaint seeking injunctive relief against the Appellant, Harbor View Daytona Condominium Association, Inc. (“the Association”), and Martha Stringer (“Ms. Stringer”). In count one of their complaint the Strachans alleged that the Association violated its governing documents and Chapter 718 of the Florida Statutes.¹ The Strachans requested an

¹ In count two the Strachans set forth a claim of private nuisance against Ms. Stringer. Because the Association is appealing only the County Court’s order granting partial summary judgment as to the Association, this Court will not need to address the Strachans’ claims as to Ms. Stringer.

injunction based on the Association's failure "to maintain common elements and/or take action against a unit owner who is impairing the drainage facilities within the condominium and creating a nuisance." The lower court granted summary judgment against the Association, and the Association now appeals that decision. We affirm. See *Robertson v. State*, 829 So. 2d 901 (Fla. 2002).²

The Strachans own Unit 111 in the Harbor View Daytona Condominium. Their unit has had drainage back-flow plumbing problems since March of 2009 in the form of black, soapy water backing up into their toilets, showers, and sinks. The Strachans contend that the source of the drainage problem is outdated and inadequate plumbing on the eighth floor of Harbor View and/or the use of a high-efficiency washing machine in Unit 808, which is owned by Martha Stringer. The Strachans argue that the Harbor View drainage system does not provide enough time for used water coming from the high-efficiency washing machine in Unit 808 to drain from the condominium, which leads to sewage backups in Unit 111.

William Thomas Harbuck was one of the plumbers that did the original work on the Harbor View drainage system in 1974, and he was deposed for this case on March 18, 2013. At his deposition Mr. Harbuck explained that Harbor View was originally an apartment building. At that time there were no washing machines in the apartments; instead, the washing machines were in a common area on each floor. Later, Harbor View was converted from apartment to condominium use, and for the first seven floors the washing machines were added to individual units by adding a small room to each balcony to house washing machines. Each washing machine connects to a drainpipe that runs down the exterior of the building and ties directly into

²The "tipsy coachman" doctrine allows an appellate court to affirm a trial court that reaches the right result, but for the wrong reasons. *Robertson v. State*, 829 So. 2d 901 (Fla. 2002). "The key to the application of this doctrine of appellate efficiency is that there must have been support for the alternative theory or principle of law in the record before the trial court." *Id.* at 906-07.

the main sewer line, so these washing machines do not drain through the building's interior plumbing system. The penthouse units on the eighth floor have different floor plans from the units on floors one through seven, so the washing machines on the eighth floor were housed in a small room off the kitchen instead of the balcony. These washing machine drainpipes connect with the kitchen sink line. All eight vertical units share a kitchen sink line, so Unit 111 and Unit 808 share a kitchen line. Ms. Stringer's washing machine is the only washing machine that drains into the kitchen sink line that furnishes the Strachans' unit.

At the deposition Mr. Harbuck explained that Harbor View's plumbing system was not designed to accommodate the new high-efficiency washing machines that discharge water at a higher rate of speed than older machines. It is undisputed that the problem in the Strachans' unit only occurs when the washing machine in Unit 808 is used with a full-load capacity. Mr. Harbuck explained that the problem does not occur when the washing machine is used for a small load because the water volume is not large enough to cause a backup. He said that there are soapsuds in the water that gets backed-up in the Strachans' unit, which further indicates that the water is coming from a washing machine. Mr. Harbuck stated that, in his opinion, Ms. Stringer's high-efficiency washing machine is causing the plumbing problem. Mr. Harbuck said that he offered three solutions to the Association: (1) hire a mechanical engineer and let him evaluate the situation and make recommendations accordingly; (2) re-pipe Ms. Stringer's washing machine drainpipe and run it exposed on the north side of the building down to the ground and around to the west side of the building, where it would tie into the sewer line; or (3) install a laundry tub in Unit 808 and have the washing machine drain into the laundry tub to slow down the water enough to prevent the backflow of water into Unit 111. Mr. Harbuck also explained that he doubted that replacing Ms. Stringer's new, high-efficiency washing machine with an older machine would solve the problem. According to Mr. Harbuck, the two-inch

kitchen sink drain would still be overloaded with water. There is nothing in record to show that the Association has taken any action at all to resolve the problem. At the time of the summary judgment hearing, however, Ms. Stringer had installed a laundry tub, which she believed to be helping, but the Court understands this to be a temporary solution.

On January 28, 2013, the lower court entered an order granting the Strachans a temporary injunction against Ms. Stringer, enjoining her from using her washing machine through February 22, 2013. On March 4, 2013, the lower court extended the temporary injunction against Ms. Stringer through May 25, 2013. On April 25, 2013, the Strachans filed a motion for summary judgment seeking permanent injunctions against the Association and Ms. Stringer. On July 3, 2013, after a hearing on the summary judgment motion, the lower court issued the order granting summary judgment against the Association, finding that the drainage problem constitutes a nuisance that the Association has a duty to abate under Section 718.303, Florida Statutes, and Section 17.6 of the Association's Declaration. The lower court ordered the Association "to diligently and permanently abate the plumbing nuisance harming Unit 111."

The standard of review for summary judgment is *de novo*. *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 130 (Fla. 2000). A summary judgment should be affirmed if the record reflects that no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. *Id.* For the reasons stated below, this Court affirms the lower court's summary judgment in favor of the Strachans.

While this Court has not discovered any cases exactly on point, the Court does find persuasive two of the Florida Department of Business and Professional Regulation ("DBPR") cases relied on by the Strachans. For example, in *Klopstad v. Park West Condominium Association, Inc.*, Case No. 95-0084, 1995 WL 17206174 (Fla. DBPR Arb.), the owners of a condominium unit filed a petition for arbitration with the DBPR, claiming that the condominium

association failed to properly maintain the common element grounds outside their unit, which resulted in flooding to their property. The unit owners sought an order requiring the association to alter the outside ground so that water would no longer pool and flood into their units. The association in that case argued that "to maintain" means to keep something unchanged and since nothing had occurred to change the common elements, the association had met its duty to maintain the common elements. The arbitrator found for the unit owners, finding the association has a duty to take reasonable steps to preserve and protect the common elements, regardless of whether the higher elevation and sloping toward the unit was a defect dating back to the original construction, or whether the flooding only arose afterward as a result of changing weather patterns.

The Strachans also point to *Coren v. Summit Towers Condominium Association, Inc.*, Case No. 95-0117, 1996 WL 33664303 (Fla. DBPR Arb.). In that case the unit owner filed a suit for damages and injunctive relief against the condominium association, claiming a faulty plumbing system caused the sewer lines to backup into his first floor unit. The association claimed that the backups and flooding were not caused by the association's failure to maintain the sewer lines, or by a defective sewer system, but by the "misuse of the sewer system by other unit owners who discard towels or dish rags down their drains." The arbitrator, however, found that 10 backups could not be attributed to misuse of the other owners. The arbitrator also highlighted the fact that "the association failed to commit itself to ascertaining the cause of the backups by retaining the services of a competent professional and then following the recommendations of that professional." The arbitrator found that injunctive relief requiring the association to remedy the problem was appropriate, because the unit owner "demonstrated the existence of a problem with sewer backups, the responsibility of the association to maintain the sewer system, and continuation of the backups over a period of years."

To support its argument that it is not responsible for the drainage problems in Unit 111, the Association relies on *Schmeck v. Sea Oats Condominium Association, Inc.*, 441 So. 2d 1092 (Fla. 5th DCA 1983). However, *Schmeck* is distinguishable from the instance case. In *Schmeck*, two unit owners sued their condominium association for damages caused by leaks through defects in the common elements. Even though it was undisputed that the damage was caused by common elements, the Fifth District Court of Appeal upheld the lower court's decision in favor of the condominium association. In doing so, the appellate court noted that "the association was acting as reasonably and expeditiously as possible, and that it was not primarily responsible for the water problems being experienced by the [unit owners]." *Id.* at 1096. The appellate court found the association was not responsible for the damage because "the association had been newly formed when the damage suffered by the [unit owners] came to its attention" and the parties agreed that the "damage was primarily caused by the developer, not the association." *Id.* In our case, however, there is no allegation that the Association was newly formed when the Strachans began complaining of the drainage problem, or that the condominium developer was somehow responsible through defects in construction.

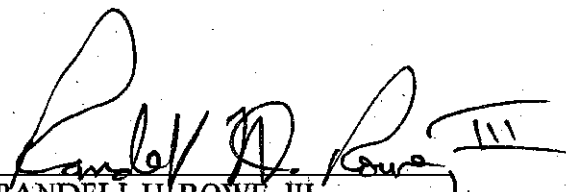
The Association argues that summary judgment was improper because it is unclear whether Ms. Stringer's washing machine, the building's plumbing system, or a combination of both causes the backflow into Unit 111. The Strachans, on the other hand, contend that the Association has a duty to remedy the backflow pursuant to its Declaration and By-Laws, as well as the Florida Statutes.³ The Strachans argue that "[e]ven if this Court were to agree with [the

³ Section 11.1 of the Declaration provides in part: "The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association, as amended from time to time." Section 5.1 of the By-Laws states, in part, that the Board of Directors "shall have the powers and duties necessary for the administration of the affairs of the Condominium . . ." These powers and duties "include, without limitation" . . . "operating and maintaining all common elements and the Association property . . . and enforcing obligations of the


Association's] contention that it does not have an absolute duty to abate nuisances, [the Association] does have an absolute duty to maintain the common elements – a duty which it has shirked even following the filing of the present action.” We agree. It is undisputed that the backup of water into the Strachans' unit only occurs when the washing machine in Unit 808 is in use at high capacity and sends water through the kitchen sink line and into the Strachans' unit. It is also undisputed that the kitchen sink line at issue is a common element that the Association has a duty to maintain under the Association's Declaration and By-Laws, as well as Chapter 718, Florida Statutes. The Association has failed to commit itself to finding a solution to the backups by following the recommendations of Mr. Harbuck. Like the unit owner in *Coren*, the Strachans have demonstrated the existence of a problem with sewer backups, the responsibility of the Association to maintain the kitchen sink line from which the backups flow, and continuation of the backups over a period of years. Therefore, this Court finds that the County Court's order granting injunctive relief requiring the Association to remedy the problem was appropriate.

Accordingly, the lower court's order granting summary judgment for the Strachans is hereby **AFFIRMED**.

DONE AND ORDERED in DeLand, Volusia County, Florida, this 19th day of December, 2014.



RANDELL H. ROWE, III
CIRCUIT JUDGE



R. MICHAEL HUTCHESON
CIRCUIT JUDGE

unit owners” In addition, paragraph G5 of Schedule “A” to the By-Laws states, “Any plumbing which serves more than one unit is the responsibility of the Association.”

Copies mailed to:

Matthew C. Shapiro, Esq.

Daniel M. Schwarz, Esq.

Hon. Dawn P. Fields, County Judge

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

STATE OF FLORIDA

CASE NO.: 2013-101064-CFDL

v.

ANGELA FAYE STOLDT,

Defendant.

**ORDER DENYING MOTION TO DISMISS DECLARING DEFENDANT
IMMUNE FROM PROSECUTION**

This matter came before this Court for an evidentiary hearing upon the Defendant's "Motion to Dismiss Declaring Defendant Immune from Prosecution" in which she asserts immunity from criminal prosecution pursuant to Section 776.032 of the Florida Statutes, generally referred to as the "Stand Your Ground" law. The Court, having considered the motion and memorandum of law, having also considered the testimony of the witnesses and exhibits entered into evidence, and argument of counsel, and being fully advised in the premises, hereby finds as follows:

The Defendant is charged with Second Degree Murder, Abuse of a Dead Human Body, and Tampering with Physical Evidence. In her motion she seeks dismissal of only Count I, the Second Degree Murder charge, pursuant to the immunity provisions of Section 776.032. The Defendant contends that her use of deadly force against the victim was reasonably justified and, therefore, she is immunized from prosecution as to Count I of the Information. A criminal defendant claiming statutory immunity under Section 776.032 has the burden of proof and must demonstrate by a preponderance of the evidence that she is immunized from prosecution. Dennis v. State, 51 So. 3d 456 (Fla. 2010); Bretherick v. State, 135 So. 3d 337 (Fla. 5th DCA 2013); and Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008).

CLERK OF THE CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA
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Like in the Peterson case, the instant Defendant did not testify in her "Stand Your Ground" hearing. However, both the State and the defense relied on her statements and confession in transcripts of law enforcement's prior recorded interviews of the Defendant. Other evidence at the evidentiary hearing included live testimony of several witnesses, deposition transcripts, and photographs. The evidence shows that the Defendant and the victim, James Sheaffer ("Sheaffer"), were neighbors who lived across the street from each other in Deltona. They had a financial arrangement whereby the Defendant had agreed to be listed as the payee on a joint bank account for deposit of Sheaffer's Social Security disability checks. An issue of contention between the two was that Sheaffer had repeatedly overdrawn funds from the account. Subsequently, Sheaffer wanted the Defendant to ask her father for a loan of up to \$4,000.

The evidence further shows that in the very early morning hours of April 3, 2013, the Defendant and her two children drove to Sheaffer's place of business to pick him up, and then they drove to the Defendant's home to drop off the children. While at her residence, the Defendant and Sheaffer drank mixed drinks of vodka and peach schnapps and discussed the account overdrafts. The Defendant told Sheaffer that her father was considering loaning her the money for Sheaffer. The recorded interview transcripts in evidence, along with live testimony at the hearing, reflect that the Defendant spiked Sheaffer's mixed drink with the prescription drug Flexeril that she had stolen from her father's house to put in Sheaffer's drink. The testimony reflects that Flexeril is a muscle relaxer medication. Flexeril, which is a brand name for cyclobenzaprine and is available only by prescription, affects the central nervous system to help create a relaxing effect in the body. The most common side effect of the drug is significant drowsiness that intensifies with increasing dose. See <http://www.md-health.com/Flexeril.html>. "You should not drink alcohol while using Flexeril. This medication slows your thinking and reaction time and alcohol increases the likelihood of these reactions occurring." Id. In her recorded interview in evidence the Defendant agreed with the investigators that Sheaffer was

drunk and off his guard from the Flexeril she put in his drink. She conceded that "when you mix them with alcohol, they affect you more." (Recorded Interview transcript, page 13, lines 3-4, Defendant's Exhibit 1.)

After she drugged Sheaffer and they had their drinks, the Defendant drove Sheaffer in her car to the Osteen Cemetery. In her interview she stated that Sheaffer thought they were driving to her parents' house, and she indicated that when she parked in the Osteen Cemetery he seemed confused about whether they were in a graveyard and what he was doing there. While parked in the cemetery and seated next to each other in the front seat of the Defendant's car, they began to further discuss their financial arrangements. According to the Defendant's recorded statement, Sheaffer asked if her father was really going to loan her the money, to which she replied, "How does it feel to be lied to, Jimmie?" (Recorded Interview transcript, page 10, lines 11-13, Defendant's Exhibit 1; and Recorded Interview transcript, page 25, lines 16-18, State's Exhibit 4.) According to the Defendant, Sheaffer responded by yelling and "swinging his hands around," although he did not hit her, and threatening to kill her. The Defendant told the investigators that she did not know if Sheaffer meant it or not when he said he was going to kill her. She said, "He starts coming at me and ... he didn't even really hit me, but he scared ... me, and I just snapped." (Recorded Interview transcript, page 26, lines 1-3, State's Exhibit 4.) "He came at me and I stabbed him." (Recorded Interview transcript, page 10, line 22, Defendant's Exhibit 1.)

The evidence reflects that the Defendant reached into a box in the back seat of her car and grabbed an ice pick with which she stabbed Sheaffer in the right eye. She stated that Sheaffer did not go unconscious right away after being stabbed in the eye but that he "kept coming at me." Then she grabbed a "tree climber" tool she had made for climbing trees, which she described as a cord with two PVC handles on each end. The Defendant used that to wrap around Sheaffer's throat and neck and strangle him to death. She described in detail how she strangled Sheaffer with the tool by climbing onto his lap and then using the force of her legs by holding

the handles with her hands and pushing on the cord with the bottom of her feet so that the cord would tighten more around his throat. She told the investigators that Sheaffer was "making the most awful sound in the world" and was grabbing at her legs trying to fight her off as she was choking him. The Defendant said in her statement she knew Sheaffer was dead when he stopped moving. She demonstrated for the investigators how she put her legs up over him "and I pulled and I pulled and pulled and pulled and pulled until he stopped." (Recorded Interview transcript, page 31, lines 1-2, State's Exhibit 4.) Then the Defendant pulled the ice pick out of Sheaffer's right eye and stabbed him in the other eye with it. Next, the Defendant said she grabbed Sheaffer's head and wrapped his face and head in Saran Wrap that she had in the back of her car. Finally, with her deceased victim sitting in the passenger seat of her car, ice pick still sticking out of his eye and his head wrapped in Saran Wrap, the Defendant drove back to her home.

When she arrived home, the Defendant drove her car into the garage, closed the garage door, went around to the passenger side and opened the car door, and slid a blue, plastic baby pool up to the car door. Then she got back into the car and, using her legs, pushed Sheaffer's body out of the car and into the baby pool on the garage floor. Then she went in the house and went to bed. The following morning the Defendant returned to her garage and commenced dismembering Sheaffer's body by cutting him up into pieces with a hacksaw and putting parts of him into a second baby pool. The Defendant told the investigators in her statement that she put Sheaffer's arms, legs and head in the second pool and left his torso in the original baby pool. The Defendant further told the investigators that she tried unsuccessfully to destroy the evidence by cooking and cremating the body parts. She admitted to putting several pieces of the body into pots and trying to cook them on her stove and trying to cook a leg in her oven. When the cooking and cremating attempt failed, the Defendant put all the body parts into trash bags. Using the hacksaw and another saw in her garage, the Defendant said she cut up the torso into three pieces and also bagged them in the trash bags.

The Defendant stated that she explained to her kids that she had hit a deer with her car and she brought it home to the garage but let it rot and now needed to get rid of it. She told her son that the cut up deer was in the trash bags, and she enlisted his help in disposing of the bags around the area. The Defendant described how she hid evidence by burying Sheaffer's cell phone and driver's license at certain parks, throwing away the pots and pans she used into dumpsters, and throwing the carpet from her car trunk into a lake. She stated that her son unknowingly helped her throw the bags of body parts away in dumpsters located behind a New Smyrna Beach fish house, and then they drove back to the Osteen Cemetery to discard more of the bags. The Defendant explained to the investigators that all of these events took place over a three-day period. She picked up Sheaffer and subsequently killed him on a Tuesday night going into Wednesday morning; "Thursday is when I was cooking him;" and "Friday is when I was dumping him," according to the Defendant's statement. (Recorded Interview transcript, pages 97-98, State's Exhibit 4.)

The Defendant's daughter testified at the hearing and explained how she and her brother had gone with the Defendant at night to help her dispose of the trash bags containing the "deer" that the Defendant told them she had hit. The daughter stated that her mother explained away the burning smell in the house by telling her it was caused by a rat that got in the oven. The daughter further testified that the Defendant admitted to her that she had given Sheaffer Flexeril and later killed him after Sheaffer "had threatened her and she panicked." The Defendant's sister, April Leach, also testified that the Defendant confessed to her that she killed Sheaffer and that she had stolen the Flexeril from their father to put in Sheaffer's drink. According to Ms. Leach, the Defendant dropped her children off at her parents' house and then confessed to the whole family what she had done. Ms. Leach described the Defendant as being distraught, sleep deprived, and "out of her mind" the night she confessed the murder to them. Ms. Leach said she called 911 because she was afraid the Defendant might kill herself. As a result of that call, the

Defendant was taken to be evaluated pursuant to the Baker Act. Throughout the following day, the Defendant voluntarily gave her statements to investigators, and she described in detail in her recorded interviews how she killed Sheaffer and discussed the circumstances surrounding and leading up to the murder.

Another witness testifying at the hearing was licensed psychologist, Harry Krop, Ph.D. Dr. Krop testified that he evaluated the Defendant in May of 2013 and again in April of 2014 and determined her to be sane and competent to stand trial. Although Dr. Krop believed the Defendant showed signs of depression and anxiety, he found "no neurological deficits" that were relevant.

The Defendant argues that she killed Sheaffer in self-defense to protect herself from Sheaffer attacking her in the car. The State called witnesses at the hearing who testified in support of its argument that the Defendant's actions of dismembering and disposing of the body and other evidence, and thereafter failing to report the alleged attack, were not reasonable actions of a person who was acting in self-defense. Lieutenant Jessica Paugh testified that when she was investigating the missing person report, the Defendant denied having seen Sheaffer. Later, the lieutenant went to visit the Defendant to ask her about the account she shared with Sheaffer, and the Defendant would not let her in the house. Paugh further testified that she went to see the Defendant again a couple of days later, that the Defendant willingly went down to the Sheriff's station for an interview, and that the Defendant never made any mention during the interview about killing Sheaffer or about his alleged attack on her. She again denied even seeing Sheaffer or knowing of his whereabouts. Investigator John Brady testified that he went to see the Defendant every day for two weeks after the date Sheaffer was reported missing, and the Defendant never told him that Sheaffer had attacked her or that she had even seen him.

Although the State has not charged the Defendant with premeditated murder, the Defendant's initial actions lead to an unavoidable inference that she could have planned to kill

Sheaffer. For example, the evidence shows that the Defendant stole the Flexeril to put in Sheaffer's drink, and that she did in fact put the drug in his drink with the apparent knowledge of how it could adversely affect Sheaffer when mixed with alcohol. Further, after drugging Sheaffer, she drove the unwitting victim to a dark, secluded location (the Osteen Cemetery) where she killed him with the "tree climber" tool that she just happened to have in the back of her car. A plausible motive for the killing could have been the Defendant's apparent dislike for Sheaffer and her anger caused by his constant overdrawing of their joint account. The Defendant indicated to the investigators that she feared Sheaffer was "going to screw me over," and she said of Sheaffer, "My life was ruined because of him and it was wrong." (Recorded Interview transcript, page 58, lines 13-17, State's Exhibit 4.) She referred to Sheaffer as an "asshole." (*Id.* at page 60, lines 3-9.) When explaining to the investigators about dumping the body parts in remote dumpsters in New Smyrna, the Defendant said of Sheaffer, "I'm sorry, but I put Jimmie where he belonged, in my opinion at the time." (*Id.* at page 61, lines 2-4.)

In any event, the law states that a person is justified in using deadly force when he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself, or to prevent the imminent commission of a forcible felony. § 776.012, Fla. Stat.; Bretherick v. State, 135 So. 3d at 340. Such a person has the burden of showing that he or she reasonably believed it was necessary to use such force to prevent the victim from inflicting death or great bodily harm or to prevent the victim from committing an imminent forcible felony. See State v. Wonder, 128 So. 3d 867 (Fla. 4th DCA 2013); Leasure v. State, 105 So. 3d 5 (Fla. 2d DCA 2012); and Joseph v. State, 103 So. 3d 227 (Fla. 4th DCA 2012).

The State argues the Defendant has not met this burden. In addition to its argument that the Defendant's actions were not reasonable actions of a person who was acting in self-defense, the State points to certain of the Defendant's own statements to show that she could not have reasonably believed it was necessary to use deadly force to prevent Sheaffer from inflicting death

or great bodily harm or to prevent him from committing an imminent forcible felony. (For example: her vague, general assertions that "he came at me" in the front seat of her car; her claim that he was "swinging his hands around," but "he didn't really even hit me;" her statement that Sheaffer verbally threatened to kill her but she didn't know if he meant it; her admission that "I just snapped;" and her admission to her daughter that she panicked after being verbally threatened.) The State further argues that Sheaffer would not have been a threat to the Defendant after being stabbed in the eye with the ice pick, especially in his drugged condition from the effects of the Flexeril. However, after disabling him with the Flexeril and ice pick, the Defendant continued to attack Sheaffer with the intent to strangle and kill him. Even after Sheaffer stopped moving after being strangled, the Defendant pulled the ice pick out of his eye and stabbed him in his other eye. Then the Defendant wrapped Sheaffer's head and face in the Saran Wrap, which she said was to keep him from bleeding all over her car, but which also presumably would have prevented him from breathing.

In Leasure v. State, 105 So. 3d at 11-14, the defendant, who, unlike the instant Defendant, did testify at her Stand Your Ground hearing, testified that she armed herself because the victim "threatened to kill her and was coming at her and shoving her." That defendant said she then shot the victim in the head, but "he kept threatening her and coming at her" and "waving his arms at her." So she shot him two more times in rapid succession. Id. The Second District Court of Appeal in Leasure expressly agreed with the trial court that the defendant had failed to meet her burden of proving that she reasonably believed it was necessary to use deadly force to prevent the victim from inflicting death or great bodily harm, and thus she was not entitled to immunity from prosecution under the Stand Your Ground law. Id.

As to the instant Defendant's argument that she is entitled to statutory immunity from prosecution, the Court finds that she has not met her burden of proof under Dennis v. State, supra, and the other case law cited herein. The Defendant has not demonstrated by a

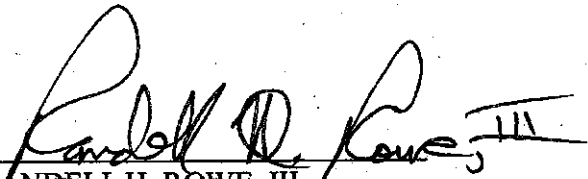
preponderance of the evidence that her belief was reasonable under Section 776.012 that killing Sheaffer was necessary to protect herself from death or great bodily harm or to prevent the imminent commission of a forcible felony. The evidence does not indicate that Sheaffer's actions rose to the level of a forcible felony. Sheaffer's actions in the car, which were described as threatening to kill the Defendant and coming at her, and waving his hands around, are similar to the victim's actions described above in the Leasure case. Like the court in Leasure, this Court finds that immunity does not attach under Section 776.032 because the Defendant's use of deadly force was not reasonable, and she failed to establish that she reasonably believed it was necessary to kill Sheaffer to prevent him from killing her or inflicting great bodily harm on her, or to prevent him from committing an imminent forcible felony.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED:

That the Defendant's Motion to Dismiss is denied.

DONE AND ORDERED in DeLand, Volusia County, Florida, this 27th day of October, 2014.



RANDELL H. ROWE, III
CIRCUIT JUDGE

Copy mailed to:

James R. Valerino, Assistant Public Defender
J. Ryan Will, Assistant State Attorney

LETTERS OF REFERENCE

Attachment B



WRIGHT & CASEY P.A.
SURFCOASTLAW.COM

April 30, 2018

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Re: Letter of reference for Circuit Judge Randell H. Rowe, III, for nomination to the Fifth District Court of Appeal.

Dear Chairman Sasso,

I write to give my strongest possible support to Judge Randy Rowe for a seat on the Fifth District Court of Appeal. As a commissioner on the Seventh Circuit Judicial Nominating Commission, the Immediate Past President of The Florida Bar Young Lawyers Division, a former member of The Florida Bar Board of Governors, and a former FAWL Chapter President, I have the privilege of coming into contact with judges and lawyers practicing at the highest levels across the state. I have known and practiced before Judge Rowe for twelve years, and I could not esteem him more highly as a jurist. I know he was on the list for the previous Fifth District Court of Appeal vacancy, and I hope he gets your serious consideration again for the current vacancies.

With a number of years overseeing civil and criminal dockets, Judge Rowe is the model of what a judge should be. He is very thoughtful and intelligent, shows up prepared for every hearing, runs a great courtroom, acts respectfully to everyone who comes before him, and is a confident jurist with appropriate judicial restraint. Judge Rowe is never going to embarrass someone who recommends him for a position, and he is never going to legislate from the bench. I would be happy to keep him as a circuit judge in our area for the remainder of his tenure, but he is a very talented writer and critical thinker and would be perfect for an appellate court position.

Judge Rowe is also a family man of character, humility, and humor. He swore in his son as a member of The Florida Bar in a historic North Florida courthouse where his grandfather once presided as judge, and he is just as proud of his daughter, an accomplished opera singer. Judge Rowe is highly regarded in the community and has a long history of service, including being one of the first lawyers to volunteer with our local teen court. I have been on Inns of Court teams with him, where he displays a fine sense of humor without losing his decorum. He has mentored me, my law firm colleagues, and a number of our local judges.

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New Smyrna Beach, Florida 32169
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April 30, 2018
Page 2

In summary, Judge Rowe would make Governor Scott and your Judicial Nominating Commission proud in an appellate position, and I cannot say enough positive things about him. If I can provide you or any members of the Judicial Nominating Commission with more information about Judge Rowe, please do not hesitate to let me know.

Thank you for your service on the Fifth District Judicial Nominating Commission.

Sincerely,

Katherine Hurst Miller

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Mr. Michael C. Sasso, Chair
Judicial Nominating Commission
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789-3744


RE: Judge Randell H. Rowe, III

Dear Mr. Sasso,

The undersigned attorneys of Dean, Ringers, Morgan and Lawton, P.A. write on behalf of Circuit Judge Randell H. Rowe, III supporting his application to join the Fifth District Court of Appeals. We have considerable experience appearing before Judge Rowe and have found that he consistently brings the highest level of integrity and professionalism to the proceedings.

Judge Rowe has consistently demonstrated superior intelligence and the highest level of preparation, even in the most complicated of issues. The care he takes in crafting his decisions demonstrates a deep understanding of the law and legal issues before him. He is evenhanded in the manner in which he conducts his courtroom and in his rulings. Judge Rowe would be an excellent addition to the Fifth District Court of Appeals.

Sincerely,

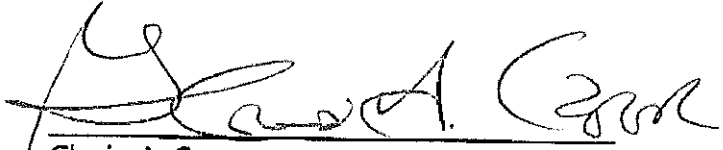


William E. Lawton

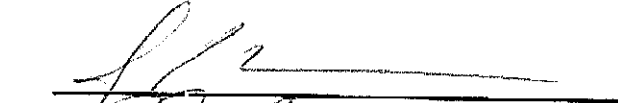
* Additional attorneys' signatures on next page

April 25, 2018

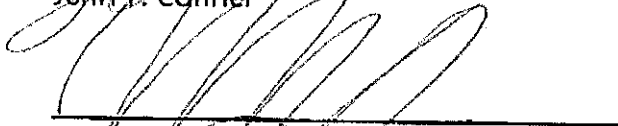
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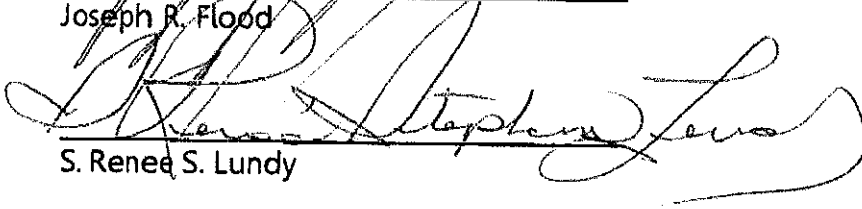
Gloria A. Carr



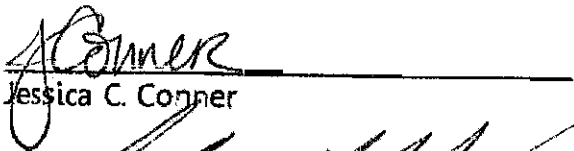
John T. Conner



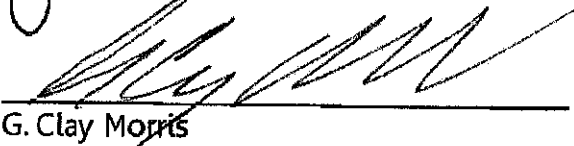
Joseph R. Flood



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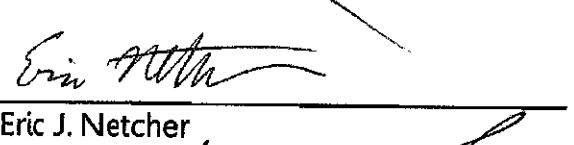
Jessica C. Conner



G. Clay Morris



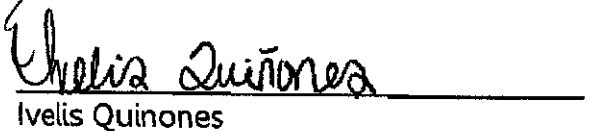
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Eric J. Netcher



Jenna M. Winchester



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MICHAEL C. WOODARD

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PLEASE REPLY TO: ORLANDO

April 26, 2018

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

TO: Judge Randell Rowe,
Telephone number:
FAX NUMBER: 386-943-7076

FROM: Art C. Young
Office: Orlando

Total Number of Pages INCLUDING Cover sheet: 3

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April 26, 2018

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Ste. 120
Winter Park, FL 32789

RE: Letter of reference for Circuit Judge Randell H. Rowe,
III, for nomination to the Fifth District Court of
Appeal

Dear Mr. Sasso:

Please let this serve as my letter of reference for Judge Randell H. Rowe, III for a position on the Fifth District Court of Appeal. Judge Rowe has been on the bench since 2005. I have had an opportunity to practice before him in relation to several different civil matters. I have always found Judge Rowe to be, first and foremost, a considerate gentleman. He is always well prepared for the matter being heard before him and runs his courtroom in manner that exemplifies experience beyond his years.

In regard to judicial temperament, Judge Rowe takes the time to become fully advised of the facts and legal issues before rendering a ruling. I have never found him to be predetermined in his judgment before arguments are made on important legal issues. He is considerate in allowing counsel to complete their argument, while at the same time challenging counsels' factual and legal interpretations.

The combination of scholarly review and appropriate judicial temperament are hallmarks of Judge Rowe. In my 30 years of practice, I believe he exemplifies the standard by which trial lawyers would expect a civil judge to conduct themselves. He has always made an effort to be collegial even when the arguments before him have become passionate. As a civil trial lawyer, he exceeds all of my expectations as it relates to a trial judge. I have no reason to believe that he would not bring these most admirable traits to the Fifth District Court of Appeals.

As an appellate court jurist, trial experience, in my opinion, is one of the most important aspects of an appellate judge's background. Judge Rowe has significant experience in

Mr. Michael C. Sasso
April 26, 2018
Page 2

that regard prior to his appointment to the bench. I would welcome his nomination to the Fifth District Court of Appeals and am convinced he would be an extraordinary asset to the appellate bench.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Art C. Young', is centered below the text 'Sincerely,'.

Art C. Young, Esquire
Shareholder
Rissman Barrett Hurt
Donahue McLain & Mangan, P.A.
201 E. Pine Street
15th Floor
P.O. Box 4940
Orlando, Florida 32802-4940
Office: 407-839-120
Fax: 407-841-9726
Email: Art.Young@rissman.com

ACY/khi

Smith · Schoder

L A W F I R M

April 25, 2018

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

RE: Circuit Judge Randell H. Rowe, III

Dear Mr. Sasso:

As a board certified civil trial lawyer in the American College, I write to support the nomination of Randell H. Rowe, III to the Fifth District Court of Appeals.

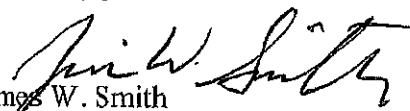
Shortly after his appointment to the circuit court bench, Judge Rowe presided over a complex medical malpractice trial in which I represented defendant healthcare providers. I was thoroughly impressed with the new judge's demeanor and intellect. After a trial that lasted over two weeks, I knew Judge Rowe would be a fine addition to our judiciary.

Over the years, Judge Rowe has continued to impress me with his judicial demeanor and acumen. I have represented litigants before Judge Rowe throughout his judicial career. His rulings are fair, impartial, and timely. He has a great sense of humor. Judge Rowe has earned our respect and admiration.

In summary, I can attest from my own personal experience that Judge Rowe possesses all the exceptional qualities that will make him an excellent appellate judge. Without hesitation or reservations, I support his nomination to the Fifth District Court of Appeals.

If you have any questions, please contact me.

Very truly yours,


James W. Smith

JWS:ks

EST. 1978

James W. Smith

jsmith@smithschoder.com

C. Anthony Schoder, Jr.

tschoder@smithschoder.com

Sheriff

MICHAEL J. CHITWOOD

OFFICE
(386) 736-5961



VOLUSIA COUNTY SHERIFF'S OFFICE

123 WEST INDIANA AVE • P.O. BOX 589 • DELAND, FLORIDA 32721-0569
(386) 822-5074 (FAX) • WWW.VOLUSIASHERIFF.ORG

June 18, 2018

The Honorable Rick Scott
Governor of the State of Florida
c/o Office of the Governor's General Counsel
Room 209, The Capitol
400 South Monroe Street
Tallahassee, FL 32399

Re: Appointment of Judge Randell H. Rowe, III, to the Fifth District Court of Appeal

Dear Governor Scott,

Please accept this letter as my official endorsement of Circuit Judge Randell H. Rowe, III, for appointment to the Fifth District Court of Appeal. Judge Rowe has honorably served as a circuit judge in the Seventh Judicial Circuit for more than 12 years. He presides in both DeLand and Daytona Beach within Volusia County.

Prior to joining the bench, Judge Rowe served the citizens of Volusia County for nearly 12 years as an assistant county attorney with the Volusia County Attorney's Office. In December 2005 Governor Jeb Bush appointed Judge Rowe to the circuit court bench. Since that time, Judge Rowe has presided over thousands of cases in all areas of the law. He has served in a criminal felony division for five years, a civil division for more than five years, and a family law division for two years. Also, he regularly presides over appellate cases from the county court and administrative tribunals. It is my understanding that Judge Rowe has an excellent reputation as a circuit judge, and that he was elected without opposition to a full term in 2008 and then reelected unopposed in 2014.

I believe that Judge Rowe would make an outstanding addition to the appellate court, where he would continue to serve the citizens of our state with distinction. Therefore, I respectfully offer my endorsement of Judge Rowe for your appointment to the Fifth District Court of Appeal. Thank you for your consideration.

Sincerely,

Michael J. Chitwood
Sheriff of Volusia County

MJC:kg/040L0192.18



Volusia County Council

ED KELLEY
COUNTY CHAIR

April 10, 2017

DEBORAH DENYS
VICE-CHAIR
DISTRICT 3

Via: Electronic Mail and U.S. Mail

JOYCE M. CUSACK
AT-LARGE

The Honorable Rick Scott
Governor of the State of Florida
c/o Office of the Governor's General Counsel
Room 209, The Capitol
400 South Monroe Street
Tallahassee, FL 32399

PAT PATTERSON
DISTRICT 1

BILLIE WHEELER
DISTRICT 2

HEATHER POST
DISTRICT 4

FRED LOWRY, JR.
DISTRICT 5

Re: Recommendation for appointment to the Fifth District Court of Appeal.

JAMES T. DINNEEN
COUNTY MANAGER

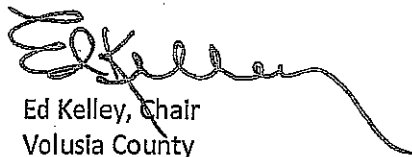
Dear Governor Scott:

I urge your appointment of Volusia County Circuit Judge Randell H. Rowe, III, to the Fifth District Court of Appeal. Judge Rowe has served with distinction on the circuit bench for eleven years. The local community holds him in high regard, as from the following perspectives do I.

As a non-lawyer, I appreciate Judge Rowe's reputation for judicial temperament, hard work, respectful courtesy, and thoughtful decisions. As the county chair and a former city mayor and commissioner, I value the extensive local government experience he gained prior to his judicial service. As a retired business executive, I welcome the practical knowledge he has attained as the general manager of a family timber business. As a Floridian, I am grateful for his service to the community and devotion to the law.

As a Volusian, I am desirous that there remain on the district court at least one judge from our circuit; and aware that due to retirement, there soon will be none if Judge Rowe is not elevated. Judge Rowe's service on the Fifth District would make you proud of your decision to appoint him.

Sincerely,

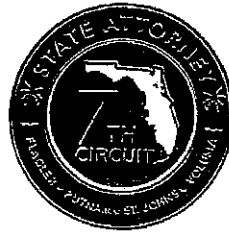


Ed Kelley, Chair
Volusia County

OFFICE OF THE STATE ATTORNEY

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

R.J. LARIZZA
STATE ATTORNEY



251 North Ridgewood Avenue
Daytona Beach, FL 32114-7509
Phone (386) 239-7710
Fax (386) 239-7711

January 31, 2017

Michael Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Letter of reference for Circuit Judge Randell H. Rowe, III for nomination to the Fifth District Court of Appeal

Dear Mr. Sasso;

Please accept this letter as my recommendation for the Honorable Judge Randell H. Rowe, III, for the appointment to the Fifth District Court of Appeal.

Judge Rowe was appointed a circuit judge by Governor Jeb Bush in December 2005. Before becoming a judge he worked as an assistant county attorney for Volusia County for almost 12 years. Since that time he has served in a criminal felony division for five years, a civil division for four years and in the family law division for two years. He was elected to full term in 2008 and reelected in 2014. Judge Rowe is also a 23 year member of the DeLand Rotary Club, a Volusia Teen Court Volunteer and a Volusia County Law Library Board of Trustees member.

Judge Rowe has a diversity of experience that would serve him well on the Court of Appeals. He is calm and professional on the bench, and he interacts well with all parties present in the courtroom. Judge Rowe has demonstrated a strong intellectual understanding of the law, and his judgments reflect a good dose of common sense. He has an impressive ability to articulate his rulings and rationale in a clear, concise and understandable fashion. He is a man of integrity and good character.

Therefore, it is without hesitation that I recommend Judge Randell H. Rowe for the Fifth District Court of Appeal position.

Should you have any questions or wish to discuss this further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R.J. Larizza", with several overlapping strokes.

R.J. Larizza
State Attorney
Seventh Judicial Circuit



Upchurch Watson White & Max
MEDIATION GROUP

125 S. Palmetto Avenue
Daytona Beach, FL 32114

Telephone: 386-253-1560

Toll Free: 800-264-2622

Facsimile: 386-255-7722

Website: www.uww-adr.com

February 2, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Honorable Randall H. Rowe, III

Dear Mr. Sasso:

Our local Bar has had the pleasure of having Randall H. Rowe, III as a valued member of our panel of Circuit Judges in the Seventh Judicial Circuit for the past eleven years. During that time, Judge Rowe has served with distinction in all of the court's divisions. He is one of our most gifted jurists, and gives generously of his time and talent in providing insight and guidance to members of the Bar and their clients in the discharge of his duties. His keen intellectual curiosity and willingness to tackle vexing conflicts with patience and diligence match perfectly with the demands of today's complex litigation environment. He is a gifted legal analyst, and known for authoring well reasoned, well written opinions and orders.

Judge Rowe possesses the qualities of temperament we all seek in a judge. He is patient, respectful and engaging. He remains focused on the merits of the matter before him and the applicable law pertaining thereto, regardless of political pressures.

We fully support Judge Rowe's candidacy, and enthusiastically recommend him for nomination for appointment to the District Court of Appeal.

Sincerely yours,

John J. Upchurch

JJU:mls



Nejame Law, P.A.
189 South Orange Avenue
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Orlando, FL 32801
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www.nejamelaw.com

January 23, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Letter of reference for Circuit Judge Randell H. Rowe, III, for nomination to the
Fifth District Court of Appeal

Dear Mr. Sasso,

It is with great pleasure that I write you in reference and recommendation of Judge Randell H. Rowe, III, who currently presides as a Circuit Court Judge in DeLand, Florida, in and for the Seventh Judicial Circuit of Florida. It is my belief that Judge Rowe would make an excellent addition to the Fifth District Court of Appeal. I have been a practicing attorney for nine plus years. The first three were as an Assistant Public Defender in Orlando, Florida. When the opportunity presented itself for my transition into private criminal defense work, one of my first concerns was representing clients outside of the circuit I had come so accustomed to over the years. This concern was unwarranted as a result of jurists like Judge Randall H. Rowe, III.


In fact, my personal transition went smoothly and a big part of that I attribute to many of our dedicated Judges throughout this State. While practicing criminal defense in Volusia County, Florida, I have had the pleasure of appearing before Judge Rowe on numerous matters. Judge Rowe has always impressed me and has been someone I believe exemplifies the characteristics of what I would refer to as a "great judge." From the first time I entered his courtroom, Judge Rowe was prompt, kind and courteous to all parties. In the event of a contested legal argument or issue, Judge Rowe also took the time to listen to the parties and then make a ruling after carefully considering all of the arguments and applicable law. Judge Rowe has demonstrated the ability to apply both settled, novel, and complex issues of the law to a given set of facts or circumstances. I have never witnessed any personal bias toward any particular party or litigant. In fact, although I chose to only practice in the criminal arena; my colleagues whom handle civil matters in Volusia County have expressed a similar satisfaction with Judge Rowe's demeanor and legal abilities to me over the years.

Michael C. Sasso, Chair
Judicial Nominating Committee
January 23, 2017
Page 2

Outside of the courtroom, I have had the opportunity to cross paths with Judge Rowe at the occasional social function or even the grocery store. During those interactions he continued to demonstrate his caring and kindness beyond the bench. He is the consummate professional. While it is my opinion that Judge Rowe would be a great addition to the Fifth District Court of Appeal, it is also apparent that he would be missed in the Seventh Circuit by many who have had the pleasure to appear before him on a regular basis. Judge Rowe, in my opinion, would certainly complement our current justices in the Fifth District. I whole-heartedly recommend that he be strongly considered for the position as he is truly a student of the law who cares about those he serves; the People of the Great State of Florida.

If you have any additional questions or concerns, I can be reached at 407-245-1232. Thank you for your time.

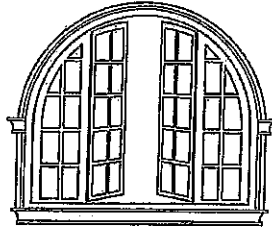
Respectfully Submitted,



David L. Jancha, Esq.
Partner

DJ/sb

JACOB V. STUART, JR.
BRUCE A. MOUNT, JR.
GREG R. GARNER
MICHAEL D. QUINTERO
HAROLD D. THOMPSON
KEVIN C. ALLEN-NASH*
PATRICK N. HARRIS*



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ORLANDO, FL 32801-2463
PHONE: (407) 434-0330
FAX: (407) 434-0358
RAISEDTOPROTECT.COM

* Of Counsel

THE LAW OFFICES OF
STUART & MOUNT, P.A.
— RAISED TO PROTECT —

January 5, 2017

Sent Via Hand Delivery

Mr. Michael E. Marder, Chair
Judicial Nominating Committee
Fifth District Court of Appeal
201 East Pine Street
Orlando, FL 32801

Re: Recommendation for the Honorable Randell H. Rowe, III to the 5th District Court of Appeal

Dear Mr. Marder:

My name is Jacob Stuart and I am the managing partner of Stuart & Mount, P.A. located here in Downtown Orlando. Please accept this correspondence as my sincere and enthusiastic recommendation in reference to the nomination of the Honorable Randell H. Rowe, III to Florida's 5th District Court of Appeal.

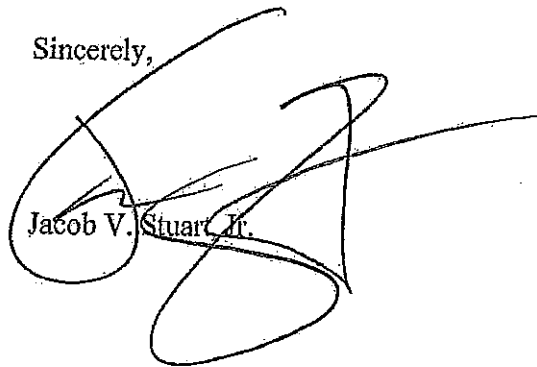
Towards this end, please know that I have personally appeared before Judge Rowe on many occasions when he presided over a Criminal Courtroom in Volusia County's Deland Courthouse. In addition, I have tried four (4) jury trials before him and can directly express to you with first-hand knowledge regarding his courtroom temperament and his superior knowledge of the law. Judge Rowe was a joy to try cases before (even in some very serious matters) and was able to command the courtroom with great ease. Make no mistake; Judge Rowe has a vast knowledge of the rules of procedure, rules of evidence and general case-law. During the course over my jury-trials before him, Judge Rowe was able to rule efficiently with great command of the law; and when a unique issue(s) occurred, Judge Rowe took the time to research the issue to make sure he got the ruling in accordance with the law.

While I am not privy to the other attorneys and judges to considered for this most meaningful on the 5th District Court of Appeal, I believe Judge Rowe embodies the right

combination of traits, experience and background to be a lasting voice of justice for many years to come in our family of communities.

Finally, please feel free to contact me directly by phone, 407-416-5987, or email, jacob@raisedtoprotect.com, if you would like to discuss this ever-important matter any further.

Sincerely,



Jacob V. Stuart, Jr.

CC: The Honorable Randell H. Rowe, III



Office of

Criminal Conflict and Civil Regional Counsel

FIFTH DISTRICT OF FLORIDA
101 SUNNYTOWN ROAD, STE. 310
CASSELBERRY, FLORIDA 32707

JEFFREY D. DEEN
REGIONAL COUNSEL

Ph. (407) 389-5140
Fax (407) 389-5139

February 3, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

RE: Letter of reference for Circuit Judge Randell H. Rowe, III, for nomination to the Fifth District Court of Appeal

Dear Mr. Sasso:

I am writing this letter to enthusiastically recommend Judge Randell Rowe to fill the vacancy in the Fifth District Court of Appeal.

I had the pleasure of appearing regularly before Judge Rowe for over 3 years as the Criminal Conflict Counsel appointed to his courtroom. The first thing that stood out to me was Judge Rowe's excellent judicial temperament. He is consistently even tempered with attorneys and defendants alike. As an assistant conflict counsel, my clients are indigent. Judge Rowe treated my clients with the same high level of respect and courtesy as he did defendants of means. Judge Rowe's mastery of the law and its application to the facts of each case is evident each time he takes the bench. I have tried several cases to conclusion and I've argued motions in front of Judge Rowe. I have won and I have lost. Regardless of whether I won or lost, there was always a reasonable basis for Judge Rowe's decisions. His preparation for every case is evidenced by his fair, just and legally sound conclusions. Judge Rowe's unquestioned ability to judge each case without bias, has earned him the highest respect from both the prosecution and defense bar.

In my fourteen years as an attorney, I've had the opportunity to appear before many judges. Judge Rowe is an outstanding candidate to fill the vacancy on the Fifth District Court of Appeal. His experience and command of the law makes him uniquely qualified

to be an appellate court judge. It is without reservation that I recommend Judge Randell Rowe, III, for nomination to the Fifth District Court of Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicole Jordan', written over the typed name.

Nicole Jordan
Assistant Regional Counsel
Office of Criminal Conflict
& Civil Regional Counsel,
5th District



KINSEY VINCENT PYLE
ATTORNEYS AT LAW

150 South Palmetto Avenue, Suite 300, Daytona Beach, Florida 32114
T: (386) 252-1561 / F: (386) 254-8157 / www.kvplaw.com

February 2, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 West Morse Blvd., Suite 120
Winter Park, Florida 32789

Re: Letter of Reference for Circuit Judge Randell H. Rowe, III, for Nomination to the Fifth District Court of Appeal

Dear Mr. Sasso:

I am submitting this letter of recommendation to you and the Judicial Nominating Commission on behalf of Circuit Judge Randell H. Rowe, III, in support of his application for the vacancy at the Fifth District Court of Appeal. I have practiced law in Volusia County for over 25 years and strongly support Judge Rowe for the judicial candidacy to the Fifth District Court of Appeal.

Judge Rowe's resume is replete with qualifications for his appointment, including working as an Assistant County Attorney for Volusia County from 1994 until January 2006. In that capacity, his practice involved mostly civil and appellate work. He represented Volusia County before administrative tribunals and handled all bankruptcy litigation in Federal Court concerning governmental claims. He was the sole attorney assigned to represent the Clerk of the Court, Tax Collector, Code Enforcement Division, Accounting and Financial Services Department, Community Services Department and the three advertising authorities in the county. He was appointed a circuit judge by Governor Jeb Bush and appointed to the bench in January 2006. Since that time, he has served in a criminal felony division, a civil division, and a family law division. He also routinely presides over appellate cases from County Court and administrative tribunals. He was elected to a full term in 2008 and was re-elected in 2014.

On a more personal note, I would like to share an experience that I had with Judge Rowe in a complex construction litigation case. I represented the plaintiff and there were numerous defendants and third party claims. Judge Rowe was not the presiding judge and had no involvement with this case up until a lengthy hearing on a Motion for Summary Judgment. Judge Rowe appeared at the hearing for the presiding judge who was unavailable. He candidly admitted that he had no

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Michael C. Sasso, Chair
Judicial Nominating Commission
February 2, 2017
Page 2

knowledge of the facts of the case and was somewhat unfamiliar with the law, but that he would fully listen to all of counsels' arguments and review all of the submitted motions, memorandums, affidavits, case law and other documentation we submitted, and would render a fair opinion. He could have easily stated that this was not his case and he did not want to get involved in a complicated motion in which he had no knowledge, or summarily denied the motion. Instead, he took the time and effort to listen to all counsel, review all submitted documentation (including extensive notebooks) and ultimately granted the Motion for Summary Judgment which facilitated a quick resolution to the case. I mention this to enlighten you and others on the Commission that Judge Rowe is extremely hard working, thorough and fair.

It is my opinion that the best judges have a broad legal background, experience in government and non-government areas of the law, and have a calm and rational judicial demeanor. Judge Rowe meets all of these criteria. He possesses the skills necessary to make critical decisions based on the law and I strongly endorse him for the position on the Fifth District Court of Appeal. Thank you for your consideration.

Sincerely,



MaryEllen G. Koberg

cc: Randell H. Rowe, III, Circuit Judge
101 N. Alabama Avenue
DeLand, Florida 32724



MIAMI - WEST PALM BEACH - TAMPA - KEY WEST - FT. LAUDERDALE WEST - NAPLES - JACKSONVILLE - ORLANDO - PENSACOLA - BONITA SPRINGS - FT. LAUDERDALE EAST

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EMAIL justin.bleakley@csklegal.com

January 25, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Dear Mr. Sasso:

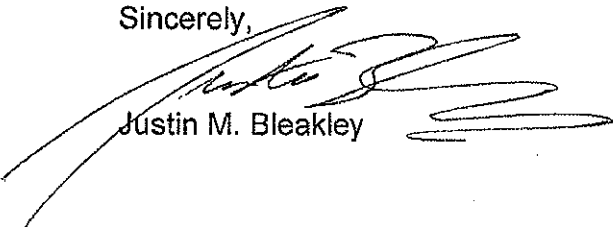
I have tried cases throughout the State of Florida, but do most of my work in Orange County. About four years ago, I was trying my first jury trial in front of Judge Randell Rowe against a local Volusia County attorney. Midway through the trial, an unusual evidentiary issue arose regarding hearsay statements made through an interpreter. The local attorney argued that Judge Rowe should let the statements into evidence because it was common practice for those statements to be admitted in Volusia County. Judge Rowe, however, patiently heard the arguments from both sides and ended up ruling in accordance with the law, that the statements were not admissible.

During the dozens of hearings and multiple trials, since our first trial together, Judge Rowe has made decisions both for and against my clients. In every case, I have been impressed with both his knowledge of the law and his determination to work until he reaches the correct legal decision.

The trial judges and appellate judges in the Fifth District have tremendously large dockets. Our next appellate judge needs to have the legal knowledge and the work ethic to tackle the tremendous work load that comes with the position. As a practicing appellate lawyer before the Fifth District Court of Appeals, given the rise of Per Curium Affirmed opinions, I think it especially critical that we select a judge possessing enough energy to keep such opinions to a minimum.

Judge Rowe has the requisite energy and legal mind to be a productive member of our appellate court. I have no doubt he would be a distinguished member of the appellate bench if he were so appointed. It is my honor to give him my highest recommendation.

Sincerely,


Justin M. Bleakley

LANDIS GRAHAM FRENCH, P.A.

ATTORNEYS AT LAW

ESTABLISHED 1902

OFFICES IN DAYTONA BEACH, DELAND AND DELTONA, FLORIDA

F. A. (ALEX) FORD, JR.
145 East Rich Avenue, P.O. Box 48
DeLand, Florida 32721-0048

TELEPHONE (386) 734-3451
Facsimile (386) 736-1350

February 1, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, Florida 32789

RE: Randell H. Rowe, III

Dear Mr. Sasso:

I am writing you this letter in support of the Honorable Randell H. Rowe, III, whose name has been submitted to you as a candidate for appointment to the Fifth District Court of Appeal. I highly recommend Judge Rowe, without reservation, as an extremely well-qualified candidate.

I have known Judge Rowe since approximately 1994, when he was an assistant county attorney for the County of Volusia. During the time he was employed by the county I frequently worked with him, sometimes in cooperation with him and sometimes as an adversary. In every situation he always demonstrated utmost integrity, a high degree of professionalism and great legal proficiency. He was always cooperative in his approach to resolving disputes and was collegial with other counsel. Prior to going on the circuit court bench, Judge Rowe had a diverse practice area, which provides him with knowledge and experience unique from many other candidates.

As one of the most senior judges in the Seventh Judicial Circuit, Judge Rowe has served with distinction in the civil, criminal and family law divisions of the Circuit Court, so his judicial experience is quite broad. I have appeared before him many times in the civil division and have found him to be quite proficient in analyzing issues and in reaching well-reasoned conclusions. He is both intellectually and ethically qualified to serve in any judicial capacity. But his intellect and ethics are not what sets him apart. There are plenty of candidates who meet those criteria. What sets Judge Rowe apart is that he has a good understanding of the limited role of the judiciary and always shows appropriate judicial demeanor. Judge Rowe will always be respectful of the counsel and parties who appear before him and he will always follow the law as it is written, not as he wishes it would be.

Judge Rowe is also a family man with good values and integrity. All too often we read about judges who are not able to maintain the degree of professionalism we expect from them. You will never associate Judge Rowe's name with any such concern.

I highly recommend Circuit Judge Randall H. Rowe, III, for appointment to the Fifth District Court of Appeal for the State of Florida. Your consideration in this regard would be most appreciated.

Sincerely,



F.A. (Alex) Ford, Jr.

FAFjr/jh

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Rhoda Bess Goodson

January 31, 2017

Michael C. Sasso, Chair

Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

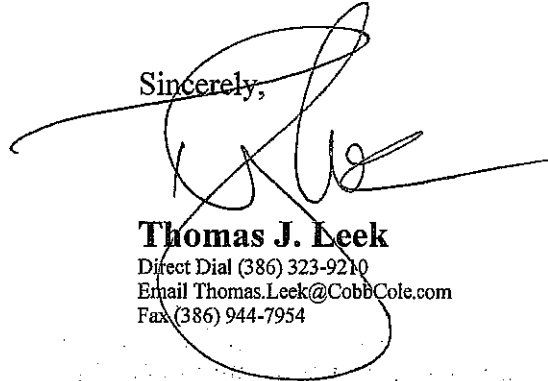
Re: Letter of Reference for Circuit Judge Randell H. Rowe, III, for Nomination to
the Fifth District Court of Appeal

Dear Mr. Sasso:

It is my honor to write in support of Judge Randell Rowe's application for a position on the bench of the Fifth District Court of Appeal. I have appeared before Judge Rowe on many occasions over the last 15 years and I know him to be a jurist of great skill, temperament, and preparation. I enthusiastically endorse him for this position, and hope that you and the Judicial Nominating Commission will give him every possible consideration.

Kind regards.

Sincerely,



Thomas J. Leek

Direct Dial (386) 323-9210
Email Thomas.Leek@CobbCole.com
Fax (386) 944-7954

TJL:mcs


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February 3, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 Morse Boulevard, Suite 120
Winter Park, Florida 32789

Re: Letter of reference for Circuit Judge Randell H. Rowe, III, for nomination to the
Fifth District Court of Appeal

Dear Mr. Sasso,

It is with great pleasure I write this letter in support of Judge Rowe and his submission for consideration to the Fifth District Court of Appeal. I met Judge Rowe when I was a felony prosecutor with the Seventh Judicial Circuit in 2014. I was assigned to a felony docket over which Judge Rowe presided. Since my entry in to private practice I have remained in contact with Judge Rowe through organizations such as Inns of Court and various bar functions.

The first observation I made about Judge Rowe when I was assigned to the felony docket over which he presided is that he is a judge of exceptional intelligence. Each decision made by Judge Rowe was always well-researched and thought out. It was very clear he had taken every piece of evidence and the law in to consideration when making his decision. He also has an ability to explain his decisions in a concise and clear way so that even if you are representing the non-prevailing party, you can understand the rationale for the decision and its basis in the law.

Judge Rowe also puts forth considerable effort to create an atmosphere in his courtroom in which everyone who enters feels welcome and heard. I was able to bear witness to Judge Rowe demonstrating exceptional patience with attorneys who drone on too long, myself included, and even the most irksome pro-se defendants. While my practice does not include any civil work and I have not had the pleasure to appear before Judge Rowe in his capacity on the civil bench, I am positive he has created the same welcoming atmosphere no matter which docket he presides over.



Principal Office: 222 Seabreeze Boulevard • Daytona Beach, FL 32118 • 386.257.1222 • Fax 386.258.9694

Flagler County Office: • 386.445.9007

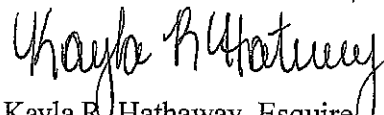
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We are exceptionally fortunate in the Seventh Judicial Circuit to have many talented judges but Judge Rowe is truly the best our circuit has to offer. While I would be very sad to lose him on the circuit bench it would be a great benefit to the Fifth District Court of Appeal to have a judge of his caliber serving the people in such a capacity. Judge Rowe espouses everything an attorney could hope to find in a judge. He is hard working, intelligent and considerate to all who come before him. The Fifth District Court of Appeal would be greatly served with his skills.

If I can provide any further details regarding my letter of reference, please do not hesitate to contact me. Thank you very much for considering this letter.

Very truly yours,


Kayla R. Hathaway, Esquire

Enc.: KRH



Harlan L. Paul* | Darren J. Elkind | Matthew D. Branz | Michael P. Kelton
Christopher B. Paul | Natali Reyes | Melissa E. Morgan

*Board Certified Civil Trial Advocate

February 7, 2017

Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd. Suite 120
Winter Park, FL 32789

Re: Reference Letter for Circuit Judge Randell H. Rowe, III for nomination to the Fifth District Court of Appeal

Dear Chairman Sasso and other commission members to whom this will be circulated:

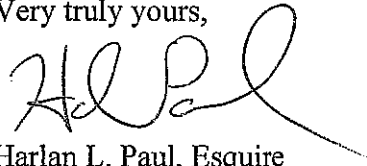
I have known Judge Rowe (Randy) for more than twenty years. My initial experiences with him were while he was serving Volusia County as an assistant county attorney. During those experiences, Randy always displayed great insight, intellect, and temperament. I cannot recall a single incident where he showed the least lack of civility or the lack of any of these other important qualities that are characteristic of him. I am confident that these same comments and observations are shared by the local bar in general.

I have been pleased that Judge Rowe never contracted Black Robe Fever (Robitis) following his appointment to the bench in 2005. He has continued to show the same insight, intellect, and temperament as a judge that he practiced as an attorney. Some judges develop these characteristics through maturity on the bench but these were characteristics displayed by Randy as an attorney, and which I assume are simply part of his personality and make-up.

My experiences of "Judge" Rowe have been the result of many appearances before him through my civil practice. I know that these same experiences are shared by my seven law partners/associates and the many attorneys that I have shared stories and experiences with. In the many times I have not been on the prevailing side of an argument before Judge Rowe, I have felt that he was thorough in his analysis, intellectually honest, and fair. When more lengthy rulings have been required of him, they have always been well-reasoned, clear, and scholarly. Judge Rowe possesses the high intellect and skills required of an appellate judge and would serve the public, bar, and bench well should he receive the high honor of the nomination and, ultimately, the appointment.

Having previously served on the Federal Judicial Nominating Commission, I know the importance of this commission making the right nomination and would therefore welcome any questions or feedback that may assist you in evaluating Randy.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. L. Paul", with a long, sweeping flourish extending to the right.

Harlan L. Paul, Esquire

/s



LAW OFFICES OF

Bross, Bross, Savy & Duncan, PLLC

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(321) 456-5914
FAX (321) 452-1689

209 HARRISON STREET
TITUSVILLE, FLORIDA 32780
(321) 268-8775
FAX (321) 268-8874

PLEASE REPLY TO:

West Melbourne
February 22, 2017

Mr. James Henry Richey
Eastern Florida State College
3865 N. Wickham Road, Bldg. 8/3rd
Melbourne, Florida 32935-2310

Dear Mr. Richey:

I am the senior and managing partner of Bross, Bross, & Savy, PLLC, and have been practicing criminal defense law for over thirty-one years. My firm handles hundreds of criminal cases each year in the 7th, 9th, 18th and 19th Judicial Circuits, as well as dozens more in other Judicial Circuits throughout the State of Florida. I am pleased to support the application of Judge Randell Rowe to fill the vacancy on the 5th District Court of Appeals for which you serve as a Judicial Nominating Committee member.

I have personally appeared before Judge Randell Rowe many times, including procedural appearances, evidentiary hearings, and Jury Trials. I have always considered Judge Rowe an exemplary jurist, an arbiter of impeccable demeanor and discretion, and a man of honor, wisdom, compassion and integrity.

In my extensive experience before Judge Rowe, he has always established, maintained and enforced the standards of conduct in his courtroom, and has personally observed those standards to preserve the integrity and independence of the judiciary. Judge Rowe has acted at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Judge Rowe has never allowed family, social, political or other relationships to influence his conduct or judgment.

To my knowledge, Judge Rowe neither has endorsed any private or professional enterprise, nor has he ever held membership in any organization that practices invidious discrimination on any basis. Judge Rowe is at all times faithful to the law, and is never

swayed by partisan interests, public clamor or fear of criticism. Judge Rowe is quintessentially patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others.

In conclusion, as a member in good standing of the Florida Bar who has known Judge Randell Rowe professionally for many years, it is my considered opinion that he is one of the most outstanding jurists before whom I have ever had the honor and privilege of practicing.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Michael Bross".

A. Michael Bross

AMB:tjl

cc: Mr. Michael Sasso, JNC Chair
1031 W. Morse Blvd., Ste. 120
Winter Park, Florida 32789-3774

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-RETIRED-
ROBERT K. McINTOSH
-RETIRED-

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OF COUNSEL

LONNIE N. GROOT
DAVID W. HALL
RAYMOND J. BRANCH III
STACEY R. SPRINGER
JENNIFER D. COCKCROFT
CLAUD B. NELSON, III

February 27, 2017

Mr. Brett Renton
Shutts & Bowen LLP
P.O. Box 4956
Orlando, Florida 32802-4956

SUBJECT: Application Of Circuit Judge Randell H. Rowe, III

Dear Mr. Renton:

The purpose of this letter is to endorse the application of Circuit Judge Randell H. Rowe, III to the Fifth District Court of Appeal.

It has been my pleasure to have well known about the legal skills of Judge Rowe when he served as a member of the Volusia County Attorney's legal staff. I served 15 years in the office of the Seminole County Attorney and have a great deal of appreciation for the professionalism and expertise of the Volusia County Attorney's office. After I left the Seminole County Attorney's office and entered into private practice, during one case I enjoyed litigating on the same side as my clients had the same interests of the County in a case against the City of Deltona. I was impressed not only by the legal skills of Judge Rowe, but his professionalism and demeanor.

Since joining the Circuit Court bench, Judge Rowe has developed a reputation as a fair and skilled jurist. I have appeared before him as a Judge and, once again, he demonstrated his great demeanor and commanding control of legal issues. His legal expertise would carry on well to the appellate court bench. In my judgment, Judge Rowe is just the right jurist to be added to the Fifth District Court of Appeal. His array of legal skills and knowledge will be an asset to that Court.

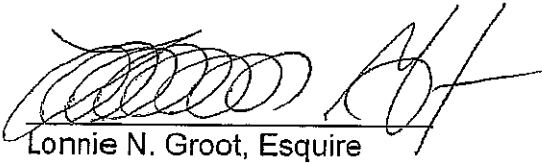
Equally important to the above is the fact that Judge Rowe is a dedicated family man and member of his community. My wife and I have, for example, found ourselves in a local DeLand candy store at the same time that a group of children followed him into the store. It was apparent to us that Judge Rowe loves his family and his community. That investment in where we live is, in my judgment, an important aspect of being a great

February 27, 2017
Mr. Brett Renton
Page 2 of 2

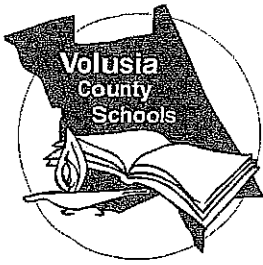
member of the judiciary. Judge Rowe demonstrates a great balance between being a skilled legal technician and a regular citizen who is active and involved in the community which he serves.

In sum, the State and our community needs high quality legal professionals and citizens to serve in the Judicial Branch of State Government. Judge Rowe is just what is needed at the appellate level of our Judicial System. I commend him to you and urge you to act favorably on his pending application before you.

Respectfully,

A handwritten signature in black ink, consisting of several loops followed by a stylized 'G' and a horizontal line extending to the right.

Lonnie N. Groot, Esquire



P.O. Box 2118
DeLand, Florida 32721-2118

200 North Clara Avenue
DeLand, Florida 32720
(386) 734-7190, ext. 20254

Mr. James T. Russell
Superintendent of Schools

The School Board of Volusia County
Mrs. Melody Johnson, Chairman
Mrs. Linda Cuthbert, Vice-Chairman
Dr. John Hill
Mr. Carl Persis
Mrs. Ida D. Wright

Mr. Michael G. Dyer
General Counsel
mgdyer@volusia.k12.fl.us

February 3, 2017

Mr. Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Letter of reference on behalf of Circuit Judge Randell H. Rowe III

Dear Mr. Sasso:

Thank you for the opportunity to submit this letter in support of the application of Circuit Judge Randell Rowe for nomination for appointment to The Fifth District Court of Appeal. I know of no better qualified candidate for the position.

I had the pleasure of working with Judge Rowe as a fellow assistant county attorney for the County of Volusia. He was respected by his peers and an experienced litigation attorney for the county. Equally important, Judge Rowe has a stellar reputation in the community as a circuit judge. I have observed him in the courtroom to be fair, neutral, studied and efficient. Despite his service on the bench, he remains a well-grounded, highly personable and humble person. These traits make him a valued member of the judiciary and one well suited for The Fifth District of Appeal.

I highly recommend Judge Rowe for appointment to The Fifth District Court of Appeal. The Seventh Judicial Circuit has benefited from his service on the bench, and I have no doubts about his qualifications.

Please do not hesitate to contact me if I may provide you additional information. Thank you for your service on the nominating commission.

Sincerely,

Michael G. Dyer
General Counsel

FRANK B. GUMMEY, III
City Attorney
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, Florida 32168-7040

Telephone (386) 410-2620
E-Mail fgummey@cityofnsb.com

February 3, 2017

Michael C. Sasso, B.C.S.
Chair, Judicial Nominating Commission
5th District Court of Appeal

Dear Mr. Sasso:

The Honorable Randell H. Rowe, III's, application for nomination to the 5th District Court of Appeal I support in the strongest possible terms.

I have known Judge Rowe for two decades as a co-worker at the Volusia County Legal Department and as a personal friend. I have appeared as a litigant in his Court.

As a person Randy Rowe is extremely intelligent, a logical thinker, a hard worker, and of the highest ethical behavior and personal rectitude. He is also humorous, friendly and a devoted family man.

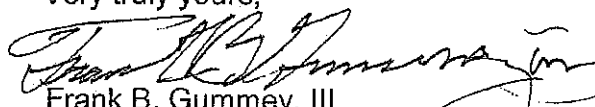
As an Assistant County Attorney, Mr. Rowe initiated innovative approaches in his litigation and administrative matters resulting in material successes and great client satisfaction.

Judge Rowe has embraced his judicial duties by serving in several divisions, has cleaned-up backlogged dockets and won the respect of attorneys and parties who have appeared before him. I have *never* heard a negative comment on his performance from any other attorneys. Though he is a principled person, I am sure he does not approach issues with an ideological agenda but rather just wants to get everything right.

Judge Rowe would be an outstanding addition to the collegial workings of the 5th District Court of Appeal. Though appellate courts are not visible to outsiders, I know he would be fair, careful, diligent and just in carrying out his responsibilities.

In my 43 years as a local government lawyer practicing in Volusia County and as a former member of the 7th Circuit JNC, I have encountered no person I would commend as highly as Randell H. Rowe, III, for nomination for the District Court.

Very truly yours,


Frank B. Gummey, III
City Attorney

FBG:mh
cc: Commissioners, 5th DCA JNC

MATTHEW G. MINTER
Board Certified in City, County and Local Government Law
601 S.E. 25th Avenue
Ocala, FL 34471
Phone (407) 928-8835
Matthew.Minter@Gmail.com

February 1, 2017

Mr. Michael C. Sasso, Esq., Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Suite 120
Winter Park, FL 32789

Re: Application of Hon. Randell H. Rowe, III, for Seat on Fifth District Court of Appeal

Dear Mr. Sasso:

I write to offer my unqualified endorsement of Circuit Judge Randell H. Rowe, III, to fill the current vacancy on the Fifth District Court of Appeal. I am the County Attorney for Marion County, Florida, but this letter represents my personal recommendation and not that of the Board of County Commissioners.

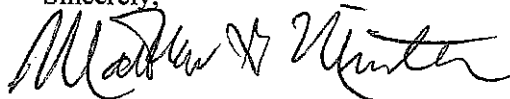
I worked with and around Randy during the years of 1995 – 2006 when I was employed by the Volusia County Attorney's Office, where I served as an assistant county attorney, and chief assistant for litigation. Randy was an assistant county attorney in the office during many of those years, until he was appointed to the circuit court bench. Representative of the quality of Randy's work during that period was his successful representation of the County of Volusia in obtaining reversal of the trial court's ruling in an annexation matter. *See, County of Volusia v. City of Deltona*, 925 So.2d 340 (Fla. 5th DCA 2006). Even after leaving the Volusia County Attorney's Office, I have maintained contact with Randy.

From my personal experience with Randy, I can attest that he is a man of high integrity, motivated by a sense of public service. He has a keen mind for legal analysis, and is concerned with attention to detail. He has a very pleasant and even disposition, and demonstrates respect to those he interacts with. I believe that as an appellate judge, Randy would seek to provide justice to the parties, but with an awareness of the broader context of the issues, and a mind for avoiding unintended consequences where the facts and law would permit.

It is my opinion that Judge Rowe would be a credit to the Fifth District Court of Appeal, and would provide excellent service to the people of the State of Florida.

Please do not hesitate to contact me if you need any clarification of this letter. If need be, you may contact me at my work number (352) 438-2330.

Sincerely,



Matthew G. Minter, BCS

January 23, 2017

Mr. Michael C. Sasso, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
1031 W. Morse Blvd., Ste. 120
Winter Park, Florida 32789

Re: Letter in Support of Nomination of Circuit Judge Randell H. Rowe, III
to the Fifth District Court of Appeal

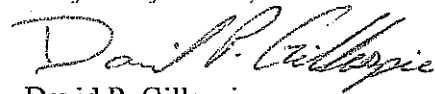
Dear Mr. Sasso:

I am writing to share with you my experiences before Circuit Judge Randell H. Rowe, III, and to earnestly support his nomination to the Fifth District Court of Appeal. I have had the privilege to appear before Judge Rowe on numerous occasions in my capacity as a Senior Assistant Statewide Prosecutor with the Florida Attorney General's Office of Statewide Prosecution in Orlando. I have always found Judge Rowe to be an exemplary circuit judge who possesses the intellect, the demeanor and the judicial restraint that would make him a true asset to the Fifth District Court of Appeal.

I have had the opportunity to argue many matters before Judge Rowe during his tenure on the circuit bench. Despite Judge Rowe occasionally ruling contrary to my position, I have always found his rulings to be well reasoned and consistent with the rule of law. On those occasions, Judge Rowe looked to the text of the statutes when deciding the matters before him and made rulings consistent with the principle of *stare decisis*. While utilizing the divided attention necessary to manage a large docket on any given day, Judge Rowe has always displayed the ability to hone in on the essential matters in dispute before him and each time has decided those matters by making a well reasoned ruling supported by precedent in a timely fashion. It is my belief that this ability would serve him well on the Fifth District Court of Appeal.

Moreover, I have always been impressed by Judge Rowe's judicial demeanor when I have appeared before him or observed others do so. His judicial demeanor is above reproach. Judge Rowe is a very patient judge who ensures that the litigants that appear before him leave his courtroom knowing that they have had an opportunity to be heard. While exercising complete control over his courtroom and moving his docket with deliberate speed, Judge Rowe always maintains professionalism and exercises courtesy to those appearing before him. In short, it is without reservation that I write this letter bringing to your attention the outstanding work and dedication of Circuit Judge Randell H. Rowe, III. His example is reflective of the highest traditions of jurisprudence and the citizens of the State of Florida would be well served by having him appointed to the Fifth District Court of Appeal.

Very Truly Yours,



David P. Gillespie
Sr. Assistant Statewide Prosecutor



City of DeLand
"The Athens of Florida"
www.deland.org

120 South Florida Avenue
DeLand, Florida 32720-5481
Telephone: (386) 626-7000
Fax: (386) 626-7140

February 5, 2017

Judicial Nominating Committee
5th District Court of Appeal

Dear Committee Members:

It is my pleasure to offer this letter of recommendation for Judge Randell Rowe for appointment to the 5th District Court of Appeal. I have known Judge Rowe for more than 20 years. He and I worked together when he was Assistant County Attorney and I worked in the County Manager's Office. I always find him to be thorough, honest, and fair in his approach to every issue. He has a reputation for being a very capable Judge with a good reputation. I know he would make a great appointment to the 5th DCA and trust that you will as well.

Thank you for taking time to review this letter of recommendation. Should you have any questions, please contact me at (386) 626-7109.

Very truly yours,

Michael Pleus, ICMA-CM
City Manager



Mark M. O'Mara
Board Certified Criminal Trial Specialist
Board Certified Marital and Family Law Specialist
Certified Family and Circuit Civil Mediator

December 30, 2016

Michael E. Marder, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
201 East Pine Street, Suite 500
Orlando, Florida 32801

Alyssa Flood
Josh Martell

RE: Letter of reference for Circuit Judge Randell H. Rowe, III for nomination to the Fifth District Court of Appeal

Dear Mr. Marder:

Please accept this as a letter of endorsement and recommendation for Judge Randell H. Rowe, III for his candidacy for appointment to the Fifth District Court of Appeal. During his tenure on the bench, I have had the pleasure of working before Judge Rowe on both family law matters and criminal matters. In the family law cases, I have come to know him as a very compassionate and knowledgeable judge with great insight, not only into the complexities of the case before him, but how it is going to affect the families, both in the litigation and afterwards. I also note he has a keen ability to work through the static that, at times, exists in family law litigation and get to the heart of what needs to be addressed and resolved. I am sure he would get the best reviews for his family bench experience from those families who have been before him.

In my criminal practice, I have had numerous cases with Judge Rowe and again, he carries himself and handles his courtroom with great respect for all involved, from the litigators to the defendants that come before him. As anyone who has served on the criminal bench knows, it is easy to become somewhat disenchanted with the rote nature of the cases that come before the court, but Judge Rowe has always been willing to listen and to allow those that come before him the dignity of being treated with respect, even though they are before him for a criminal event.

Beyond his broad-based experience on the circuit bench, I believe his best quality for serving on the District Court is his great knowledge of the law and its nuances and how to apply that knowledge to a set of facts in a way that not only maintains the rule of law, but does so with a healthy dose of common sense.

I recall a criminal trial I had before Judge Rowe recently where there were some very interesting, unsettled evidentiary issues that he had to address. Although the initial ruling was not in my favor, I appreciated the level of integrity in resolving the issue and his willingness to keep an open mind when the dynamics of the issue developed such that a change in his ruling was appropriate.

It is without reservation that I recommend Judge Randell H. Rowe, III for your consideration for a seat on the Fifth District Court of Appeal.

Sincerely,

Mark M. O'Mara
MMO/kme

J. Cheney Mason, P.A.
Attorney and Counsellor at Law

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250 PARK AVENUE SOUTH, SUITE 200
WINTER PARK, FLORIDA 32789
TELEPHONE: (407) 843-5785
TELEPHONE: (407) 622-2220
EMAIL: cheneylaw@aol.com

December 29, 2016

Michael E. Marder, Chair
Judicial Nominating Commission
Fifth District Court of Appeal
201 East Pine Street, Suite 500
Orlando, Florida 32801

RE: Judge Randell H. Rowe, III
Circuit Judge

Dear Mr. Marder:

I have been a member of the Florida Bar now for almost 46 years, all of which has been devoted to the trials of criminal cases and/or divorce cases. This experience has brought me in contact with literally hundreds of judges, not only throughout Florida, but in many jurisdictions around the country. My personal credentials include having served 11 years on the Florida Bar Board of Legal Specialization and Education (the Chairman for 2 years) as well as being Board Certified by the National Board of Trial Advocacy and the Florida Bar as a criminal trial law specialist. I am proud to also be an elected fellow of the American Board of Criminal Lawyers. These credentials, I believe, should in some way give validity to my opinions and recommendations, especially with respect to judges before whom I have appeared in contested matters. Judge Randell H. Rowe, III in Volusia County is one of them.

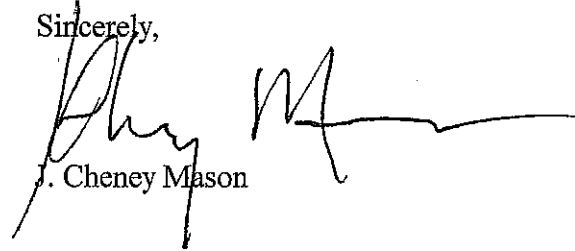
While I vigorously try to win all cases, I am reasonably accustomed to judge's disagreeing with me, or ruling against me, for various reasons. I have been before Judge Rowe when he has both agreed with me and, in other circumstances, disagreed. In all such circumstances, he exhibited the highest level of competence, integrity, and judicial patience that I value most. Judge Rowe has exhibited legal acumen and diligence in some very difficult legal issues and factual problems. He has proven to me his ability to make objective rulings notwithstanding emotional pressures.

I do not know how many applicants there are now to fill the vacancy on the Fifth District Court of Appeal, or who they may be. I do know, however, that Judge Rowe is absolutely qualified and would be a credit to our profession and to our community. It is without hesitation or any reservations of any description that I endorse, recommend, and encourage the appointment of Judge Rowe.

Michael E. Marder, Chair
December 29, 2016
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Should you or any member of the commission have any questions, be certain that I am willing to discuss same by phone, in person, or otherwise. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Cheney Mason". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

J. Cheney Mason

JCM:kdm