

**APPLICATION FOR NOMINATION TO THE 5<sup>th</sup> DISTRICT COURT**

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

**DATE:** 08/15/2019 Florida Bar No.: 626570

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

1. Name C. Joseph Boatwright II (Joe Boatwright) E-mail: [REDACTED]  
Date Admitted to Practice in Florida: 4/16/2003  
Date Admitted to Practice in other States: NA

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

3. Business address: 410 St. Johns Ave. Room 310  
City Palatka County Putnam State FL ZIP 32177  
Telephone (386) 329-0269 FAX (386) 329-1229

4. Residential address: [REDACTED]  
City [REDACTED] County [REDACTED] State FL ZIP [REDACTED]  
Since 1979 Telephone [REDACTED]

5. Place of birth: Tampa, FL  
Date of birth: [REDACTED] Age: 47

6a. Length of residence in State of Florida: 47

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

7. Marital status: Married  
If married: Spouse's name [REDACTED]  
Date of marriage 01/06/2006  
Spouse's occupation House Wife

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.  
NA

8. Children

| <i>Name(s)</i> | <i>Age(s)</i> | <i>Occupation(s)</i> | <i>Residential address(es)</i> |
|----------------|---------------|----------------------|--------------------------------|
| [REDACTED]     | 10            | None                 | [REDACTED]                     |
| [REDACTED]     | 8             | None                 |                                |
| [REDACTED]     | 5             | None                 |                                |

9. Military Service (including Reserves)

| <i>Service</i> | <i>Branch</i> | <i>Highest Rank</i> | <i>Dates</i> |
|----------------|---------------|---------------------|--------------|
| NA             |               |                     |              |

Rank at time of discharge \_\_\_\_\_ Type of discharge \_\_\_\_\_

Awards or citations \_\_\_\_\_

| <i>Service</i> | <i>Branch</i> | <i>Highest Rank</i> | <i>Dates</i> |
|----------------|---------------|---------------------|--------------|
|                |               |                     |              |

Rank at time of discharge \_\_\_\_\_ Type of discharge \_\_\_\_\_

Awards or citations \_\_\_\_\_

**HEALTH:**

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

No

11a. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism?

Yes  No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes  No

If yes, please explain.

12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes  No

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

Yes  No

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

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>                               |
|---|--|----------------------------|---|
| Duke University<br>School of Law                                | N/A  | 2016-2018                  | LL.M. Master of<br>Laws Judicial<br>Studies |
| University of Florida,<br>Levin College of<br>Law               | GPA: 3.86 (The<br>LL.M program<br>no longer gives<br>rankings) | 2006-2008                  | LL.M. Master of<br>Laws Taxation            |
| Catholic University<br>of America,<br>Columbus School of<br>Law | GPA: 3.88;<br>Class Rank:<br>Top 1% (2/217)                    | 2000-2002                  | Juris Doctor                                |

|                                      |          |           |                                     |
|--------------------------------------|----------|-----------|-------------------------------------|
| Covington<br>Theological<br>Seminary | N/A      | 1995-1997 | Master of<br>Religious<br>Education |
| University of Florida                | GPA: 3.3 | 1991-1994 | B.A./Political<br>Science           |

- 18b. List and describe academic scholarships earned, honor societies or other awards.
1. Awarded Full Merit Scholarship from Duke University School of Law for Master of Judicial Studies, LL.M. program (2016-2018).
  2. Selected as Editor in Chief for the Spring 2018 edition of the Judicature Law Journal.
  3. Selected to serve on the editorial board for the Winter 2017 edition of the Judicature Law Journal.
  4. Selected as a member of the Catholic University Law Review.
  5. Graduated Summa Cum Laude, The Catholic University of America, Columbus School of Law
  6. Golden Key National Honor Society, University of Florida

**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>                                      |
|-------------|-----------------|-------------------------------|---|
| 1994-2000   | Principal       | Open Bible Baptist<br>Academy | 124 Old San Mateo<br>Road, East Palatka, FL<br>3213 |

**PROFESSIONAL ADMISSIONS:**

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

Florida Bar (2003)  
 United States District Court, Middle District of Florida (2004)  
 United States Tax Court (2008)

**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> |
|---|---------------------|----------------|--------------|
| 1. Putnam County Court Judge, 7th Judicial Circuit, P.O. Box 758, Palatka, FL 32177 - January 2013- Present   |                     |                |              |
| 2. Florida Coastal School of Law, 8787 Baypine Road, Jacksonville, FL 32256, Adjunct Professor – August 2003-2016.  |                     |                |              |
| 3. St. Johns River State College, 5001 St. Johns Ave., Palatka, FL 32177, Adjunct Professor- January 2014-Present.  |                     |                |              |
| 4. Office of the State Attorney, 7th Judicial Circuit of Florida, 410 St. Johns Ave., Palatka, FL 32177, Managing Assistant State Attorney - January 2009-2012. |                     |                |              |

5. Ivan, Cole, &  
Bonnette,  
Jacksonville, FL,  
Associate  
Attorney-July  
2008-December  
2008.

6. Law Offices of  
Donald E. Holmes,  
222 North Third  
Street, Palatka, FL  
32177, Associate  
Attorney- August  
2005-July 2008.

7. Office of the  
State Attorney, 7th  
Judicial Circuit of  
Florida, 410 St.  
Johns Ave.,  
Palatka, FL 32177,  
Assistant State  
Attorney- October  
2002- August  
2005.

8. American Center  
for Law and  
Justice (ACLJ),  
Alexandria, VA,  
Law Clerk,  
January 2002-  
May 2002.

9. D.C. Law  
Students in Court  
Program (LSIC),  
4340 Connecticut  
Ave., N.W., Suite  
100, Washington,  
D.C. 20008,  
Student Attorney,  
May 2001-

December 2001.

10.Catholic  
University,  
Columbus School  
of Law,  
Washington, D.C.  
Professor Clifford  
S. Fishman,  
Research  
Assistant, May  
2001-August 2001.

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.

#### Current Practice

I currently serve as a county court judge in Putnam County, Florida, which is part of the Seventh Judicial Circuit. I also am cross assigned as an acting circuit court judge. In addition, I am currently the Administrative Judge for Putnam County. Finally, I have been assigned to both the 4<sup>th</sup> and 5<sup>th</sup> District Courts of Appeal as an associate judge. I currently am assigned to the criminal misdemeanor and civil traffic dockets. However, I have handled cases and trials on all of the county court dockets including landlord-tenant, small claims, and county civil. I handle all first appearance hearings during the week. I preside over arraignments, pre-trial conferences, sentencing and violation of probation hearings. I hear numerous motions which include suppression, evidentiary, modification of probation and post-conviction issues. I preside over both jury and non-jury trials. On average, I have been assigned to five to ten thousand cases a year. I have presided over 30 jury trials, over 35 non-jury trials, and hundreds of substantive hearings.

As an acting circuit court judge, I have the authority to handle circuit court cases and deal with emergency circuit court issues. I handle emergency motions and hearings dealing with family law issues, dependency cases, injunctions, civil commitments, and extradition matters. I also preside over felony cases including arraignments, pre-trials, jury selection, motion hearings, and pleas and sentencings. I have been assigned to family law cases, foreclosure actions, civil cases, probate matters, and final injunction hearings. Currently, I have been assigned to the Truancy docket in our family law division.

I have been assigned in the past to the 5th District Court of Appeal to handle



criminal, civil, and family law appeals as an associate judge including participating in oral arguments. I was recently assigned as an associate judge to the 4<sup>th</sup> District Court of Appeal in July, 2019 where I handled criminal, civil, probate, and family law appeals while participating in oral arguments and drafting opinions.

Finally, I serve as the Administrative Judge for Putnam County where I am designated to assist the Chief Judge for administrative matters including but not limited to signing reassignment orders upon the recusal (disqualification) of judges in Putnam County; requiring the attendance of prosecutors, defense counsel, clerks, bailiffs, and other officers of the court in Putnam County; reviewing the status of inmates in the Putnam County Jail; supervising the selection of venirees for petit and grand juries in Putnam County; authorizing the replacement of grand jurors unable to complete their terms; developing a schedule for judicial coverage of First Appearance hearings and consideration of emergency injunctions and other emergency matters that may arise on weekends, holidays, and after hours on weekends; ensuring that court facilities and court proceedings in Putnam County are open and available to the public during normal operating hours; and advising the chief judge on matters related to the space provided by the County Commission for operation of the court system in Putnam County.

I am also currently an adjunct professor at St. Johns River State College in Palatka, Florida. I have served in this position since January 2014. The courses I have taught include Business Law I and II.

#### Prior Experience

I was a Managing Assistant State Attorney for the Office of the State Attorney for the 7th Judicial Circuit of Florida. I served in this position from January 2009, until December 2012. In this position, I performed management of the Putnam County Office of the State Attorney, 7th Judicial Circuit of Florida, by supervising the entire office including attorneys and other staff. I personally handled a caseload of felony cases including but not limited to drug, sex, financial, property, DUI manslaughter, and other violent crimes. In addition to these cases, I litigated all civil forfeiture cases for local law enforcement agencies including drafting pleadings, conducting depositions, and participating in probable cause hearings and trials. Finally, I was assigned to post-conviction relief cases which included drafting responses and arguing the cases at an evidentiary or final hearing.

I was an adjunct professor at Florida Coastal School of Law in Jacksonville, Florida. I served in this position from August 2003-16. The courses I have taught include federal income taxation, partnership tax, corporate tax, legal research and writing, advanced legal research and writing and oral advocacy, criminal procedure, judicial writing, and civil asset seizure/forfeiture law. In performing work in this position, I have prepared lessons, lectured, evaluated writing and research projects, met with students and other faculty, and assigned grades. In order to serve in this position, I taught evening classes, which required travel from my home in East Palatka to Jacksonville at least two evenings per week.

I was an Associate Attorney for Ivan, Cole, & Bonnette, Jacksonville, Florida, from July 2008 to December 2008. Ivan, Cole, & Bonnette was an AV rated tax and estate planning firm, which has now dissolved. In this position, I litigated tax, probate, and trust cases; as well as providing tax planning and advice.

I was an Associate Attorney in the Law Offices of Donald E. Holmes, P.A., Palatka, Florida, from August 2005 to August 2008. Donald E. Holmes, P.A., is an AV rated law firm in Florida. In this position, I litigated all aspects of civil cases involving commercial, real estate, family, land use, and local government law while drafting all pleadings and responses, conducting depositions, arguing at hearings, participating in the discovery process, mediating cases, and preparing for both jury and non-jury trials. Further, I represented court appointed and private clients in criminal matters including felony, misdemeanor, and juvenile cases. I worked on transactional matters including drafting documents for the formation of corporations and LLCs; drafting wills and trusts; and providing tax advice in these areas. I also represented local law enforcement agencies in all civil forfeiture matters including providing legal counsel and training, drafting policies, handling all litigation matters, and providing advice on the use and management of the trust accounts. I also handled all facets of real estate matters including but not limited to foreclosures, specific performance suits, boundary line disputes, ejectment actions, title disputes, commercial and residential landlord tenant matters, state and local taxation issues, and real estate closings. I was involved in the legal representation of local government agencies including the City of Palatka, City of Interlachen, Putnam County Sheriff's Office, Putnam County Code Enforcement, and Supervisor of Elections Office in all election matters for Putnam County.

I served as an Assistant State Attorney in the Office of the State Attorney, 7th Judicial Circuit of Florida, from October 2002 to August 2005. In this position, I handled a caseload of over 250 cases at one time, performed intake on over 300 cases per month, interviewed victims, investigated cases, and litigated all aspects of criminal, misdemeanor, and juvenile cases in both jury and bench trials. I also litigated all aspects of felony cases including drug, sex, fraud, property, and other violent crimes. This included conducting depositions, arguing at various hearings, writing motions, researching legal issues, participating in the discovery process, selecting juries for trial and presenting cases at trial in both jury and bench trials. I also litigated all civil forfeiture cases for local law enforcement agencies including drafting pleadings, conducting depositions, and participating in probable cause hearings and trials.

I served as a Law Clerk for the American Center for Law and Justice (ACLJ), Alexandria, VA, from January 2002 to May 2002. In this position, I performed legal research and writing on First Amendment, taxation, and other civil liberties issues. I worked on federal legislation and in particular, taxation bills for non-profit groups. This position allowed me to work with experienced attorneys in the field of constitutional law.

I served as a Student Attorney in the D.C. Law Students in Court Program (LSIC), Washington, D.C., from May 2001 to December 2001. I was certified to perform in this capacity by the D.C. Court of Appeals. In this position, I litigated all aspects of landlord/tenant cases while obtaining valuable guidance from experienced attorneys.

This position provided me with both case preparation and courtroom experience, and gave me the opportunity to handle an individual case load while having a one-on-one relationship with a seasoned litigator. This work included preparing and filing responsive pleadings on behalf of indigent individuals and arguing written and oral motions before the court on their behalf. I prepared for both jury and bench trials by drafting written and oral motions and filed all necessary responsive pleadings. I conducted client interviews and completed on site investigations for clients.

I served as Research Assistant to Professor Clifford S. Fishman, Catholic University, Columbus School of Law, from May 2001 to August 2001. In this position, I researched legal issues in evidentiary matters and prepared written legal memoranda that were used in publishing evidence treatises Jones on Evidence.

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>25</u> %   |
| Federal Trial        | <u>0</u> %    | Criminal         | <u>25</u> %   |
| Federal Other        | <u>0</u> %    | Family           | <u>25</u> %   |
| State Appellate      | <u>1</u> %    | Probate          | <u>25</u> %   |
| State Trial          | <u>98</u> %   | Other            | <u>    </u> % |
| State Administrative | <u>1</u> %    |                  |               |
| State Other          | <u>    </u> % |                  |               |
|                      | <u>    </u> % |                  |               |
| TOTAL                | <u>100</u> %  | TOTAL            | <u>100</u> %  |

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

|              |   |                        |           |
|--------------|---|------------------------|-----------|
|              | 20 (10 first<br>chair; 10<br>second<br>chair) | Non-jury?              |           |
| Jury?        | <u>    </u>                                   |                        | <u>20</u> |
| Arbitration? | <u>0</u>                                      | Administrative Bodies? | <u>3</u>  |

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

No

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

No

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

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

1. State of Florida v. Brandall Hawkins; 09-47344 MMAES ( 7th Judicial Circuit, Volusia County)

a. State- Josh Alexander and Joe Boatwright (904 824-9788)

b. Defense- Joe Warren (386-253-5612)

2. John Salonen v. Jannette Stoeffler; 05-716-CA-53 (7th Judicial Circuit, Putnam County)

a. Plaintiff- Donald E. Holmes and Joe Boatwright (386-328-1111)

b. Defense- John Key (386 385-3646)

3. State of Florida v. Daniel E. Buchanan; 2004-1285-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright

b. Defense- Gary Wood (386-326-3993) and Ronald E. Clark (deceased)

4. State of Florida v. Gary Eugene Bland; 2004-0985-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright

b. Defense- Larry Sikes (deceased)

5. State of Florida v. Spencer Faison; 2004-0307-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright

b. Defense- Robert Vest (robert\_vst@yahoo.com)

6. State of Florida v. Jose E. Gutierrez; 2003-1173 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright

b. Defense- Kevin Monahan ( 386 325-8673)

- 27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).
1. Daniel McLendon v. Glen M. Titus; 06-570 CA (7th Judicial Circuit, Putnam County)
    - a. Plaintiff- Joe Boatwright
    - b. Defendant- Lew A. Merryday ( deceased)
  2. Patricia Spengler and Robert Spengler v. Derek Mayo and Gordon Zeuhl; 06-175-CA 52 (7th Judicial Circuit, Putnam County)
    - a. Plaintiff- Joe Boatwright
    - b. Defendant- N. Mark New (904 224-4499 )
  3. Susan Loosberg v. Andres Loosberg; 07-126-FD-54 (7th Judicial Circuit, Putnam County)
    - a. Petitioner- Leanna Freeman (904 471-7272)
    - b. Respondent- Joe Boatwright
  4. Laura Lee Johnson v. Louis Scott Johnson; 07-272-FD
    - a. Peititioner- Joe Boatwright
    - b. Respondent- Charles Esposito (386 627-8310)
  5. Tammy Powell v. Edward Powell; 05-1661-FD 54 (7th Judicial Circuit, Putnam County)
    - a. Petitioner-Joe Boatwright
    - b. Respondent-Robert Fields (386-325-2041)
  6. Jamie Lynn Chirico v. Anthony Chirico; 06-717-FD-54 (7th Judicial Circuit, Putnam County)
    - a. Petitioner- Rachel Murphy (deceased)
    - b. Respondent- Joe Boatwright (386-329-0259)
- 27c. During the last five years, how frequently have you appeared at administrative hearings? less than one average times per month
- 27d. During the last five years, how frequently have you appeared in Court? 5 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? NA% Defendants? NA%

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

As an assistant state attorney, from 2002-2005, I appeared in court on an average of 15 times a month. This would include jury and non-jury trials, administrative court days, and hearings.

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.

NA

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. John Salonen v. Jannette Stoeffler; 05-716-CA-53 (7th Judicial Circuit, Putnam County)

a. Plaintiff- Donald E. Holmes and Joe Boatwright (386-328-1111)

b. Defense- John Key (386-385-3646)

c. Judges- Arthur Nichols and Edward Hedstrom

d. Date of Trial: 1-23-2008

e. Our office represented the plaintiff in a complex civil case that was litigated for nearly two years. The case involved a specific performance and breach of contract action involving a dispute over commercial real estate. I drafted the majority of the pleadings including the summary judgment motion, took depositions, and drafted the closing arguments that were submitted to the court. The case was significant in that I was able to litigate a complicated civil case all the way through the trial phase. The main issue in the case involved an option provision, which our client claimed gave him the right to purchase the subject property. The defendant argued that the provision was a right of first refusal. I drafted and argued a summary judgment motion wherein the court ruled that the provision was an option to purchase. The only issue that remained was the size of the property that the Plaintiff was entitled to purchase. This was the issue that we litigated at trial. The judge asked us to submit written oral arguments and I was involved in drafting those arguments. Subsequently, the judge ruled in our favor and granted specific performance.

2.State of Florida v. Daniel E. Buchanan; 2004-1285-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright (386-329-0259)

b. Defense- Gary Wood (386-326-3993) and Ronald E. Clark (deceased)

c. Judge- Edward Hedstrom

d. Date of Trial: 4-04-05

e. I represented the State of Florida in this case. The defendant, Mr. Buchanan, was charged with aggravated battery with a firearm. The defendant was a licensed bailbondsman with a subject out on bond. This subject individual had failed to appear for a court appearance. The defendant tried for many months to find the subject individual. He finally made contact with the individual and while the individual was trying to escape, the defendant shot him in the back. The defendant claimed self defense and that as a

bondsman he had the same right as a law enforcement officer to use deadly force to effectuate an arrest. This case was significant in that it was politically and racially charged. This is one of the few cases that I have been involved in, for which the public seemed to be against the prosecution. This was a week-long jury trial with over 20 witnesses. The jury found the defendant guilty and he was sentenced to 25 years in prison. His sentence was later overturned on appeal based on a jury selection issue. Although, the case was overturned on appeal, the case was significant in that the appellate court ruled that a bondsman only had the authority to use reasonable force in effectuating an arrest and did not have the same legal authority as a law enforcement officer.

3. State of Florida v. Gary Eugene Bland; 2004-0985-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright (386-329-0259)

b. Defense- Larry Sikes (deceased)

c. Judge- Arthur Nichols

d. Date of Trial: 5-23-2005

e. I represented the State of Florida in this case. The defendant was a 55 year old man who was accused of committing lewd and lascivious battery on a 15 year old girl. He had previously been convicted of lewd and lascivious molestation. I was able to use the two victims in his previous case as similar fact witnesses in the jury trial. A jury convicted him of lewd and lascivious battery and he was sentenced to the maximum of 15 years in prison. The case was significant in that this was a dangerous individual that we were able to convict and put in prison so that the community was protected. Further, it gave me great experience in drafting a "Williams Rule" motion and using similar fact witnesses.

4. State v. Sylvester Andrews; 2003-1001-CF-53 (7th Judicial Circuit, Putnam County)

a. State- Joe Boatwright (386-329-0259)

b. Defense- Larry Sikes (904-879-1473)

c. Date of Trial: 2-09-2004

d. Judge- Arthur Nichols

I represented the State of Florida in this case. The defendant in this case was accused of attempted first degree murder. He was accused of stabbing his employer in the back 15 times because the employer did not pay him his wages on time. The jury found him guilty and he was sentenced as a habitual offender to life in prison. The case was significant in that I was able to gain experience using the repeat offender sentencing enhancements and was able to assist in sentencing a dangerous individual to life imprisonment.

5. State of Florida vs. Spencer Faison; 2004-0307-CF-53 (7th Judicial Circuit, Putnam County)

a. State-Joe Boatwright (386-329-0259)

b. Defense- Robert Vest ( robert\_vst@yahoo.com)



c. Judge- Arthur Nichols

d. Date of Trial: 1-10-2005

e. I represented the State of Florida in this case. The defendant was released from prison after serving a murder sentence. The defendant was accused of robbery while wearing a mask. The crime involved robbery of a convenience store by a man wearing a ski mask. The crime occurred within a week of the defendant's release from prison. The jury found the defendant guilty as charged. The defendant was sentenced to 30 years in prison under the Prison Releasee Reoffender statute. The case was significant in that I was able to gain experience using the prison releasee reoffender sentencing provisions and that a violent individual went to prison for 30 years.

6. State of Florida vs. Purcell Bagley

a. State- Joe Boatwright

b. Defendant- Kevin Monahan (386 325-8673)

c. Judge- Carlos Mendoza

I was responsible for drafting responses and arguing post-conviction relief cases while I managed the state attorney's office in Putnam County, FL. The case was significant in that it provided an opportunity to draft a response that dealt with many of the issues that arise in 3.850 motions. Although these types of cases involve an evidentiary hearing, they do involve appellate type issues and require one to work with the trial court's record in drafting responses.

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.

I wrote all the documents attached. Some minor editing on one of the legal articles was done by Dean Michael Friel at the University of Florida, Levin College of Law. The other articles had editing done by the editorial boards for the respective law journals.

**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.

Putnam County Court Judge, 7th Judicial Circuit Florida- January 2013-Present

32b. List any prior quasi-judicial service:

*Dates*

*Name of Agency*

*Position Held*

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. Bradley J. Bradley, Esquire

Chief Administrative Office/Chief Counsel

St. Johns County Clerk of Court

410 Lewis Speedway, St. Augustine, FL 32084

Office (904) 819-3600

Cell (904) 655-1559

2. Kurt Teifke, Esquire

1 Hargrove Grade, Building A Suite 2E

Palm Coast, FL 32137

(386) 269-4551

3. Alex Sharp

General Counsel Putnam County Sheriff's Office

130 Orié Griffin Blvd.

Palatka, FL 32177

Cell (386) 916-0838

4. Andrew Morgan, Esquire  
Canan Law  
1030 North Ponce de Leon  
St. Augustine, FL 32084  
Office (904) 217-6209  
Cell (904) 382-9897

5. Kevin Sharbaugh, Esquire  
Keyser and Sharbaugh, P.A.  
501 Atlantic Ave.  
Interlachen, FL  
Office (386) 684-4673

6. Charlie Douglas, Esquire  
Douglas and Hedstrom, PA  
601 St. Johns Ave.  
Palatka, FL 32177  
Office (386) 328-6000  
Cell (904) 673-2118

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

I currently serve as a county court judge in Putnam County, Florida, which is part of the Seventh Judicial Circuit. I also am cross assigned as an acting circuit court judge. In addition, I am currently the Administrative Judge for Putnam County. I currently am assigned to the criminal misdemeanor and civil traffic dockets. However, I have handled cases and trials on all of the county court dockets including landlord-tenant, small claims, and county civil. I handle all first appearance hearings during the week. I preside over arraignments, pre-trial conferences, sentencing, and violation of probation hearings. I hear numerous motions which include suppression, evidentiary, modification of probation, and post-conviction issues. I preside over both jury and non-jury trials. On average, I have been assigned to five to ten thousand cases a year. I have presided over 30 jury trials, over 35 non-jury trials, and hundreds of substantive hearings.

As an acting circuit court judge, I have the authority to handle circuit court cases and deal with emergency circuit court issues. I handle emergency motions and hearings dealing with family law issues, dependency cases, injunctions, civil

commitments, and extradition matters. I also preside over felony cases including arraignments, pre-trials, jury selection, motion hearings, and pleas and sentencings. I have been assigned to family law cases, foreclosure actions, civil cases, probate matters, and final injunction hearings. Currently, I have been assigned to the Truancy docket in our family law division.

In addition, I have been assigned in the past to 5th District Court of Appeal to handle criminal, civil, and family law appeals as an associate judge. I was recently assigned to 4<sup>th</sup> District Court of Appeal as an associate judge where I was assigned criminal, civil, probate, and family law appeals while participating in oral arguments and drafting opinions.

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

FL v. Johnson, 22 Fla. L. Weekly Supp. 1067b

- (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. Amber Rye, 2012-1572 CT (Putnam County Court, Seventh Judicial Circuit)

a. Trial Date- January 16, 2013

a. State of Florida- Marie Defusco

b. Defense-Mack Brunton

I presided over a jury trial in which the defendant was charged with one count of Driving Under the Influence. The State alleged that the defendant was under the influence of drugs rather than alcohol. The case was significant because it presented a situation where three different expert witnesses testified as to different issues regarding the impairment of the defendant and the drugs in her system. I had to determine the reliability of each witness and decide whether they could testify on highly technical issues.

2. Richard Northrip v. James Nicholson, 2012-145 SC (Putnam County Court, Seventh Judicial Circuit, Florida)

a. Trial Date- February 12, 2013

b. Plaintiff's Attorney- Jeremiah Mulligan

d. Defendant's Attorney- Kevin Sharbaugh

The plaintiff brought claims of Breach of Contract and Unjust Enrichment against the defendant. The plaintiff had performed mechanic services for the defendant in repairing his automobile. The defendant refused to pay the plaintiff for services rendered based on faulty workmanship but later refused, claiming he did not receive a written estimate as required by Fla. Stat. 559.905. I ruled for the defendant. Although the plaintiff had done substantial work on the defendant's automobile, I ruled for the defendant because the plain language of Fla. Stat. 559.905 and 5<sup>th</sup> DCA precedent of Osteen v. Morris, 481 So. 2d 1287 (Fla. 5<sup>th</sup> DCA 1986) required that a written estimate be given in order to recover

damages. The case was significant in that it raised issues of statutory interpretation and the use of textualism. In addition, I was confronted with the issue that by following the law the result was not equitable.

3. Kevin Smith and Elizabeth Smith v. Duane Brown Fill Dirt, Inc., 2016-719 CC (Putnam County Court, Seventh Judicial Circuit, Florida)

a. Trial Date- November 22, 2017

b. Plaintiff- Timothy Keyser

c. Defendant- Adam Rowe

The plaintiffs brought claims for Negligent Construction and Trespass on the Case. The plaintiffs alleged that the defendant had negligently constructed a roadway in their neighborhood which changed the water flow and caused damages to their property. The case was significant in that I had to deal with expert witnesses in the area of road construction. In addition, I had to deal with complicated issues regarding surface water runoff due to negligent construction.

4. Village Inn Bar and Grill v. Ronald D. Brown and Sumter County, FL, 5D16-1897 (Fla. 5<sup>th</sup> District Court of Appeal)

Appellant- Bryan T. Anderson, Esq. and James Schatt, Esq.

Appellee- Christian Waugh, Esq. and George G. Angelidias

I was selected to be an associate judge and assigned appellate cases on the Fifth District Court of Appeals in 2017. One of the cases dealt with complex issues dealing with appellant's claim in trying to gain legal access to his business establishment. The case was significant in that allowed me to be part of the appellate process first hand. I was able to handle the case from start to finish including but not limited to working with the judicial clerk assigned to the case, reading through the record, doing extensive legal research, preparing for and sitting on a oral argument panel, and being involved in the final decision making process.

5. In Re: The Marriage of Ashley M. Lemay, Former Wife and James W. Lemay, DR 12-0041 (Circuit Court, Seventh Judicial Circuit, In and For St. Johns County, Florida)

a. Hearing Date- August 5, 2014

b. Former Wife- Colin C. Klein, Esq.

c. Former Husband- Adam J. Kohl, Esq.

I was assigned to a family law case in St. Johns County, FL. Although I handled numerous family law cases in private practice, this was the first time I handled a substantial family law case as a judge. I presided over the final hearing on a Motion to Modify and Enforce the Final Judgment. The case provided me with the opportunity to deal with issues of child support, child custody, uncovered medical expenses, and issues dealing with a related injunction case.

(v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a

finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

No

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

No

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

N/A

**BUSINESS INVOLVEMENT:**

33a. If you are now an officer, director or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties, and whether you intend to resign such position immediately upon your appointment or election to judicial office.

N/A

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.

1. Managing Member of Putnam Enterprises LLC (2004-2009). The LLC was used to buy and sell real estate. The LLC was dissolved in 2009.

2. Florida Coastal School of Law, Jacksonville, FL, Adjunct Professor – August 2003-August 2016.

3. St. Johns River State College, Palatka, FL, Adjunct Professor- January 2014-Present.

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.

1. I received rental income from rental houses that I own. This is documented on the attached tax returns.

2. (1) Florida Coastal School of Law, Jacksonville, FL, (2) law school, (3) August 2003-2016. The amounts paid are documented on the attached tax returns.

3. (1) St. Johns River State College, Palatka, FL, (2) state college, (3) January 2014-present. The amounts paid are documented on the attached tax returns.

**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

**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. I was sued in the County Court, Seventh Judicial Circuit, In and For Putnam County, Florida. I was a named defendant along with the Putnam County Sheriff's Office and the Office of the Public Defender. We were sued in Small Claims Court by a former criminal defendant. It was unclear from the complaint as to the actual allegations but it dealt with an allegation of causing him emotional distress. Motions to Dismiss were filed and the case was dismissed.

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

No

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

No

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

No

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

No

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

Yes  No  If no, please explain. \_\_\_\_\_

43b. Have you ever paid a tax penalty?

Yes  No  If yes, please explain what and why. \_\_\_\_\_



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

No

**HONORS AND PUBLICATIONS:**

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

1. Editor In Chief Judicature Law Journal, Volume 102 Number 1 (Spring 2018).  
<https://judicialstudies.duke.edu/editions/spring-2018/>

2. Board of Editors Judicature Law Journal, Volume 101 Number 4 (Winter 2017).  
<https://judicialstudies.duke.edu/editions/winter-2017/>

3. C. Joseph Boatwright II, Solving the Problem of Criminalizing the Mentally Ill: The Miami Model, 56 Am. Crim. L. Rev. 135 ( Winter 2019).  
<https://www.law.georgetown.edu/american-criminal-law-review/in-print/volume-56-number-1-winter-2019/solving-the-problem-of-criminalizing-the-mentally-ill-the-miami-model/>

4. Joe Boatwright, Supreme Collaboration: Fun Stories and Useful Advice for Would-Be CoAuthors, Judicature Law Journal, Volume 102 Number 3 (Winter/Fall 2018) (reviewing Bryan Garner, Nino and Me: My unusual Friendship With Antonin Scalia (2018)).

5. C. Joseph Boatwright, The Salvation Army in Moscow- A Less-Than Decisive Victory, 4 INT'L J. OF NOT-FOR-PROFIT LAW 4 (2002) at  
[http://www.icnl.org/journal/vol4iss4/cn\\_nis.htm](http://www.icnl.org/journal/vol4iss4/cn_nis.htm).

6. C. Joseph Boatwright, 1997 Freedom of Conscience and Religious Associations: Its Effect on New Religions, 1 INT'L J. OF NOT-FOR-PROFIT LAW 2 (2003).

7. C. Joseph Boatwright, Should the 501(c)(3) Political Activity Prohibition Be Revoked? 6 INT'L J. CIV. SOC. L. 3 (2008).

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

None other than those listed in 18b above.

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

A. I have lectured to local law enforcement agencies on the following subjects:

1. Civil Forfeiture Law
2. 4th , 5th , and 6th Amendment Law
3. Case Preparation and Investigation

B. I lectured on the subject of election law to the poll workers in Putnam County, Florida, during the 2004 presidential election.

C. I have lectured to QI Roberts Cambridge Program students on the legal system and constitutional law as part of the justice teaching program.

D. I presented a lecture on the Putnam County State Attorney's Office to the Palatka Kiwanas in 2012.

E. I made a speech on the benefits of Rotary during the Crescent Rotary's installation banquet.

F. I have lectured to Jenkins Middle School students on the legal system as part of the justice teaching program.

47. Do you have a Martindale-Hubbell rating? Yes  If so, what is it? \_\_\_ 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.

Member of the St. Augustine Inn of Court

Member of Scribes: The American Society of Legal Writers

Former Member Putnam County Bar

Former Member Florida Bar Tax Division

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.

President and member of Palatka Rotary Club, Palatka, FL

Board Member of the Putnam County Sheriff's Police Athletic League

Board Member Ark Youth Shelter, St. Augustine, FL

Member and Treasurer of God's Way Baptist Church, Hastings, FL

Board Member Project Lighthouse, Palatka, FL

Board Member ARC of Putnam County, FL

Finance Committee Member ARC of Putnam County, FL

Board Member Putnam County Habitat for Humanity

Seventh Judicial Circuit's Pro-Bono Sub-Committee Chairman for Putnam County

Justice Teaching Volunteer

Member Putnam County Public Safety Council

48c. List your hobbies or other vocational interests.

Golf, Fishing, Teaching, and Writing

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.

I have recently been assigned as the Seventh Judicial Circuit's Pro-Bono Sub-Committee Chairman for Putnam County. Prior to this appointment, I performed pro bono legal work for an average of about 30 hours a year from 2005 until 2012. It should be noted that during two years of this time period, I was working full-time and going to school to get my LL.M. The remaining amount of my legal career has been spent working for the State Attorney's Office. The pro bono work that I performed was accomplished on my own and was in the form of providing legal advice to non-profit organizations, representing students in expulsion hearings in front of the Putnam County School Board, and providing legal advice to indigent individuals.

**SUPPLEMENTAL INFORMATION:**

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

Florida Judicial College Phase I

Daubert and Florida Evidence, Florida's New Expert Opinion Evidence Standard

FSAE Canvassing Board Workshop

Diversity, Inclusion and the Effect of Implicit Bias

Developing Skills for Better Courts

Florida Judicial College Phase II

2013 County Judges Conference

2014 County Judges Conference

Duke Judicial Studies LL.M. Program (2016-2018)

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?

A. I have taught the following subjects at Florida Coastal School of Law:

1. Legal Research and Writing
2. Motion Writing and Oral Advocacy
3. Basic Appellate Writing and Oral Advocacy
4. Florida Forfeiture Law

5. Federal Income Tax
6. Federal Partnership Tax
7. Federal Corporate Tax
8. Criminal Procedure
9. Florida Criminal Practice and Procedure
10. Judicial Writing

B. I have taught the following subjects at St. Johns River State College:

1. Business Law I
2. Business Law II

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

Prior to practicing law, from 1994-1999, I served as the principal/administrator for Open Bible Baptist Academy, which was located in Putnam County, Florida. I served as senior educator, teacher, coach, and administrator/manager of budgets, facilities, and all ancillary priorities and requirements of a self-sustaining private school. I supervised and evaluated teachers and staff. I counseled students and parents. Finally, I attained accreditation for the school all six years of employment.

This prior experience has been invaluable to me as a judge. I learned how to deal with sensitive issues concerning children and their parents. This experience taught me to be consistent and fair in my dealings with others. I learned the importance of being respectful to all of those involved in the education process including those in authority over me. It is these principles that I continue to use on a daily basis as a judge and in my dealings with individuals in the community.

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

The combination of my legal and work experience, education, and writing skills are the contributions that I would bring to this position. As a trial judge and as a practicing attorney, I have been involved in over 100 jury and non-jury trials combined. As a trial judge, I am in a unique position to deal with issues daily that become the foundation of the appeals process. In addition, as an attorney I have been involved in numerous complicated trials that raised appellate issues. By being involved as both an attorney and judge in such trials, I am now better able to understand and recognize issues that become the basis of appeals. Finally, in my assignments to the 4<sup>th</sup> and 5<sup>th</sup> District Courts of Appeal I have been able to gain invaluable experience into the appellate court process through preparing and participating in oral arguments, working with other judges and clerks, and participating in the opinion writing process.

I was fortunate to work for a small AV rated law office in Putnam County, FL. This gave me the unique opportunity to handle all types of cases in most areas of law. This unique

experience has been invaluable as a trial court judge. More importantly, on my recent assignment to the 4<sup>th</sup> and 5<sup>th</sup> District Courts of Appeal, the assigned cases all raised issues that I confronted in either private practice or as an assistant state attorney.

Being able to research and write well are necessary requirements for an appellate judge. I have extensive experience in the field of legal research and writing. I have taught numerous classes in legal research and writing for over 10 years at the law school level. These classes have ranged from basic legal writing to more advanced forms of appellate advocacy and judicial writing. In addition, I have numerous published academic articles. Also, I have been the editor in chief of one of the most comprehensive and prestigious law journals aimed at issues affecting judges.

Successful performance on the appellate court requires critical thinking and problem solving. My academic background shows that I have the aptitude for critical legal thinking and problem solving. I graduated second in my graduating class from the Catholic University, Columbus School of Law. I have an LL.M. in Taxation from the University of Florida, where I excelled academically in one of the toughest law related subject areas. Finally, I received an LL.M. in Judicial Studies from Duke Law School where I had the privilege of studying law with 25 judges from around the country. In addition, I had some of the greatest professors in the country including United States Supreme Court Justice Samuel Alito, legal writing expert Bryan Garner, former United States Supreme Court clerks, and many nationally recognized experts in the academic legal field.

Finally, I have always strived to be professional as both an attorney and as a judge, and treat people with respect. As a judge, I strive to be fair and impartial and follow the law.

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

1. Applied for the 5<sup>th</sup> District Court of Appeal, December 2018
1. Applied for the 5<sup>th</sup> District Court of Appeal, May 2018
2. Applied for 7<sup>th</sup> Judicial Circuit Court, May 2010
3. Applied for the position of a United States Magistrate Judge for the United States District Court Middle District of Florida in 2016 and 2017.
4. Applied for the position of a United States Magistrate Judge for the United States District Court Eastern District of California in 2017.

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

I have spent much time in trying to build a good resume in my professional life, but the most important things to me are my faith in God, my family, and my community. My wife and three children take up most of my time outside of work. However, I am actively involved in my church and my community. I have spent numerous hours going into local schools teaching about the judicial system and have held many courtroom tours in which

I have explained the role of court system to school-aged children. I am actively involved as a board member of local charities that deal with developmentally and intellectually disabled adults and children. In addition, I am a board member of a non-profit organization that provides a shelter for runaway children and problem youth and have been actively involved in my Rotary club for a number of years. Finally, I am a member on our county's public safety council and in that role I have been active in dealing with issues of jail overcrowding and the treatment of the mentally ill within the court 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. Judge Spencer Levine

Florida 4<sup>th</sup> District Court of Appeals Judge

110 South Tamarind Ave.

West Palm Beach, FL 33401

Office (561) 242-2000

Cell (954) 559-4356

2. Melissa Miller

Senior Vice President/General Counsel St. Johns River State College

5001 St Johns Ave.

Palatka, FL 32177

Office (386) 312-4105

Cell (352) 214-5859

melissamiller@sjrstate.edu

3. Judge Charles J. Tinlin

St. Johns County Court Judge

4010 Lewis Speedway

St. Augustine, FL 32084

(904) 827-5611

(904) 808-6601

4. RJ Larizza

State Attorney 7<sup>th</sup> Judicial Circuit  
251 N Ridgewood Avenue  
Daytona Beach, FL 32114  
Office (386) 239-7710  
Cell (386) 235-5591

5. Major Jeremiah Blocker

St. Johns County Commissioner  
Air Force JAG  
101 Marketside Ave. Suite 404-195  
Ponte Vedra, FL 32081  
Cell (352) 362-9317

6. Judge Carlos E. Mendoza

United States District Court Judge, Middle District of Florida  
401 West Central Boulevard  
Orlando, FL 32801  
(407) 835-4310  
carlos\_mendoza@flmd.uscourts.gov

7. Chief Judge Raul Zambrano

State of Florida, 7th Judicial Circuit  
101 North Alabama Ave.  
Deland, FL 32724  
Office (386) 943-7060  
Cell (386) 852-3268  
rzambrano@circuit7.org

8. Frank Talbot

Assistant United States Attorney  
300 North Hogan Street, Suite 700  
Jacksonville, FL 32202  
(904) 301-6184  
Frank.m.talbot@usdoj.gov

9. Homer "Gator" Deloach

Putnam County Sheriff  
130 Orié Griffin Blvd.  
Palatka, FL 32177  
Cell (386) 937-7907

10. Hunter Conrad, Esquire

St. Johns County Clerk of Court  
410 Lewis Speedway, St. Augustine, FL 32084  
Office (904) 819-3600  
Cell (904) 687-3465



**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 15th day of August, 2019.

C. Joseph Boatwright II

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.*

## 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: 08/15/2019

JNC Submitting To: 5<sup>th</sup> District Court of Appeal

Name (please print): C. Joseph Boatwright II (Joe Boatwright)

Current Occupation: Putnam County Court Judge, Seventh Judicial Circuit

Telephone Number: (386) 329-0269 Attorney No.: 626570

Gender (check one):  Male  Female

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

County of Residence: Putnam County, FL

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.

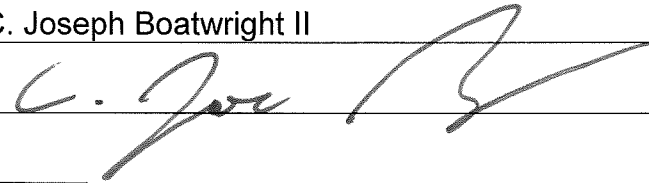
CONSUMER'S AUTHORIZATION FOR FDLE  
TO OBTAIN CONSUMER REPORT(S)

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:

C. Joseph Boatwright II

Signature of Applicant:



Date: 08/15/2019



STATE OF FLORIDA  
SEVENTH JUDICIAL CIRCUIT

County Court, Putnam County  
Putnam County Courthouse  
410 St. Johns Avenue, Suite 310  
Post Office Box 758  
Palatka, Florida 32178

Joe Boatwright  
County Court Judge

Phone: (386) 329-0269  
Fax: (386) 329-1229

August 15, 2019

To Whom It May Concern:

Please be advised that I have filed the original Full and Public Disclosure of Financial Interests (Form 6) for 2018 with the Florida Commission on Ethics and a copy with the Florida Judicial Qualifications Committee. I am providing you with a copy of the Full and Public Disclosure of Financial Interests (Form 6) that I had previously filed with the Florida Commission on Ethics.

Sincerely,

  
Joe Boatwright

Please print or type your name, mailing address, agency name, and position below:

FOR OFFICE USE ONLY:

LAST NAME — FIRST NAME — MIDDLE NAME:  
Boatwright II, C. Joseph

MAILING ADDRESS:  
P.O. Box 758

CITY: Palatka                      ZIP: 32178                      COUNTY: Putnam

NAME OF AGENCY:  
State of Florida 7th Judicial Circuit

NAME OF OFFICE OR POSITION HELD OR SOUGHT:  
Putnam County Court Judge

CHECK IF THIS IS A FILING BY A CANDIDATE

**PART A -- NET WORTH**

Please enter the value of your net worth as of December 31, 2018 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, 20 18 was \$ 604,780.79.

**PART B -- ASSETS**

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

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

The aggregate value of my household goods and personal effects (described above) is \$ Est. \$75,000.00

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

DESCRIPTION OF ASSET (specific description is required - see instructions p.4)

VALUE OF ASSET

See attached Exhibit 1

**PART C -- LIABILITIES**

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

See attached Exhibit 1

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

None

**PART D -- INCOME**

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2018 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

I elect to file a copy of my 2018 federal income tax return and all W2's, schedules, and attachments.  
 [If you check this box and attach a copy of your 2018 tax return, you need not complete the remainder of Part D.]

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

| NAME OF SOURCE OF INCOME EXCEEDING \$1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|--|-----------------------------|--------|
| See attached Exhibit 1                     |                             |        |

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

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|-------------------------|---|-------------------|---------------------------------------|
| None                    |   |                   |                                       |

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

|   | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---------------------|---------------------|---------------------|
| NAME OF BUSINESS ENTITY                       | None                |                     |                     |
| 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               |                     |                     |                     |

**PART F - TRAINING**

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

I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

**OATH**

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.

*[Signature]*  
 SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

Trinisha Shawnta Austin  
 NOTARY PUBLIC  
 STATE OF FLORIDA  
 Comm# GG307374  
 Expires 3/28/2022

STATE OF FLORIDA  
 COUNTY OF Putnam  
 I am sworn to (or affirmed) and subscribed before me this 22nd day of May, 2019 by Joe Boatwright  
Trinisha S Austin  
 (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 \_\_\_\_\_

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

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

\_\_\_\_\_  
 Signature Date

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

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

EXHIBIT 1

PART B- ASSETS

**Assets Over \$1,000.00**

|   | <b>Value</b> |
|---|--------------|
| 1. Capital City Money Market                      | \$107,061.95 |
| 2. Capital City Checking Account                  | \$20,837.64  |
| 3. Property [REDACTED]                            | \$151,890.00 |
| 4. Property [REDACTED]                            | \$52,590.00  |
| 5. Property [REDACTED]                            | \$44,410.00  |
| 6. Property [REDACTED]                            | \$14,060.00  |
| 7. Property [REDACTED]                            | \$64,190.00  |
| 8. State of Florida Retirement Investment Account | \$218,521.51 |

PART C-LIABILITIES

**Creditor**

|   | <b>Amount of Liability</b> |
|---|----------------------------|
| 1. Wells Fargo, P.O. Box 14411, Des Moines IA | \$143,780.31               |

PART D-INCOME

**Primary Source of Income**

|  | <b>Amount</b> |
|--|---------------|
| 1. State of Florida<br>200 E. Gaines Street<br>Tallahassee, Fl 32399   | \$151,821.96  |
| 2. St. Johns River State College<br>5001 St. Johns Ave.<br>Palatka, Fl | \$6,000.00    |
| 3. Rental Income<br>[REDACTED]   | \$7,800.00    |
| 4. Rental Income<br>[REDACTED]   | \$7,200.00    |
| 5. Rental Income<br>[REDACTED]   | \$7,200.00    |

**Form 6A. Disclosure of Gifts, Expense Reimbursements or Payments, and Waivers  
of Fees and Charges**

All judicial officers must file with the Florida Commission on Ethics a list of all reportable gifts accepted, and reimbursements or direct payments of expenses, and waivers of fees or charges accepted from sources other than the state or a judicial branch entity as defined in Florida Rule of Judicial Administration 2.420(b)(2), during the preceding calendar year as provided in Canons 5D(5)(a) and 5D(5)(h), Canon 6A(3), and Canon 6B(2) of the Code of Judicial Conduct, by date received, description (including dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid, or waived), source's name, and amount for gifts only.

Name: C. Joseph Boatwright II Work Telephone: (386) 329-0269

Work Address: P.O. Box 758, Palatka, FL 32178 Judicial Office Held: COUNTY COURT JUDGE

1. Please identify all reportable gifts, bequests, favors, or loans you received during the preceding calendar year, as required by Canons 5D(5)(a), 5D(5)(h), and 6B(2) of the Code of Judicial Conduct.

| DATE | DESCRIPTION | SOURCE | AMOUNT |
|------|-------------|--------|--------|
|      | None        |        | \$     |
|      |             |        | \$     |
|      |             |        | \$     |
|      |             |        | \$     |

Check here if continued on separate sheet

2. Please identify all reportable reimbursements or direct payments of expenses, and waivers of fees or charges you received during the preceding calendar year, as required by Canons 6A(3) and 6B(2) of the Code of Judicial Conduct.

| DATE | DESCRIPTION<br>(Include dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid or waived) | SOURCE |
|------|---|--------|
|      | None  |        |
|      |   |        |
|      |   |        |
|      |   |        |

Check here if continued on separate sheet

**CONTINUE TO PAGE 2 FOR OATH**



OATH

State of Florida

County of Putnam

I, C. Joseph Boatwright, the public official filing this disclosure statement, being first duly sworn, do depose on oath and say that the facts set forth in the above statement are true, correct, and complete to the best of my knowledge and belief.

[Signature]  
(Signature of Reporting Official)

[Signature]  
(Signature of Officer Authorized to Administer Oaths)

My Commission expires 3/28/2023

Sworn to and subscribed before me this

22<sup>nd</sup> day of May, 2019



Trinisha Shawnta Austin  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG307374  
Expires 3/28/2023

**Form 6B. Report of Business Interests**

**Instructions:** List the names of any corporations or business entities, not otherwise identified on Form 6, in which you had a financial interest as of December 31 of the preceding year. If no business interests, or the interests are already identified on Form 6, then indicate "None," or "N/A." Attach additional pages as necessary. This form is filed only with the JQC.

Name of Judge: C. Joseph Boatwright II Telephone: 386-329-0269

Address: P.O. Box 758 Palatka, FL 32177 Position: County Court Judge

Name of Business Entity

Address of Business Entity

None

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

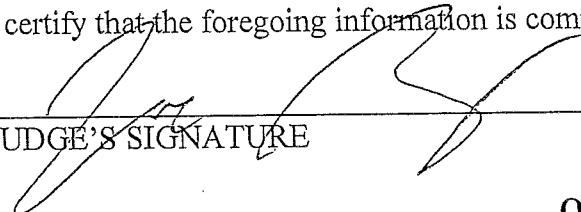
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I certify that the foregoing information is complete, true, and correct.

  
\_\_\_\_\_  
JUDGE'S SIGNATURE

OATH

State of Florida,

County of Putnam.

Sworn to (or affirmed) and subscribed before me, this 22<sup>nd</sup> day of May,

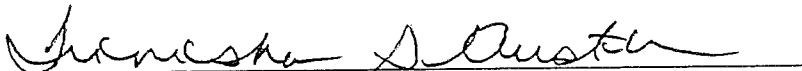
20 19,

(NOTARY SEAL)

by Joe Boatwright (Name of Judge).

Personally Known , or Produced Identification \_\_\_\_\_.

Identification Produced: \_\_\_\_\_.

  
\_\_\_\_\_  
(Signature of Notary or official authorized to administer oaths)



Trinisha Shawnta Austin  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG307374  
Expires 3/28/2023

For the year Jan. 1-Dec. 31, 2016, or other tax year beginning \_\_\_\_\_, 2016, ending \_\_\_\_\_, 20

Your first name and initial: **CARLESS J.** Last name: **BOATWRIGHT** Your social security number: [REDACTED]

If a joint return, spouse's first name and initial: [REDACTED] Last name: [REDACTED] Spouse's social security number: [REDACTED]

Home address (number and street). If you have a P.O. box, see instructions. [REDACTED] Apt. no. [REDACTED]

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below. [REDACTED]

Foreign country name: [REDACTED] Foreign province/state/country: [REDACTED] Foreign postal code: [REDACTED]

Presidential Election Campaign: Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.  You  Spouse

**Filing Status**

1  Single

2  Married filing jointly (even if only one had income)

3  Married filing separately. Enter spouse's SSN above and full name here. ▶

4  Head of household (with qualifying person). If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5  Qualifying widow(er) with dependent child

Check only one box.

**Exemptions**

6a  Yourself. If someone can claim you as a dependent, do not check box 6a

6b  Spouse

| (1) First name | Last name  | (2) Dependent's social security number | (3) Dependent's relationship to you | (4) If child under age 17 qualifying for child tax credit |
|----------------|------------|--|-------------------------------------|---|
| [REDACTED]     | [REDACTED] | [REDACTED]                             | DAUGHTER                            | X   |
| [REDACTED]     | [REDACTED] | [REDACTED]                             | DAUGHTER                            | X   |
| [REDACTED]     | [REDACTED] | [REDACTED]                             | SON                                 | X   |

Boxes checked on 6a and 6b: **2**

No. of children on 6c who:

- lived with you: **3**
- did not live with you due to divorce or separation (see instructions):

Dependents on 6c not entered above: **5**

Add numbers on lines above: **5**

If more than four dependents, see instructions and check here

**Income**

|     |   |     |          |
|-----|---|-----|----------|
| 7   | Wages, salaries, tips, etc. Attach Form(s) W-2  | 7   | 147,119. |
| 8a  | Taxable interest. Attach Schedule B if required   | 8a  | 61.      |
| 8b  | Tax-exempt interest. Do not include on line 8a  | 8b  |          |
| 9a  | Ordinary dividends. Attach Schedule B if required   | 9a  |          |
| 9b  | Qualified dividends   | 9b  |          |
| 10  | Taxable refunds, credits, or offsets of state and local income taxes  | 10  |          |
| 11  | Alimony received  | 11  |          |
| 12  | Business income or (loss). Attach Schedule C or C-EZ  | 12  |          |
| 13  | Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/> | 13  |          |
| 14  | Other gains or (losses). Attach Form 4797   | 14  |          |
| 15a | IRA distributions   | 15a |          |
| 15b | Taxable amount  | 15b |          |
| 16a | Pensions and annuities  | 16a |          |
| 16b | Taxable amount  | 16b |          |
| 17  | Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E                 | 17  | 4,352.   |
| 18  | Farm income or (loss). Attach Schedule F  | 18  |          |
| 19  | Unemployment compensation   | 19  |          |
| 20a | Social security benefits  | 20a |          |
| 20b | Taxable amount  | 20b |          |
| 21  | Other income. List type and amount  | 21  |          |
| 22  | Combine the amounts in the far right column for lines 7 through 21. This is your total income               | 22  | 151,532. |

**Adjusted Gross Income**

|     |  |     |          |
|-----|--|-----|----------|
| 23  | Educator expenses  | 23  |          |
| 24  | Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ | 24  |          |
| 25  | Health savings account deduction. Attach Form 8889   | 25  |          |
| 26  | Moving expenses. Attach Form 3903  | 26  |          |
| 27  | Deductible part of self-employment tax. Attach Schedule SE   | 27  |          |
| 28  | Self-employed SEP, SIMPLE, and qualified plans   | 28  |          |
| 29  | Self-employed health insurance deduction   | 29  |          |
| 30  | Penalty on early withdrawal of savings   | 30  |          |
| 31a | Alimony paid   | 31a |          |
| 31b | Recipient's SSN  | 31b |          |
| 32  | IRA deduction  | 32  |          |
| 33  | Student loan interest deduction  | 33  |          |
| 34  | Tuition and fees. Attach Form 8917   | 34  |          |
| 35  | Domestic production activities deduction. Attach Form 8903   | 35  |          |
| 36  | Add lines 23 through 35  | 36  |          |
| 37  | Subtract line 36 from line 22. This is your adjusted gross income  | 37  | 151,532. |

Tax and Credits

38 Amount from line 37 (adjusted gross income) ..... 38 151,532.

39a Check  You were born before January 2, 1952,  Blind.  Spouse was born before January 2, 1952,  Blind. Total boxes checked ... 39a  if:   39b

b If your spouse itemizes on a separate return or you were a dual-status alien, check here

40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) ..... 40 15,516.

41 Subtract line 40 from line 38 ..... 41 136,016.

42 Exemptions. If line 38 is \$155,650 or less, multiply \$4,050 by the number on line 6d. Otherwise, see inst. .... 42 20,250.

43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- ..... 43 115,766.

44 Tax. Check if any from: a  Form(s) 8814 b  Form 4972 c  ..... 44 20,484.

45 Alternative minimum tax. Attach Form 6251 ..... 45

46 Excess advance premium tax credit repayment. Attach Form 8962 ..... 46

47 Add lines 44, 45, and 46 ..... 47 20,484.

48 Foreign tax credit. Attach Form 1116 if required ..... 48

49 Credit for child and dependent care expenses. Attach Form 2441 ..... 49

50 Education credits from Form 8863, line 19 ..... 50

51 Retirement savings contributions credit. Attach Form 8880 ..... 51

52 Child tax credit. Attach Schedule 8812, if required ..... 52 900.

53 Residential energy credits. Attach Form 5695 ..... 53

54 Other credits from Form: a  3800 b  8801 c  ..... 54

55 Add lines 48 through 54. These are your total credits ..... 55 900.

56 Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ..... 56 19,584.

Other Taxes

57 Self-employment tax. Attach Schedule SE ..... 57

58 Unreported social security and Medicare tax from Form: a  4137 b  8919 ..... 58

59 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required ..... 59

60a Household employment taxes from Schedule H ..... 60a

b First-time homebuyer credit repayment. Attach Form 5405 if required ..... 60b

61 Health care: Individual responsibility (see instructions) Full-year coverage  ..... 61

62 Taxes from: a  Form 8959 b  Form 8960 c  Inst.; enter code(s) ..... 62

63 Add lines 56 through 62. This is your total tax ..... 63 19,584.

Payments

64 Federal income tax withheld from Forms W-2 and 1099 ..... 64 21,138.

65 2016 estimated tax payments and amount applied from 2015 return ..... 65

66a Earned income credit (EIC) ..... 66a

b Nontaxable combat pay election ..... 66b

67 Additional child tax credit. Attach Schedule 8812 ..... 67

68 American opportunity credit from Form 8863, line 8 ..... 68

69 Net premium tax credit. Attach Form 8962 ..... 69

70 Amount paid with request for extension to file ..... 70

71 Excess social security and tier 1 RRTA tax withheld STMT 1 ..... 71 496.

72 Credit for federal tax on fuels. Attach Form 4136 ..... 72

73 Credits from Form: a  2439 b  Reserved c  8885 d  ..... 73

74 Add lines 64, 65, 66a, and 67 through 73. These are your total payments ..... 74 21,634.

Refund

75 If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid ..... 75 2,050.

76a Amount of line 75 you want refunded to you. If Form 8888 is attached, check here  ..... 76a 2,050.

Direct deposit? See instructions. b Routing number [REDACTED] c Type:  Checking  Savings d Account number [REDACTED] ..... 77

77 Amount of line 75 you want applied to your 2017 estimated tax ..... 77

Amount You Owe

78 Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions ..... 78

79 Estimated tax penalty (see instructions) ..... 79

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)?  Yes. Complete below.  No

Designee's name **JOHN D. ROWE, CPA** Phone no. **386-325-4561** Personal identification number (PIN) **99553**

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature \_\_\_\_\_ Date \_\_\_\_\_ Your occupation \_\_\_\_\_ Daytime phone number \_\_\_\_\_

Spouse's signature. If a joint return, both must sign. \_\_\_\_\_ Date \_\_\_\_\_ Spouse's occupation \_\_\_\_\_ If the IRS sent you an Identity Protection PIN, enter it here \_\_\_\_\_

Print/Type preparer's name Preparer's signature Date Check  if self-employed PTIN

**Paid Preparer JOHN D. ROWE, CPA JOHN D. ROWE, CPA 02/04/17 P00099553**

**Use Only Firm's name CARR, RIGGS & INGRAM, LLC Firm's EIN 72 1396621**

**906 S STATE RD 19 Phone no. 386-325-4561**

**610002 11-30-16 Firm's address PALATKA, FL 32177**

**Child Tax Credit Worksheet** (keep for your records)

Name(s): First **CARLESS J. & [REDACTED]** Last **[REDACTED]** Your SSN **[REDACTED]**

**Part 1**

1. Number of qualifying children: 3 X \$1,000. Enter the result. 1 3,000.
2. Enter the amount from Form 1040, line 38, Form 1040A, line 22, or Form 1040NR, line 37. 2 151,532.
3. **1040 filers:** Enter the total of any-
  - Exclusion of income from Puerto Rico, and
  - Amounts from Form 2555, lines 45 and 50; Form 2555-EZ, line 18; and Form 4563, line 15.
 } 3 0.  
**1040A and 1040NR filers:** Enter -0-.
4. Add lines 2 and 3. Enter the total. 4 151,532.
5. Enter the amount shown below for your filing status.
  - Married filing jointly - \$110,000
  - Single, head of household, or qualifying widow(er) - \$75,000
  - Married filing separately - \$55,000
 } 5 110,000.
6. Is the amount on line 4 more than the amount on line 5?
  - No. Leave line 6 blank. Enter -0- on line 7.
  - Yes. Subtract line 5 from line 4. 6 42,000.  
 If the result is not a multiple of \$1,000, increase it to the next multiple of \$1,000 (for example, increase \$425 to \$1,000, increase \$1,025 to \$2,000, etc).
7. Multiply the amount on line 6 by 5% (.05). Enter the result. 7 2,100.
8. Is the amount on line 1 more than the amount on line 7?
  - No. **STOP**  
 You cannot take the child tax credit on Form 1040, line 52, Form 1040A, line 35, or Form 1040NR, line 49. You also cannot take the additional child tax credit.
  - Yes. Subtract line 7 from line 1. Enter the result. 8 900.

**Part 2**

9. Enter the amount from Form 1040, line 47, Form 1040A, line 30, or Form 1040NR, line 45. 9 20,484.
10. **1040 filers:** Enter the total of the amounts from lines 48 through 51.\*  
**1040A filers:** Enter the total of the amounts from lines 31 through 34.  
**1040NR filers:** Enter the total of the amounts from lines 46 through 48.\* } 10 \_\_\_\_\_
11. Are you claiming any of the following credits?
  - Residential energy efficient property credit, Form 5695, Part I.
  - Mortgage interest credit, Form 8396
  - Qualified adoption expenses, Form 8839
  - District of Columbia first-time homebuyer credit, Form 8859
 } 11 \_\_\_\_\_  
 No. Enter the amount from line 10.  
 Yes. If you are filing Form 2555 or 2555-EZ, enter the amount from line 10. Otherwise, complete the Line 11 Worksheet to figure the amount to enter here.
12. Subtract line 11 from line 9. Enter the result. 12 20,484.
13. Is the amount on line 8 of this worksheet more than the amount on line 12?
  - No. Enter the amount from line 8. } **This is your**
  - Yes. Enter the amount from line 12. } **child tax credit.** 13 900.

\* Also include amounts from:  
 Form 5695, line 30  
 Form 8910, line 15  
 Form 8936, line 23  
 Schedule R, line 22

**SCHEDULE A  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on Form 1040

**Itemized Deductions**

Information about Schedule A and its separate instructions is at [www.irs.gov/schedulea](http://www.irs.gov/schedulea).  
Attach to Form 1040.

OMB No. 1545-0074

**2016**  
Attachment  
Sequence No. 07

Your social security number

CARLESS J. & [REDACTED]

|  |  |   |    |    |         |
|--|--|---|----|----|---------|
| <b>Medical and Dental Expenses</b>                       |  | <b>Caution:</b> Do not include expenses reimbursed or paid by others.   |    |    |         |
| 1  | Medical and dental expenses (see instructions)   |   |    | 1  |         |
| 2  | Enter amount from Form 1040, line 38   |   | 2  |    |         |
| 3  | Multiply line 2 by 10% (0.10). But if either you or your spouse was born before January 2, 1952, multiply line 2 by 7.5% (0.075) instead   |   |    | 3  |         |
| 4  | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-  |   |    |    | 4       |
| <b>Taxes You Paid</b>                                    |  | <b>5 State and local (check only one box):</b>  |    | 5  | 1,622.  |
|  | a <input type="checkbox"/> Income taxes, or  |   |    |    |         |
|  | b <input checked="" type="checkbox"/> General sales taxes  |   |    |    |         |
| 6  | Real estate taxes (see instructions)   | SEE STATEMENT 3   |    | 6  | 1,790.  |
| 7  | Personal property taxes  |   |    | 7  |         |
| 8  | Other taxes. List type and amount  |   |    | 8  |         |
| 9  | Add lines 5 through 8  |   |    | 9  | 3,412.  |
| <b>Interest You Paid</b>                                 |  | <b>10 Home mortgage interest and points reported to you on Form 1098 STMT 2</b>   |    | 10 | 9,149.  |
| 11   | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address |   |    | 11 |         |
| 12   | Points not reported to you on Form 1098. See instructions for special rules  |   |    | 12 |         |
| 13   | Mortgage insurance premiums (see instructions)   |   |    | 13 |         |
| 14   | Investment interest. Attach Form 4952 if required. (See instructions.)   |   |    | 14 |         |
| 15   | Add lines 10 through 14  |   |    | 15 | 9,149.  |
| <b>Gifts to Charity</b>                                  |  | <b>16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions</b>   |    | 16 | 2,105.  |
|  | If you made a gift and got a benefit for it, see instructions.   | <b>17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500</b>                      |    | 17 | 850.    |
| 18   | Carryover from prior year  |   |    | 18 |         |
| 19   | Add lines 16 through 18  |   |    | 19 | 2,955.  |
| <b>Casualty and Theft Losses</b>                         |  | <b>20 Casualty or theft loss(es). Attach Form 4684. (See instructions.)</b>   |    | 20 |         |
| <b>Job Expenses and Certain Miscellaneous Deductions</b> |  | <b>21 Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.)</b> |    | 21 |         |
| 22   | Tax preparation fees   |   |    | 22 |         |
| 23   | Other expenses - investment, safe deposit box, etc. List type and amount   |   |    | 23 |         |
| 24   | Add lines 21 through 23  |   |    | 24 |         |
| 25   | Enter amount from Form 1040, line 38   |   | 25 |    |         |
| 26   | Multiply line 25 by 2% (0.02)  |   |    | 26 |         |
| 27   | Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-  |   |    | 27 |         |
| <b>Other Miscellaneous Deductions</b>                    |  | <b>28 Other - from list in instructions. List type and amount</b>   |    | 28 |         |
| <b>Total Itemized Deductions</b>                         |  | <b>29 Is Form 1040, line 38, over \$155,650?</b>  |    | 29 | 15,516. |
|  | <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40.    |   |    |    |         |
|  | <input type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.                                    |   |    |    |         |
| 30   | If you elect to itemize deductions even though they are less than your standard deduction, check here  |   |    |    |         |

# Interest and Ordinary Dividends

▶ Attach to Form 1040A or 1040.

▶ Information about Schedule B and its instructions is at [www.irs.gov/scheduleb](http://www.irs.gov/scheduleb).

Your social security number

CARLESS J. & [REDACTED]

**Part I**  
**Interest**

- 1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see instructions and list this interest first. Also, show that buyer's social security number and address ▶
- CAPITAL CITY BANK

| Amount |     |
|--------|-----|
| 1      | 61. |
| 2      | 61. |
| 3      |     |
| 4      | 61. |

**Note:** If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

- 2 Add the amounts on line 1
- 3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815
- 4 Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a ▶

**Note:** If line 4 is over \$1,500, you must complete Part III.

**Part II**  
**Ordinary Dividends**

- 5 List name of payer ▶

| Amount |  |
|--------|--|
| 5      |  |
| 6      |  |

**Note:** If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

- 6 Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a ▶

**Note:** If line 6 is over \$1,500, you must complete Part III.

**Part III**  
**Foreign Accounts and Trusts**

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

- 7a At any time during 2016, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions
- If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements
- b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶
- 8 During 2016, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions

| Yes | No |
|-----|----|
|     | X  |
|     |    |
|     |    |
|     | X  |

# Interest and Dividend Summary

FEIN/SSN: 589-54-8612

Name: CARLESS J. & TAMMY JO BOATWRIGHT

| Payer             | Interest   | Interest on U.S. Savings Bonds | Tax-Exempt Interest | Private Activity Interest | Original Issue Discount (OID) | Ordinary Dividends | Qualified Dividends | Capital Gain Distributions | Federal Income Tax Withheld | State Tax Withheld | Foreign Tax Paid |
|-------------------|------------|--------------------------------|---------------------|---------------------------|-------------------------------|--------------------|---------------------|----------------------------|-----------------------------|--------------------|------------------|
| CAPITAL CITY BANK | 61.        |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
| <b>TOTALS</b>     | <b>61.</b> |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |



**SCHEDULE E**

**(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ Information about Schedule E and its separate instructions is at [www.irs.gov/schedulee](http://www.irs.gov/schedulee).

OMB No. 1545-0074

**2016**

Attachment  
Sequence No. **13**

Name(s) shown on return

Your social security number

CARLESS J. & [REDACTED]

**Part I Income or Loss From Rental Real Estate and Royalties** Note: If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

**A** Did you make any payments in 2016 that would require you to file Form(s) 1099? (see instructions)  Yes  No  
**B** If "Yes," did you or will you file required Forms 1099?  Yes  No

**1a** Physical address of each property (street, city, state, ZIP code)  
**A** [REDACTED]  
**B** [REDACTED]  
**C** [REDACTED]

| 1b | Type of Property (from list below) | 2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions. | Fair Rental Days | Personal Use Days | QJV                      |
|----|------------------------------------|--|------------------|-------------------|--------------------------|
| A  | 1                                  |  | 305              |                   | <input type="checkbox"/> |
| B  | 1                                  |  | 366              |                   | <input type="checkbox"/> |
| C  |                                    |  |                  |                   | <input type="checkbox"/> |

**Type of Property:**

- 1 Single Family Residence
- 2 Multi-Family Residence
- 3 Vacation/Short-Term Rental
- 4 Commercial
- 5 Land
- 6 Royalties
- 7 Self-Rental
- 8 Other (describe)

| Income:   | Properties: | A      | B       | C      |
|---|-------------|--------|---------|--------|
| 3 Rents received  | 3           | 5,500. | 7,200.  |        |
| 4 Royalties received  | 4           |        |         |        |
| <b>Expenses:</b>  |             |        |         |        |
| 5 Advertising   | 5           |        |         |        |
| 6 Auto and travel (see instructions)  | 6           |        |         |        |
| 7 Cleaning and maintenance  | 7           |        |         |        |
| 8 Commissions   | 8           |        |         |        |
| 9 Insurance   | 9           | 715.   | 806.    |        |
| 10 Legal and other professional fees  | 10          |        |         |        |
| 11 Management fees  | 11          |        |         |        |
| 12 Mortgage interest paid to banks, etc. (see instructions)   | 12          |        |         |        |
| 13 Other interest   | 13          |        |         |        |
| 14 Repairs  | 14          | 305.   |         |        |
| 15 Supplies   | 15          | 121.   |         |        |
| 16 Taxes  | 16          | 1,092. | 947.    |        |
| 17 Utilities  | 17          | 31.    |         |        |
| 18 Depreciation expense or depletion  | 18          | 2,862. | 1,469.  |        |
| 19 Other (list) ▶   | 19          |        |         |        |
| 20 Total expenses. Add lines 5 through 19   | 20          | 5,126. | 3,222.  |        |
| 21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198  | 21          | 374.   | 3,978.  |        |
| 22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)   | 22          |        |         |        |
| 23a Total of all amounts reported on line 3 for all rental properties   | 23a         |        | 12,700. |        |
| b Total of all amounts reported on line 4 for all royalty properties  | 23b         |        |         |        |
| c Total of all amounts reported on line 12 for all properties   | 23c         |        |         |        |
| d Total of all amounts reported on line 18 for all properties   | 23d         |        | 4,331.  |        |
| e Total of all amounts reported on line 20 for all properties   | 23e         |        | 8,348.  |        |
| 24 <b>Income.</b> Add positive amounts shown on line 21. Do not include any losses  | 24          |        |         | 4,352. |
| 25 <b>Losses.</b> Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here   | 25          |        |         |        |
| 26 <b>Total rental real estate and royalty income or (loss).</b> Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 | 26          |        |         | 4,352. |

LHA For Paperwork Reduction Act Notice, see the separate instructions.

Schedule E (Form 1040) 2016

2016 DEPRECIATION AND AMORTIZATION REPORT

SCHEDULE E-1

RENTAL PROPERTY -

| Asset No. | Description              | Date Acquired | Method | Life  | C o n v | Line No. | Unadjusted Cost Or Basis | Bus % Excl | Section 179 Expense | * Reduction In Basis | Basis For Depreciation | Beginning Accumulated Depreciation | Current Sec 179 Expense | Current Year Deduction | Ending Accumulated Depreciation |
|-----------|--------------------------|---------------|--------|-------|---------|----------|--------------------------|------------|---------------------|----------------------|------------------------|------------------------------------|-------------------------|------------------------|---------------------------------|
| 1         | RENTAL HOUSE             | 06/01/05      | SL     | 27.50 |         | MM17     | 50,000.                  |            |                     |                      | 50,000.                | 19,165.                            |                         | 1,818.                 | 20,983.                         |
| 2         | LAND                     | 06/01/05      | L      |       |         | HY       | 7,000.                   |            |                     |                      | 7,000.                 | 0.                                 |                         | 0.                     | 0.                              |
| 3         | AIR CONDITIONER          | 09/15/05      | 150DB  | 15.00 |         | MQ17     | 4,800.                   |            |                     |                      | 4,800.                 | 3,489.                             |                         | 283.                   | 3,772.                          |
| 4         | WELL & IMPROVEMENTS      | 10/21/05      | 150DB  | 15.00 |         | MQ17     | 6,689.                   |            |                     |                      | 6,689.                 | 4,763.                             |                         | 395.                   | 5,158.                          |
| 5         | FLOORING                 | 10/15/05      | 200DB  | 5.00  |         | MQ17     | 2,201.                   |            |                     |                      | 2,201.                 | 2,201.                             |                         | 0.                     | 2,201.                          |
| 6         | DRAIN FIELD              | 01/26/06      | 150DB  | 15.00 |         | HY17     | 3,625.                   |            | 275.                |                      | 3,625.                 | 2,448.                             |                         | 214.                   | 2,662.                          |
| 7         | BATHROOM RENOVATIONS     | 06/01/06      | SL     | 27.50 |         | MM17     | 1,000.                   |            |                     |                      | 1,000.                 | 345.                               |                         | 36.                    | 381.                            |
| 8         | HOT WATER HEATER         | 12/02/08      | 200DB  | 7.00  |         | MQ17     | 550.                     |            | 275.                |                      | 275.                   | 275.                               |                         | 0.                     | 275.                            |
| 9         | FLOORING                 | 09/01/08      | 200DB  | 7.00  |         | MQ17     | 631.                     |            | 316.                |                      | 315.                   | 315.                               |                         | 0.                     | 315.                            |
| 20        | ROOF                     | 03/17/15      | SL     | 27.50 |         | MM17     | 3,192.                   |            |                     |                      | 3,192.                 | 92.                                |                         | 116.                   | 208.                            |
|           | TOTAL SCH E DEPRECIATION |               |        |       |         |          | 79,688.                  |            | 591.                |                      | 79,097.                | 33,093.                            |                         | 2,862.                 | 35,955.                         |

(D) - Asset disposed

\* ITC, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone

2016 DEPRECIATION AND AMORTIZATION REPORT

SCHEDULE E-2

RESIDENTIAL RENTAL - [REDACTED]

| Asset No. | Description                    | Date Acquired | Method | Life  | C o n v | Line No. | Unadjusted Cost Or Basis | Bus % Excl | Section 179 Expense | * Reduction in Basis | Basis For Depreciation | Beginning Accumulated Depreciation | Current Sec 179 Expense | Current Year Deduction | Ending Accumulated Depreciation |
|-----------|--------------------------------|---------------|--------|-------|---------|----------|--------------------------|------------|---------------------|----------------------|------------------------|------------------------------------|-------------------------|------------------------|---------------------------------|
| 10        | HOUSE                          | 08/02/13      | SL     | 27.50 |         | MM17     | 30,194.                  |            |                     |                      | 30,194.                | 2,608.                             |                         | 1,098.                 | 3,706.                          |
| 11        | LAND                           | 08/02/13      | L      |       | HY      |          | 5,328.                   |            |                     |                      | 5,328.                 |                                    |                         | 0.                     | 0.                              |
| 12        | ROOF                           | 08/16/13      | SL     | 27.50 |         | MM17     | 4,520.                   |            |                     |                      | 4,520.                 | 390.                               |                         | 164.                   | 554.                            |
| 13        | BATHROOM & KITCHEN RENOVATIONS | 08/30/13      | SL     | 27.50 |         | MM17     | 2,706.                   |            |                     |                      | 2,706.                 | 233.                               |                         | 98.                    | 331.                            |
| 14        | AIR CONDITIONER                | 09/06/14      | SL     | 27.50 |         | MM17     | 3,000.                   |            |                     |                      | 3,000.                 | 141.                               |                         | 109.                   | 250.                            |
|           | TOTAL SCH E DEPRECIATION       |               |        |       |         |          | 45,748.                  |            |                     |                      | 45,748.                | 3,372.                             |                         | 1,469.                 | 4,841.                          |

(D) - Asset disposed

\* ITC, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone

# Schedule E - Two-Year Comparison Worksheet

# 2016

Property Name:

RENTAL PROPERTY - [REDACTED]

| Description                       | Tax Year<br>2015 | Tax Year<br>2016 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| <b>INCOME</b>                     |                  |                  |                        |
| RENTS RECEIVED                    | 6,600.           | 5,500.           | -1,100.                |
| <b>EXPENSES</b>                   |                  |                  |                        |
| CLEANING AND MAINTENANCE          | 550.             | 0.               | -550.                  |
| INSURANCE                         | 716.             | 715.             | -1.                    |
| REPAIRS                           | 878.             | 305.             | -573.                  |
| SUPPLIES                          | 0.               | 121.             | 121.                   |
| TAXES                             | 1,113.           | 1,092.           | -21.                   |
| UTILITIES                         | 0.               | 31.              | 31.                    |
| SUBTOTAL                          | 3,257.           | 2,264.           | -993.                  |
| DEPRECIATION EXPENSE OR DEPLETION | 2,878.           | 2,862.           | -16.                   |
| TOTAL EXPENSES                    | 6,135.           | 5,126.           | -1,009.                |
| INCOME OR (LOSS)                  | 465.             | 374.             | -91.                   |

# Schedule E - Two-Year Comparison Worksheet

# 2016

Property Name:

RESIDENTIAL RENTAL - [REDACTED]

| Description                       | Tax Year<br>2015 | Tax Year<br>2016 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| <b>INCOME</b>                     |                  |                  |                        |
| RENTS RECEIVED                    | 7,200.           | 7,200.           | 0.                     |
| <b>EXPENSES</b>                   |                  |                  |                        |
| INSURANCE                         | 807.             | 806.             | -1.                    |
| TAXES                             | 956.             | 947.             | -9.                    |
| SUBTOTAL                          | 1,763.           | 1,753.           | -10.                   |
| DEPRECIATION EXPENSE OR DEPLETION | 1,469.           | 1,469.           | 0.                     |
| TOTAL EXPENSES                    | 3,232.           | 3,222.           | -10.                   |
| INCOME OR (LOSS)                  | 3,968.           | 3,978.           | 10.                    |

ALTERNATIVE MINIMUM TAX DEPRECIATION REPORT

| Asset No. | Description                     | Date Acquired | AMT Method | AMT Life | AMT Cost Or Basis | AMT Accumulated | Regular Depreciation | AMT Depreciation | AMT Adjustment |
|-----------|---------------------------------|---------------|------------|----------|-------------------|-----------------|----------------------|------------------|----------------|
|           | RENTAL PROPERTY - [REDACTED]    |               |            |          |                   |                 |                      |                  |                |
| 1         | RENTAL HOUSE                    | 060105        | SL         | 27.50    | 50,000.           | 19,165.         | 1,818.               | 1,818.           | 0.             |
| 3         | AIR CONDITIONER                 | 091505        | 150DB      | 15.00    | 4,800.            | 3,489.          | 283.                 | 283.             | 0.             |
| 4         | WELL & IMPROVEMENTS             | 102105        | 150DB      | 15.00    | 6,689.            | 4,764.          | 395.                 | 395.             | 0.             |
| 6         | DRAIN FIELD                     | 012606        | 150DB      | 15.00    | 3,625.            | 2,448.          | 214.                 | 214.             | 0.             |
| 7         | BATHROOM RENOVATIONS            | 060106        | SL         | 27.50    | 1,000.            | 344.            | 36.                  | 36.              | 0.             |
| 20        | ROOF                            | 031715        | SL         | 27.50    | 3,192.            | 92.             | 116.                 | 116.             | 0.             |
|           | ** SUBTOTAL **                  |               |            |          | 69,306.           | 30,302.         | 2,862.               | 2,862.           | 0.             |
|           | RESIDENTIAL RENTAL - [REDACTED] |               |            |          |                   |                 |                      |                  |                |
| 10        | HOUSE                           | 080213        | SL         | 27.50    | 30,194.           | 2,608.          | 1,098.               | 1,098.           | 0.             |
| 12        | ROOF                            | 081613        | SL         | 27.50    | 4,520.            | 390.            | 164.                 | 164.             | 0.             |
| 13        | BATHROOM & KITCHEN RENOVATIONS  | 083013        | SL         | 27.50    | 2,706.            | 233.            | 98.                  | 98.              | 0.             |
| 14        | AIR CONDITIONER                 | 090614        | SL         | 27.50    | 3,000.            | 141.            | 109.                 | 109.             | 0.             |
|           | ** SUBTOTAL **                  |               |            |          | 40,420.           | 3,372.          | 1,469.               | 1,469.           | 0.             |
|           | *** GRAND TOTAL ***             |               |            |          | 109,726.          | 33,674.         | 4,331.               | 4,331.           | 0.             |

# Shared Responsibility Payment

## To Figure Your Shared Responsibility Payment

- Follow Steps 1 through 5 next.
- Complete Worksheet A or Worksheet B if you are directed to them as you complete Steps 1 through 5.
- Complete the Shared Responsibility Payment Worksheet as directed by Steps 1 through 5 or Worksheets A and B.

### Step 1 All Filers

1. Can someone claim you as a dependent?  
 **Yes.** Stop. You do not owe a shared responsibility payment. Do not check the box on line 6a of Form 1040 or Form 1040A. If you file Form 1040EZ, check the box on line 5  
 **No.** Continue to line 2
2. Did you, and everyone else in your tax household (see Tax household under *Definitions*, earlier) have qualifying health coverage for every month of 2016\*?  
 **Yes.** Stop. You do not owe a shared responsibility payment. Check the Full-year coverage box on Form 1040, line 61; Form 1040A, line 38; or Form 1040EZ, line 11  
 **No.** Continue to line 3  

\*You can check the Full-year coverage box if you had or adopted a child during the year, or a member of your tax household died during the year, as long as that person had qualifying health care coverage for every month he or she was a member of your tax household.
3. Did you or anyone else in your tax household have qualifying health coverage or qualify for a coverage exemption for any month in 2016?  
 **Yes.** Stop. Claim any coverage exemption you qualify for on Form 8965. Skip question 4; go to Worksheet A  
 **No.** Continue to line 4
4. Did you, or anyone else in your tax household turn 18 during 2016?  
 **Yes.** Go to Worksheet A  
 **No.** Go to Step 2

### Step 2 Flat Dollar Amount

1. Multiply \$695 by the number of people in your tax household who were at least 18 years old.\* ..... 1 \_\_\_\_\_  

\*For purposes of figuring the shared responsibility payment, an individual is considered under age 18 for an entire month if he or she didn't turn 18 before the first day of the month. An individual turns 18 on the anniversary of the day the individual was born.
2. Multiply \$347.50 by the number of people in your tax household who were under age 18 ..... 2 \_\_\_\_\_
3. Add lines 1 and 2 ..... 3 \_\_\_\_\_
4. Enter the smaller of line 3 or \$2,085 here and on line 1 of the Shared Responsibility Payment Worksheet. Go to Step 3 ..... 4 \_\_\_\_\_

### Step 3 Household Income

1. Enter the amount from Form 1040, line 38; Form 1040A, line 21; or Form 1040EZ, line 4 ..... 1 \_\_\_\_\_
2. Did you receive any tax-exempt interest?  
 **Yes.** Enter the amount from Form 1040, line 8b; Form 1040A, line 8b; or the amount entered in the space to the left of Form 1040EZ, line 2 ..... 2 \_\_\_\_\_  
 **No.** Continue to line 3
3. Did you attach Form 2555 or Form 2555-EZ?  
 **Yes.** Enter the amount from Form 2555, lines 45 and 50; or Form 2555-EZ, line 18 ..... 3 \_\_\_\_\_  
 **No.** Continue to line 4
4. Did you claim any dependents?  
 **Yes.** Continue to line 5  
 **No.** Stop. Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
5. Were any of the dependents you claimed required to file a return?  
 **Yes.** Complete questions 1 through 3 for each dependent with a filing requirement for whom you did not attach Form 8814. Enter the total here ..... 5 \_\_\_\_\_  
 **No.** Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
6. Did you attach Form 8814?  
 **Yes.** Continue to line 7  
 **No.** Stop. Add lines 1, 2, 3, and 5. **This is your household income.** Enter the result on Step 4, line 1
7. Is Form 8814, line 4 more than \$1,050?  
 **Yes.** Add the amount from Form 8814, line 1b and the smaller of Form 8814, line 4 or 5 ..... 7 \_\_\_\_\_  
 **No.** Enter -0-. Continue to line 8
8. Add lines 1, 2, 3, 5, and 7. **This is your household income.** Enter the result on Step 4, line 1 ..... 8 \_\_\_\_\_

## Shared Responsibility Payment continued

### Step 4 Percentage Income Amount

1. Enter your household income from Step 3 ..... 1 \_\_\_\_\_
2. Were you or your spouse (if filing jointly) born before January 2, 1952?
  - Yes.** Skip question 3. Find your filing threshold on the **Filing Thresholds for Most People** chart and enter it both here and on line 4. .... 2 \_\_\_\_\_
  - No.** Go to question 3. ....
3. Enter the amount listed below for your filing status. .... 3 \_\_\_\_\_
  - Single - \$10,350
  - Head of household - \$13,350
  - Married filing jointly - \$20,700
  - Married filing separately - \$4,050
  - Qualifying widow(er) with dependent child - \$16,650
4. Enter the amount from line 2 or 3. .... 4 \_\_\_\_\_
5. Subtract line 4 from line 1 ..... 5 \_\_\_\_\_
6. Is the amount on line 5 zero or less?
  - Yes.** Stop. You do not owe a shared responsibility payment. Complete Form 8965 by checking the box on line 7.
  - No.** Continue to line 7. ....
7. Multiply line 5 by 2.5% (0.025). This is your percentage income amount ..... 7 \_\_\_\_\_
8. Were you required to complete Worksheet A?
  - Yes.** Go to Worksheet B. Then continue to Step 5
  - No.** Enter the amount from line 7 above on line 2 of the Shared Responsibility Payment Worksheet and complete line 3 of that worksheet. Then continue to step 5.

### Step 5 National Average Bronze Plan Premium

1. Were you required to complete Worksheet A?
  - Yes.** Continue to line 2
  - No.** Skip question 2; Go to question 3.
2. Multiply \$223\* by the number on Worksheet A, line 8. Enter the result here and on line 4 of the Shared Responsibility Payment Worksheet. Skip question 3 and complete line 5 of the Shared Responsibility Payment Worksheet ..... 2 \_\_\_\_\_
 

\*\$223 is the 2016 national average premium for a bronze level health plan available through the Marketplace for one individual for one month.
3. Enter on line 4 of the Shared Responsibility Payment Worksheet, the amount below that corresponds to the total number of people in your tax household. Then complete line 5 of the Shared Responsibility Payment Worksheet.
  - 1 person - \$2,676
  - 2 people - \$5,352
  - 3 people - \$8,028
  - 4 people - \$10,704
  - 5 or more people - \$13,380

### Shared Responsibility Payment Worksheet

Use this worksheet if you are referred here from the Shared Responsibility Payment flowchart or from Worksheet A or B. If everyone in your tax household had either minimum essential coverage or a coverage exemption for every month during 2016, stop here. You do not owe a shared responsibility payment.

|  |         |
|--|---------|
| <b>Complete Step 1</b>   |         |
| 1. Enter the flat dollar amount. (From Step 2, question 4 or Worksheet A, line 7) .....                                | 1 _____ |
| <b>Complete Step 3</b>   |         |
| 2. Enter the percentage income amount. (From Step 4, question 7 or Worksheet B, line 14) .....                         | 2 _____ |
| 3. Enter the larger of line 1 or line 2 .....  | 3 _____ |
| <b>Complete Step 5</b>   |         |
| 4. Enter the National Average Bronze Plan Premium (From Step 5, question 2 or 3) .....                                 | 4 _____ |
| 5. Enter the smaller of line 3 or line 4 here and on Form 1040, line 61; Form 1040A, line 38; or Form 1040EZ, line 11. | 5 _____ |
| <b>This is your shared responsibility payment</b> .....  | 5 _____ |



# Passive Activity Loss Limitations

▶ See separate instructions.

▶ Attach to Form 1040 or Form 1041.

▶ Information about Form 8582 and its instructions is available at [www.irs.gov/form8582](http://www.irs.gov/form8582).

Name(s) shown on return

Identifying number

CARLESS J. & [REDACTED]

**Part I 2016 Passive Activity Loss** Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

| Rental Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.) |   |        |    |
|--|---|--------|----|
| 1a   | Activities with net income (enter the amount from Worksheet 1, column (a))  | 4,352. | 1d |
| 1b   | Activities with net loss (enter the amount from Worksheet 1, column (b))  | ( )    |    |
| 1c   | Prior years unallowed losses (enter the amount from Worksheet 1, column (c))  | ( )    |    |
| d Combine lines 1a, 1b, and 1c   |   | 4,352. |    |
| Commercial Revitalization Deductions From Rental Real Estate Activities  |   |        |    |
| 2a   | Commercial revitalization deductions from Worksheet 2, column (a)   | ( )    | 2c |
| 2b   | Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)  | ( )    |    |
| c Add lines 2a and 2b  |   | ( )    |    |
| All Other Passive Activities   |   |        |    |
| 3a   | Activities with net income (enter the amount from Worksheet 3, column (a))  | ( )    | 3d |
| 3b   | Activities with net loss (enter the amount from Worksheet 3, column (b))  | ( )    |    |
| 3c   | Prior years unallowed losses (enter the amount from Worksheet 3, column (c))  | ( )    |    |
| d Combine lines 3a, 3b, and 3c   |   | ( )    |    |
| 4  | Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used |        | 4  |
|  |   | 4,352. |    |

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
  - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
  - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

**Caution:** If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

**Part II Special Allowance for Rental Real Estate Activities With Active Participation**

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

|    |   |    |
|----|---|----|
| 5  | Enter the smaller of the loss on line 1d or the loss on line 4  | 5  |
| 6  | Enter \$150,000. If married filing separately, see instructions   | 6  |
| 7  | Enter modified adjusted gross income, but not less than zero (see instructions)<br>Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8. |    |
| 8  | Subtract line 7 from line 6   | 8  |
| 9  | Multiply line 8 by 50% (0.5). Do not enter more than \$25,000. If married filing separately, see instructions   | 9  |
| 10 | Enter the smaller of line 5 or line 9<br>If line 2c is a loss, go to Part III. Otherwise, go to line 15.  | 10 |

**Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities**

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

|    |  |    |
|----|--|----|
| 11 | Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions | 11 |
| 12 | Enter the loss from line 4   | 12 |
| 13 | Reduce line 12 by the amount on line 10  | 13 |
| 14 | Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13                        | 14 |

**Part IV Total Losses Allowed**

|    |   |    |
|----|---|----|
| 15 | Add the income, if any, on lines 1a and 3a and enter the total  | 15 |
| 16 | Total losses allowed from all passive activities for 2016. Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return | 16 |

**Caution:** The worksheets must be filed with your tax return. Keep a copy for your records.

**Worksheet 1 - For Form 8582, Lines 1a, 1b, and 1c** (See instructions.)

| Name of activity   | Current year                           |                        | Prior years                  | Overall gain or loss |          |
|--|--|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 1a)               | (b) Net loss (line 1b) | (c) Unallowed loss (line 1c) | (d) Gain             | (e) Loss |
|  |  |                        |                              |                      |          |
|  |  |                        |                              |                      |          |
|  |  |                        |                              |                      |          |
|  |  |                        |                              |                      |          |
|  | SEE ATTACHED STATEMENT FOR WORKSHEET 1 |                        |                              |                      |          |
| <b>Total. Enter on Form 8582, lines 1a, 1b, and 1c</b> ▶ | 4,352.                                 |                        |                              |                      |          |

**Worksheet 2 - For Form 8582, Lines 2a and 2b** (See instructions.)

| Name of activity                                    | (a) Current year deductions (line 2a) | (b) Prior year unallowed deductions (line 2b) | (c) Overall loss |
|---|---------------------------------------|---|------------------|
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
| <b>Total. Enter on Form 8582, lines 2a and 2b</b> ▶ |                                       |   |                  |

**Worksheet 3 - For Form 8582, Lines 3a, 3b, and 3c** (See instructions.)

| Name of activity   | Current year             |                        | Prior years                  | Overall gain or loss |          |
|--|--------------------------|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 3a) | (b) Net loss (line 3b) | (c) Unallowed loss (line 3c) | (d) Gain             | (e) Loss |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
| <b>Total. Enter on Form 8582, lines 3a, 3b, and 3c</b> ▶ |                          |                        |                              |                      |          |

**Worksheet 4 - Use this worksheet if an amount is shown on Form 8582, line 10 or 14** (See instructions.)

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Special allowance | (d) Subtract column (c) from column (a) |
|------------------|---|----------|-----------|-----------------------|---|
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
| <b>Total</b> ▶   |   |          |           |                       |   |

**Worksheet 5 - Allocation of Unallowed Losses** (See instructions.)

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Unallowed loss |
|------------------|---|----------|-----------|--------------------|
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
| <b>Total</b> ▶   |   |          |           |                    |

# Noncash Charitable Contributions

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

▶ Information about Form 8283 and its separate instructions is at [www.irs.gov/form8283](http://www.irs.gov/form8283).

Name(s) shown on your income tax return

Identifying number

**CARLESS J. &** [REDACTED]

**Note.** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities** - List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

**Part I** Information on Donated Property - If you need more space, attach a statement.

| 1 | (a) Name and address of the donee organization                | (b) If donated property is a vehicle, check the box. Also enter the vehicle identification number (unless Form 1098-C is attached) | (c) Description of donated property<br><small>(For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.)</small> |
|---|---|--|---|
| A | GOODWILL INDUSTRIES OF N FL<br>4527 L, JACKSONVILLE, FL 32205 | <input type="checkbox"/>   | CLOTHING, HOUSEHOLD GOODS   |
| B | LEE CONLEE HOUSE, INC.<br>PO BOX 2558, PALATKA, FL 32178      | <input type="checkbox"/>   | HOUSEHOLD GOODS   |
| C | THE COMMUNITY THRIFT SHOP<br>P.O. BO, INTERLACHEN, FL 32148   | <input type="checkbox"/>   | CLOTHING, HOUSEHOLD GOODS   |
| D |   | <input type="checkbox"/>   |   |
| E |   | <input type="checkbox"/>   |   |

**Note.** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

| A | (d) Date of the contribution | (e) Date acquired by donor (mo., yr.) | (f) How acquired by donor | (g) Donor's cost or adjusted basis | (h) Fair market value (see instructions) | (i) Method used to determine the fair market value |
|---|------------------------------|---------------------------------------|---------------------------|------------------------------------|--|--|
| A |                              |                                       | PURCHASE                  |                                    | 250.                                     | THRIFT SHOP VALUE                                  |
| B |                              |                                       | PURCHASE                  |                                    | 150.                                     | THRIFT SHOP VALUE                                  |
| C |                              |                                       | PURCHASE                  |                                    | 450.                                     | THRIFT SHOP VALUE                                  |
| D |                              |                                       |                           |                                    |  |  |
| E |                              |                                       |                           |                                    |  |  |

**Part II** Partial Interests and Restricted Use Property - Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2 a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ \_\_\_\_\_  
If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
(2) For any prior tax years ▶ \_\_\_\_\_

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):  
Name of charitable organization (donee) \_\_\_\_\_  
Address (number, street, and room or suite no.) \_\_\_\_\_  
City or town, state, and ZIP code \_\_\_\_\_

d For tangible property, enter the place where the property is located or kept ▶ \_\_\_\_\_

e Name of any person, other than the donee organization, having actual possession of the property ▶ \_\_\_\_\_

|   | Yes | No |
|---|-----|----|
| 3 a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? .....  |     |    |
| b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? ..... |     |    |
| c Is there a restriction limiting the donated property for a particular use? .....  |     |    |

## Paid Preparer's Due Diligence Checklist

*Earned Income Credit (EIC), Child Tax Credit (CTC), and American Opportunity Tax Credit (AOTC)*

▶ To be completed by preparer and filed with Form 1040, 1040A, 1040EZ, 1040NR, 1040SS, or 1040PR.  
▶ Information about Form 8867 and its separate instructions is at [www.irs.gov/form8867](http://www.irs.gov/form8867).

Taxpayer name(s) shown on return  
**CARLESS J. &** [REDACTED]

Taxpayer's identification number  
[REDACTED]

Enter preparer's name and PTIN

**JOHN D. ROWE, CPA**

**P00099553**

### Due Diligence Requirements

| Please complete the appropriate column for all credits claimed on this return<br>(check all that apply).  | EIC  | CTC/ACTC  | AOTC   |
|---|--|---|--|
| <b>1</b> Did you complete the return based on information for tax year 2016 provided by the taxpayer or reasonably obtained by you? .....   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>2</b> Did you complete the applicable EIC and/or CTC/ACTC worksheets found in the Form 1040, 1040A, 1040EZ, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed? ..... | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>3</b> Did you satisfy the knowledge requirement? Answer "Yes" only if you can answer "Yes" to both 3a and 3b. To meet the knowledge requirement, did you:  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>a</b> Interview the taxpayer, ask adequate questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s)? .....   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>b</b> Review adequate information to determine that the taxpayer is eligible to claim the credit(s) and in what amount? .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>4</b> Did any information provided by the taxpayer, a third party, or reasonably known to you in connection with preparing the return appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.) .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>a</b> Did you make reasonable inquiries to determine the correct or complete information? .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>b</b> Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.) .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>5</b> Did you satisfy the record retention requirement? To meet the record retention requirement, did you keep a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility or to compute the amount for the credit(s)? .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| In addition to your notes from the interview with the taxpayer, list those documents, if any, that you relied on.<br>_____<br>_____<br>_____  |  |   |  |
| <b>6</b> Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for and the amount of the credit(s) claimed on the return?   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>7</b> Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| (If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)   |  |   |  |
| <b>a</b> Did you complete the required recertification form(s)? .....   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>8</b> If the taxpayer is reporting self-employment income, did you ask adequate questions to prepare a complete and correct Form 1040, Schedule C? .....   | <input type="checkbox"/> Yes <input type="checkbox"/> No | <input type="checkbox"/> Yes <input type="checkbox"/> No            | <input type="checkbox"/> Yes <input type="checkbox"/> No |

LHA For Paperwork Reduction Act Notice, see separate instructions.

**Due Diligence Questions for Returns Claiming EIC** (If the return does not claim EIC, go to question 10.)

|  | EIC  | CTC/ACTC | AOTC |
|--|--|----------|------|
| <b>9a</b> Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tie-breaker rules), and have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed? ..... | <input type="checkbox"/> Yes <input type="checkbox"/> No |          |      |
| <b>b</b> Did you explain to the taxpayer that he/she may not claim the EIC if the taxpayer has not lived with the child for over half the year, even if the taxpayer has supported the child? .....  | <input type="checkbox"/> Yes <input type="checkbox"/> No |          |      |

**Due Diligence Questions for Returns Claiming CTC and/or additional CTC** (If the return does not claim CTC or Additional CTC, go to question 11.)

|  |   |  |  |
|--|---|--|--|
| <b>10a</b> Does the child reside with the taxpayer who is claiming the CTC/ACTC? (If "Yes," go to question 10c. If "No," answer question 10b.) .....   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  |  |
| <b>b</b> Did you ask if there is an active Form 8332, Release/Revocation of Claim to Exemption for Child by Custodial Parent, or a similar statement in place and, if applicable, did you attach it to the return? ..... | <input type="checkbox"/> Yes <input type="checkbox"/> No            |  |  |
| <b>c</b> Have you determined that the taxpayer has not released the claim to another person? .....   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  |  |

**Due Diligence Questions for Returns Claiming AOTC** (If the return does not claim AOTC, go to *Credit Eligibility Certification*.)

|   |  |  |  |
|---|--|--|--|
| <b>11</b> Did the taxpayer provide substantiation such as a Form 1098-T and receipts for the qualified tuition and related expenses for the claimed AOTC? ..... | <input type="checkbox"/> Yes <input type="checkbox"/> No |  |  |
|---|--|--|--|

**► You have complied with all due diligence requirements with respect to the credits claimed on the return of the taxpayer identified above if you:**

- A. Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for all credits claimed;
- B. Submit Form 8867 in the manner required;
- C. Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and in what amount(s); **and**
- D. Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.
  1. A copy of Form 8867,
  2. The applicable worksheet(s) or your own worksheet(s) for any credits claimed,
  3. Copies of any taxpayer documents you may have relied upon to determine eligibility for and the amount of the credit(s),
  4. A record of how, when, and from whom the information used to prepare this form and worksheet(s) was obtained, and
  5. A record of any additional questions you may have asked to determine eligibility for and amount of the credits, and the taxpayer's answers.

**► If you have not complied with all due diligence requirements for all credits claimed, you may have to pay a \$510 penalty for each credit for which you have failed to comply.**

**Credit Eligibility Certification**

|  |   |  |  |
|--|---|--|--|
| <b>12</b> Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct and complete? ..... | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  |  |
|--|---|--|--|

FORM 1040

EXCESS SOCIAL SECURITY TAX WORKSHEET

STATEMENT 1

|  | TAXPAYER | SPOUSE |
|--|----------|--------|
| 1. ADD ALL SOCIAL SECURITY TAX WITHHELD BUT NOT MORE THAN \$7,347.00 FOR EACH EMPLOYER (THIS TAX SHOULD BE SHOWN IN BOX 4 OF YOUR W-2 FORMS). ENTER THE TOTAL HERE | 7,843.   |        |
| 2. ENTER ANY UNCOLLECTED SOCIAL SECURITY TAX ON TIPS OR GROUP-TERM LIFE INSURANCE INCLUDED IN THE TOTAL ON FORM 1040, LINE 62                                      |          |        |
| 3. ADD LINES 1 AND 2   | 7,843.   |        |
| 4. SOCIAL SECURITY TAX LIMIT   | 7,347.   |        |
| 5. SUBTRACT LINE 4 FROM LINE 3. EXCESS SOCIAL SECURITY TAX INCLUDED IN FORM 1040, LINE 71.   | 496.     |        |

SCHEDULE A

MORTGAGE INTEREST AND POINTS REPORTED ON FORM 1098

STATEMENT 2

| DESCRIPTION   | AMOUNT |
|---|--------|
| WELLS FARGO BANK N A, PO BOX 14411, DES MOINES, IA 50306-3411 | 9,149. |
| TOTAL TO SCHEDULE A, LINE 10                                  | 9,149. |

SCHEDULE A

REAL ESTATE TAXES

STATEMENT 3

| DESCRIPTION                 | AMOUNT |
|-----------------------------|--------|
| [REDACTED]                  | 233.   |
| WELLS FARGO BANK N A        | 1,557. |
| TOTAL TO SCHEDULE A, LINE 6 | 1,790. |

FORM 8582 ACTIVE RENTAL OF REAL ESTATE - WORKSHEET 1 STATEMENT 4

| NAME OF ACTIVITY                | CURRENT YEAR  |           | PRIOR YEAR UNALLOWED LOSS | OVERALL GAIN OR LOSS |      |
|---------------------------------|---------------|-----------|---------------------------|----------------------|------|
|                                 | NET INCOME    | NET LOSS  |                           | GAIN                 | LOSS |
| RENTAL PROPERTY - [REDACTED]    | 374.          | 0.        |                           | 374.                 |      |
| RESIDENTIAL RENTAL - [REDACTED] | 3,978.        | 0.        |                           | 3,978.               |      |
| <b>TOTALS</b>                   | <b>4,352.</b> | <b>0.</b> |                           | <b>4,352.</b>        |      |

FORM 8582 SUMMARY OF PASSIVE ACTIVITIES STATEMENT 5

| RENTAL PROPERTY -      | FORM OR SCHEDULE | GAIN/LOSS     | PRIOR YEAR C/O | NET GAIN/LOSS | UNALLOWED LOSS | ALLOWED LOSS |
|------------------------|------------------|---------------|----------------|---------------|----------------|--------------|
| X RENTAL PROPERTY -    | SCH E            | 374.          |                | 374.          |                |              |
| X RESIDENTIAL RENTAL - | SCH E            | 3,978.        |                | 3,978.        |                |              |
| <b>TOTALS</b>          |                  | <b>4,352.</b> |                | <b>4,352.</b> |                |              |

PRIOR YEAR CARRYOVERS ALLOWED DUE TO CURRENT YEAR NET ACTIVITY INCOME

TOTAL

For the year Jan. 1-Dec. 31, 2017, or other tax year beginning, 2017, ending, 20. See separate instructions.

Your first name and initial: CARLESS J. Last name: BOATWRIGHT. Your social security number: [REDACTED]

If a joint return, spouse's first name and initial: [REDACTED] Last name: [REDACTED] Spouse's social security number: [REDACTED]

Home address (number and street), if you have a P.O. box, see instructions: P.O. BOX 101. Apt. no. [REDACTED]. Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code, if you have a foreign address, also complete spaces below: EAST PALATKA, FL 32131. Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.

Foreign country name, Foreign province/state/county, Foreign postal code. You Spouse

Filing Status: 1 Single, 2 Married filing jointly (checked), 3 Married filing separately, 4 Head of household, 5 Qualifying widow(er)

Exemptions: 6a Yourself (checked), 6b Spouse (checked). Table of dependents: DAUGHTER, DAUGHTER, SON. Total number of exemptions claimed: 5

Income: 7 Wages, salaries, tips, etc. 141,541. 8a Taxable interest. 46. 9a Ordinary dividends. 10 Taxable refunds, credits, or offsets of state and local income taxes. 11 Alimony received. 12 Business income or (loss). 13 Capital gain or (loss). 14 Other gains or (losses). 15a IRA distributions. 16a Pensions and annuities. 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. 4,931. 18 Farm income or (loss). 19 Unemployment compensation. 20a Social security benefits. 21 Other income. 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income. 146,518.

Adjusted Gross Income: 23 Educator expenses. 24 Certain business expenses of reservists, performing artists, and fee-basis government officials. 25 Health savings account deduction. 26 Moving expenses. 27 Deductible part of self-employment tax. 28 Self-employed SEP, SIMPLE, and qualified plans. 29 Self-employed health insurance deduction. 30 Penalty on early withdrawal of savings. 31a Alimony paid. 32 IRA deduction. 33 Student loan interest deduction. 34 Reserved for future use. 35 Domestic production activities deduction. 36 Add lines 23 through 35. 37 Subtract line 36 from line 22. This is your adjusted gross income. 146,518.



|                        |     |   |     |          |
|------------------------|-----|---|-----|----------|
| <b>Tax and Credits</b> | 38  | Amount from line 37 (adjusted gross income)   | 38  | 146,518. |
|                        | 39a | Check <input type="checkbox"/> You were born before January 2, 1953, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1953, <input type="checkbox"/> Blind. Total boxes checked ... | 39a |          |
|                        | b   | If your spouse itemizes on a separate return or you were a dual-status alien, check here  | 39b |          |
|                        | 40  | Itemized deductions (from Schedule A) or your standard deduction (see left margin)  | 40  | 13,702.  |
|                        | 41  | Subtract line 40 from line 38   | 41  | 132,816. |
|                        | 42  | Exemptions. If line 38 is \$156,900 or less, multiply \$4,050 by the number on line 6d. Otherwise, see inst.  | 42  | 20,250.  |
|                        | 43  | Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-   | 43  | 112,566. |
|                        | 44  | Tax. Check if any from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972 c <input type="checkbox"/>   | 44  | 19,619.  |
|                        | 45  | Alternative minimum tax. Attach Form 6251   | 45  |          |
|                        | 46  | Excess advance premium tax credit repayment. Attach Form 8962   | 46  |          |
|                        | 47  | Add lines 44, 45, and 46  | 47  | 19,619.  |
|                        | 48  | Foreign tax credit. Attach Form 1116 if required  | 48  |          |
|                        | 49  | Credit for child and dependent care expenses. Attach Form 2441  | 49  |          |
|                        | 50  | Education credits from Form 8863, line 19   | 50  |          |
|                        | 51  | Retirement savings contributions credit. Attach Form 8880   | 51  |          |
|                        | 52  | Child tax credit. Attach Schedule 8812, if required   | 52  | 1,150.   |
|                        | 53  | Residential energy credit. Attach Form 5695   | 53  |          |
|                        | 54  | Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>   | 54  |          |
|                        | 55  | Add lines 48 through 54. These are your total credits   | 55  | 1,150.   |
|                        | 56  | Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-   | 56  | 18,469.  |
| <b>Other Taxes</b>     | 57  | Self-employment tax. Attach Schedule SE   | 57  |          |
|                        | 58  | Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919  | 58  |          |
|                        | 59  | Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required   | 59  |          |
|                        | 60a | Household employment taxes from Schedule H  | 60a |          |
|                        | 60b | First-time homebuyer credit repayment. Attach Form 5405 if required   | 60b |          |
|                        | 61  | Health care: Individual responsibility (see instructions) Full-year coverage <input checked="" type="checkbox"/>  | 61  |          |
|                        | 62  | Taxes from: a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Form 8960 c <input type="checkbox"/> Inst.; enter code(s)   | 62  |          |
|                        | 63  | Add lines 56 through 62. This is your total tax   | 63  | 18,469.  |
| <b>Payments</b>        | 64  | Federal income tax withheld from Forms W-2 and 1099   | 64  | 21,057.  |
|                        | 65  | 2017 estimated tax payments and amount applied from 2016 return   | 65  |          |
|                        | 66a | Earned income credit (EIC)  | 66a |          |
|                        | b   | Nontaxable combat pay election  | 66b |          |
|                        | 67  | Additional child tax credit. Attach Schedule 8812   | 67  |          |
|                        | 68  | American opportunity credit from Form 8863, line 8  | 68  |          |
|                        | 69  | Net premium tax credit. Attach Form 8962  | 69  |          |
|                        | 70  | Amount paid with request for extension to file  | 70  |          |
|                        | 71  | Excess social security and tier 1 RRTA tax withheld   | 71  |          |
|                        | 72  | Credit for federal tax on fuels. Attach Form 4136   | 72  |          |
|                        | 73  | Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> Reserved c <input type="checkbox"/> 8885 d <input type="checkbox"/>   | 73  |          |
|                        | 74  | Add lines 64, 65, 66a, and 67 through 73. These are your total payments   | 74  | 21,057.  |
| <b>Refund</b>          | 75  | If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid   | 75  | 2,588.   |
|                        | 76a | Amount of line 75 you want refunded to you. If Form 8888 is attached, check here  | 76a | 2,588.   |
|                        | b   | Routing number <input type="checkbox"/> Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> Account number   |     |          |
|                        | 77  | Amount of line 75 you want applied to your 2018 estimated tax   | 77  |          |
| <b>Amount You Owe</b>  | 78  | Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions  | 78  |          |
|                        | 79  | Estimated tax penalty (see instructions)  | 79  |          |

**Third Party Designee** Do you want to allow another person to discuss this return with the IRS (see instructions)?  Yes. Complete below.  No

Designee's name **JOHN D. ROWE, CPA** Phone no. **386-325-4561** Personal Identification number (PIN) **99553**

**Sign Here** Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature \_\_\_\_\_ Date \_\_\_\_\_ Your occupation \_\_\_\_\_ Daytime phone number \_\_\_\_\_

Spouse's signature, if a joint return, both must sign. \_\_\_\_\_ Date \_\_\_\_\_ Spouse's occupation \_\_\_\_\_ If the IRS sent you an Identity Protection PIN, enter it here \_\_\_\_\_

Print/Type preparer's name \_\_\_\_\_ Preparer's signature **JOHN D. ROWE, CPA** Date **02/21/18** Check  if self-employed PTIN **P00099553**

**Paid Preparer Use Only** Firm's name **CARR, RIGGS & INGRAM, LLC** Firm's EIN **72 1396621**  
 906 S STATE RD 19 Phone no. **386-325-4561**  
 PALATKA, FL 32177

**Child Tax Credit Worksheet** (keep for your records)

Name(s): First **CARLESS J. &** Last **BOATWRIGHT** Your SSN **[REDACTED]**

**Part 1**

1. Number of qualifying children: 3 X \$1,000. Enter the result. **1** 3,000.
2. Enter the amount from Form 1040, line 38, Form 1040A, line 22, or Form 1040NR, line 37. **2** 146,518.
3. **1040 filers:** Enter the total of any-
  - Exclusion of income from Puerto Rico, and
  - Amounts from Form 2555, lines 45 and 50; Form 2555-EZ, line 18; and Form 4563, line 15.**1040A and 1040NR filers:** Enter -0-.
  - Married filing jointly - \$110,000
  - Single, head of household, or qualifying widow(er) - \$75,000
  - Married filing separately - \$55,000**3** 0.
4. Add lines 2 and 3. Enter the total. **4** 146,518.
5. Enter the amount shown below for your filing status.
  - Married filing jointly - \$110,000
  - Single, head of household, or qualifying widow(er) - \$75,000
  - Married filing separately - \$55,000**5** 110,000.
6. Is the amount on line 4 more than the amount on line 5?
  - No. Leave line 6 blank. Enter -0- on line 7.
  - Yes. Subtract line 5 from line 4. **6** 37,000.  
If the result is not a multiple of \$1,000, increase it to the next multiple of \$1,000 (for example, increase \$425 to \$1,000, increase \$1,025 to \$2,000, etc).
7. Multiply the amount on line 6 by 5% (.05). Enter the result. **7** 1,850.
8. Is the amount on line 1 more than the amount on line 7?
  - No. **STOP**  
You cannot take the child tax credit on Form 1040, line 52, Form 1040A, line 35, or Form 1040NR, line 49. You also cannot take the additional child tax credit.
  - Yes. Subtract line 7 from line 1. Enter the result. **8** 1,150.

**Part 2**

9. Enter the amount from Form 1040, line 47, Form 1040A, line 30, or Form 1040NR, line 45. **9** 19,619.
10. **1040 filers:** Enter the total of the amounts from lines 48 through 51.\*  
**1040A filers:** Enter the total of the amounts from lines 31 through 34.  
**1040NR filers:** Enter the total of the amounts from lines 46 through 48.\* } **10** \_\_\_\_\_
11. Are you claiming any of the following credits?
  - Residential energy efficient property credit, Form 5695, Part I.
  - Mortgage interest credit, Form 8396
  - Qualified adoption expenses, Form 8839
  - District of Columbia first-time homebuyer credit, Form 8859 No. Enter the amount from line 10. } **11** \_\_\_\_\_  
 Yes. If you are filing Form 2555 or 2555-EZ, enter the amount from line 10. Otherwise, complete the Line 11 Worksheet to figure the amount to enter here.
12. Subtract line 11 from line 9. Enter the result. **12** 19,619.
13. Is the amount on line 8 of this worksheet more than the amount on line 12?
  - No. Enter the amount from line 8. } **This is your**
  - Yes. Enter the amount from line 12. } **child tax credit.** **13** 1,150.

\* Also include amounts from:  
 Form 5695, line 30  
 Form 8910, line 15  
 Form 8936, line 23  
 Schedule R, line 22

**SCHEDULE A  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on Form 1040

**Itemized Deductions**

▶ Go to [www.irs.gov/ScheduleA](http://www.irs.gov/ScheduleA) for instructions and the latest information.  
▶ Attach to Form 1040.

Caution: If you are claiming a net qualified disaster loss on Form 4684, see the instructions for line 28.

OMB No. 1545-0074

**2017**

Attachment  
Sequence No. 07

Your social security number

**CARLESS J. & [REDACTED] BOATWRIGHT**

|   |  |   |          |    |         |
|---|--|---|----------|----|---------|
| <b>Medical and Dental Expenses</b>  |  | <b>Caution:</b> Do not include expenses reimbursed or paid by others.   |          |    |         |
| 1   | Medical and dental expenses (see instructions)   |   |          | 1  |         |
| 2   | Enter amount from Form 1040, line 38   | 2   |          |    |         |
| 3   | Multiply line 2 by 7.5% (0.075)  |   |          | 3  |         |
| 4   | Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-  |   |          |    | 4       |
| <b>Taxes You Paid</b>   |  | <b>5 State and local (check only one box):</b>  |          | 5  | 1,551.  |
| a   | <input type="checkbox"/> Income taxes, or  |   |          | 6  | 1,853.  |
| b   | <input checked="" type="checkbox"/> General sales taxes  |   |          | 7  |         |
| 6   | Real estate taxes (see instructions)   | SEE STATEMENT 2   |          | 8  |         |
| 7   | Personal property taxes  |   |          | 9  | 3,404.  |
| 8   | Other taxes. List type and amount ▶  |   |          |    |         |
| 9   | Add lines 5 through 8  |   |          |    |         |
| <b>Interest You Paid</b>  |  | <b>10 Home mortgage interest and points reported to you on Form 1098</b>  |          | 10 | 8,681.  |
| 11  | Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ▶ | STMT 1  |          | 11 |         |
| <b>Note:</b><br>Your mortgage interest deduction may be limited (see instructions).                             |  |   |          | 12 |         |
| 12  | Points not reported to you on Form 1098. See instructions for special rules  |   |          | 13 |         |
| 13  | Reserved for future use  |   |          | 14 |         |
| 14  | Investment interest. Attach Form 4952 if required. See instructions  |   |          | 15 | 8,681.  |
| 15  | Add lines 10 through 14  |   |          |    |         |
| <b>Gifts to Charity</b>   |  | <b>16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions</b>   |          | 16 | 867.    |
| 17  | Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500   |   |          | 17 | 750.    |
| 18  | Carryover from prior year  |   |          | 18 |         |
| 19  | Add lines 16 through 18  |   |          | 19 | 1,617.  |
| <b>Casualty and Theft Losses</b>  |  | <b>20 Casualty or theft loss(es) other than net qualified disaster losses. Attach Form 4684 and enter the amount from line 18 of that form. See instructions</b>                      |          | 20 |         |
| <b>Job Expenses and Certain Miscellaneous Deductions</b>  |  | <b>21 Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. See instructions. ▶</b>                                   |          | 21 |         |
| 22  | Tax preparation fees   |   |          | 22 | 350.    |
| 23  | Other expenses - investment, safe deposit box, etc. List type and amount ▶   |   |          | 23 |         |
| 24  | Add lines 21 through 23  |   |          | 24 | 350.    |
| 25  | Enter amount from Form 1040, line 38   | 25  | 146,518. | 26 | 2,930.  |
| 26  | Multiply line 25 by 2% (0.02)  |   |          | 27 | 0.      |
| 27  | Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-  |   |          |    |         |
| <b>Other Miscellaneous Deductions</b>   |  | <b>28 Other - from list in instructions. List type and amount ▶</b>   |          | 28 |         |
| <b>Total Itemized Deductions</b>  |  | <b>29 Is Form 1040, line 38, over \$156,900?</b>  |          | 29 | 13,702. |
|   |  | <input checked="" type="checkbox"/> No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. |          |    |         |
|   |  | <input type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.                                 |          |    |         |
| <b>30 If you elect to itemize deductions even though they are less than your standard deduction, check here</b> |  |   |          |    |         |

**SCHEDULE B**  
(Form 1040A or 1040)

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on return

**Interest and Ordinary Dividends**

▶ Attach to Form 1040A or 1040.

▶ Go to [www.irs.gov/ScheduleB](http://www.irs.gov/ScheduleB) for instructions and the latest information.

OMB No. 1545-0074

**2017**

Attachment  
Sequence No. **08**

Your social security number

**CARLESS J. & [REDACTED] BOATWRIGHT**

|                                  |   | Amount |
|----------------------------------|---|--------|
| <b>Part I</b><br><b>Interest</b> | 1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address ▶<br><u>CAPITAL CITY BANK</u> | 46.    |
|                                  | 2 Add the amounts on line 1   | 46.    |
|                                  | 3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815   |        |
|                                  | 4 Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a ... ▶   | 46.    |
|                                  | <b>Note:</b> If line 4 is over \$1,500, you must complete Part III.   |        |

|   |  |  |
|---|--|--|
| <b>Part II</b><br><b>Ordinary Dividends</b> | 5 List name of payer ▶   |  |
|   | 6 Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a ... ▶ |  |

| <b>Part III</b>   |   | Yes | No |
|---|---|-----|----|
| You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust. |   |     |    |
| <b>Foreign Accounts and Trusts</b>  | 7a At any time during 2017, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions .....<br>If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements ..... |     | X  |
|   | b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶   |     |    |
|   | 8 During 2017, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust?<br>If "Yes," you may have to file Form 3520. See instructions .....  |     | X  |

# Interest and Dividend Summary

FEIN/SSN: 589-54-8612

Name: CARLESS J. & TAMMY JO BOATWRIGHT

| Payer             | Interest   | Interest on U.S. Savings Bonds | Tax-Exempt Interest | Private Activity Interest | Original Issue Discount (OID) | Ordinary Dividends | Qualified Dividends | Capital Gain Distributions | Federal Income Tax Withheld | State Tax Withheld | Foreign Tax Paid |
|-------------------|------------|--------------------------------|---------------------|---------------------------|-------------------------------|--------------------|---------------------|----------------------------|-----------------------------|--------------------|------------------|
| CAPITAL CITY BANK | 46.        |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
|                   |            |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |
| <b>TOTALS</b>     | <b>46.</b> |                                |                     |                           |                               |                    |                     |                            |                             |                    |                  |

**SCHEDULE E**

**(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ Go to [www.irs.gov/ScheduleE](http://www.irs.gov/ScheduleE) for instructions and the latest information.

OMB No. 1545-0074

**2017**

Attachment  
Sequence No. 13

Name(s) shown on return

Your social security number

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I Income or Loss From Rental Real Estate and Royalties** Note: If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

**A** Did you make any payments in 2017 that would require you to file Form(s) 1099? (see instructions)  Yes  No  
**B** If "Yes," did you or will you file required Forms 1099?  Yes  No

**1a** Physical address of each property (street, city, state, ZIP code)

**A** [REDACTED]  
**B** [REDACTED]  
**C** [REDACTED]

| 1b | Type of Property (from list below) | 2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions. | Fair Rental Days | Personal Use Days | QJV                      |
|----|------------------------------------|--|------------------|-------------------|--------------------------|
|    |                                    |  | A                | B                 | C                        |
| A  | 1                                  |  | 365              |                   | <input type="checkbox"/> |
| B  | 1                                  |  | 365              |                   | <input type="checkbox"/> |
| C  | 1                                  |  | 365              |                   | <input type="checkbox"/> |

**Type of Property:**

- 1 Single Family Residence
- 2 Multi-Family Residence
- 3 Vacation/Short-Term Rental
- 4 Commercial
- 5 Land
- 6 Royalties
- 7 Self-Rental
- 8 Other (describe)

| Income:   | Properties: | A       | B       | C        |
|---|-------------|---------|---------|----------|
| 3 Rents received  | 3           | 7,150.  | 7,200.  | 7,200.   |
| 4 Royalties received  | 4           |         |         |          |
| <b>Expenses:</b>  |             |         |         |          |
| 5 Advertising   | 5           |         |         |          |
| 6 Auto and travel (see instructions)  | 6           |         |         |          |
| 7 Cleaning and maintenance  | 7           | 3,570.  | 145.    |          |
| 8 Commissions   | 8           |         |         |          |
| 9 Insurance   | 9           | 715.    | 552.    | 806.     |
| 10 Legal and other professional fees  | 10          |         |         |          |
| 11 Management fees  | 11          |         |         |          |
| 12 Mortgage interest paid to banks, etc. (see instructions)   | 12          |         |         |          |
| 13 Other interest   | 13          |         |         |          |
| 14 Repairs  | 14          | 385.    | 285.    |          |
| 15 Supplies   | 15          |         |         |          |
| 16 Taxes  | 16          | 1,160.  | 2,023.  | 1,016.   |
| 17 Utilities  | 17          | 33.     | 91.     |          |
| 18 Depreciation expense or depletion  | 18          | 3,083.  | 1,286.  | 1,469.   |
| 19 Other (list) ▶   | 19          |         |         |          |
| 20 Total expenses. Add lines 5 through 19   | 20          | 8,946.  | 4,382.  | 3,291.   |
| 21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198  | 21          | -1,796. | 2,818.  | 3,909.   |
| 22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)   | 22          | 1,796.) |         |          |
| 23a Total of all amounts reported on line 3 for all rental properties   | 23a         |         | 21,550. |          |
| b Total of all amounts reported on line 4 for all royalty properties  | 23b         |         |         |          |
| c Total of all amounts reported on line 12 for all properties   | 23c         |         |         |          |
| d Total of all amounts reported on line 18 for all properties   | 23d         |         | 5,838.  |          |
| e Total of all amounts reported on line 20 for all properties   | 23e         |         | 16,619. |          |
| 24 <b>Income.</b> Add positive amounts shown on line 21. Do not include any losses  | 24          |         |         | 6,727.   |
| 25 <b>Losses.</b> Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here   | 25          |         |         | (1,796.) |
| 26 <b>Total rental real estate and royalty income or (loss).</b> Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 | 26          |         |         | 4,931.   |

LHA For Paperwork Reduction Act Notice, see the separate instructions.

Schedule E (Form 1040) 2017

2017 DEPRECIATION AND AMORTIZATION REPORT

SCHEDULE E-1

RENTAL PROPERTY - [REDACTED]

| Asset No. | Description              | Date Acquired | Method | Life  | Line No. | Unadjusted Cost Or Basis | Bus % Excl | Section 179 Expense | Reduction In Basis | Basis For Depreciation | Beginning Accumulated Depreciation | Current Sec 179 Expense | Current Year Deduction | Ending Accumulated Depreciation |
|-----------|--------------------------|---------------|--------|-------|----------|--------------------------|------------|---------------------|--------------------|------------------------|------------------------------------|-------------------------|------------------------|---------------------------------|
| 1         | RENTAL HOUSE             | 06/01/05      | SL     | 27.50 | MM17     | 50,000.                  |            |                     |                    | 50,000.                | 20,983.                            |                         | 1,818.                 | 22,801.                         |
| 2         | LAND                     | 06/01/05      | L      |       | HY       | 7,000.                   |            |                     |                    | 7,000.                 |                                    |                         | 0.                     | 0.                              |
| 3         | AIR CONDITIONER          | 09/15/05      | 150DB  | 15.00 | MQ17     | 4,800.                   |            |                     |                    | 4,800.                 | 3,772.                             |                         | 284.                   | 4,056.                          |
| 4         | WELL & IMPROVEMENTS      | 10/21/05      | 150DB  | 15.00 | MQ17     | 6,689.                   |            |                     |                    | 6,689.                 | 5,158.                             |                         | 395.                   | 5,553.                          |
| 5         | FLOORING                 | 10/15/05      | 200DB  | 5.00  | MQ17     | 2,201.                   |            |                     |                    | 2,201.                 | 2,201.                             |                         | 0.                     | 2,201.                          |
| 6         | DRAIN FIELD              | 01/26/06      | 150DB  | 15.00 | HY17     | 3,625.                   |            |                     |                    | 3,625.                 | 2,662.                             |                         | 214.                   | 2,876.                          |
| 7         | BATHROOM RENOVATIONS     | 06/01/06      | SL     | 27.50 | MM17     | 1,000.                   |            |                     |                    | 1,000.                 | 381.                               |                         | 36.                    | 417.                            |
| 8         | HOT WATER HEATER         | 12/02/08      | 200DB  | 7.00  | MQ17     | 550.                     |            | 275.                |                    | 275.                   | 275.                               |                         | 0.                     | 275.                            |
| 9         | FLOORING                 | 09/01/08      | 200DB  | 7.00  | MQ17     | 631.                     |            | 316.                |                    | 315.                   | 315.                               |                         | 0.                     | 315.                            |
| 20        | ROOF                     | 03/17/15      | SL     | 27.50 | MM17     | 3,192.                   |            |                     |                    | 3,192.                 | 208.                               |                         | 116.                   | 3,324.                          |
| 26        | RENOVATION               | 02/18/17      | SL     | 27.50 | MM19H    | 6,906.                   |            |                     |                    | 6,906.                 |                                    |                         | 220.                   | 220.                            |
|           | TOTAL SCH E DEPRECIATION |               |        |       |          | 86,594.                  |            | 591.                |                    | 86,003.                | 35,955.                            |                         | 3,083.                 | 39,038.                         |
|           | CURRENT YEAR ACTIVITY    |               |        |       |          |                          |            |                     |                    |                        |                                    |                         |                        |                                 |
|           | BEGINNING BALANCE        |               |        |       |          | 79,688.                  |            | 591.                | 0.                 | 79,097.                | 35,955.                            |                         |                        | 38,818.                         |
|           | ACQUISITIONS             |               |        |       |          | 6,906.                   |            | 0.                  | 0.                 | 6,906.                 | 0.                                 |                         |                        | 220.                            |
|           | DISPOSITIONS             |               |        |       |          | 0.                       |            | 0.                  | 0.                 | 0.                     | 0.                                 |                         |                        | 0.                              |
|           | ENDING BALANCE           |               |        |       |          | 86,594.                  |            | 591.                | 0.                 | 86,003.                | 35,955.                            |                         |                        | 39,038.                         |

2017 DEPRECIATION AND AMORTIZATION REPORT

SCHEDULE E-3

| Asset No. | Description              | Date Acquired | Method | Life  | Conv | Line No. | Unadjusted Cost Or Basis | Bus % Excl | Section 179 Expense | * Reduction In Basis | Basis For Depreciation | Beginning Accumulated Depreciation | Current Sec 179 Expense | Current Year Deduction | Ending Accumulated Depreciation |
|-----------|--------------------------|---------------|--------|-------|------|----------|--------------------------|------------|---------------------|----------------------|------------------------|------------------------------------|-------------------------|------------------------|---------------------------------|
| 27        | HOUSE                    | 01/31/17      | SL     | 27.50 |      | MM19H    | 15,528.                  |            |                     |                      | 15,528.                |                                    |                         | 541.                   | 541.                            |
| 28        | LAND                     | 01/31/17      | L      |       |      | HY       | 5,000.                   |            |                     |                      | 5,000.                 |                                    |                         | 0.                     | 0.                              |
| 29        | ROOF                     | 02/08/17      | SL     | 27.50 |      | MM19H    | 3,868.                   |            |                     |                      | 3,868.                 |                                    |                         | 123.                   | 123.                            |
| 30        | RENOVATION               | 03/15/17      | SL     | 27.50 |      | MM19H    | 21,592.                  |            |                     |                      | 21,592.                |                                    |                         | 622.                   | 622.                            |
|           | TOTAL SCH E DEPRECIATION |               |        |       |      |          | 45,988.                  |            |                     |                      | 45,988.                |                                    |                         | 1,286.                 | 1,286.                          |
|           | CURRENT YEAR ACTIVITY    |               |        |       |      |          |                          |            |                     |                      |                        |                                    |                         |                        |                                 |
|           | BEGINNING BALANCE        |               |        |       |      |          | 0.                       |            | 0.                  | 0.                   | 0.                     |                                    |                         | 0.                     | 0.                              |
|           | ACQUISITIONS             |               |        |       |      |          | 45,988.                  |            | 0.                  | 0.                   | 45,988.                |                                    |                         | 1,286.                 | 1,286.                          |
|           | DISPOSITIONS             |               |        |       |      |          | 0.                       |            | 0.                  | 0.                   | 0.                     |                                    |                         | 0.                     | 0.                              |
|           | ENDING BALANCE           |               |        |       |      |          | 45,988.                  |            | 0.                  | 0.                   | 45,988.                |                                    |                         | 1,286.                 | 1,286.                          |

(D) - Asset disposed

\* ITC, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone



2017 DEPRECIATION AND AMORTIZATION REPORT

SCHEDULE E- 2

RESIDENTIAL RENTAL - [REDACTED]

| Asset No. | Description                    | Date Acquired | Method | Life  | C o n v | Line No. | Unadjusted Cost Or Basis | Bus % Excl | Section 179 Expense | * Reduction In Basis | Basis For Depreciation | Beginning Accumulated Depreciation | Current Sec 179 Expense | Current Year Deduction | Ending Accumulated Depreciation |
|-----------|--------------------------------|---------------|--------|-------|---------|----------|--------------------------|------------|---------------------|----------------------|------------------------|------------------------------------|-------------------------|------------------------|---------------------------------|
| 10        | HOUSE                          | 08/02/13      | SL     | 27.50 | MM      | 17       | 30,194.                  |            |                     |                      | 30,194.                | 3,706.                             |                         | 1,098.                 | 4,804.                          |
| 11        | LAND                           | 08/02/13      | L      |       | HY      |          | 5,328.                   |            |                     |                      | 5,328.                 |                                    |                         | 0.                     | 0.                              |
| 12        | ROOF                           | 08/16/13      | SL     | 27.50 | MM      | 17       | 4,520.                   |            |                     |                      | 4,520.                 | 554.                               |                         | 164.                   | 718.                            |
| 13        | BATHROOM & KITCHEN RENOVATIONS | 08/30/13      | SL     | 27.50 | MM      | 17       | 2,706.                   |            |                     |                      | 2,706.                 | 331.                               |                         | 98.                    | 429.                            |
| 14        | AIR CONDITIONER                | 09/06/14      | SL     | 27.50 | MM      | 17       | 3,000.                   |            |                     |                      | 3,000.                 | 250.                               |                         | 109.                   | 359.                            |
|           | TOTAL SCH E DEPRECIATION       |               |        |       |         |          | 45,748.                  |            |                     |                      | 45,748.                | 4,841.                             |                         | 1,469.                 | 6,310.                          |

(D) - Asset disposed

\* ITC, Salvage, Bonus, Commercial Revitalization Deduction, GO Zone

# Schedule E - Two-Year Comparison Worksheet

# 2017

Property Name:

RENTAL PROPERTY - [REDACTED]

| Description                       | Tax Year<br>2016 | Tax Year<br>2017 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| <b>INCOME</b>                     |                  |                  |                        |
| RENTS RECEIVED                    | 5,500.           | 7,150.           | 1,650.                 |
| <b>EXPENSES</b>                   |                  |                  |                        |
| CLEANING AND MAINTENANCE          | 0.               | 3,570.           | 3,570.                 |
| INSURANCE                         | 715.             | 715.             | 0.                     |
| REPAIRS                           | 305.             | 385.             | 80.                    |
| SUPPLIES                          | 121.             | 0.               | -121.                  |
| TAXES                             | 1,092.           | 1,160.           | 68.                    |
| UTILITIES                         | 31.              | 33.              | 2.                     |
| SUBTOTAL                          | 2,264.           | 5,863.           | 3,599.                 |
| DEPRECIATION EXPENSE OR DEPLETION | 2,862.           | 3,083.           | 221.                   |
| TOTAL EXPENSES                    | 5,126.           | 8,946.           | 3,820.                 |
| INCOME OR (LOSS)                  | 374.             | -1,796.          | -2,170.                |
| DEDUCTIBLE RENTAL LOSS *          | 0.               | -1,796.          | -1,796.                |
| * INCLUDES PASSIVE ACTIVITY LOSS  |                  |                  |                        |

Schedule E - Two-Year Comparison Worksheet

2017

Property Name:

RESIDENTIAL RENTAL - [REDACTED]

| Description                       | Tax Year<br>2016 | Tax Year<br>2017 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| INCOME                            |                  |                  |                        |
| RENTS RECEIVED                    | 7,200.           | 7,200.           | 0.                     |
| EXPENSES                          |                  |                  |                        |
| INSURANCE                         | 806.             | 806.             | 0.                     |
| TAXES                             | 947.             | 1,016.           | 69.                    |
| SUBTOTAL                          | 1,753.           | 1,822.           | 69.                    |
| DEPRECIATION EXPENSE OR DEPLETION | 1,469.           | 1,469.           | 0.                     |
| TOTAL EXPENSES                    | 3,222.           | 3,291.           | 69.                    |
| INCOME OR (LOSS)                  | 3,978.           | 3,909.           | -69.                   |

ALTERNATIVE MINIMUM TAX DEPRECIATION REPORT

| Asset No. | Description                     | Date Acquired | AMT Method | AMT Life | AMT Cost Or Basis | AMT Accumulated | Regular Depreciation | AMT Depreciation | AMT Adjustment |
|-----------|---------------------------------|---------------|------------|----------|-------------------|-----------------|----------------------|------------------|----------------|
|           | RENTAL PROPERTY - [REDACTED]    |               |            |          |                   |                 |                      |                  |                |
| 1         | RENTAL HOUSE                    | 060105        | SL         | 27.50    | 50,000.           | 20,983.         | 1,818.               | 1,818.           | 0.             |
| 3         | AIR CONDITIONER                 | 091505        | 150DB      | 15.00    | 4,800.            | 3,772.          | 284.                 | 284.             | 0.             |
| 4         | WELL & IMPROVEMENTS             | 102105        | 150DB      | 15.00    | 6,689.            | 5,159.          | 395.                 | 395.             | 0.             |
| 6         | DRAIN FIELD                     | 012606        | 150DB      | 15.00    | 3,625.            | 2,662.          | 214.                 | 214.             | 0.             |
| 7         | BATHROOM RENOVATIONS            | 060106        | SL         | 27.50    | 1,000.            | 380.            | 36.                  | 36.              | 0.             |
| 20        | ROOF                            | 031715        | SL         | 27.50    | 3,192.            | 208.            | 116.                 | 116.             | 0.             |
| 26        | RENOVATION                      | 021817        | SL         | 27.50    | 6,906.            | 0.              | 220.                 | 220.             | 0.             |
|           | ** SUBTOTAL **                  |               |            |          | 76,212.           | 33,164.         | 3,083.               | 3,083.           | 0.             |
|           | RESIDENTIAL RENTAL - [REDACTED] |               |            |          |                   |                 |                      |                  |                |
| 10        | HOUSE                           | 080213        | SL         | 27.50    | 30,194.           | 3,706.          | 1,098.               | 1,098.           | 0.             |
| 12        | ROOF                            | 081613        | SL         | 27.50    | 4,520.            | 554.            | 164.                 | 164.             | 0.             |
| 13        | BATHROOM & KITCHEN RENOVATIONS  | 083013        | SL         | 27.50    | 2,706.            | 331.            | 98.                  | 98.              | 0.             |
| 14        | AIR CONDITIONER                 | 090614        | SL         | 27.50    | 3,000.            | 250.            | 109.                 | 109.             | 0.             |
|           | ** SUBTOTAL **                  |               |            |          | 40,420.           | 4,841.          | 1,469.               | 1,469.           | 0.             |
|           | RESIDENTIAL RENTAL - [REDACTED] |               |            |          |                   |                 |                      |                  |                |
| 27        | HOUSE                           | 013117        | SL         | 27.50    | 15,528.           | 0.              | 541.                 | 541.             | 0.             |
| 29        | ROOF                            | 020817        | SL         | 27.50    | 3,868.            | 0.              | 123.                 | 123.             | 0.             |
| 30        | RENOVATION                      | 031517        | SL         | 27.50    | 21,592.           | 0.              | 622.                 | 622.             | 0.             |
|           | ** SUBTOTAL **                  |               |            |          | 40,988.           | 0.              | 1,286.               | 1,286.           | 0.             |
|           | *** GRAND TOTAL ***             |               |            |          | 157,620.          | 38,005.         | 5,838.               | 5,838.           | 0.             |

# Shared Responsibility Payment

## To Figure Your Shared Responsibility Payment

- Follow Steps 1 through 5 next.
- Complete Worksheet A or Worksheet B if you are directed to them as you complete Steps 1 through 5.
- Complete the Shared Responsibility Payment Worksheet as directed by Steps 1 through 5 or Worksheets A and B.

### Step 1 All Filers

- Can someone claim you as a dependent?
  - Yes.** Stop. You don't owe a shared responsibility payment. Don't check the box on line 6a of Form 1040 or Form 1040A. If you file Form 1040EZ, check the box on line 5
  - No.** Continue to line 2
- Did you, and everyone else in your tax household (see Tax household under *Definitions*, earlier) have qualifying health coverage for every month of 2017\*?
  - Yes.** Stop. You don't owe a shared responsibility payment. Check the Full-year coverage box on Form 1040, line 61; Form 1040A, line 38; or Form 1040EZ, line 11
  - No.** Continue to line 3

\*You can check the Full-year coverage box if you had or adopted a child during the year, or a member of your tax household died during the year, as long as that person had qualifying health care coverage for every month he or she was a member of your tax household.
- Did you or anyone else in your tax household have qualifying health coverage or qualify for a coverage exemption for any month in 2017?
  - Yes.** Stop. Claim any coverage exemption you qualify for on Form 8965. Skip question 4; go to Worksheet A
  - No.** Continue to line 4
- Did you, or anyone else in your tax household turn 18 during 2017?
  - Yes.** Go to Worksheet A
  - No.** Go to Step 2

### Step 2 Flat Dollar Amount

- Multiply \$695 by the number of people in your tax household who were at least 18 years old\* ..... 1 \_\_\_\_\_  
 \*For purposes of figuring the shared responsibility payment, an individual is considered under age 18 for an entire month if he or she didn't turn 18 before the first day of the month. An individual turns 18 on the anniversary of the day the individual was born.
- Multiply \$347.50 by the number of people in your tax household who were under age 18 ..... 2 \_\_\_\_\_
- Add lines 1 and 2 ..... 3 \_\_\_\_\_
- Enter the smaller of line 3 or \$2,085 here and on line 1 of the Shared Responsibility Payment Worksheet. Go to Step 3 ..... 4 \_\_\_\_\_

### Step 3 Household Income

- Enter the amount from Form 1040, line 38; Form 1040A, line 21; or Form 1040EZ, line 4 ..... 1 \_\_\_\_\_
- Did you receive any tax-exempt interest?
  - Yes.** Enter the amount from Form 1040, line 8b; Form 1040A, line 8b; or the amount entered in the space to the left of Form 1040EZ, line 2 ..... 2 \_\_\_\_\_
  - No.** Continue to line 3
- Did you attach Form 2555 or Form 2555-EZ?
  - Yes.** Enter the amount from Form 2555, lines 45 and 50; or Form 2555-EZ, line 18 ..... 3 \_\_\_\_\_
  - No.** Continue to line 4
- Did you claim any dependents?
  - Yes.** Continue to line 5
  - No.** Stop. Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
- Were any of the dependents you claimed required to file a return?
  - Yes.** Complete questions 1 through 3 for each dependent with a filing requirement for whom you didn't attach Form 8814. Enter the total here ..... 5 \_\_\_\_\_
  - No.** Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
- Did you attach Form 8814?
  - Yes.** Continue to line 7
  - No.** Stop. Add lines 1, 2, 3, and 5. **This is your household income.** Enter the result on Step 4, line 1
- Is Form 8814, line 4, more than \$1,050?
  - Yes.** Add the amount from Form 8814, line 1b, and the smaller of Form 8814, line 4 or 5 ..... 7 \_\_\_\_\_
  - No.** Enter -0-. Continue to line 8
- Add lines 1, 2, 3, 5, and 7. **This is your household income.** Enter the result on Step 4, line 1 ..... 8 \_\_\_\_\_

## Shared Responsibility Payment continued

### Step 4 Percentage Income Amount

1. Enter your household income from Step 3 ..... 1 \_\_\_\_\_
2. Were you or your spouse (if filing jointly) born before January 2, 1953?
  - Yes.** Skip question 3. Find your filing threshold on the **Filing Thresholds for Most People** chart and enter it both here and on line 4. .... 2 \_\_\_\_\_
  - No.** Go to question 3. .... 2 \_\_\_\_\_
3. Enter the amount listed below for your filing status. .... 3 \_\_\_\_\_
  - Single - \$10,400
  - Head of household - \$13,400
  - Married filing jointly - \$20,800
  - Married filing separately - \$4,050
  - Qualifying widow(er) - \$16,750
4. Enter the amount from line 2 or 3. .... 4 \_\_\_\_\_
5. Subtract line 4 from line 1 ..... 5 \_\_\_\_\_
6. Is the amount on line 5 zero or less?
  - Yes.** Stop. You don't owe a shared responsibility payment. Complete Form 8965 by checking the box on line 7.
  - No.** Continue to line 7. .... 6 \_\_\_\_\_
7. Multiply line 5 by 2.5% (0.025). This is your percentage income amount ..... 7 \_\_\_\_\_
8. Were you required to complete Worksheet A?
  - Yes.** Go to Worksheet B. Then continue to Step 5
  - No.** Enter the amount from line 7 above on line 2 of the Shared Responsibility Payment Worksheet and complete line 3 of that worksheet. Then continue to Step 5.

### Step 5 National Average Bronze Plan Premium

1. Were you required to complete Worksheet A?
  - Yes.** Continue to line 2
  - No.** Skip question 2; Go to question 3.
2. Multiply \$272\* by the number on Worksheet A, line 8. Enter the result here and on line 4 of the Shared Responsibility Payment Worksheet. Skip question 3 and complete line 5 of the Shared Responsibility Payment Worksheet ..... 2 \_\_\_\_\_
 

\*\$272 is the 2017 national average premium for a bronze level health plan available through the Marketplace for one individual for one month.
3. Enter on line 4 of the Shared Responsibility Payment Worksheet, the amount below that corresponds to the total number of people in your tax household. Then complete line 5 of the Shared Responsibility Payment Worksheet.
  - 1 person - \$3,264
  - 2 people - \$6,528
  - 3 people - \$9,792
  - 4 people - \$13,056
  - 5 or more people - \$16,320

### Shared Responsibility Payment Worksheet

Use this worksheet if you are referred here from the Shared Responsibility Payment flowchart or from Worksheet A or B. If everyone in your tax household had either minimum essential coverage or a coverage exemption for every month during 2017, stop here. You don't owe a shared responsibility payment.

|  |         |
|--|---------|
| <b>Complete Step 1</b>   |         |
| 1. Enter the flat dollar amount. (From Step 2, question 4 or Worksheet A, line 7) .....                                | 1 _____ |
| <b>Complete Step 3</b>   |         |
| 2. Enter the percentage income amount. (From Step 4, question 7 or Worksheet B, line 14) .....                         | 2 _____ |
| 3. Enter the larger of line 1 or line 2 .....  | 3 _____ |
| <b>Complete Step 5</b>   |         |
| 4. Enter the National Average Bronze Plan Premium (From Step 5, question 2 or 3) .....                                 | 4 _____ |
| 5. Enter the smaller of line 3 or line 4 here and on Form 1040, line 61; Form 1040A, line 38; or Form 1040EZ, line 11. | 5 _____ |
| <b>This is your shared responsibility payment</b> .....  | 5 _____ |

# Passive Activity Loss Limitations

▶ See separate instructions.

▶ Attach to Form 1040 or Form 1041.

▶ Go to [www.irs.gov/Form8582](http://www.irs.gov/Form8582) for instructions and the latest information.

Name(s) shown on return

Identifying number

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I 2017 Passive Activity Loss** Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

**Rental Real Estate Activities With Active Participation** (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

|    |   |          |        |
|----|---|----------|--------|
| 1a | Activities with net income (enter the amount from Worksheet 1, column (a))    | 6,727.   |        |
| 1b | Activities with net loss (enter the amount from Worksheet 1, column (b))      | (1,796.) |        |
| 1c | Prior years' unallowed losses (enter the amount from Worksheet 1, column (c)) | ( )      |        |
| 1d | Combine lines 1a, 1b, and 1c  |          | 4,931. |

**Commercial Revitalization Deductions From Rental Real Estate Activities**

|    |  |     |  |
|----|--|-----|--|
| 2a | Commercial revitalization deductions from Worksheet 2, column (a)                      | ( ) |  |
| 2b | Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b) | ( ) |  |
| 2c | Add lines 2a and 2b  | ( ) |  |

**All Other Passive Activities**

|    |   |     |  |
|----|---|-----|--|
| 3a | Activities with net income (enter the amount from Worksheet 3, column (a))    | ( ) |  |
| 3b | Activities with net loss (enter the amount from Worksheet 3, column (b))      | ( ) |  |
| 3c | Prior years' unallowed losses (enter the amount from Worksheet 3, column (c)) | ( ) |  |
| 3d | Combine lines 3a, 3b, and 3c  |     |  |

|   |   |  |        |
|---|---|--|--------|
| 4 | Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used |  | 4,931. |
|---|---|--|--------|

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
  - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
  - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

**Caution:** If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II or Part III. Instead, go to line 15.

**Part II Special Allowance for Rental Real Estate Activities With Active Participation**

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

|    |   |  |  |
|----|---|--|--|
| 5  | Enter the <b>smaller</b> of the loss on line 1d or the loss on line 4   |  |  |
| 6  | Enter \$150,000. If married filing separately, see instructions   |  |  |
| 7  | Enter modified adjusted gross income, but not less than zero (see instructions)<br>Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8. |  |  |
| 8  | Subtract line 7 from line 6   |  |  |
| 9  | Multiply line 8 by 50% (0.50). <b>Do not</b> enter more than \$25,000. If married filing separately, see instructions   |  |  |
| 10 | Enter the <b>smaller</b> of line 5 or line 9<br>If line 2c is a loss, go to Part III. Otherwise, go to line 15.   |  |  |

**Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities**

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

|    |  |  |  |
|----|--|--|--|
| 11 | Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions |  |  |
| 12 | Enter the loss from line 4   |  |  |
| 13 | Reduce line 12 by the amount on line 10  |  |  |
| 14 | Enter the <b>smallest</b> of line 2c (treated as a positive amount), line 11, or line 13                 |  |  |

**Part IV Total Losses Allowed**

|    |  |  |  |
|----|--|--|--|
| 15 | Add the income, if any, on lines 1a and 3a and enter the total   |  |  |
| 16 | <b>Total losses allowed from all passive activities for 2017.</b> Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return |  |  |

**Caution:** The worksheets must be filed with your tax return. Keep a copy for your records.

**Worksheet 1 - For Form 8582, Lines 1a, 1b, and 1c (See instructions.)**

| Name of activity                                       | Current year             |                        | Prior years                  | Overall gain or loss |          |
|--|--------------------------|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 1a) | (b) Net loss (line 1b) | (c) Unallowed loss (line 1c) | (d) Gain             | (e) Loss |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
| SEE ATTACHED STATEMENT FOR WORKSHEET 1                 |                          |                        |                              |                      |          |
| <b>Total. Enter on Form 8582, lines 1a, 1b, and 1c</b> | 6,727.                   | -1,796.                |                              |                      |          |

**Worksheet 2 - For Form 8582, Lines 2a and 2b (See instructions.)**

| Name of activity                                  | (a) Current year deductions (line 2a) | (b) Prior year unallowed deductions (line 2b) | (c) Overall loss |
|---|---------------------------------------|---|------------------|
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
| <b>Total. Enter on Form 8582, lines 2a and 2b</b> |                                       |   |                  |

**Worksheet 3 - For Form 8582, Lines 3a, 3b, and 3c (See instructions.)**

| Name of activity                                       | Current year             |                        | Prior years                  | Overall gain or loss |          |
|--|--------------------------|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 3a) | (b) Net loss (line 3b) | (c) Unallowed loss (line 3c) | (d) Gain             | (e) Loss |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
| <b>Total. Enter on Form 8582, lines 3a, 3b, and 3c</b> |                          |                        |                              |                      |          |

**Worksheet 4 - Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)**

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Special allowance | (d) Subtract column (c) from column (a) |
|------------------|---|----------|-----------|-----------------------|---|
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
| <b>Total</b>     |   |          |           |                       |   |

**Worksheet 5 - Allocation of Unallowed Losses (See instructions.)**

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Unallowed loss |
|------------------|---|----------|-----------|--------------------|
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
| <b>Total</b>     |   |          |           |                    |



# Noncash Charitable Contributions

▶ Attach to your tax return if you claimed a total deduction of over \$500 for all contributed property.

▶ Information about Form 8283 and its separate instructions is at [www.irs.gov/form8283](http://www.irs.gov/form8283).

Name(s) shown on your income tax return

Identifying number

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Note.** Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

**Section A. Donated Property of \$5,000 or Less and Publicly Traded Securities** - List in this section **only** items (or groups of similar items) for which you claimed a deduction of \$5,000 or less. Also list publicly traded securities even if the deduction is more than \$5,000 (see instructions).

**Part I** Information on Donated Property - If you need more space, attach a statement.

| 1 | (a) Name and address of the donee organization                | (b) If donated property is a vehicle, check the box. Also enter the vehicle identification number (unless Form 1098-C is attached) | (c) Description of donated property<br>(For a vehicle, enter the year, make, model, and mileage. For securities, enter the company name and the number of shares.) |
|---|---|--|--|
| A | GOODWILL INDUSTRIES OF N FL<br>4527 L, JACKSONVILLE, FL 32205 | <input type="checkbox"/>   |  |
| B | LEE CONLEE HOUSE, INC.<br>PO BOX 2558, PALATKA, FL 32178      | <input type="checkbox"/>   |  |
| C |   | <input type="checkbox"/>   |  |
| D |   | <input type="checkbox"/>   |  |
| E |   | <input type="checkbox"/>   |  |

**Note.** If the amount you claimed as a deduction for an item is \$500 or less, you do not have to complete columns (e), (f), and (g).

|   | (d) Date of the contribution | (e) Date acquired by donor (mo., yr.) | (f) How acquired by donor | (g) Donor's cost or adjusted basis | (h) Fair market value (see instructions) | (i) Method used to determine the fair market value |
|---|------------------------------|---------------------------------------|---------------------------|------------------------------------|--|--|
| A |                              |                                       | PURCHASE                  |                                    | 650.                                     | THRIFT SHOP VALUE                                  |
| B |                              |                                       | PURCHASE                  |                                    | 100.                                     | THRIFT SHOP VALUE                                  |
| C |                              |                                       |                           |                                    |  |  |
| D |                              |                                       |                           |                                    |  |  |
| E |                              |                                       |                           |                                    |  |  |

**Part II** Partial Interests and Restricted Use Property - Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2 a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ \_\_\_\_\_  
If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: (1) For this tax year ▶ \_\_\_\_\_  
(2) For any prior tax years ▶ \_\_\_\_\_

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):  
Name of charitable organization (donee) \_\_\_\_\_  
Address (number, street, and room or suite no.) \_\_\_\_\_  
City or town, state, and ZIP code \_\_\_\_\_

d For tangible property, enter the place where the property is located or kept ▶ \_\_\_\_\_  
e Name of any person, other than the donee organization, having actual possession of the property ▶ \_\_\_\_\_

|   | Yes | No |
|---|-----|----|
| 3 a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property? .....  |     |    |
| b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire? ..... |     |    |
| c Is there a restriction limiting the donated property for a particular use? .....  |     |    |

## Paid Preparer's Due Diligence Checklist

*Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC),  
and Additional Child Tax Credit (ACTC)*

▶ To be completed by preparer and filed with Form 1040, 1040A, 1040EZ, 1040NR, 1040SS, or 1040PR.  
▶ Go to [www.irs.gov/Form8867](http://www.irs.gov/Form8867) for instructions and the latest information.

Taxpayer name(s) shown on return  
**CARLESS J. & [REDACTED] BOATWRIGHT**

Taxpayer identification number  
[REDACTED]

Enter preparer's name and PTIN

**JOHN D. ROWE, CPA**

**P00099553**

**Part I Due Diligence Requirements**

| Please check the appropriate box for the credit(s) claimed on this return and complete the related Parts I-IV for the credit(s) claimed (check all that apply).  | EIC<br><input type="checkbox"/>         | CTC/ACTC<br><input checked="" type="checkbox"/> | AOTC<br><input type="checkbox"/>        |
|--|---|---|---|
| <b>1</b> Did you complete the return based on information for tax year 2017 provided by the taxpayer or reasonably obtained by you? .....  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| <b>2</b> Did you complete the applicable EIC and/or CTC/ACTC worksheets found in the Form 1040, 1040A, 1040EZ, 1040SS, 1040PR, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed? .....  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| <b>3</b> Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following:<br><ul style="list-style-type: none"> <li>• Interview the taxpayer, ask questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s)</li> <li>• Review information to determine that the taxpayer is eligible to claim the credit(s) and for what amount .....</li> </ul>                                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| <b>4</b> Did any information provided by the taxpayer, a third party, or reasonably known to you, in connection with preparing the return, appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.) .....   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No          |   |
| <b>a</b> Did you make reasonable inquiries to determine the correct, complete, and consistent information? .....   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No                     |   |
| <b>b</b> Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.) .....   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No                     |   |
| <b>5</b> Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of applicable worksheets, a record of how, when, and from whom the information used to prepare Form 8867 and worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility or to compute the amount for the credit(s) ..... | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| List those documents, if any, that you relied on.<br>_____<br>_____<br>_____   |   |   |   |
| <b>6</b> Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for and the amount of the credit(s) claimed on the return if his/her return is selected for audit? .....  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| <b>7</b> Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? .....   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                     |   |
| (If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)  |   |   |   |
| <b>a</b> Did you complete the required recertification Form 8862? .....  | <input type="checkbox"/> Yes            | <input type="checkbox"/> No                     | <input type="checkbox"/> N/A            |
| <b>8</b> If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Form 1040, Schedule C? .....   | <input type="checkbox"/> Yes            | <input type="checkbox"/> No                     | <input checked="" type="checkbox"/> N/A |

LHA For Paperwork Reduction Act Notice, see separate instructions.

**Part II Due Diligence Questions for Returns Claiming EIC** (If the return does not claim EIC, go to Part III.)

|   | EIC  | CTC/ACTC | AOTC |
|---|--|----------|------|
| <b>9a</b> Have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed, or to claim EIC if the taxpayer has no qualifying child? (Skip 9b and 9c if the taxpayer is claiming EIC and does not have a qualifying child.) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                 |          |      |
| <b>b</b> Did you explain to the taxpayer that he/she may not claim the EIC if the taxpayer has not lived with the child for over half the year, even if the taxpayer has supported the child?   | <input type="checkbox"/> Yes <input type="checkbox"/> No                                 |          |      |
| <b>c</b> Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tie-breaker rules)?   | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A |          |      |

**Part III Due Diligence Questions for Returns Claiming CTC and/or ACTC** (If the return does not claim CTC or ACTC, go to Part IV.)

|  |   |  |
|--|---|--|
| <b>10a</b> Did all children for whom the taxpayer is claiming the CTC/ACTC reside with the taxpayer? (If "Yes," go to question 10c; if "No," go to question 10b.)  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                 |  |
| <b>b</b> Did you ask if there is an active Form 8332, Release/Revocation of Claim to Exemption for Child by Custodial Parent, or a similar statement in place and, if applicable, did you attach it to the return? | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A            |  |
| <b>c</b> Have you determined that the taxpayer has not released the claim to another person?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A |  |

**Part IV Due Diligence Questions for Returns Claiming AOTC** (If the return does not claim AOTC, go to Part V.)

|  |  |
|--|--|
| <b>11</b> Did the taxpayer provide substantiation such as a Form 1098-T and/or receipts for the qualified tuition and related expenses for the claimed AOTC? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
|--|--|

**Part V Credit Eligibility Certification**

- ▶ You have complied with all due diligence requirements with respect to the credits claimed on the return of the taxpayer identified above if you:
  - A. Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and in what amount(s);
  - B. Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for all credits claimed;
  - C. Submit Form 8867 in the manner required; and
  - D. Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.
    1. A copy of Form 8867,
    2. The applicable worksheet(s) or your own worksheet(s) for any credits claimed,
    3. Copies of any taxpayer documents you may have relied upon to determine eligibility for and the amount of the credit(s),
    4. A record of how, when, and from whom the information used to prepare this form and worksheet(s) was obtained, and
    5. A record of any additional questions you may have asked to determine eligibility for and amount of the credits, and the taxpayer's answers.
- ▶ If you have not complied with all due diligence requirements for all credits claimed, you may have to pay a \$510 penalty for each credit for which you have failed to comply.

|   |   |
|---|---|
| <b>12</b> Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|---|---|

**Depreciation and Amortization**  
(Including Information on Listed Property)

▶ Attach to your tax return. **SCHEDULE E- 1**

▶ Go to [www.irs.gov/Form4562](http://www.irs.gov/Form4562) for instructions and the latest information.

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on return

Business or activity to which this form relates

Identifying number

**RENTAL PROPERTY** - [REDACTED]

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I Election To Expense Certain Property Under Section 179** Note: If you have any listed property, complete Part V before you complete Part I.

|    |   |                              |                  |
|----|---|------------------------------|------------------|
| 1  | Maximum amount (see instructions)   | 1                            |                  |
| 2  | Total cost of section 179 property placed in service (see instructions)   | 2                            |                  |
| 3  | Threshold cost of section 179 property before reduction in limitation   | 3                            |                  |
| 4  | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-  | 4                            |                  |
| 5  | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see Instructions | 5                            |                  |
| 6  | (a) Description of property   | (b) Cost (business use only) | (c) Elected cost |
| 7  | Listed property. Enter the amount from line 29  | 7                            |                  |
| 8  | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7  | 8                            |                  |
| 9  | Tentative deduction. Enter the smaller of line 5 or line 8  | 9                            |                  |
| 10 | Carryover of disallowed deduction from line 13 of your 2016 Form 4562   | 10                           |                  |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5   | 11                           |                  |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but don't enter more than line 11  | 12                           |                  |
| 13 | Carryover of disallowed deduction to 2018. Add lines 9 and 10, less line 12   | 13                           |                  |

Note: Don't use Part II or Part III below for listed property. Instead, use Part V.

**Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property.)**

|    |  |    |  |
|----|--|----|--|
| 14 | Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year | 14 |  |
| 15 | Property subject to section 168(f)(1) election   | 15 |  |
| 16 | Other depreciation (including ACRS)  | 16 |  |

**Part III MACRS Depreciation (Don't include listed property.) (See instructions.)**

**Section A**

|    |   |    |        |
|----|---|----|--------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2017  | 17 | 2,863. |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here |    |        |

**Section B - Assets Placed in Service During 2017 Tax Year Using the General Depreciation System**

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only - see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |
|--------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|
| 19a 3-year property            |                                      |  |                     |                |            |                            |
| b 5-year property              |                                      |  |                     |                |            |                            |
| c 7-year property              |                                      |  |                     |                |            |                            |
| d 10-year property             |                                      |  |                     |                |            |                            |
| e 15-year property             |                                      |  |                     |                |            |                            |
| f 20-year property             |                                      |  |                     |                |            |                            |
| g 25-year property             |                                      |  | 25 yrs.             |                | S/L        |                            |
| h Residential rental property  | 2 / 17                               | 6,906.   | 27.5 yrs.           | MM             | S/L        | 220.                       |
| i Nonresidential real property | /                                    |  | 39 yrs.             | MM             | S/L        |                            |

**Section C - Assets Placed in Service During 2017 Tax Year Using the Alternative Depreciation System**

|     |            |   |         |    |     |  |
|-----|------------|---|---------|----|-----|--|
| 20a | Class life |   |         |    | S/L |  |
| b   | 12-year    |   | 12 yrs. |    | S/L |  |
| c   | 40-year    | / | 40 yrs. | MM | S/L |  |

**Part IV Summary (See instructions.)**

|    |  |    |        |
|----|--|----|--------|
| 21 | Listed property. Enter amount from line 28   | 21 |        |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr. | 22 | 3,083. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs  | 23 |        |

Part V

Listed Property (Include automobiles, certain other vehicles, certain aircraft, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A - Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? Yes No 24b If "Yes," is the evidence written? Yes No

Table with columns (a) Type of property, (b) Date placed in service, (c) Business/investment use percentage, (d) Cost or other basis, (e) Basis for depreciation, (f) Recovery period, (g) Method/Convention, (h) Depreciation deduction, (i) Elected section 179 cost. Includes rows 25-29.

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

Table with columns (a) through (f) Vehicle. Rows 30-36: 30 Total business/investment miles driven during the year, 31 Total commuting miles driven during the year, 32 Total other personal (noncommuting) miles driven, 33 Total miles driven during the year, 34-36 Availability questions.

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who aren't more than 5% owners or related persons.

Table with columns Yes No. Rows 37-41: 37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? 38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? 39 Do you treat all use of vehicles by employees as personal use? 40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received? 41 Do you meet the requirements concerning qualified automobile demonstration use?

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," don't complete Section B for the covered vehicles.

Part VI Amortization

Table with columns (a) Description of costs, (b) Date amortization begins, (c) Amortizable amount, (d) Code section, (e) Amortization period or percentage, (f) Amortization for this year. Rows 42-44: 42 Amortization of costs that begins during your 2017 tax year, 43 Amortization of costs that began before your 2017 tax year, 44 Total. Add amounts in column (f). See the instructions for where to report

**Depreciation and Amortization**  
(Including Information on Listed Property)

▶ Attach to your tax return. **SCHEDULE E- 3**

Department of the Treasury  
Internal Revenue Service (99)

▶ Go to [www.irs.gov/Form4562](http://www.irs.gov/Form4562) for instructions and the latest information.

Name(s) shown on return

Business or activity to which this form relates

Identifying number

**RESIDENTIAL RENTAL** - [REDACTED]

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I Election To Expense Certain Property Under Section 179** Note: If you have any listed property, complete Part V before you complete Part I.

|    |   |                              |                  |
|----|---|------------------------------|------------------|
| 1  | Maximum amount (see instructions)   | 1                            |                  |
| 2  | Total cost of section 179 property placed in service (see instructions)   | 2                            |                  |
| 3  | Threshold cost of section 179 property before reduction in limitation   | 3                            |                  |
| 4  | Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-  | 4                            |                  |
| 5  | Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions | 5                            |                  |
| 6  | (a) Description of property   | (b) Cost (business use only) | (c) Elected cost |
| 7  | Listed property. Enter the amount from line 29  | 7                            |                  |
| 8  | Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7  | 8                            |                  |
| 9  | Tentative deduction. Enter the smaller of line 5 or line 8  | 9                            |                  |
| 10 | Carryover of disallowed deduction from line 13 of your 2016 Form 4562   | 10                           |                  |
| 11 | Business income limitation. Enter the smaller of business income (not less than zero) or line 5   | 11                           |                  |
| 12 | Section 179 expense deduction. Add lines 9 and 10, but don't enter more than line 11  | 12                           |                  |
| 13 | Carryover of disallowed deduction to 2018. Add lines 9 and 10, less line 12   | 13                           |                  |

Note: Don't use Part II or Part III below for listed property. Instead, use Part V.

**Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property.)**

|    |  |    |  |
|----|--|----|--|
| 14 | Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year | 14 |  |
| 15 | Property subject to section 168(f)(1) election   | 15 |  |
| 16 | Other depreciation (including ACRS)  | 16 |  |

**Part III MACRS Depreciation (Don't include listed property.) (See instructions.)**

**Section A**

|    |   |    |                          |
|----|---|----|--------------------------|
| 17 | MACRS deductions for assets placed in service in tax years beginning before 2017  | 17 |                          |
| 18 | If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here |    | <input type="checkbox"/> |

**Section B - Assets Placed in Service During 2017 Tax Year Using the General Depreciation System**

| (a) Classification of property | (b) Month and year placed in service | (c) Basis for depreciation (business/investment use only - see instructions) | (d) Recovery period | (e) Convention | (f) Method | (g) Depreciation deduction |        |
|--------------------------------|--------------------------------------|--|---------------------|----------------|------------|----------------------------|--------|
| 19a                            | 3-year property                      |  |                     |                |            |                            |        |
| b                              | 5-year property                      |  |                     |                |            |                            |        |
| c                              | 7-year property                      |  |                     |                |            |                            |        |
| d                              | 10-year property                     |  |                     |                |            |                            |        |
| e                              | 15-year property                     |  |                     |                |            |                            |        |
| f                              | 20-year property                     |  |                     |                |            |                            |        |
| g                              | 25-year property                     |  | 25 yrs.             |                | S/L        |                            |        |
| h                              | Residential rental property          | /  | 27.5 yrs.           | MM             | S/L        |                            |        |
|                                |                                      | /  | STATEMENT 5         | 27.5 yrs.      | MM         | S/L                        | 1,286. |
| i                              | Nonresidential real property         | /  | 39 yrs.             | MM             | S/L        |                            |        |
|                                |                                      | /  |                     | MM             | S/L        |                            |        |

**Section C - Assets Placed in Service During 2017 Tax Year Using the Alternative Depreciation System**

|     |            |   |         |    |     |  |
|-----|------------|---|---------|----|-----|--|
| 20a | Class life |   |         |    | S/L |  |
| b   | 12-year    |   | 12 yrs. |    | S/L |  |
| c   | 40-year    | / | 40 yrs. | MM | S/L |  |

**Part IV Summary (See instructions.)**

|    |  |    |        |
|----|--|----|--------|
| 21 | Listed property. Enter amount from line 28   | 21 |        |
| 22 | Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr. | 22 | 1,286. |
| 23 | For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs  | 23 |        |

Part V Listed Property (Include automobiles, certain other vehicles, certain aircraft, certain computers, and property used for entertainment, recreation, or amusement.)
Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A - Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? Yes No 24b If "Yes," is the evidence written? Yes No
(a) Type of property (list vehicles first) (b) Date placed in service (c) Business/investment use percentage (d) Cost or other basis (e) Basis for depreciation (business/investment use only) (f) Recovery period (g) Method/Convention (h) Depreciation deduction (i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use 25
26 Property used more than 50% in a qualified business use: %
27 Property used 50% or less in a qualified business use: % S/L -
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1 28
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1 29

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

Table with 6 main columns: (a) Vehicle, (b) Vehicle, (c) Vehicle, (d) Vehicle, (e) Vehicle, (f) Vehicle. Rows 30-36 include questions about miles driven and personal use availability.

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who aren't more than 5% owners or related persons.

37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees? Yes No
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners
39 Do you treat all use of vehicles by employees as personal use?
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?
41 Do you meet the requirements concerning qualified automobile demonstration use?
Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," don't complete Section B for the covered vehicles.

Part VI Amortization

Table with 6 columns: (a) Description of costs, (b) Date amortization begins, (c) Amortizable amount, (d) Code section, (e) Amortization period or percentage, (f) Amortization for this year. Rows 42-44 include amortization details.

SCHEDULE A MORTGAGE INTEREST AND POINTS STATEMENT 1  
 REPORTED ON FORM 1098

| DESCRIPTION   | AMOUNT |
|---|--------|
| WELLS FARGO BANK N A, PO BOX 14411, DES MOINES, IA 50306-3411 | 8,681. |
| TOTAL TO SCHEDULE A, LINE 10                                  | 8,681. |

SCHEDULE A REAL ESTATE TAXES STATEMENT 2

| DESCRIPTION                 | AMOUNT |
|-----------------------------|--------|
| [REDACTED]                  | 238.   |
| WELLS FARGO BANK N A        | 1,615. |
| TOTAL TO SCHEDULE A, LINE 6 | 1,853. |

FORM 8582 ACTIVE RENTAL OF REAL ESTATE - WORKSHEET 1 STATEMENT 3

| NAME OF ACTIVITY                | CURRENT YEAR |          | PRIOR YEAR UNALLOWED LOSS | OVERALL GAIN OR LOSS |         |
|---------------------------------|--------------|----------|---------------------------|----------------------|---------|
|                                 | NET INCOME   | NET LOSS |                           | GAIN                 | LOSS    |
| RENTAL PROPERTY - [REDACTED]    |              |          |                           |                      |         |
| [REDACTED]                      | 0.           | -1,796.  |                           |                      | -1,796. |
| RESIDENTIAL RENTAL - [REDACTED] |              |          |                           |                      |         |
| [REDACTED]                      | 3,909.       | 0.       |                           | 3,909.               |         |
| RESIDENTIAL RENTAL - [REDACTED] |              |          |                           |                      |         |
| [REDACTED]                      | 2,818.       | 0.       |                           | 2,818.               |         |
| TOTALS                          | 6,727.       | -1,796.  |                           | 6,727.               | -1,796. |



| RE<br>A<br>NAME   | FORM<br>OR<br>SCHEDULE | PRIOR<br>YEAR C/O | NET<br>GAIN/LOSS | UNALLOWED<br>LOSS | ALLOWED<br>LOSS      |
|---|------------------------|-------------------|------------------|-------------------|----------------------|
| X RENTAL PROPERTY -<br>[REDACTED]                                     | SCH E                  |                   | -1,796.          | -1,796.           | 1,796.               |
| X RESIDENTIAL<br>RENTAL - [REDACTED]                                  | SCH E                  |                   | 3,909.           | 3,909.            |                      |
| X RESIDENTIAL<br>RENTAL - [REDACTED]                                  | SCH E                  |                   | 2,818.           | 2,818.            |                      |
| TOTALS  |                        |                   | <u>4,931.</u>    | <u>4,931.</u>     | <u>1,796.</u>        |
| PRIOR YEAR CARRYOVERS ALLOWED DUE TO CURRENT YEAR NET ACTIVITY INCOME |                        |                   |                  |                   |                      |
| TOTAL   |                        |                   |                  |                   | <u><u>1,796.</u></u> |

FORM 4562 PART III - RESIDENTIAL RENTAL PROPERTY STATEMENT 5

| (A)<br>DESCRIPTION OF PROPERTY         | (B)<br>MO/YR | (C)<br>BASIS | (G)<br>DEDUCTION |
|--|--------------|--------------|------------------|
| HOUSE                                  | 1/17         | 15,528.      | 541.             |
| ROOF                                   | 2/17         | 3,868.       | 123.             |
| RENOVATION                             | 3/17         | 21,592.      | 622.             |
| TOTAL TO FORM 4562, PART III, LINE 19H |              | 40,988.      | 1,286.           |

U.S. Individual Income Tax Return

Filing status:  Single  Married filing jointly  Married filing separately  Head of household  Qualifying widow(er)

Your first name and initial: CARLESS J. Last name: BOATWRIGHT Your social security number: [REDACTED]

Your standard deduction:  Someone can claim you as a dependent  You were born before January 2, 1954  You are blind

If joint return, spouse's first name and initial: [REDACTED] Last name: [REDACTED] Spouse's social security number: [REDACTED]

Spouse standard deduction:  Spouse is blind  Someone can claim your spouse as a dependent  Spouse itemizes on a separate return or you were dual-status alien  Spouse was born before January 2, 1954  Full-year health care coverage or exempt (see inst.)

Home address (number and street). If you have a P.O. box, see instructions. [REDACTED] Apt. no. [REDACTED] Presidential Election Campaign. (see inst.)  You  Spouse

City, town or post office, state, and ZIP code. If you have a foreign address, attach Schedule 6. [REDACTED] If more than four dependents, see inst. and / here

Table with 4 columns: (1) First name, Last name, (2) Social security number, (3) Relationship to you, (4) Child tax credit, Credit for other dependents. Rows include DAUGHTER, DAUGHTER, and SON.

Sign Here: Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. Includes fields for signature, date, and occupation for both preparer and spouse.

Paid Preparer Use Only: Preparer's name: JOHN D. ROWE, CPA; Preparer's signature: JOHN D. ROWE, CPA; PTIN: P00099553; Firm's EIN: 72-1396621; Check if:  3rd Party Designee,  Self-employed.

Firm's name: CARR, RIGGS & INGRAM, LLC; Firm's address: PALATKA, FL 32177; Phone no.: 386.325.4561

|                                   |      |   |   |     |          |
|-----------------------------------|------|---|---|-----|----------|
|                                   | 1    | Wages, salaries, tips, etc. Attach Form(s) W-2  | STMT 1  | 1   | 150,657. |
|                                   | 2a   | Tax-exempt interest   | 2a  | 2b  | 46.      |
|                                   | 3a   | Qualified dividends   | 3a  | 3b  |          |
|                                   | 4a   | IRAs, pensions, and annuities   | 4a  | 4b  |          |
|                                   | 5a   | Social security benefits  | 5a  | 5b  |          |
|                                   | 6    | Total income. Add lines 1 through 5. Add any amount from Schedule 1, line 22  | 7,963.  | 6   | 158,666. |
|                                   | 7    | Adjusted gross income. If you have no adjustments to income, enter the amount from line 6; otherwise, subtract Schedule 1, line 36, from line 6 |   | 7   | 158,666. |
|                                   | 8    | Standard deduction or itemized deductions (from Schedule A)   |   | 8   | 24,000.  |
|                                   | 9    | Qualified business income deduction (see instructions)  |   | 9   |          |
|                                   | 10   | Taxable income. Subtract lines 8 and 9 from line 7. If zero or less, enter -0-  |   | 10  | 134,666. |
|                                   | 11   | a Tax (see inst) 21,506. (check if any from: 1 Form(s) 8814 2 Form 4972 3 )   |   | 11  | 21,506.  |
|                                   | 12   | b Add any amount from Schedule 2 and check here   |   | 12  | 6,000.   |
|                                   | 12   | a Child tax credit/credit for other dependents 6,000. b Add any amount from Sch. 3 and check here   |   | 13  | 15,506.  |
|                                   | 13   | Subtract line 12 from line 11. If zero or less, enter -0-   |   | 14  |          |
|                                   | 14   | Other taxes. Attach Schedule 4  |   | 15  | 15,506.  |
|                                   | 15   | Total tax. Add lines 13 and 14  |   | 16  | 19,780.  |
|                                   | 16   | Federal income tax withheld from Forms W-2 and 1099   |   | 17  |          |
|                                   | 17   | Refundable credits: a EIC (see inst.) b Sch 8812 c Form 8863  |   | 18  | 19,780.  |
|                                   | 18   | Add any amount from Schedule 5  |   | 19  | 4,274.   |
|                                   | 18   | Add lines 16 and 17. These are your total payments  |   | 20a | 4,274.   |
|                                   | 19   | If line 18 is more than line 15, subtract line 15 from line 18. This is the amount you overpaid   |   |     |          |
| Refund                            | 20 a | Amount of line 19 you want refunded to you. If Form 8888 is attached, check here  |   |     |          |
| Direct deposit? See instructions. | b    | Routing number  | c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings |     |          |
|                                   | d    | Account number  |   |     |          |
|                                   | 21   | Amount of line 19 you want applied to your 2019 estimated tax   | 21  |     |          |
| Amount You Owe                    | 22   | Amount you owe. Subtract line 18 from line 15. For details on how to pay, see instructions  |   | 22  |          |
|                                   | 23   | Estimated tax penalty (see instructions)  | 23  |     |          |

Standard Deduction for -

- Single or married filing separately, \$12,000
- Married filing jointly or Qualifying widow(er), \$24,000
- Head of household, \$18,000
- If you checked any box under Standard deduction, see instructions.

**SCHEDULE 1  
(Form 1040)**

**Additional Income and Adjustments to Income**

OMB No. 1545-0074

**2018**  
Attachment  
Sequence No. **01**

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1040.

▶ Go to [www.irs.gov/Form1040](http://www.irs.gov/Form1040) for instructions and the latest information.

|                                    |                                  |   |   |        |
|------------------------------------|----------------------------------|---|---|--------|
| Name(s) shown on Form 1040         |                                  | Your social security number   |   |        |
| CARLESS J. & ██████████ BOATWRIGHT |                                  | ██████████  |   |        |
| <b>Additional<br/>Income</b>       | 1-9b                             | Reserved .....  | 1-9b  |        |
|                                    | 10                               | Taxable refunds, credits, or offsets of state and local income taxes .....  | 10  |        |
|                                    | 11                               | Alimony received .....  | 11  |        |
|                                    | 12                               | Business income or (loss). Attach Schedule C or C-EZ .....  | 12  |        |
|                                    | 13                               | Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>   | 13  |        |
|                                    | 14                               | Other gains or (losses). Attach Form 4797 .....   | 14  |        |
|                                    | 15a                              | Reserved .....  | 15b   |        |
|                                    | 16a                              | Reserved .....  | 16b   |        |
|                                    | 17                               | Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E .....   | 17  | 7,963. |
|                                    | 18                               | Farm income or (loss). Attach Schedule F .....  | 18  |        |
|                                    | 19                               | Unemployment compensation .....   | 19  |        |
|                                    | 20a                              | Reserved .....  | 20b   |        |
|                                    | 21                               | Other income. List type and amount ▶ .....  | 21  |        |
|                                    | 22                               | Combine the amounts in the far right column. If you don't have any adjustments to income, enter here and include on Form 1040, line 6. Otherwise, go to line 23 ..... | 22  | 7,963. |
|                                    | <b>Adjustments<br/>to Income</b> | 23  | Educator expenses .....   | 23     |
|                                    |                                  | 24  | Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 ..... | 24     |
|                                    |                                  | 25  | Health savings account deduction. Attach Form 8889 .....  | 25     |
|                                    |                                  | 26  | Moving expenses for members of the Armed Forces. Attach Form 3903 .....   | 26     |
|                                    |                                  | 27  | Deductible part of self-employment tax. Attach Schedule SE .....  | 27     |
|                                    |                                  | 28  | Self-employed SEP, SIMPLE, and qualified plans .....  | 28     |
|                                    |                                  | 29  | Self-employed health insurance deduction .....  | 29     |
|                                    |                                  | 30  | Penalty on early withdrawal of savings .....  | 30     |
| 31a                                |                                  | Alimony paid    b Recipient's SSN ▶ .....   | 31a   |        |
| 32                                 |                                  | IRA deduction .....   | 32  |        |
| 33                                 |                                  | Student loan interest deduction .....   | 33  |        |
| 34                                 | Reserved .....                   | 34  |   |        |
| 35                                 | Reserved .....                   | 35  |   |        |
| 36                                 | Add lines 23 through 35 .....    | 36  |   |        |

LHA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule 1 (Form 1040) 2018

**Child Tax Credit and Credit for Other Dependents Worksheet** *(keep for your records)*

Name(s): First **CARLESS J. & [REDACTED]** Last **BOATWRIGHT** Your SSN **[REDACTED]**

**Part 1**

1. Number of qualifying children under age 17 with the required social security number: 3 X \$2,000. Enter the result. 1 6,000.
2. Number of other dependents, including qualifying children who are not under 17 or who do not have the required social security number: \_\_\_\_\_ X \$500. Enter the result. 2 \_\_\_\_\_
3. Add lines 1 and 2 3 6,000.
4. Enter the amount from Form 1040, line 7 or Form 1040NR, line 37. 4 158,666.
5. **1040 filers:** Enter the total of any-
  - Exclusion of income from Puerto Rico, and
  - Amounts from Form 2555, lines 45 and 50; Form 2555-EZ, line 18; and Form 4563, line 15.5 0.
6. **1040NR filers:** Enter -0-. 6 158,666.
6. Add lines 4 and 5. Enter the total. 6 158,666.
7. Enter the amount shown below for your filing status.
  - Married filing jointly - \$400,000
  - All other filing statuses - \$200,0007 400,000.
8. Is the amount on line 6 more than the amount on line 7?
  - No.** Leave line 8 blank. Enter -0- on line 9.
  - Yes.** Subtract line 7 from line 6. 8 \_\_\_\_\_  
If the result is not a multiple of \$1,000, increase it to the next multiple of \$1,000 (for example, increase \$425 to \$1,000, increase \$1,025 to \$2,000, etc).
9. Multiply the amount on line 8 by 5% (.05). Enter the result. 9 0.
10. Is the amount on line 3 more than the amount on line 9?
  - No.** **STOP**
  - Yes.** Subtract line 9 from line 3. Enter the result. 10 6,000.  
You cannot take the child tax credit or credit for other dependents on Form 1040, line 12a, or Form 1040NR, line 49. You also cannot take the additional child tax credit.

**Part 2**

11. Enter the amount from Form 1040, line 11 or Form 1040NR, line 45. 11 21,506.
12. **1040 filers:** Enter the total of the amounts from Schedule 3, lines 48 through 51.\*  
**1040NR filers:** Enter the total of the amounts from lines 46 through 48.\* 12 \_\_\_\_\_
13. Subtract line 12 from line 11 13 21,506.
14. Are you claiming any of the following credits?
  - Residential energy efficient property credit, Form 5695, Part I.
  - Mortgage interest credit, Form 8396
  - Adoption credit, Form 8839
  - District of Columbia first-time homebuyer credit, Form 885914 0.
15. Subtract line 14 from line 13. Enter the result. 15 21,506.
16. Is the amount on line 10 of this worksheet more than the amount on line 15?
  - No.** Enter the amount from line 10. 16 6,000.
  - Yes.** Enter the amount from line 15. 16 6,000.  
**This is your child tax credit and credit for other dependents.**

\* Also include amounts from:  
 Form 5695, line 30  
 Form 8910, line 15  
 Form 8936, line 23  
 Schedule R, line 22

**SCHEDULE B**  
**(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)  
Name(s) shown on return

**Interest and Ordinary Dividends**

▶ Go to [www.irs.gov/ScheduleB](http://www.irs.gov/ScheduleB) for instructions and the latest information.

▶ Attach to Form 1040.

OMB No. 1545-0074

**2018**  
Attachment  
Sequence No. **08**

Your social security number

**CARLESS J. & [REDACTED] BOATWRIGHT**

|   |  | Amount        |
|---|--|---------------|
| <b>Part I</b><br><b>Interest</b>                                    | <b>1</b> List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address ▶<br><u>CAPITAL CITY BANK</u> | 46.           |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   |  |               |
|   | <b>2</b> Add the amounts on line 1 .....   | 46.           |
|   | <b>3</b> Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815 .....   |               |
|   | <b>4</b> Subtract line 3 from line 2. Enter the result here and on Form 1040, line 2b ▶  | 46.           |
| <b>Note:</b> If line 4 is over \$1,500, you must complete Part III. |  | <b>Amount</b> |

|   |  |  |
|---|--|--|
| <b>Part II</b><br><b>Ordinary Dividends</b> | <b>5</b> List name of payer ▶  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   |  |  |
|   | <b>6</b> Add the amounts on line 5. Enter the total here and on Form 1040, line 3b ▶ |  |

|   |  | Yes | No |
|---|--|-----|----|
| <b>Part III</b><br><b>Foreign Accounts and Trusts</b> | <b>You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.</b>   |     |    |
|   | <b>7a</b> At any time during 2018, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions .....<br>If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements ..... |     | X  |
|   | <b>b</b> If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶   |     |    |
|   | <b>8</b> During 2018, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions .....   |     | X  |

# Interest and Dividend Summary

Name: CARLESS J. & TAMMY JO BOATWRIGHT

FEIN/SSN:

| Payer               | Interest | Interest on U.S. Savings Bonds | Tax-Exempt Interest | Private Activity Interest | Market Discount | Original Issue Discount (OID) | Ordinary Dividends | Qualified Dividends |
|---------------------|----------|--------------------------------|---------------------|---------------------------|-----------------|-------------------------------|--------------------|---------------------|
| A CAPITAL CITY BANK | 46.      |                                |                     |                           |                 |                               |                    |                     |
| B                   |          |                                |                     |                           |                 |                               |                    |                     |
| C                   |          |                                |                     |                           |                 |                               |                    |                     |
| D                   |          |                                |                     |                           |                 |                               |                    |                     |
| E                   |          |                                |                     |                           |                 |                               |                    |                     |
| F                   |          |                                |                     |                           |                 |                               |                    |                     |
| G                   |          |                                |                     |                           |                 |                               |                    |                     |
| H                   |          |                                |                     |                           |                 |                               |                    |                     |
| I                   |          |                                |                     |                           |                 |                               |                    |                     |
| J                   |          |                                |                     |                           |                 |                               |                    |                     |
| K                   |          |                                |                     |                           |                 |                               |                    |                     |
| <b>Totals</b>       | 46.      |                                |                     |                           |                 |                               |                    |                     |

| Capital Gain Distributions | Unrecaptured Section 1250 Gain | Section 1202 Gain | Collectibles | Section 199A Dividends | Investment Expenses | Federal Tax Withheld | State Tax Withheld | Foreign Tax Paid |
|----------------------------|--------------------------------|-------------------|--------------|------------------------|---------------------|----------------------|--------------------|------------------|
| A                          |                                |                   |              |                        |                     |                      |                    |                  |
| B                          |                                |                   |              |                        |                     |                      |                    |                  |
| C                          |                                |                   |              |                        |                     |                      |                    |                  |
| D                          |                                |                   |              |                        |                     |                      |                    |                  |
| E                          |                                |                   |              |                        |                     |                      |                    |                  |
| F                          |                                |                   |              |                        |                     |                      |                    |                  |
| G                          |                                |                   |              |                        |                     |                      |                    |                  |
| H                          |                                |                   |              |                        |                     |                      |                    |                  |
| I                          |                                |                   |              |                        |                     |                      |                    |                  |
| J                          |                                |                   |              |                        |                     |                      |                    |                  |
| K                          |                                |                   |              |                        |                     |                      |                    |                  |
| <b>Totals</b>              |                                |                   |              |                        |                     |                      |                    |                  |



**SCHEDULE E**

**(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ Go to [www.irs.gov/ScheduleE](http://www.irs.gov/ScheduleE) for instructions and the latest information.

OMB No. 1545-0074

**2018**  
Attachment  
Sequence No. **13**

Name(s) shown on return

Your social security number

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I** **Income or Loss From Rental Real Estate and Royalties** Note: If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

- A** Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions)  Yes  No
- B** If "Yes," did you or will you file required Forms 1099?  Yes  No

**1a** Physical address of each property (street, city, state, ZIP code)

|          |            |
|----------|------------|
| <b>A</b> | [REDACTED] |
| <b>B</b> | [REDACTED] |
| <b>C</b> | [REDACTED] |

| <b>1b</b> | Type of Property (from list below) | <b>2</b> For each rental real estate property listed above, report the number of fair rental and personal use days. Check the <b>QJV</b> box only if you meet the requirements to file as a qualified joint venture. See instructions. | Fair Rental Days | Personal Use Days | QJV                      |
|-----------|------------------------------------|--|------------------|-------------------|--------------------------|
| <b>A</b>  | 1                                  |  | 365              |                   | <input type="checkbox"/> |
| <b>B</b>  | 1                                  |  | 274              |                   | <input type="checkbox"/> |
| <b>C</b>  | 1                                  |  | 365              |                   | <input type="checkbox"/> |

**Type of Property:**

- 1 Single Family Residence    3 Vacation/Short-Term Rental    5 Land    7 Self-Rental  
2 Multi-Family Residence    4 Commercial    6 Royalties    8 Other (describe)

| <b>Income:</b>  | <b>Properties:</b> | <b>A</b> | <b>B</b> | <b>C</b> |
|---|--------------------|----------|----------|----------|
| <b>3</b> Rents received   | <b>3</b>           | 7,800.   | 7,200.   | 7,200.   |
| <b>4</b> Royalties received   | <b>4</b>           |          |          |          |
| <b>Expenses:</b>  |                    |          |          |          |
| <b>5</b> Advertising  | <b>5</b>           |          |          |          |
| <b>6</b> Auto and travel (see instructions)   | <b>6</b>           |          |          |          |
| <b>7</b> Cleaning and maintenance   | <b>7</b>           | 1,250.   |          |          |
| <b>8</b> Commissions  | <b>8</b>           |          |          |          |
| <b>9</b> Insurance  | <b>9</b>           | 715.     | 586.     | 733.     |
| <b>10</b> Legal and other professional fees   | <b>10</b>          |          |          |          |
| <b>11</b> Management fees   | <b>11</b>          |          |          |          |
| <b>12</b> Mortgage interest paid to banks, etc. (see instructions)  | <b>12</b>          |          |          |          |
| <b>13</b> Other interest  | <b>13</b>          |          |          |          |
| <b>14</b> Repairs   | <b>14</b>          | 277.     |          |          |
| <b>15</b> Supplies  | <b>15</b>          |          | 900.     |          |
| <b>16</b> Taxes   | <b>16</b>          | 1,181.   | 1,372.   | 1,047.   |
| <b>17</b> Utilities   | <b>17</b>          |          | 103.     |          |
| <b>18</b> Depreciation expense or depletion   | <b>18</b>          | 3,113.   | 1,491.   | 1,469.   |
| <b>19</b> Other (list) ▶  | <b>19</b>          |          |          |          |
| <b>20</b> Total expenses. Add lines 5 through 19  | <b>20</b>          | 6,536.   | 4,452.   | 3,249.   |
| <b>21</b> Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198   | <b>21</b>          | 1,264.   | 2,748.   | 3,951.   |
| <b>22</b> Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)  | <b>22</b>          |          |          |          |
| <b>23a</b> Total of all amounts reported on line 3 for all rental properties  | <b>23a</b>         |          | 22,200.  |          |
| <b>b</b> Total of all amounts reported on line 4 for all royalty properties   | <b>23b</b>         |          |          |          |
| <b>c</b> Total of all amounts reported on line 12 for all properties  | <b>23c</b>         |          |          |          |
| <b>d</b> Total of all amounts reported on line 18 for all properties  | <b>23d</b>         |          | 6,073.   |          |
| <b>e</b> Total of all amounts reported on line 20 for all properties  | <b>23e</b>         |          | 14,237.  |          |
| <b>24</b> <b>Income.</b> Add positive amounts shown on line 21. Do not include any losses   | <b>24</b>          |          |          | 7,963.   |
| <b>25</b> <b>Losses.</b> Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here  | <b>25</b>          |          |          |          |
| <b>26</b> <b>Total rental real estate and royalty income or (loss).</b> Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Schedule 1 (Form 1040), line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 | <b>26</b>          |          |          | 7,963.   |

LHA For Paperwork Reduction Act Notice, see the separate instructions.

Schedule E (Form 1040) 2018

Schedule E - Two-Year Comparison Worksheet

2018

Property Name:

RENTAL PROPERTY - [REDACTED]

| Description                       | Tax Year 2017 | Tax Year 2018 | Increase (Decrease) |
|-----------------------------------|---------------|---------------|---------------------|
| <b>INCOME</b>                     |               |               |                     |
| RENTS RECEIVED                    | 7,150.        | 7,800.        | 650.                |
| <b>EXPENSES</b>                   |               |               |                     |
| CLEANING AND MAINTENANCE          | 3,570.        | 1,250.        | -2,320.             |
| INSURANCE                         | 715.          | 715.          | 0.                  |
| REPAIRS                           | 385.          | 277.          | -108.               |
| TAXES                             | 1,160.        | 1,181.        | 21.                 |
| UTILITIES                         | 33.           | 0.            | -33.                |
| SUBTOTAL                          | 5,863.        | 3,423.        | -2,440.             |
| DEPRECIATION EXPENSE OR DEPLETION | 3,083.        | 3,113.        | 30.                 |
| TOTAL EXPENSES                    | 8,946.        | 6,536.        | -2,410.             |
| INCOME OR (LOSS)                  | -1,796.       | 1,264.        | 3,060.              |
| DEDUCTIBLE RENTAL LOSS *          | -1,796.       | 0.            | 1,796.              |
| * INCLUDES PASSIVE ACTIVITY LOSS  |               |               |                     |

Schedule E - Two-Year Comparison Worksheet

2018

Property Name:

RESIDENTIAL RENTAL - [REDACTED]

| Description                       | Tax Year<br>2017 | Tax Year<br>2018 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| <b>INCOME</b>                     |                  |                  |                        |
| RENTS RECEIVED                    | 7,200.           | 7,200.           | 0.                     |
| <b>EXPENSES</b>                   |                  |                  |                        |
| INSURANCE                         | 806.             | 733.             | -73.                   |
| TAXES                             | 1,016.           | 1,047.           | 31.                    |
| SUBTOTAL                          | 1,822.           | 1,780.           | -42.                   |
| DEPRECIATION EXPENSE OR DEPLETION | 1,469.           | 1,469.           | 0.                     |
| TOTAL EXPENSES                    | 3,291.           | 3,249.           | -42.                   |
| INCOME OR (LOSS)                  | 3,909.           | 3,951.           | 42.                    |

Schedule E - Two-Year Comparison Worksheet

2018

Property Name:

RESIDENTIAL RENTAL - [REDACTED]

| Description                       | Tax Year<br>2017 | Tax Year<br>2018 | Increase<br>(Decrease) |
|-----------------------------------|------------------|------------------|------------------------|
| <b>INCOME</b>                     |                  |                  |                        |
| RENTS RECEIVED                    | 7,200.           | 7,200.           | 0.                     |
| <b>EXPENSES</b>                   |                  |                  |                        |
| CLEANING AND MAINTENANCE          | 145.             | 0.               | -145.                  |
| INSURANCE                         | 552.             | 586.             | 34.                    |
| REPAIRS                           | 285.             | 0.               | -285.                  |
| SUPPLIES                          | 0.               | 900.             | 900.                   |
| TAXES                             | 2,023.           | 1,372.           | -651.                  |
| UTILITIES                         | 91.              | 103.             | 12.                    |
| SUBTOTAL                          | 3,096.           | 2,961.           | -135.                  |
| DEPRECIATION EXPENSE OR DEPLETION | 1,286.           | 1,491.           | 205.                   |
| TOTAL EXPENSES                    | 4,382.           | 4,452.           | 70.                    |
| INCOME OR (LOSS)                  | 2,818.           | 2,748.           | -70.                   |

# Paid Preparer's Due Diligence Checklist

OMB No. 1545-0074

Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status  
**▶ To be completed by preparer and filed with Form 1040, 1040NR, 1040SS, or 1040PR.**  
**▶ Go to [www.irs.gov/Form8867](http://www.irs.gov/Form8867) for instructions and the latest information.**

**2018**  
Attachment  
Sequence No. **70**

Taxpayer name(s) shown on return

**CARLESS J. & [REDACTED] BOATWRIGHT**

Taxpayer identification number

**P00099553**

Enter preparer's name and PTIN

**JOHN D. ROWE, CPA**

**Part I Due Diligence Requirements**

| Please check the appropriate box for the credit(s) and/or HOH filing status claimed on this return and complete the related Parts I-V for the benefit(s), and/or HOH filing status claimed (check all that apply). |  | EIC                      | CTC/<br>ACTC/ODC   | AOTC                                | HOH                      |
|--|--|--------------------------|--|-------------------------------------|--------------------------|
| <b>1</b>   | Did you complete the return based on information for tax year 2018 provided by the taxpayer or reasonably obtained by you? .....   | <input type="checkbox"/> | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/> |
|  |  |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                              |                                     |                          |
| <b>2</b>   | If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040SS, 1040PR, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed? .....  |                          | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/> |
|  |  |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |                                     |                          |
| <b>3</b>   | Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following.<br><ul style="list-style-type: none"> <li>• Interview the taxpayer, ask questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status.</li> <li>• Review information to determine that the taxpayer is eligible to claim the credit(s) and/or HOH filing status and the amount of any credit(s) claimed.</li> </ul>                                   |                          | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            |                          |
|  |  |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                              |                                     |                          |
| <b>4</b>   | Did any information provided by the taxpayer or a third party for use in preparing the return, or information reasonably known to you, appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.) .....   |                          | <input type="checkbox"/>   | <input checked="" type="checkbox"/> |                          |
|  |  |                          | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                              |                                     |                          |
| <b>a</b>   | Did you make reasonable inquiries to determine the correct, complete, and consistent information? .....  |                          | <input type="checkbox"/>   | <input type="checkbox"/>            |                          |
|  |  |                          | <input type="checkbox"/> Yes <input type="checkbox"/> No   |                                     |                          |
| <b>b</b>   | Did you document your inquiries? (Documentation should include the questions you asked, whom you asked, when you asked, the information that was provided, and the impact the information had on your preparation of the return.) .....  |                          | <input type="checkbox"/>   | <input type="checkbox"/>            |                          |
|  |  |                          | <input type="checkbox"/> Yes <input type="checkbox"/> No   |                                     |                          |
| <b>5</b>   | Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of any applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the taxpayer that you relied on to determine eligibility for the credit(s) and/or HOH filing status or to compute the amount of the credit(s) ..... |                          | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            |                          |
|  | List those documents, if any, that you relied on.<br>_____<br>_____<br>_____   |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                              |                                     |                          |
| <b>6</b>   | Did you ask the taxpayer whether he/she could provide documentation to substantiate eligibility for the credit(s) and/or HOH filing status and the amount of any credit(s) claimed on the return if his/her return is selected for audit? .....  |                          | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            |                          |
|  |  |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                              |                                     |                          |
| <b>7</b>   | Did you ask the taxpayer if any of these credits were disallowed or reduced in a previous year? .....  |                          | <input checked="" type="checkbox"/>  | <input type="checkbox"/>            | <input type="checkbox"/> |
|  | (If credits were disallowed or reduced, go to question 7a; if not, go to question 8.)  |                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |                                     |                          |
| <b>a</b>   | Did you complete the required recertification Form 8862? .....   |                          | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A            |                                     |                          |
| <b>8</b>   | If the taxpayer is reporting self-employment income, did you ask questions to prepare a complete and correct Form 1040, Schedule C? .....  |                          | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A |                                     |                          |

**Part II Due Diligence Questions for Returns Claiming EIC** (If the return does not claim EIC, go to Part III.)

|  | EIC  | CTC/<br>ACTC/ODC | AOTC | HOH |
|--|--|------------------|------|-----|
| 9a Have you determined that this taxpayer is, in fact, eligible to claim the EIC for the number of children for whom the EIC is claimed, or to claim the EIC if the taxpayer has no qualifying child? (Skip 9b and 9c if the taxpayer is claiming the EIC and does not have a qualifying child.) | <input type="checkbox"/> Yes <input type="checkbox"/> No                                 |                  |      |     |
| b Did you ask the taxpayer if the child lived with the taxpayer for over half of the year, even if the taxpayer has supported the child the entire year?   | <input type="checkbox"/> Yes <input type="checkbox"/> No                                 |                  |      |     |
| c Did you explain to the taxpayer the rules about claiming the EIC when a child is the qualifying child of more than one person (tiebreaker rules)?  | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A |                  |      |     |

**Part III Due Diligence Questions for Returns Claiming CTC/ACTC/ODC** (If the return does not claim CTC, ACTC, or ODC, go to Part IV.)

|  | EIC | CTC/<br>ACTC/ODC  | AOTC | HOH |
|--|-----|---|------|-----|
| 10 Have you determined that each qualifying person for the CTC/ACTC/ODC is the taxpayer's dependent who is a citizen, national, or resident of the United States?  |     | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                 |      |     |
| 11 Did you explain to the taxpayer that he/she may not claim the CTC/ACTC if the taxpayer has not lived with the child for over half of the year, even if the taxpayer has supported the child, unless the child's custodial parent has released a claim to exemption for the child? |     | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A            |      |     |
| 12 Did you explain to the taxpayer the rules about claiming the CTC/ACTC/ODC for a child of divorced or separated parents (or parents who live apart), including any requirement to attach a Form 8332 or similar statement to the return?   |     | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br><input type="checkbox"/> N/A |      |     |

**Part IV Due Diligence Questions for Returns Claiming AOTC** (If the return does not claim AOTC, go to Part V.)

|  | EIC | CTC/<br>ACTC/ODC | AOTC   | HOH |
|--|-----|------------------|--|-----|
| 13 Did the taxpayer provide the required substantiation for the credit, including a Form 1098-T and/or receipts for the qualified tuition and related expenses for the claimed AOTC? |     |                  | <input type="checkbox"/> Yes <input type="checkbox"/> No |     |

**Part V Due Diligence Questions for Claiming HOH** (If the return does not claim HOH filing status, go to Part VI.)

|  | EIC | CTC/<br>ACTC/ODC | AOTC | HOH  |
|--|-----|------------------|------|--|
| 14 Have you determined that the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for a qualifying person? |     |                  |      | <input type="checkbox"/> Yes <input type="checkbox"/> No |

**Part VI Eligibility Certification**

► You will have complied with all due diligence requirements for claiming the applicable credit(s) and/or HOH filing status on the return of the taxpayer identified above if you:

- Interview the taxpayer, ask adequate questions, document the taxpayer's responses on the return or in your notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to determine the amount of the credit(s) claimed;
- Complete this Form 8867 truthfully and accurately and complete the actions described in this checklist for any applicable credit(s) claimed and HOH filing status, if claimed;
- Submit Form 8867 in the manner required; and
- Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under *Document Retention*.
  - A copy of Form 8867;
  - The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed;
  - Copies of any documents provided by the taxpayer on which you relied to determine eligibility for the credit(s) and/or HOH filing status;
  - A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained; and
  - A record of any additional questions you may have asked to determine eligibility to claim the credit(s), and/or HOH filing status and the amount(s) of any credit(s) claimed and the taxpayer's answers.

► If you have not complied with all due diligence requirements, you may have to pay a \$520 penalty for each failure to comply related to a claim of an applicable credit or HOH filing status.

|  |   |
|--|---|
| 15 Do you certify that all of the answers on this Form 8867 are, to the best of your knowledge, true, correct, and complete? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|--|---|

# Shared Responsibility Payment

## To Figure Your Shared Responsibility Payment

- Follow Steps 1 through 5 next.
- Complete Worksheet A and Worksheet B if you are directed to them as you complete Steps 1 through 5.
- Complete the Shared Responsibility Payment Worksheet as directed by Steps 1 through 5 or Worksheets A and B.

### Step 1 All Filers

1. Can someone claim you as a dependent?  
 **Yes.** Stop. You don't owe a shared responsibility payment. Check the Someone can claim you as a dependent box on the Your standard deduction line of Form 1040.  
 **No.** Continue to line 2
2. Did you, and everyone else in your tax household (see Tax household under Definitions, earlier) have qualifying health coverage for every month of 2018, or have a coverage exemption that covered all of 2018 or a combination of qualifying health care coverage and coverage exemption(s) for every month of 2018\*?  
 **Yes.** Stop. You don't owe a shared responsibility payment. Check the "Full-year health care coverage or exempt" box on Form 1040.  
 **No.** Continue to line 3  

\*You can check the "Full-year health care coverage or exempt" box if you had or adopted a child during the year, or a member of your tax household died during the year, as long as that person had qualifying health care coverage or a coverage exemption for every month he or she was a member of your tax household and everyone else in your tax household had health care coverage or coverage exemptions for each month of the year.
3. Did you or anyone else in your tax household have qualifying health coverage or qualify for a coverage exemption for any month in 2018?  
 **Yes.** Stop. Claim any coverage exemption you qualify for on Form 8965. Skip question 4; go to Worksheet A.  
 **No.** Continue to line 4
4. Did you, or anyone else in your tax household turn 18 during 2018?  
 **Yes.** Go to Worksheet A  
 **No.** Go to Step 2

### Step 2 Flat Dollar Amount

1. Multiply \$695 by the number of people in your tax household who were at least 18 years old.\* ..... 1 \_\_\_\_\_  
\*For purposes of figuring the shared responsibility payment, an individual is considered under age 18 for an entire month if he or she didn't turn 18 before the first day of the month. An individual turns 18 on the anniversary of the day the individual was born.
2. Multiply \$347.50 by the number of people in your tax household who were under age 18 ..... 2 \_\_\_\_\_
3. Add lines 1 and 2 ..... 3 \_\_\_\_\_
4. Enter the smaller of line 3 or \$2,085 here and on line 1 of the Shared Responsibility Payment Worksheet. Go to Step 3 ..... 4 \_\_\_\_\_

### Step 3 Household Income

1. Enter the amount from Form 1040, line 7 ..... 1 \_\_\_\_\_
2. Did you receive any tax-exempt interest?  
 **Yes.** Enter the amount from Form 1040, line 2a ..... 2 \_\_\_\_\_  
 **No.** Continue to line 3
3. Did you attach Form 2555 or Form 2555-EZ?  
 **Yes.** Enter the amount from Form 2555, lines 45 and 50; or Form 2555-EZ, line 18 ..... 3 \_\_\_\_\_  
 **No.** Continue to line 4
4. Did you claim any dependents?  
 **Yes.** Continue to line 5  
 **No.** Stop. Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
5. Were any of the dependents you claimed required to file a return?  
 **Yes.** Complete questions 1 through 3 for each dependent with a filing requirement for whom you didn't attach Form 8814. Enter the total here ..... 5 \_\_\_\_\_  
 **No.** Add lines 1 through 3. **This is your household income.** Enter the result on Step 4, line 1
6. Did you attach Form 8814?  
 **Yes.** Continue to line 7  
 **No.** Stop. Add lines 1, 2, 3, and 5. **This is your household income.** Enter the result on Step 4, line 1
7. Is Form 8814, line 4, more than \$1,050?  
 **Yes.** Add the amount from Form 8814, line 1b, and the smaller of Form 8814, line 4 or 5 ..... 7 \_\_\_\_\_  
 **No.** Enter -0-. Continue to line 8
8. Add lines 1, 2, 3, 5, and 7. **This is your household income.** Enter the result on Step 4, line 1 ..... 8 \_\_\_\_\_

## Shared Responsibility Payment continued

### Step 4 Percentage Income Amount

1. Enter your household income from Step 3 ..... 1 \_\_\_\_\_
2. Were you or your spouse (if filing jointly) born before January 2, 1954?
  - Yes. Skip question 3. Find your filing threshold on the **Filing Thresholds for Most People** chart and enter it both here and on line 4 ..... 2 \_\_\_\_\_
  - No. Go to question 3. ....
3. Enter the amount listed below for your filing status ..... 3 \_\_\_\_\_
  - Single - \$12,000
  - Head of household - \$18,000
  - Married filing jointly - \$24,000
  - Married filing separately - \$0
  - Qualifying widow(er) - \$24,000
4. Enter the amount from line 2 or 3 ..... 4 \_\_\_\_\_
5. Subtract line 4 from line 1 ..... 5 \_\_\_\_\_
6. Is the amount on line 5 zero or less?
  - Yes. Stop. You don't owe a shared responsibility payment. Check the "Full-year health care coverage or exempt" box on Form 1040. You don't need to file Form 8965.
  - No. Continue to line 7
7. Multiply line 5 by 2.5% (0.025). This is your percentage income amount ..... 7 \_\_\_\_\_
8. Were you required to complete Worksheet A?
  - Yes. Go to Worksheet B. Then continue to Step 5.
  - No. Enter the amount from line 7 above on line 2 of the Shared Responsibility Payment Worksheet and complete line 3 of that worksheet. Then continue to Step 5.

### Step 5 National Average Bronze Plan Premium

1. Were you required to complete Worksheet A?
  - Yes. Continue to line 2
  - No. Skip question 2; Go to question 3.
2. Multiply \$283\* by the number on Worksheet A, line 8. Enter the result here and on line 4 of the Shared Responsibility Payment Worksheet. Skip question 3 and complete line 5 of the Shared Responsibility Payment Worksheet ..... 2 \_\_\_\_\_
 

\*\$283 is the 2018 national average premium for a bronze level health plan available through the Marketplace for one individual for one month.
3. Enter on line 4 of the Shared Responsibility Payment Worksheet the amount below that corresponds to the total number of people in your tax household. Then complete line 5 of the Shared Responsibility Payment Worksheet.
  - 1 person - \$3,396
  - 2 people - \$6,792
  - 3 people - \$10,188
  - 4 people - \$13,584
  - 5 or more people - \$16,980

### Shared Responsibility Payment Worksheet

Use this worksheet if you are referred here from the Shared Responsibility Payment flowchart or from Worksheet A or B. If everyone in your tax household had either minimum essential coverage or a coverage exemption for every month during 2018, stop here. You don't owe a shared responsibility payment.

|  |         |
|--|---------|
| <b>Complete Step 1</b>   |         |
| 1. Enter the flat dollar amount. (From Step 2, question 4 or Worksheet A, line 7) .....        | 1 _____ |
| <b>Complete Step 3</b>   |         |
| 2. Enter the percentage income amount. (From Step 4, question 7 or Worksheet B, line 14) ..... | 2 _____ |
| 3. Enter the larger of line 1 or line 2 .....  | 3 _____ |
| <b>Complete Step 5</b>   |         |
| 4. Enter the National Average Bronze Plan Premium. (From Step 5, question 2 or 3) .....        | 4 _____ |
| 5. Enter the smaller of line 3 or line 4 here and on Schedule 4 (Form 1040), line 61.          | 5 _____ |
| <b>This is your shared responsibility payment</b> .....  | 5 _____ |



# Passive Activity Loss Limitations

Department of the Treasury  
Internal Revenue Service (99)

▶ See separate instructions.  
▶ Attach to Form 1040 or Form 1041.

▶ Go to [www.irs.gov/Form8582](http://www.irs.gov/Form8582) for instructions and the latest information.

Name(s) shown on return

Identifying number

**CARLESS J. & [REDACTED] BOATWRIGHT**

**Part I 2018 Passive Activity Loss** Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

**Rental Real Estate Activities With Active Participation** (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

|   |        |           |        |
|---|--------|-----------|--------|
| <b>1a</b> Activities with net income (enter the amount from Worksheet 1, column (a))    | 7,963. |           |        |
| <b>1b</b> Activities with net loss (enter the amount from Worksheet 1, column (b))      | ( )    |           |        |
| <b>1c</b> Prior years' unallowed losses (enter the amount from Worksheet 1, column (c)) | ( )    |           |        |
| <b>d</b> Combine lines 1a, 1b, and 1c   |        | <b>1d</b> | 7,963. |

**Commercial Revitalization Deductions From Rental Real Estate Activities**

|   |     |           |     |
|---|-----|-----------|-----|
| <b>2a</b> Commercial revitalization deductions from Worksheet 2, column (a)                     | ( ) |           |     |
| <b>b</b> Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b) | ( ) |           |     |
| <b>c</b> Add lines 2a and 2b  |     | <b>2c</b> | ( ) |

**All Other Passive Activities**

|  |     |           |  |
|--|-----|-----------|--|
| <b>3a</b> Activities with net income (enter the amount from Worksheet 3, column (a))   |     |           |  |
| <b>b</b> Activities with net loss (enter the amount from Worksheet 3, column (b))      | ( ) |           |  |
| <b>c</b> Prior years' unallowed losses (enter the amount from Worksheet 3, column (c)) | ( ) |           |  |
| <b>d</b> Combine lines 3a, 3b, and 3c  |     | <b>3d</b> |  |

|  |  |          |        |
|--|--|----------|--------|
| <b>4</b> Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used |  | <b>4</b> | 7,963. |
|--|--|----------|--------|

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
  - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
  - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

**Caution:** If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

**Part II Special Allowance for Rental Real Estate Activities With Active Participation**

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

|  |  |           |  |
|--|--|-----------|--|
| <b>5</b> Enter the smaller of the loss on line 1d or the loss on line 4  |  |           |  |
| <b>6</b> Enter \$150,000. If married filing separately, see instructions   |  |           |  |
| <b>7</b> Enter modified adjusted gross income, but not less than zero (see instructions)<br>Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8. |  |           |  |
| <b>8</b> Subtract line 7 from line 6   |  |           |  |
| <b>9</b> Multiply line 8 by 50% (0.50). Do not enter more than \$25,000. If married filing separately, see instructions  |  |           |  |
| <b>10</b> Enter the smaller of line 5 or line 9<br>If line 2c is a loss, go to Part III. Otherwise, go to line 15.   |  | <b>9</b>  |  |
|  |  | <b>10</b> |  |

**Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities**

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

|  |  |           |  |
|--|--|-----------|--|
| <b>11</b> Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions |  | <b>11</b> |  |
| <b>12</b> Enter the loss from line 4   |  | <b>12</b> |  |
| <b>13</b> Reduce line 12 by the amount on line 10  |  | <b>13</b> |  |
| <b>14</b> Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13                        |  | <b>14</b> |  |

**Part IV Total Losses Allowed**

|   |  |           |  |
|---|--|-----------|--|
| <b>15</b> Add the income, if any, on lines 1a and 3a and enter the total  |  | <b>15</b> |  |
| <b>16</b> Total losses allowed from all passive activities for 2018. Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return |  | <b>16</b> |  |

**Caution:** The worksheets must be filed with your tax return. Keep a copy for your records.

**Worksheet 1 - For Form 8582, Lines 1a, 1b, and 1c** (See instructions.)

| Name of activity                                       | Current year             |                        | Prior years                  | Overall gain or loss |          |
|--|--------------------------|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 1a) | (b) Net loss (line 1b) | (c) Unallowed loss (line 1c) | (d) Gain             | (e) Loss |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
| <b>SEE ATTACHED STATEMENT FOR WORKSHEET 1</b>          |                          |                        |                              |                      |          |
| <b>Total.</b> Enter on Form 8582, lines 1a, 1b, and 1c | 7,963.                   |                        |                              |                      |          |

**Worksheet 2 - For Form 8582, Lines 2a and 2b** (See instructions.)

| Name of activity                                  | (a) Current year deductions (line 2a) | (b) Prior year unallowed deductions (line 2b) | (c) Overall loss |
|---|---------------------------------------|---|------------------|
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
|   |                                       |   |                  |
| <b>Total.</b> Enter on Form 8582, lines 2a and 2b |                                       |   |                  |

**Worksheet 3 - For Form 8582, Lines 3a, 3b, and 3c** (See instructions.)

| Name of activity                                       | Current year             |                        | Prior years                  | Overall gain or loss |          |
|--|--------------------------|------------------------|------------------------------|----------------------|----------|
|  | (a) Net income (line 3a) | (b) Net loss (line 3b) | (c) Unallowed loss (line 3c) | (d) Gain             | (e) Loss |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
|  |                          |                        |                              |                      |          |
| <b>Total.</b> Enter on Form 8582, lines 3a, 3b, and 3c |                          |                        |                              |                      |          |

**Worksheet 4 - Use this worksheet if an amount is shown on Form 8582, line 10 or 14** (See instructions.)

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Special allowance | (d) Subtract column (c) from column (a) |
|------------------|---|----------|-----------|-----------------------|---|
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
|                  |   |          |           |                       |   |
| <b>Total</b>     |   |          |           |                       |   |

**Worksheet 5 - Allocation of Unallowed Losses** (See instructions.)

| Name of activity | Form or schedule and line number to be reported on (see instructions) | (a) Loss | (b) Ratio | (c) Unallowed loss |
|------------------|---|----------|-----------|--------------------|
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
|                  |   |          |           |                    |
| <b>Total</b>     |   |          |           |                    |

SECTION 1.263(A)-1(F) DE MINIMIS SAFE HARBOR ELECTION

CARLESS J. & [REDACTED] BOATWRIGHT  
[REDACTED]

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

FOR THE YEAR ENDING DECEMBER 31, 2018

CARLESS J. & [REDACTED] BOATWRIGHT ARE MAKING THE DE MINIMIS SAFE  
HARBOR ELECTION UNDER REG. SEC. 1.263(A)-1(F).

FORM 1040

WAGES RECEIVED AND TAXES WITHHELD

STATEMENT 1

| T<br>S EMPLOYER'S NAME                           | AMOUNT<br>PAID  | FEDERAL<br>TAX<br>WITHHELD | STATE<br>TAX<br>WITHHELD | CITY<br>SDI<br>TAX W/H | FICA<br>TAX   | MEDICARE<br>TAX |
|--|-----------------|----------------------------|--------------------------|------------------------|---------------|-----------------|
|  |                 |                            |                          |                        |               |                 |
| T STATE OF FLORIDA<br>CHIEF FINANCIAL<br>OFFICER | 145,107.        | 19,780.                    |                          |                        | 7,961.        | 2,170.          |
| T ST. JOHNS RIVER STATE<br>COLLEGE               | 5,550.          |                            |                          |                        |               | 87.             |
| <b>TOTALS</b>                                    | <b>150,657.</b> | <b>19,780.</b>             |                          |                        | <b>7,961.</b> | <b>2,257.</b>   |

FORM 8582

ACTIVE RENTAL OF REAL ESTATE - WORKSHEET 1

STATEMENT 2

| NAME OF ACTIVITY                | CURRENT YEAR  |           | PRIOR YEAR<br>UNALLOWED<br>LOSS | OVERALL GAIN OR LOSS |      |
|---------------------------------|---------------|-----------|---------------------------------|----------------------|------|
|                                 | NET INCOME    | NET LOSS  |                                 | GAIN                 | LOSS |
| RENTAL PROPERTY - [REDACTED]    | 1,264.        | 0.        |                                 | 1,264.               |      |
| RESIDENTIAL RENTAL - [REDACTED] | 3,951.        | 0.        |                                 | 3,951.               |      |
| RESIDENTIAL RENTAL - [REDACTED] | 2,748.        | 0.        |                                 | 2,748.               |      |
| <b>TOTALS</b>                   | <b>7,963.</b> | <b>0.</b> |                                 | <b>7,963.</b>        |      |

FORM 8582

SUMMARY OF PASSIVE ACTIVITIES

STATEMENT 3

| R<br>R<br>E<br>A  | NAME                            | FORM<br>OR<br>SCHEDULE | GAIN/LOSS | PRIOR<br>YEAR C/O | NET<br>GAIN/LOSS | UNALLOWED<br>LOSS | ALLOWED<br>LOSS |  |
|---|---------------------------------|------------------------|-----------|-------------------|------------------|-------------------|-----------------|--|
| X   | RENTAL PROPERTY - [REDACTED]    | SCH E                  |           |                   |                  |                   |                 |  |
|   | [REDACTED]                      |                        | 1,264.    |                   | 1,264.           |                   |                 |  |
| X   | RESIDENTIAL RENTAL - [REDACTED] | SCH E                  |           |                   |                  |                   |                 |  |
|   | [REDACTED]                      |                        | 3,951.    |                   | 3,951.           |                   |                 |  |
| X   | RESIDENTIAL RENTAL - [REDACTED] | SCH E                  |           |                   |                  |                   |                 |  |
|   | [REDACTED]                      |                        | 2,748.    |                   | 2,748.           |                   |                 |  |
| TOTALS  |                                 |                        | 7,963.    |                   | 7,963.           |                   |                 |  |
| PRIOR YEAR CARRYOVERS ALLOWED DUE TO CURRENT YEAR NET ACTIVITY INCOME |                                 |                        |           |                   |                  |                   |                 |  |
| TOTAL   |                                 |                        |           |                   |                  |                   |                 |  |

# WRITING SAMPLES



**Georgetown Law  
American Criminal Law Review**

**Publication Agreement**

The *American Criminal Law Review* hereby extends an offer to C. Joseph Boatwright II to publish the author's article "SOLVING THE PROBLEM OF CRIMINALIZING THE MENTALLY ILL: THE MIAMI MODEL" in Volume 56 of the *American Criminal Law Review* under the following terms and conditions:

The offer of publication is conditional upon the following requirements:

- That the entire work is original to the authors
- That Journal staff are able to verify the authors' research
- That the work is not in publication or published in substantially the same form elsewhere

In the event that the above conditions are not met, *American Criminal Law Review* reserves the right to rescind the publication offer at any time. The author agrees to accept all grammatical and Bluebook corrections, as well as attempts to shorten the piece. If the Journal and the author cannot reach an agreement on substantive edits, the Journal reserves the right to refrain from publishing the piece.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Journal

Volume #

Issue #

Date

## SOLVING THE PROBLEM OF CRIMINALIZING THE MENTALLY ILL: THE MIAMI MODEL

C. Joseph Boatwright II\*

### INTRODUCTION

It does not seem plausible that a Harvard-educated psychiatrist and the former head of psychiatry at Jackson Memorial hospital in Miami-Dade County would be homeless and continually cycling through the criminal justice system. However, this was exactly the situation that faced Judge Steven Leifman, a county court judge in Miami-Dade County, Florida in 2000.<sup>1</sup> Early in his career, Judge Leifman met with parents who asked if he could help their son who was scheduled to appear before Judge Leifman in court that day.<sup>2</sup> They explained that their son was a Harvard-educated psychiatrist and the former head of psychiatry at Jackson Memorial hospital in Miami-Dade County.<sup>3</sup> Further, they explained that he was suffering from late-onset schizophrenia, was homeless, and had been arrested numerous times on minor offenses.<sup>4</sup> As a result, he had been in and out of the county jail system for years.<sup>5</sup> Although Judge Leifman had not previously dealt with a similar situation, he assured the parents that he would help their son.<sup>6</sup>

The accused man had been arrested on a second-degree misdemeanor for stealing a shopping cart.<sup>7</sup> As Judge Leifman began to speak to him, the accused man had a psychotic episode in the courtroom.<sup>8</sup> This caused Judge Leifman to order a mental competency examination for him.<sup>9</sup> After the examination, it was determined that he was “incompetent to proceed” in court due to his mental illness and

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\* The author is a County Court Judge and cross sworn as an Acting Circuit Judge in the Seventh Judicial Circuit in Florida. He was an Associate Judge on the 5th District Court of Appeals in Florida. The author obtained his J.D. from the Catholic University, Columbus School of Law, *summa cum laude*; an LL.M. in Taxation from the University of Florida, Levin College of Law; and an LL.M. in Judicial Studies from Duke Law School in May 2018. The author gratefully acknowledges the input and advice he received from the Hon. Steven Leifman and Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project, in writing this article. © 2018, C. Joseph Boatwright II.

1. Ines Novacic, *Treatment or Lockup? Criminal Justice System Grapples with Mentally Ill*, CBS News (July 21, 2015, 5:36 AM), <http://www.cbsnews.com/news/treatment-or-lockup-criminal-justice-system-grapples-with-mentally-ill/>. See Concept Professional Training & CE (Forensic Mental Health), *IAFMHS 2013 Keynote by Judge Steven Leifman*, YOUTUBE (July 13, 2013), <https://www.youtube.com/watch?v=ky8byo3PTyA>.

2. Concept Professional Training & CE, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See *id.* (“It was some ridiculous minor offense.”)

8. See *id.* (“[C]learly whatever I said triggered a crisis right before my eyes.”)

9. *Id.*



should be involuntarily committed to a facility where he could receive mental-health treatment and be restored to competency.<sup>10</sup> However, Florida law, like the laws of many other states and jurisdictions, did not allow for the involuntary commitment of defendants in misdemeanor cases.<sup>11</sup> As a result, he was released from jail without receiving mental health treatment, only to repeat the cycle of being arrested again and going through the same process without any treatment.<sup>12</sup>

Judge Leifman's experience is not uncommon for those in the criminal justice system. It is generally and most commonly described as the "criminalization of mental illness."<sup>13</sup> The criminalization of mental illness is the process of directing those with mental illnesses, who usually commit minor offenses, through the criminal justice system and then treating their mental illnesses in our jails and prisons.<sup>14</sup> The criminalization of mental illness has become a significant problem in the United States. According to statistics from the National Sheriff's Association, Treatment Advocacy Center, and the Department of Justice, in 2012 there were over ten times as many people with severe mental illnesses in jails and prisons in the United States as there were in all state psychiatric hospitals combined.<sup>15</sup> Twenty percent of all jail detainees experience a severe mental illness.<sup>16</sup> There are nearly 1.5 million individuals with severe mental illnesses who are arrested annually.<sup>17</sup> On any given day there are 360,000 people with severe mental illnesses in jails and prisons throughout the country and over 760,000 people with severe mental illnesses are on community control or probation.<sup>18</sup> People with mental illnesses are on probation or parole two to four times longer than that of the general population on community control or probation.<sup>19</sup> In South Florida, people with mental illnesses remain incarcerated eight times longer than people without mental illnesses for the exact same charge and at seven times the cost.<sup>20</sup>

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10. *Id.*

11. *Id.*

12. *See id.*

13. *See* RISDON N. SLATE ET AL., *THE CRIMINALIZATION OF MENTAL ILLNESS* 42-43 (2d ed. 2013) (summarizing how U.S. society moved away from "its rehabilitative ideals to a more retributive, punitive stance" toward those with mental illnesses).

14. *Id.*

15. The statistics mentioned most likely include all individuals whether they have committed minor or major offenses. E. FULLER TORREY ET AL., *THE TREATMENT OF PERSONS WITH MENTAL ILLNESS IN PRISONS AND JAILS: A STATE SURVEY 6* (2014), <http://www.treatmentadvocacycenter.org/storage/documents/treatment-behind-bars/treatment-behind-bars.pdf>.

16. *See id.* (finding twenty percent as a "reasonable and possibly overly conservative" estimate).

17. Telephone Interview with Steven Leifman, Associate Administrative Judge, Eleventh Judicial Circuit of Florida (Oct. 19, 2017).

18. *Id.*

19. Jillian Peterson, *Mental Illness Not Usually Linked To Crime, Research Finds*, AM. PSYCHOL. ASS'N (Apr. 21, 2014), <http://www.apa.org/news/press/releases/2014/04/mental-illness-crime.aspx>.

20. MIAMI-DADE COUNTY, OFFICE OF THE MAYOR, MIAMI-DADE COUNTY MAYOR'S MENTAL HEALTH TASK FORCE 16 (2007).

When Judge Leifman initially confronted this problem, South Florida had the highest percentage of individuals suffering from mental illnesses in the nation in its population.<sup>21</sup> In Miami-Dade County, nine percent of the total population suffered from severe mental illness, which is two to three times the national average.<sup>22</sup> At this same time, in the Dade County Jail there were up to 1,200 inmates suffering from mental illnesses that occupied three floors of the jail.<sup>23</sup> In contrast, in 1985 there were only 80 inmates suffering from mental illnesses in the county jail.<sup>24</sup> Of the 114,000 bookings in the county jail, 20,000 were for individuals suffering from mental illnesses.<sup>25</sup> Therefore, the Dade County jail served as the largest psychiatric institution in Florida.<sup>26</sup>

During this same time period, Miami-Dade County spent millions of dollars yearly on its mental health crisis. Miami-Dade County spent over one million dollars a year on psychotropic medications.<sup>27</sup> In addition, it spent eighteen dollars per day to house inmates at its jail.<sup>28</sup> The cost for housing inmates suffering from a mental illness was \$125 per day.<sup>29</sup> The total cost to house those suffering from mental illnesses was \$218,000 per day and \$80 million annually.<sup>30</sup>

Judge Leifman recognized the significance of the criminalization of mental illness first hand due to his experiences as a judge in the criminal justice system. He considered it a crisis situation.<sup>31</sup> This led him to help develop, with other community leaders, the Eleventh Judicial Circuit Criminal Mental Health Project (“CMHP”) in 2000. Now, more than fifteen years later, the CMHP is referred to as the Miami Model.<sup>32</sup> The CMHP or Miami Model is a mental health diversion program that consists of a number of distinct parts that have helped eliminate the

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21. KATHERINE RUNDLE & DON L. HORN, FINAL REPORT OF THE MIAMI-DADE GRAND JURY: SPRING TERM 2004 6 (Jan. 11, 2005).

22. John K. Iglehart, *Decriminalizing Mental Illness—The Miami Model*, 374 NEW ENG. J. MED. 1701, 1703 (2016).

23. RUNDLE & HORN, *supra* note 21, at 6.

24. *Id.* *Mentally Ill Criminals in Dade County, Florida: A Report On The Problem And How To Deal With It*, Citizens' Crime Commission Report Program at pg. 17, 41 and 51 (March, 1985). [http://passthrough.fw-notify.net/download/563748/http://dcjhistory.com/uploads/1985\\_Mentally\\_Ill\\_Criminals\\_in\\_Dade\\_Cty.pdf](http://passthrough.fw-notify.net/download/563748/http://dcjhistory.com/uploads/1985_Mentally_Ill_Criminals_in_Dade_Cty.pdf).

25. MIAMI-DADE COUNTY ELEVENTH JUDICIAL CIRCUIT, CRIMINAL MENTAL HEALTH PROJECT (CMHP), <https://perma.cc/L77V-VHLT> [hereinafter CMHP A].

26. *Id.*

27. RUNDLE & HORN, *supra* note 21, at 7.

28. *Id.*

29. *Id.*

30. CMHP A, *supra* note 25.

31. See Novacic, *supra* note 1, (“We apply a criminal justice model to a public health problem and it doesn’t work. It’s a disaster.”).

32. Iglehart, *supra* note 22.

criminalization of mental illness in Miami-Dade County.<sup>33</sup> The success of the CMHP has been nationally recognized through numerous awards and the CMHP has become a national model of excellence in dealing with mental illness in the criminal justice system.<sup>34</sup>

This article, which is divided into six parts, seeks to examine the success of the Miami Model or the CMHP. Part I describes the history of deinstitutionalization, which has contributed to the criminalization of mental illness. Part II describes the concept and problems associated with the criminalization of mental illness. Part III discusses the problems Miami-Dade County faces in its mental health crisis, the institution of the CMHP, and the success of the CMHP. Part IV describes the experiences of other jurisdictions throughout the United States that have implemented programs patterned after or adopted key parts of the CMHP. Part V describes the weaknesses of programs like the CMHP including the need for more legislation and funding to assist courts and communities in combating the criminalization of mental illness. Part VI discusses the success of judicial and community intervention in dealing with mental health issues in the criminal justice system. Finally, this article concludes that the CMHP has been successful and is a model for other jurisdictions to follow in their struggles against the criminalization of mental illness.

#### I. DEINSTITUTIONALIZATION: A HISTORICAL PERSPECTIVE

The criminalization of mental illness is not a recent concept. In the early years of our country, jails and prisons were commonly used to house people suffering from mental illnesses because there were no psychiatric hospitals in existence at that time.<sup>35</sup> It is estimated that twenty percent of the jail population during this time period included those suffering from severe mental illnesses.<sup>36</sup> In the early 1800s, Reverend Louis Dwight, a Yale graduate and Congregationalist minister, while delivering bibles to local jails in Massachusetts, noticed how poorly people suffering from mental illnesses were being treated in these jails.<sup>37</sup> As a result, he lobbied the Commonwealth of Massachusetts for better treatment of the mentally ill.<sup>38</sup> This led to the creation of the first publicly funded psychiatric hospital, which was opened in Massachusetts in 1833.<sup>39</sup>

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33. CMHP A, *supra* note 25.

34. *Id.*

35. SUP. CT. OF FLA., MENTAL HEALTH: TRANSFORMING FLORIDA'S MENTAL HEALTH SYSTEM 9 (2007) [http://www.floridasupremecourt.org/pub\\_info/documents/11-14-2007\\_Mental\\_Health\\_Report.pdf](http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf).

36. E. FULLER TORREY ET AL., MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES 13 (2010).

37. E. FULLER TORREY, OUT OF THE SHADOWS: CONFRONTING AMERICA'S MENTAL ILLNESS CRISIS (1997), as reprinted in Frontline, *Deinstitutionalization: A Psychiatric "Titanic,"* PBS (May 10, 2005), <http://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html>.

38. *Id.*

39. *Id.*

The most notable activist in this area was Dorothy Dix. She also lobbied for better treatment of people suffering from mental illnesses that were being housed in jails.<sup>40</sup> Her advocacy led to the creation of numerous publicly funded psychiatric hospitals.<sup>41</sup> In fact, by 1880, there were more than seventy-five publicly-funded hospitals in the United States.<sup>42</sup>

Efforts by activists such as Dwight and Dix led the United States government in 1880 to perform a census of people suffering from mental illnesses.<sup>43</sup> The census located roughly 90,000 individuals suffering from mental illnesses in the United States.<sup>44</sup> There were 58,609 prisoners in local jails and prisons but only 397 of those were classified as having severe mental illnesses.<sup>45</sup> Thus, persons with severe mental illnesses made up only 0.7% of the prison and jail populations at that time.<sup>46</sup>

By the mid-1900s, there were nearly 350 state psychiatric hospitals across the United States.<sup>47</sup> In addition, there were nearly 560,000 mentally ill patients in the nation's psychiatric hospitals.<sup>48</sup> As the numbers of patients in psychiatric hospitals began to rise, the level of care began to decline.<sup>49</sup> Further, the cost to run the institutions was increasingly rising and these hospitals were becoming inefficient to operate.<sup>50</sup>

In 1955, the drug Thorazine began to be used to control the symptoms of psychosis associated with mental illness. The mental health community proposed that mental health patients could receive better treatment in their local communities with the use of Thorazine.<sup>51</sup> It was believed that with proper medication and humane treatment, those suffering from mental illnesses would be treated more humanely and effectively in their own community.<sup>52</sup> Thus, the policy of the deinstitutionalization of people with mental illnesses began.

Deinstitutionalization is the name given to the policy of moving severely mentally ill individuals out of state hospitals and back into their communities where they received community-based treatment.<sup>53</sup> The result of this would ultimately lead to the closing of all or part of the state-run institutions.<sup>54</sup> This idea was

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40. *Id.*

41. *Id.*; see also *Module 2: A Brief History of Mental Illness and the U.S. Mental Health Care System*, Unite For Sight 1, <http://www.uniteforsight.org/mental-health/module2>.

42. TORREY, *supra* note 37.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. SUP. CT. OF FLA., *supra* note 35, at 16.

48. *Module 2*, *supra* note 41, at 2.

49. *Id.* at 1.

50. *Id.*

51. See, e.g., TORREY, *supra* note 37.

52. SUP. CT. FLA., *supra* note 35, at 16–17.

53. See TORREY, *supra* note 37.

54. *Id.* See also SUP. CT. OF FLA., *supra* note 35, at 17.

accepted by the federal government which led to the enactment of the Community Mental Health Centers Act in 1963.<sup>55</sup>

The Community Mental Health Centers Act “was intended to create a network of community-based mental health providers that would replace failing and costly state hospitals, and integrate people with mental illnesses back into their home communities with comprehensive treatment and services.”<sup>56</sup> “In what would be his last public bill signing, President Kennedy signed a \$3 billion authorization to support this movement from institutional to community-based treatment.”<sup>57</sup> However, President Kennedy was assassinated, and with the distraction of the Vietnam War, none of the \$3 billion was ever appropriated.<sup>58</sup>

After the passage of the act, a number of federal tort and class action lawsuits were filed against the states.<sup>59</sup> As the courts ruled against the state-run facilities, the judgments led to the closing of the institutions or the release of patients with mental illnesses.<sup>60</sup> These closings contributed to the deinstitutionalization of people with mental illnesses because there was no organized or adequate network of community mental health centers to receive the released patients.<sup>61</sup>

One of the landmark cases that contributed to deinstitutionalization was *Wyatt v. Stickney*.<sup>62</sup> In *Wyatt*, a challenge was made to the conditions and treatment provided to the patients at Bryce Hospital in Alabama.<sup>63</sup> The challenges were prompted when funding for mental health services was decreased statewide and about 100 employees’ employment was terminated at the hospital.<sup>64</sup> Bryce Hospital serviced primarily patients who were involuntarily committed due to their mental illness.<sup>65</sup>

The court held that individuals involuntarily committed through the civil commitment process had a constitutional right to adequate and effective treatment that would allow them the opportunity to be cured or improve their mental condition.<sup>66</sup> In its reasoning, the court stated:

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55. See SUP. CT. OF FLA., *supra* note 35, at 17.

56. *Id.*

57. *Id.* It is thought that President Kennedy had a personal motivation behind signing this bill because his sister Rosemary Kennedy, while suffering from a severe mental illness, received a botched lobotomy that left her permanently mentally and physically incapacitated. *Reflecting on JFK's Legacy of Community-based Care*, Substance Abuse and Mental Health Services Administration (Apr. 19, 2016), <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/jfk%E2%80%99s-legacy-community-based-care>.

58. See SUP. CT. OF FLA., *supra* note 35, at 17.

59. See *id.* at 19.

60. See Daniel Yohanna, *Deinstitutionalization of People with Mental Illness: Causes and Consequences*, 15 AMA J. OF ETHICS 886, 887 (2013).

61. See *id.* at 888.

62. 325 F. Supp. 781 (M.D. Ala. 1971).

63. *Id.*

64. *Id.* at 783.

65. *Id.* at 784.

66. *Id.*

The patients at Bryce Hospital, for the most part, were involuntarily committed through noncriminal procedures and without the constitutional protections that are afforded defendants in criminal proceedings. When patients are so committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. . . . Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed into a penitentiary where one could be held indefinitely for no convicted offense. The purpose of involuntary hospitalization for treatment purposes is *treatment* and not mere custodial care or punishment. This is the only justification, from a constitutional standpoint, that allows civil commitments to mental institutions such as Bryce.<sup>67</sup>

As a result, the court held that even though the failure to provide adequate treatment was due to a lack of operating funds resulting in a lack of staff and facilities, this could not be used to justify not providing suitable and adequate care to people with mental illnesses.<sup>68</sup> According to the court, this failure to provide the adequate and suitable care was a violation of the individual's due process rights.<sup>69</sup>

The court gave the defendants six months to establish treatment plans and implement a compliant treatment program.<sup>70</sup> In doing so, the court outlined three fundamental conditions for adequate and effective treatment programs in public mental institutions. "These three fundamental conditions [were]: (1) a humane psychological and physical environment, (2) qualified staff in numbers sufficient to administer adequate treatment, and (3) individualized treatment plans."<sup>71</sup> As a result, if the state could not meet these standards, then the patients were to be released.<sup>72</sup>

These factors of compliance became known as the "Wyatt Standards."<sup>73</sup> Relying on these standards, similar litigation began in numerous other states. Many states were unable to meet these requirements.<sup>74</sup> As a result, patients with mental illnesses were rapidly released from hospitals all over the country.<sup>75</sup>

Several other "court cases . . . further defined the legal requirements for admission to or retention in a hospital setting" and contributed to deinstitutionalization.<sup>76</sup> For example, the District of Columbia Court of Appeals in 1966 "requir[ed] hospitals to discharge patients to an environment less restrictive than a hospital if at all

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67. *Wyatt*, 325 F. Supp. at 784 (internal quotation marks omitted) (emphasis in original).

68. *Id.*

69. *Id.* at 785.

70. *Wyatt v. Stickney*, 334 F. Supp. 1341, 1342 (M.D. Ala. 1971).

71. *Id.* at 1343.

72. *Id.*

73. See Comment on *Wyatt v. Stickney* 25 F. Supp 781 (M.D. Ala. 1971), 334 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in part, rev'd in part sub nom. Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974), MENTAL ILLNESS POL'Y ORG., <https://mentalillnesspolicy.org/legal/wyatt-stickney-right-treatment.html> (last visited Sept. 6, 2018).

74. *Id.*

75. *Id.*

76. See Yohanna, *supra* note 60, at 887.

possible,” and the burden was placed on the government to find alternative courses of treatment.<sup>77</sup> Also, in 1975, the United States Supreme Court held that “a finding of ‘mental illness’ alone cannot justify a state confining a person against his will and holding him indefinitely in simple custodial confinement.”<sup>78</sup> The Court held further that a state cannot constitutionally confine a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends solely because he suffers from a mental illness.<sup>79</sup> Finally, in 1999, the Court held that a mental illness could be defined as a disability, and thus could be covered under the Americans with Disabilities Act.<sup>80</sup> Thereafter, all governmental agencies, not just state hospitals, would be required to make “reasonabl[e] accommodat[ions]” to move people with mental illnesses into community-based treatment to end unnecessary institutionalization.<sup>81</sup> However, many states and communities lacked adequate community-based treatment and this led to further deinstitutionalization.

As deinstitutionalization began, the number of patients in state mental hospitals began to decline. From 1955 until 1995, the number of patients in state hospitals fell from approximately 560,000 to 72,000 patients, which was a decrease of over 90 percent.<sup>82</sup> Further, in 2009, with the onset of the Great Recession, states spent less money on mental health facilities by cutting spending by \$4.35 billion.<sup>83</sup> This led to an even greater decrease in facilities for those suffering from mental illnesses.<sup>84</sup> As a result, in 2010, there were only 43,000 beds in psychiatric facilities available for use in the United States.<sup>85</sup> This was fourteen beds for every 100,000 people.<sup>86</sup> This was the same ratio that existed in 1850 before the work of activists Dix and Dwight.<sup>87</sup>

Deinstitutionalization was meant to help those suffering from mental illnesses. Individuals suffering from severe mental illnesses were supposed to be freed from the confines of state mental hospitals and receive treatment back in their communities through a community-based health system. However, because of the lack of funding for community-based health systems, the vast majority of these individuals were left with no way of being ensured that they would receive proper medication or treatment. Further, there are now very few psychiatric hospitals left in the

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77. Yohanna, *supra* note 60, at 887; *Lake v. Cameron*, 364 F.2d 657, 660-661 (D.C. Cir. 1966).

78. *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975).

79. *Id.*

80. *Olmsted v. L.C.*, 527 U.S. 581, 597-598 (1999).

81. *Id.* at 607.

82. Brief for the Am. Psychiatric Ass'n et al. as Amici Curiae Supporting Respondents at 21 n.5, *Olmstead v. L.C.*, 527 U.S. 563 (1999) (No. 98-536).

83. Deanna Pan, *Timeline: Deinstitutionalization and Its Consequences*, MOTHER JONES (April 29, 2013, 10:00 AM), <http://www.motherjones.com/politics/2013/04/timeline-mental-health-america>.

84. *See id.*

85. *Id.*

86. *Id.*

87. *Id.*

country and even fewer beds in the remaining hospitals for those who suffer from mental illnesses. This has led many to call deinstitutionalization the major cause of the mental health crisis in the United States.<sup>88</sup>

## II. THE CONCEPT OF THE CRIMINALIZATION OF MENTAL ILLNESS

Deinstitutionalization contributed significantly to the criminalization of mental illness. As people with mental illnesses left the psychiatric hospitals, they were turned out into the communities at large. However, since there was inadequate funding for the community-based programs, those with mental illnesses suffered from a lack of adequate treatment. As a result, many ended up in local jails and state prisons. This is likely the reason why, “over the next four decades [as the patients in the state psychiatric hospitals] decreased by 90 percent, the prison population grew by 400 percent.”<sup>89</sup>

The term criminalization of mental illness was coined by Dr. Marc F. Abramson as he noticed the large rise of those suffering from mental illnesses in the prison population after the start of deinstitutionalization.<sup>90</sup> Criminalization of mental illness is used to describe people with mental illnesses who are arrested and prosecuted, with or without jail detention, for minor offenses rather than being placed in the mental health system.<sup>91</sup> Some scholars in the area include in this term individuals who commit serious offenses, but the overwhelming majority of experts in this area apply the term to minor offenses only.<sup>92</sup> The difference between minor offenses and serious offenses is important.<sup>93</sup> Those who commit serious offenses are normally directed to the criminal justice system and housed in forensic state institutions. Alternatively, those who commit minor offenses will be directed to a civil facility if there is adequate space available.<sup>94</sup> Due to the closing of the psychiatric hospitals and the lack of community-based programs, those who have committed minor offenses are released, only to be re-arrested for the same or similar offenses.<sup>95</sup> As a result, they continually cycle in and out of state and local jail facilities.<sup>96</sup>

According to recent data collected by the Department of Justice, Bureau of Justice Statistics, there are more than 1.2 million people with some type of reported

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88. TORREY, *supra* note 37.

89. RUNDLE & HORN, *supra* note 21, at 5.

90. SLATE ET AL., *supra* note 13, at 43.

91. *Id.*; see also H. Richard Lamb and Linda E. Weinberger, *Persons With Severe Mental Illness in Jails and Prison: A Review*, 49 PSYCHIATRIC SERVS. 483, 484 (1998)483 (arguing term “criminalization” should be applied to mentally ill persons arrested for minor, but not serious, offenses).

92. Telephone Interview with Steven Leifman, Associate Administrative Judge, Eleventh Judicial Circuit of Florida (Oct. 19, 2017).

93. Lamb & Weinberger, *supra* note 91.

94. *Id.*

95. *Id.* at 490 (arguing that insufficiency of community treatment can result in later reincarceration of patients).

96. *Id.*



mental illness incarcerated in jails and prisons throughout the United States.<sup>97</sup> Of these, people with mental illnesses are on probation or parole two to four times more often than the general population.<sup>98</sup> On any given day there are about 360,000 people with severe mental illnesses in jails and prisons throughout the country and over 760,000 people with severe mental illnesses are on community control or probation.<sup>99</sup> There are also roughly 35,000 individuals with severe mental illnesses in state psychiatric hospitals.<sup>100</sup> Most of these individuals are in the hospitals in response to court orders in criminal cases.<sup>101</sup> “In forty-four of the fifty states and the District of Columbia, a single prison or county jail in that state holds more people with severe mental illnesses than the largest remaining . . . psychiatric hospital” in that state.<sup>102</sup> Thus, the number of those with severe mental illnesses in prisons and jails is nearly ten times the number remaining in state hospitals.<sup>103</sup>

“The United States ranks number one in the world in [both] the number of people suffering from mental illnesses . . . [and the] number of untreated cases of mental illnesses.”<sup>104</sup> “Further, nearly half the inmates with mental illnesses in state or federal custody in the United States are incarcerated for committing a nonviolent crime.”<sup>105</sup> According to recent statistics by the United States Department of Justice (“DOJ”), nearly 20 percent of all jail detainees experience severe mental illnesses and are incarcerated four to eight times longer than people without mental illnesses for the exact same charge.<sup>106</sup>

According to the DOJ, \$15 billion is spent annually on housing those with mental illnesses in prisons and jails throughout the country.<sup>107</sup> State prisons spend \$5

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97. Jillian Peterson, *Mental Illness Not Usually Linked To Crime, Research Finds*, AM. PSYCHOL. ASS'N (April 21, 2014), <http://www.apa.org/news/press/releases/2014/04/mental-illness-crime.aspx>; see also DORRIS J. JAMES AND LAUREN E. GLA, BUREAU OF JUST. STATISTICS, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1 (September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf> (estimating that in 2005 1.2 million inmates of state prisons, federal prisons, and local jails had a mental health problem). As explained earlier the term criminalization of mental illness is traditionally applied to those who commit minor offenses. The 1.2 million individuals documented by the Department of Justice most likely include all individuals whether they have committed minor or major offenses.

98. Peterson, *supra* note 97.

99. Telephone Interview with Steven Leifman, Associate Administrative Judge, Eleventh Judicial Circuit of Florida (Oct. 19, 2017); see also TORREY ET AL., *supra* note 15, at 6 (estimating 356,268 inmates with severe mental illness in 2012).

100. TORREY ET AL. *supra* note 15, at 6.

101. *Id.* at 23.

102. *Id.* at 7.

103. *Id.* at 6.

104. RUNDLE & HORN, *supra* note 21, at 5.

105. *Id.*

106. MIAMI-DADE CNTY. MAYOR'S MENTAL HEALTH TASK FORCE, *supra* note 20, at 16.

107. E. Fuller Torrey, *Criminalization of Individuals with Severe Psychiatric Disorders*, MENTAL ILLNESS POL'Y ORG., <https://mentallillnesspolicy.org/consequences/criminalization.html> (last visited Sept. 6, 2018).

billion annually to house non-violent inmates with mental illnesses.<sup>108</sup> On average it costs more to house those with mental illnesses than those without.<sup>109</sup>

Although this is a national problem, each state has its own unique challenges. For example, in Texas it costs \$22,000 a year to house an inmate without mental illness, but those with mental illnesses cost the state \$30,000 to \$50,000 a year.<sup>110</sup> In some areas of Florida, it costs the state \$80 per day to house inmates, but those with mental illnesses cost the state \$130 a day.<sup>111</sup> In Cook County, Illinois, it costs \$143 a day on average to house an inmate but costs twice that amount if the individual has severe mental illnesses.<sup>112</sup> In Arkansas, the cost to process an individual through the court system and keep them incarcerated is \$6,300 per year, but the cost for an individual with mental illness is \$30,000 a year.<sup>113</sup> These are just a few of the examples of the nationwide consequences of the criminalization of mental illness.

In regard to the State of Florida, Judge Leifman, who is the chair of the Florida Supreme Court Task Force on Substance Abuse and Mental Issues, recently presented a study before the Subcommittee on the Oversight and Investigations of the Energy and Commerce Committee of the United States House of Representatives.<sup>114</sup> According to his study, the prison population in Florida has increased by fifty-six percent since 1996.<sup>115</sup> By contrast, the number of inmates receiving mental health treatment has increased by 160%.<sup>116</sup> The total cost to house people with mental illnesses in Florida's prisons and forensic treatment facilities is \$625 million annually and an additional \$400 million is spent housing people with mental illnesses in local jails.<sup>117</sup> State expenditures are expected to increase as much as one billion dollars annually over the next decade.<sup>118</sup>

These costs to house those suffering from mental illnesses are higher because of the costs associated with special care that is needed for these inmates. This

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108. Allen Frances, *Prison or Treatment for the Mentally Ill*, HUFF POST (May 11, 2013) [https://www.huffingtonpost.com/allen-frances/prison-prison-population-\\_b\\_2811448.html](https://www.huffingtonpost.com/allen-frances/prison-prison-population-_b_2811448.html).

109. *Serious Mental Illness Prevalence in Jails and Prisons*, TREATMENT ADVOC. CTR. (Sept. 2016), <http://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3695>.

110. TORREY, *supra* note 37, at 10.

111. *Id.* at 9-10.

112. Deborah L. Shelton, *How Sending the Mentally Ill to Jail Is a Cost to Us All*, TAKEPART (May 15, 2015), <http://www.takepart.com/article/2015/05/18/when-sickness-crime> (defining severe as having "a psychiatric condition and require[ing] a doctor's care, medication, and extra security").

113. *Report: Incarcerating the Mentally Ill 20 Times More Costly Than Treatment*, ARK. NEWS (June 18, 2015), <http://www.arkansasnews.com/news/arkansas/report-incarcerating-mentally-ill-people-20-times-more-costly-treatment>.

114. *Where Have All the Patients Gone? Examining the Psychiatric Bed Shortage: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 113th Cong. 74-77 (2014) (testimony of Judge Steve Leifman, Chair, Supreme Court of Florida Task Force on Substance Abuse and Mental Health Issues in the Courts).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

includes special medical treatment, costs for special medication, i.e., psychotropic drugs, and additional supervision costs. For example, the Los Angeles County Jail spends ten million dollars per year on psychiatric medications.<sup>119</sup> In the Oklahoma prison system, the number of psychiatric drugs prescribed increased almost fifty percent over a five-year period from 1996 to 2001.<sup>120</sup> In Portland, Oregon, the local county jail spends half of its medication budget on psychiatric drugs for those suffering from mental illness.<sup>121</sup>

In addition, inmates with mental illnesses spend, on average, a longer amount of time in jail. This increased jail stay results in higher costs for inmates suffering from mental illnesses compared to those without mental illnesses. For example, in Florida, inmates in the Orange County Jail stay for a period of twenty-one days, but inmates suffering from mental illnesses are there for an average of fifty-one days.<sup>122</sup> Further, in New York, inmates in Riker's Island stay for an average of forty-two days, but those with mental illnesses stay for an average of 215 days.<sup>123</sup> In Denver, Colorado, inmates suffering from mental illnesses stay in jail five-and-one-half times longer than other inmates.<sup>124</sup>

Furthermore, the costs associated with lawsuits from injuries sustained relating to inmates suffering from mental illnesses while in jail facilities are not usually included in the costs of housing them.<sup>125</sup> However, these costs can be substantial. For example, in a recent six-year period, the State of Washington spent over \$1.2 million in judgments from lawsuits involving the care of inmates with mental illnesses.<sup>126</sup> Monetary amounts are not available in most instances due to confidential settlements, but one only has to read the numerous accounts of negligence to know how costly these lawsuits can be to the states and local jurisdictions.<sup>127</sup>

As a result of deinstitutionalization, jails have become the new mental hospitals.<sup>128</sup> Not only do jails house people with mental illnesses that are accused of committing crimes, they also house those not accused of committing crimes. In a

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119. Torrey, *supra* note 107.

120. *Id.*

121. Matt Davis, *The Criminalization of Mental Illness: Why Are Oregon's Jails the Biggest Providers of Mental Health Services?*, PORTLAND MERCURY (Jan. 14, 2010), <http://www.portlandmercury.com/portland/the-criminalization-of-mental-illness/Content?oid=2090110>.

122. Stephanie Mencimer, *There Are 10 Times More Mentally Ill People Behind Bars Than in State Hospitals*, MOTHER JONES (April 8, 2014, 10:00 AM), <http://www.motherjones.com/mojo/2014/04/record-numbers-mentally-ill-prisons-and-jails>.

123. *Id.*

124. Sidney M. Wolfe, *Criminalizing the Seriously Mentally Ill: Two Decades Later*, 27 PUB. CITIZEN 1, 1 (July 2011).

125. Mencimer, *supra* note 122.

126. CHAD KINSELLA, THE COUNCIL OF ST. GOV'TS, CORRECTIONS HEALTH CARE COSTS 3, (Jan. 2004), <https://www.prisonpolicy.org/scans/csg/Corrections+Health+Care+Costs+1-21-04.pdf>.

127. Mencimer, *supra* note 122 (explaining how a schizophrenic man housed in a Texas state prison gouged out his eye and ate it, while another man in a Florida prison cut open his abdomen and repeatedly vomited into the open wound).

128. TORREY ET AL., *supra* note 15, at 12.

1992 study, it was found that twenty-nine percent of jails nationwide housed those suffering from mental illnesses that were not accused of committing crimes.<sup>129</sup> These individuals not accused of crimes are housed while they await mental health evaluations pursuant to civil commitment proceedings.<sup>130</sup> Jails have to house these individuals because they have become the only receiving facilities for civil commitments in these areas.<sup>131</sup> These numbers are not decreasing. In fact, Public Citizen's Health Research Group and the National Alliance for the Mentally Ill reviewed these statistics over a twenty-year period and found that the numbers increased for this period.<sup>132</sup>

A major problem caused by deinstitutionalization is that prisons, and especially local jails, are ill-equipped to deal with inmates suffering from mental illnesses.<sup>133</sup> Jails and prisons are not prepared to provide adequate psychiatric and medical treatment for people suffering from mental illnesses.<sup>134</sup> Jail staffs are often not adequately trained in handling those suffering from mental illnesses.<sup>135</sup> In addition, inmates suffering from mental illnesses are more likely to physically attack correctional staff and other inmates and also are subject to victimization by other inmates in disproportionate numbers.<sup>136</sup> Finally, deterioration of their psychiatric condition occurs when they are denied adequate treatment, which often leads to a disproportionate number of suicides.<sup>137</sup>

The criminalization of mental illness is a major problem in this country. As jails and prisons have become the main holding facilities for those suffering from mental illnesses, the results for society include significant financial costs to the taxpayers and inadequate care and treatment for people suffering from mental illnesses. There was and is a great need for a solution to this problem.

### III. A SOLUTION TO THE CRIMINALIZATION OF MENTAL ILLNESS: THE MIAMI MODEL

#### A. *Miami-Dade County's Problem*

In the early 2000s, south Florida had the highest number of people in its population suffering from mental illnesses in the country.<sup>138</sup> In Miami-Dade County, nine percent of the population suffered from mental illnesses which is two to three times

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129. AZZA ABUDAGGA ET AL., PUB. CITIZENS' HEALTH RES. GROUP AND TREATMENT ADVOC. CTR., INDIVIDUALS WITH SERIOUS MENTAL ILLNESSES IN COUNTY JAILS: A SURVEY OF JAIL STAFF'S PERSPECTIVES 3 (2016), <http://www.citizen.org/documents/2330.pdf>.

130. *Id.*

131. *See id.* (explaining that the individuals are those being held for involuntary examinations based on civil commitment statutes in the differing states).

132. *Id.*

133. TORREY ET AL., *supra* note 15, at 7.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. RUNDLE & HORN, *supra* note 21, at 6.

the national average.<sup>139</sup> However, Florida ranked 48th in the nation in state funding for mental health services.<sup>140</sup> Miami-Dade County had the largest percentage of mental illness among large U.S. communities.<sup>141</sup> In the Dade County Jail, there were up to 1,200 inmates suffering from mental illnesses and they took up three floors of the jail.<sup>142</sup> Contrast this with 1985 when there were only eighty inmates suffering from severe mental illnesses in the county jail.<sup>143</sup> Of the 114,000 bookings in the county jail, 20,000 were for individuals suffering from mental illnesses.<sup>144</sup> Thus, the Dade County jail served as the largest psychiatric institution in Florida.<sup>145</sup>

During this time period, Miami-Dade County spent over one million dollars a year on psychotropic medications.<sup>146</sup> Miami-Dade County spent \$18 per day to house inmates without mental illnesses at its jail.<sup>147</sup> However, the cost for housing inmates with mental illnesses was \$125 a day.<sup>148</sup> The total cost to house those with mental illnesses was \$218,000 a day and \$80 million annually.<sup>149</sup> People suffering from mental illnesses were incarcerated eight times longer than those without and at seven times the cost.<sup>150</sup>

### *B. The Solution: The Creation of the CMHP*

These were the issues facing Judge Leifman. He saw the problem of the criminalization of mental illness firsthand. This led him to help develop the Eleventh Judicial Circuit Criminal Mental Health Project ("CMHP") in 2000. Fifteen years later, it is called the Miami Model.<sup>151</sup> The Miami Model contains a number of distinct parts that have helped to substantially eliminate the criminalization of mental illness in Miami-Dade County.

Certain core elements are necessary to ensure that any mental health diversion project is successful.<sup>152</sup> These core elements are included in the CMHP and make up the essential system of care that is necessary for any program to be successful and provide the proper treatment.<sup>153</sup> According to Tim Coffey, the Eleventh Judicial Circuit's project coordinator, "it's not about following or using the exact

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139. Iglehart, *supra* note 22, at 1701–03.

140. *Id.*

141. *Id.*

142. RUNDLE & HORN, *supra* note 21, at 6.

143. *Id.*

144. CMHP A, *supra* note 25, at 2.

145. *Id.*

146. RUNDLE & HORN, *supra* note 21, at 7.

147. *Id.*

148. *Id.*

149. CMHP A, *supra* note 25, at 2.

150. MAYOR'S MENTAL HEALTH TASK FORCE, *supra* note 20, at 16.

151. Iglehart, *supra* note 21, at 1703.

152. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Nov. 23, 2016).

153. *Id.*

model of the Eleventh Judicial Circuit. The success of the program has been due to implementation or following of certain core elements which any community can follow.”<sup>154</sup>

These core elements are described by the National Leadership Forum on Behavioral Health/Criminal Justice Services to include “forensic intensive case management, supportive housing, peer support, accessible and appropriated medication, . . . integrated dual diagnosis treatment, . . . supported employment, . . . assertive community treatment/ forensic assertive community treatment . . . and cognitive-behavioral interventions targeted to risk factors.”<sup>155</sup> In addition, Coffey stated:

Judge Leifman identified the following other elements that would be essential to a successful program and they include: proper diagnosis and treatment for both mental illnesses and co-occurring substance use disorders; trauma related services; meaningful day activities (e.g., clubhouses, drop-in centers) that can provide opportunities for development of social and employment skills; coordinated criminal justice responses (e.g., problem solving courts, diversion programs, and Crisis Intervention Training); and use of advances in information technology to reduce system fragmentation and enhance care coordination.<sup>156</sup>

The CMHP was established with the primary goal of diverting individuals with serious mental illnesses (“SMI”) or co-occurring serious mental illnesses and substance use disorders out of the criminal justice system and into comprehensive community-based treatment and support services.<sup>157</sup> The object was to establish a solution to the problem of the criminalization of mental illness by providing essential services to those in need and bridging a gap between the community partners and stakeholders who had an interest in eliminating or reducing the problem of criminalization of mental illness.<sup>158</sup> The short-term goals were to reduce the number of individuals with SMI in county jails and provide sufficient help with housing, treatment, and other essential medical services so that those re-entering the community would not reoffend and would have the proper treatment for a successful mental health recovery.<sup>159</sup> The program’s long term goals included: “reduced demand for costly acute care services in jails, prisons, forensic mental health treatment facilities, emergency rooms, and other crisis settings; decreased crime and improved public safety; improved public health; decreased injuries to law enforcement officers and people with mental illnesses; and decreased rates of chronic

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154. *Id.*

155. NAT’L LEADERSHIP F. ON BEHAV. HEALTH/CRIM. JUST. SERVS., ENDING AN AMERICAN TRAGEDY: ADDRESSING THE NEEDS OF JUSTICE-INVOLVED PEOPLE WITH MENTAL ILLNESSES AND CO-OCCURRING DISORDERS (Sept. 2009).

156. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Dec. 13, 2016).

157. CMHP A, *supra* note 25.

158. *Id.*

159. *Id.*

homelessness.”<sup>160</sup> Most important, the CMHP’s main goal was “to close the revolving door which results in the devastation of families and the community, the breakdown of the criminal justice system, and wasteful government spending.”<sup>161</sup>

The CMHP has been in operation for eighteen years. It functions to divert nonviolent misdemeanor defendants suffering from SMI or those with SMI who commit less serious felonies, or those with co-occurring SMI and substance use disorders, from the criminal justice system into community-based treatment and support services.<sup>162</sup> The program has two main components. First, there is a pre-booking process that relies heavily on crisis intervention training (“CIT”) with law enforcement officers.<sup>163</sup> Second, there is a post-booking diversion program that seeks to divert those arrested and awaiting adjudication out of the criminal justice system.<sup>164</sup> Both components seek to divert the individuals out of the criminal justice system and place them in community-based treatment and support programs.<sup>165</sup>

The success of the CMHP depends on the participation and cooperation of community stakeholders.<sup>166</sup> Without the support of the community stakeholders, the CMHP would have no chance of success.<sup>167</sup> The community stakeholders for the CMHP include: “the State Attorney’s Office, the Public Defender’s Office, the Miami-Dade County Department of Corrections and Rehabilitation, the Florida Department of Children and Families, the Social Security Administration, public and private community mental health providers, Jackson Memorial Hospital-Public Health Trust, law enforcement agencies, family members, and mental health consumers.”<sup>168</sup> These community leaders have a vested interest in making sure each of the following programs is successful in order to help alleviate the societal problems associated with the criminalization of mental illness.

### *1. Pre-Booking Diversion*

CIT is the key component of the pre-booking diversion. CIT was modeled after training developed in Memphis, Tennessee, in the 1980s and is currently known as the Memphis Model.<sup>169</sup> The basis of CIT is to equip and train law enforcement officers to appropriately deal with those suffering from mental illnesses.<sup>170</sup> Law enforcement officers on a regular basis are the first responders to deal with those suffering from mental illnesses. Thus, proper training is essential.

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160. *Id.* at 1.

161. *Id.*

162. CMHP A, *supra* note 25.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 2.

169. *Id.* at 3.

170. *Id.*

CIT requires that officers receive “40 hours of specialized training in psychiatric diagnoses, suicide intervention, substance abuse issues, behavioral de-escalation techniques, the role of the family in the care of a person with a mental illness, mental health and substance abuse laws, and local resources for those in crisis.”<sup>171</sup> “The training is designed to educate and prepare officers to recognize the signs and symptoms of mental illnesses, and to respond more effectively and appropriately to individuals in crisis.”<sup>172</sup> CIT officers are trained and have expertise in de-escalating crises involving people suffering from mental illnesses and provide an understanding and compassion in dealing with those with SMI in difficult situations.<sup>173</sup> As a result, officers dealing with those suffering from SMI can often divert them to proper mental health services rather than taking them to jail.<sup>174</sup>

This training is important because it can divert individuals with SMI out of the criminal justice system and into programs that are designed to address their needs.<sup>175</sup> For example, an individual with SMI may habitually trespass at a convenience store. An officer with CIT can ascertain that the individual’s conduct is based on his SMI and divert him to a proper mental health facility. In this way, the officer can provide services that may help alleviate the problem rather than to arrest the individual and continue the cycle of the individual being repeatedly incarcerated because of the mental illness.

The CMHP has been very successful in its CIT. Through the history of the program the CMHP has provided training free of charge to over 4,600 law enforcement officers and to all thirty-six local municipalities in Miami-Dade County, as well as to Miami-Dade Public Schools and the Department of Corrections and Rehabilitation.<sup>176</sup> Between 2006 and 2010, these officers from the Miami-Dade Police Department and City of Miami Police Department who have received CIT “have responded to nearly 38,000 mental health crisis calls resulting in over 9,000 diversions to crisis units and just 85 arrests.”<sup>177</sup> “Last year alone, [2016] CIT officers from the Miami-Dade Police Department and City of Miami Police Department responded to more than 11,000 calls, resulting in nearly 1,700 diversions to crisis units and just 19 arrests. Since 2010, these two agencies have responded to nearly 72,000 mental health crisis calls resulting

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171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *See id.* (“Last year alone, CIT officers from the Miami-Dade Police Department and City of Miami Police Department responded to more than 10,000 calls, resulting in over 1,200 diversions to crisis units and just 9 arrests.”)

176. *Id.*; *see also* MIAMI-DADE COUNTY ELEVENTH JUDICIAL CIRCUIT, CRIMINAL MENTAL HEALTH PROJECT (CMHP): CRIM. JUST./MENTAL HEALTH STAT. AND PROJECT OUTCOMES (JUNE 8, 2016), available at <https://perma.cc/BT65-A2GX> [hereinafter CMHP STATISTICS AND OUTCOMES]; *see also* Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

177. CMHP A, *supra* note 25, at 3; *see also* Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).



**Table 1: Results of Annual CIT Calls<sup>185</sup>**

|       | Annual Calls | Arrests | Diversions from Jail | Crisis Center Placements |
|-------|--------------|---------|----------------------|--------------------------|
| 2010  | 7,779        | 4       | 1,940                | 3,307                    |
| 2011  | 9,399        | 45      | 3,563                | 4,642                    |
| 2012  | 10,404       | 27      | 2,118                | 5,527                    |
| 2013  | 10,626       | 9       | 1,215                | 3,946                    |
| 2014  | 11,042       | 24      | 1,871                | 5,155                    |
| 2015  | 10,579       | 10      | 1,633                | 7,417                    |
| 2016  | 11,799       | 19      | 1,694                | 8,303                    |
| Total | 71,628       | 138     | 14,034               | 38,297                   |
|       |              | 0.20%   | 19.60%               | 53.50%                   |

in 38,000 diversions to crisis units and 138 arrests.<sup>178</sup> Statistically, this is one arrest per every 519 calls for service dealing with people with mental illnesses, one diversion for every five calls, and one transport for treatment for every 1.8 calls.<sup>179</sup> As a result of CIT, the average daily population in the county jail system has dropped from 7800 to 4,800 inmates and the county has closed one entire jail facility.<sup>180</sup> This has produced a savings to the taxpayers of \$12 million per year.<sup>181</sup> There has also been a reduction in fatal shootings and injuries of people with mental illnesses by police officers.<sup>182</sup> From 1999 through 2005, there were nineteen persons with mental illnesses who died as the result of incidents with law enforcement officers in Miami-Dade County.<sup>183</sup> Since 2005, this figure has dropped significantly.<sup>184</sup> The following statistics indicate the success of the CIT program.

178. MIAMI-DADE COUNTY ELEVENTH JUDICIAL CIRCUIT, CRIMINAL MENTAL HEALTH PROJECT (CMHP), <https://perma.cc/5H3U-ZF83> [hereinafter CMHP B].

179. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

180. CMHP A, *supra* note 25, at 3.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. CMHP STATISTICS AND OUTCOMES, *supra* note 176; *see also* Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

**Table 2: Reduction in Fatal Shootings and Injuries<sup>186</sup>**

|       | Annual Calls | Use of Force | Officer Injuries | Consumer Injuries |
|-------|--------------|--------------|------------------|-------------------|
| 2010  | 7,779        | 29           | -                | -                 |
| 2011  | 9,399        | 75           | -                | -                 |
| 2012  | 10,404       | 72           | -                | -                 |
| 2013  | 10,626       | 59           | 11               | 127               |
| 2014  | 11,042       | 79           | 21               | 262               |
| 2015  | 10,579       | 69           | 26               | 211               |
| 2016  | 11,799       | 58           | 12               | 203               |
| Total | 71,628       | 441          | 70               | 803               |
|       |              | 0.60%        | 0.10%            | 1.10%             |

## 2. Post-Booking Jail Diversion Program

The CMHP was created to divert non-violent misdemeanor offenders with SMI and co-occurring substance abuse disorders out of the criminal justice system and into community-based treatment and service programs.<sup>187</sup> In 2008, the program was expanded to address certain non-violent felony offenses in the diversion program.<sup>188</sup> On average, 500 individuals annually are diverted out of the criminal justice system.<sup>189</sup> However, that number has increased as the program has developed over the years. For example, in 2015, there were 831 referrals.<sup>190</sup> Over the past ten years, roughly 4,000 individuals have been diverted out of county jails and into community-based programs and services for treating mental illnesses.<sup>191</sup> The misdemeanor and felony jail diversion programs are the main parts of the Post-Booking Jail Diversion program.

186. CMHP STATISTICS AND OUTCOMES, *supra* note 176. *See also* Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

187. CMHP A, *supra* note 25.

188. *Id.*

189. CMHP A, *supra* note 25, at 3.

190. CMHP STATISTICS AND OUTCOMES, *supra* note 176.

191. CMHP A, *supra* note 25, at 3.

*a. Misdemeanor Jail Diversion Program*

The misdemeanor diversion program has 300 referrals annually.<sup>192</sup> The post-booking diversion program requires that defendants who are booked into the jail are screened for signs and symptoms of mental illnesses by correctional officers.<sup>193</sup> Defendants charged with misdemeanors and who satisfy the program admission criteria are transferred from the jail to a community-based crisis stabilization unit within twenty-four to forty-eight hours of booking.<sup>194</sup> Once the defendant is stabilized, the criminal charges may be dismissed or modified according to the type of further treatment that is needed.<sup>195</sup> If further treatment is needed, then defendants who agree to further services are assisted by matching them with a comprehensive array of community-based treatment, support, and housing services that are essential for successful community re-entry and recovery outcomes.<sup>196</sup> “Program participants are monitored by the CMHP for up to one year following community re-entry” to ensure that they are continuing with their treatment and are in contact with necessary supports and services.<sup>197</sup>

Seventy-five to eighty percent of the defendants in the misdemeanor diversion program are homeless at the time of arrest.<sup>198</sup> In addition, they tend to be those who suffer from the most severe forms of mental illnesses and also have co-occurring substance abuse issues.<sup>199</sup> The program has been very successful as the recidivism rates among program participants have decreased from about seventy-five percent to twenty percent annually.<sup>200</sup>

*b. Felony Jail Diversion Program*

There are roughly 200 defendants that are referred to the felony diversion program each year.<sup>201</sup> The defendants in the felony jail diversion program are referred to the CMHP through a number of community sources “including the Public Defender’s Office, the State Attorney’s Office, private attorneys, judges, corrections health services, and family members.”<sup>202</sup> The defendants must meet mental health diagnostic criteria to qualify to enter the program.<sup>203</sup> They must also meet the legal criteria of entering the program with a third-degree felony and cannot

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192. *Id.* at 4. That number has been growing each year as the program has grown.

193. CMHP A, *supra* note 25, at 4.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

202. CMHP A, *supra* note 25, at 4.

203. *Id.*

have more than three prior felony convictions.<sup>204</sup> In addition, they must be eligible to apply for entitlement benefits such as Supplemental Security Income (“SSI”), Social Security Disability Insurance (“SSDI”), and Medicaid.<sup>205</sup>

Once the person is accepted into the felony jail diversion program, the assistant state attorney prosecuting the case will inform the court of the plea offer to the defendant and any subsequent plea conditions that will be offered contingent upon successful program completion.<sup>206</sup> Similar to the misdemeanor program, legal charges may be dismissed or modified based on treatment engagement.<sup>207</sup> All defendants are assisted in accessing community-based services and supports, and their progress is monitored and reported back to the court by CMHP staff.<sup>208</sup>

Of those participating in the felony diversion program, sixty-five percent complete the program.<sup>209</sup> While those who completed and did not complete the program both demonstrated improvements in criminal justice outcomes, those who completed it did much better.<sup>210</sup> Recidivism rates were twenty-five percent for completers and seventy-three percent for non-completers within one year of finishing or leaving the program. Within two years of leaving the program, recidivism rates were thirty-five percent for completers and seventy-nine percent for non-completers.<sup>211</sup> Non-completers of the program returned to jail twice as often as those who completed the program.<sup>212</sup> Those who completed the program demonstrated an eighty-two percent reduction in jail bookings and a ninety percent reduction in jail days within one year.<sup>213</sup> For every 100 completers of the program, there was over \$750,000 dollars in cost avoidance to the jail in the year following admission.<sup>214</sup> “Since 2008, the felony jail program alone is estimated to have saved the county over 15,000 days of housing costs in the county jail,” which is more than thirty-five years of costly jail time.<sup>215</sup> Overall, participants in the program demonstrated continued reductions in criminal justice involvement during the two years following discharge from the program.<sup>216</sup>

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204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. Telephone interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. CMHP A, *supra* note 25, at 4.

216. Telephone interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017).

### 3. *Forensic Hospital Diversion Program*

In 2009, the CMHP implemented a pilot project funded by the State of Florida to develop the Miami-Dade Forensic Alternative Center (“MD-FAC”). The MD-FAC is a ten-bed receiving facility which was implemented to “demonstrate the feasibility of establishing a program to divert individuals with mental illnesses committed to the Florida Department of Children and Families from placement in state forensic hospitals to placement in community-based treatment and forensic services.”<sup>217</sup> Individuals participating in the program are those that have been charged with second and third degree felonies but who do not have significant histories of violent felony offenses.<sup>218</sup> In addition, they must not be likely to face incarceration if convicted of their alleged offenses.<sup>219</sup> Finally, they must have been adjudicated incompetent to proceed to trial or not guilty by reason of insanity.<sup>220</sup> Individuals meeting these requirements qualify for the community-based treatment program.<sup>221</sup>

“The community-based treatment provider for the pilot project is responsible for providing a full array of residential treatment and community re-entry services including crisis stabilization, competency restoration, development of community living skills, assistance with community re-entry, and community monitoring to ensure ongoing treatment following discharge.”<sup>222</sup> In addition, the treatment provider will help individuals in accessing “entitlement benefits and other means of economic self-sufficiency to ensure ongoing and timely access to services and supports after re-entering the community.”<sup>223</sup> Unlike individuals admitted to state hospitals, individuals served by MD-FAC are not returned to jail upon restoration of competency.<sup>224</sup> This is an advantage because, unlike state facilities, the program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial.<sup>225</sup> As a result, this decreases the burdens on the jail and eliminates the possibility that a person may decompensate while in jail and or lose his ability to maintain normal psychological functioning and be declared incompetent to proceed again.<sup>226</sup>

To date, the project has demonstrated a

more cost effective delivery of forensic mental health services, reduced burdens on the county jail system in terms of housing and transporting defendants with forensic mental health needs, and [has provided a] more effective

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217. FLA. SENATE INTERIM REP., THE FORENSIC MENTAL HEALTH SYSTEM, 2012-108, at 3 (2011).

218. CMHP A, *supra* note 25, at 4.

219. *Id.*

220. *Id.*

221. *See id.*

222. *Id.* at 4–5.

223. *Id.* at 5.

224. *Id.*

225. *Id.*

226. *Id.*

community re-entry and monitoring of individuals who, historically, have been at high risk for recidivism to the justice system and other acute care settings.<sup>227</sup>

Additionally, “[i]ndividuals admitted to the MD-FAC program are identified as ready for discharge from forensic commitment an average of fifty-two days (thirty-five percent) sooner than individuals who complete competency restoration services in forensic treatment facilities, and spend an average of thirty-one fewer days (eighteen percent) under forensic commitment.”<sup>228</sup> And “[t]he average cost to provide services in the MD-FAC program is roughly thirty-two percent less expensive than services provided in state forensic treatment facilities.”<sup>229</sup>

#### 4. Access to Entitlement Benefits

Stakeholders in the criminal justice and behavioral health communities consistently identify lack of access to public entitlement benefits such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and Medicaid as among the most significant and persistent barriers to successful community re-integration and recovery for individuals who experience serious mental illnesses and co-occurring substance use disorders.<sup>230</sup>

The majority of individuals involved in the CMHP programs do not receive any entitlement benefits at the time they enter a CMHP program.<sup>231</sup> As a result, many of the participants do not have sufficient funds to obtain “adequate housing, treatment, or support services in the community.”<sup>232</sup>

In order to address this barrier and maximize limited resources, the CMHP developed an innovative plan to improve the ability to transition individuals from the criminal justice system to the community.<sup>233</sup> Funding is essential to the success of the program. Therefore, “all participants in the program who are eligible to apply for Social Security benefits are provided with assistance utilizing a best practice model referred to as SOAR (SSI/SSDI, Outreach, Access and Recovery).”<sup>234</sup> SOAR is an approach that was developed as a federal technical assistance initiative to expedite access to social security entitlement benefits for individuals with mental illnesses who are homeless.<sup>235</sup> The result of obtaining SSI and/or SSDI for the program participants is essential in that it provides a “steady income and health care coverage which enables individuals to access basic needs including housing,

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227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

food, medical care, and psychiatric treatment.”<sup>236</sup> “This significantly reduces recidivism to the criminal justice system, prevents homelessness, and is an essential element in the process of recovery” for the CMHP participants.<sup>237</sup>

The CMHP has developed a good working relationship with the Social Security Administration, which helps expedite and ensure approvals for entitlement benefits in the shortest time possible.<sup>238</sup> The process begins when all CMHP participants are initially screened for eligibility for federal entitlement benefits, with CMHP staff initiating applications as early as possible utilizing the SOAR model.<sup>239</sup> Program data demonstrates that ninety percent of the individuals are approved on the initial application.<sup>240</sup> By contrast, the national average across all disability groups for approval on initial application is twenty-nine percent.<sup>241</sup> In addition, the average time until approval for CMHP participants is forty days.<sup>242</sup> This quick turnaround time is remarkable when compared to the ordinary approval process, which typically takes between nine and twelve months.<sup>243</sup>

Based on the success of the CMHP, Miami-Dade County was awarded a three-year, \$1.2 million grant from the State of Florida in 2010.<sup>244</sup> The grant was for the purpose of implementing and expanding applications for access to entitlement benefit services to include individuals with SMI re-entering the community after completing jail sentences.<sup>245</sup> This would be done by implementing a specialized entitlement benefits unit utilizing the SOAR model to expedite access to Social Security and Medicaid benefits for individuals served by the CMHP programs.<sup>246</sup>

##### 5. *Recovery Peer Specialists*

Recovery Peer Specialists are another essential element of the CMHP. Recovery Peer Specialists are individuals who suffered from mental illnesses and have recovered or are in recovery and who work as members of the jail diversion team.<sup>247</sup> Based on their life experiences, they are able to better relate in some instances and provide invaluable help to those they are serving. “The primary function of the Recovery Peer Specialist is to assist jail diversion program participants

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236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 6.

240. *Id.*

241. CMHP B, *supra* note 178.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*; see also *The Florida Certification Board, Available Certifications*, <http://flcertificationboard.org/certifications/certified-recovery-peer-specialist-adult-family-or-veteran>. One can receive a certificate of training as a Recovery Peer Specialist from the State of Florida.

with community re-entry and engagement in continuing treatment and services.<sup>248</sup> “This is accomplished by working with participants, caregivers, family members, and other sources of support to minimize barriers to treatment engagement and to model and facilitate the development of adaptive coping skills and behaviors.”<sup>249</sup> Recovery Peer Specialists also serve as consultants and faculty to the CMHP’s CIT training program.<sup>250</sup>

#### 6. *Bristol-Myers Squibb Foundation Project*

The South Florida Behavioral Health Network, with coordination from CMHP, “which is contracted by the Florida Department of Children and Families to manage the substance abuse and mental health system of care in Miami-Dade and Monroe counties, was awarded a three-year, \$1.2 million grant from the Bristol-Myers Squibb Foundation.”<sup>251</sup> The purpose of the grant is to develop and implement a “first-of-its-kind coordinated system of care,” targeting the needs of individuals with serious mental illnesses who are at highest risk for involvement in the criminal justice system and other institutional settings.<sup>252</sup> The project coordinates and works with CMHP’s Misdemeanor and Felony Jail Diversion programs.<sup>253</sup> “A primary goal of the project is to ensure timely and efficient access to a comprehensive array of services based on enhanced, individualized assessment of clinical and criminogenic needs and risk factors.”<sup>254</sup> The services are to be delivered by a “coordinated network of community-based treatment providers and justice system stakeholders involved in cross-systems and cross-disciplinary treatment planning, service coordination, and information sharing.”<sup>255</sup> Although in its infancy, the project will be evaluated by comparisons of behavioral health and criminal justice outcomes among individuals enrolled in the new program versus individuals participating in traditional community-based services.<sup>256</sup>

#### 7. *Mental Health Diversion Facility*

Another important aspect of the CMHP is its development of a dedicated mental health diversion facility. Since 2006, the courts and stakeholders from Miami-Dade County have worked on a capital improvement project to develop a mental health diversion and treatment facility. Currently, the county has begun building a dedicated mental health diversion facility, which will cost taxpayers over \$42

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248. CMHP B, *supra* note 178, at 6.

249. *Id.*

250. *Id.*

251. CMHP A, *supra* note 25, at 6.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*



million.<sup>257</sup> The facility will service individuals who are diverted from the county jail system into a “seamless continuum of comprehensive community-based treatment programs that leverage local, state, and federal resources.”<sup>258</sup> The project’s main goal is to “build on the successful work of the CMHP with the goal of creating an effective and cost efficient alternative treatment setting to which individuals awaiting trial may be diverted.”<sup>259</sup>

“The diversion facility will be housed in a former state forensic hospital which . . . is in the process of being renovated to include programs operated by community-based treatment and social services providers.”<sup>260</sup> The services offered at the facility will include “crisis stabilization, short-term residential treatment, day treatment and day activities programs, intensive case management, outpatient behavioral health and primary care treatment services, and vocational rehabilitation/supportive employment services.”<sup>261</sup> The facility will also include “space for the courts and for social service agencies such as housing providers, legal services, and immigration services so that the comprehensive needs of individuals can be served.”<sup>262</sup>

The goal for the mental health diversion facility and expansion of the CMHP’s diversion programs is to “create a centralized, coordinated, and seamless continuum of care for individuals who are diverted from the criminal justice system either pre-booking or post-booking.”<sup>263</sup> By providing a comprehensive array of services and supports in one facility, it is likely that “individuals who are currently recycling through the criminal justice system will be more likely to engage treatment and recovery services.”<sup>264</sup> The new facility will also allow individuals who spend extended amounts of time in the county jail to move more quickly and seamlessly into residential treatment programs and supervised outpatient services.<sup>265</sup>

It is estimated that the new diversion facility will save \$8.2 million each year.<sup>266</sup> In addition, it is estimated that there will be a reduction in almost 1,200 jail

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257. Telephone interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017); see also David Ovalle, *In Miami-Dade, hope, help for offenders with mental illness*, MIAMI HERALD (Sept. 29, 2014, 10:31 PM), <http://www.miamiherald.com/news/local/community/miami-dade/article2319144.html>

258. CMHP B, *supra* note 178, at 6.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.* at 7.

265. *Id.*

266. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Oct. 25, 2017); see also MENTAL HEALTH DIVERSION FACILITY, SERVICE AND FISCAL IMPACT ESTIMATES (Jun. 9, 2016).

bookings each year.<sup>267</sup> Further, it is estimated that the county will save over 36,000 annual jail days, which is equivalent to more than ninety beds every year.<sup>268</sup>

#### 8. *Typical or Troubled? Program*

Recently, the CMHP partnered with the American Psychiatric Foundation (“APF”) and Miami-Dade County Public Schools (“MDCPS”) to implement the *Typical or Troubled?* School Mental Health Education Program for all public junior high and high schools in the Miami-Dade County school system.<sup>269</sup> “The program will train over 500 teachers, school psychologists, social workers and guidance counselors on early identification of potential mental health problems, will educate and engage parents, and will ultimately link students with mental health services when needed.”<sup>270</sup> The program “helps school personnel distinguish between typical teenage behavior and evidence of mental health warning signs that would warrant intervention.”<sup>271</sup> The goal will be to proactively confront mental health in the school system “through partnerships and targeted training” that identify and provide “effective treatment of mental health problems before those problems manifest through increased truancy, substance abuse,” criminal activity, violence, or tragedy.<sup>272</sup>

#### C. *CMHP: A Model of Success*

The success of the CMHP has been immense in the fight against the criminalization of mental illness. “The CMHP has demonstrated substantial gains in the effort to reverse the criminalization of people with mental illnesses.”<sup>273</sup> This is accomplished because “the CMHP offers the promise of hope and recovery for individuals with SMI [who] have often been misunderstood and discriminated against” through a wide variety of services and programs that are absent from most communities.<sup>274</sup> Once a person is “engaged in [the proper] treatment and community support services,” the individual has “the opportunity to achieve successful recovery” and community integration, as well as reduce his recidivism to jail.<sup>275</sup>

The success of the CMHP has been nationally recognized and is a national model of excellence in dealing with mental illness in the criminal justice system.<sup>276</sup>

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267. *Id.*

268. *Id.*

269. John Schuster, *Miami-Dade County Public Schools and American Psychiatric Foundation Bring Early-Intervention Mental Health Program to Schools*, AM. PSYCHOL. FOUND. (Jan. 23, 2013), <http://www.americanpsychiatricfoundation.org/what-we-do/public-education/typical-or-troubled>.

270. *Id.*

271. *Id.*

272. *Id.*

273. CMHP A, *supra* note 25, at 7.

274. *Id.*

275. *Id.*

276. *Id.*

The CMHP has received numerous recognitions and awards including the 2010 Prudential Davis Productivity Award for implementation of SOAR, 2010 Eli Lilly Reintegration Award for Advocacy, the 2008 Center for Mental Health Services/National GAINS Center Impact Award, the 2007 National Association of Counties Achievement Award, the 2006 United States Department of Housing & Urban Development's HMIS National Visionary Award, the 2006 Prudential Financial Davis Productivity Award, and the 2003 National Association of Counties Distinguished Service Award.<sup>277</sup> In addition, for Judge Leifman's incredible work in this area, he was honored in 2015 by the United States Supreme Court when he received the National Center for State Courts' William H. Rehnquist Award for Judicial Excellence.<sup>278</sup>

"The CMHP provides an effective and cost-efficient solution to a community problem."<sup>279</sup> As previously noted, over CMHP's fifteen-year history, "[p]rogram results demonstrate that individualized transition planning to access necessary community based treatment and services upon release from jail will ensure successful community re-entry and recovery for individuals with mental illnesses, and possible co-occurring substance use disorders that are involved in the criminal justice system."<sup>280</sup> This truly innovative program has seen incredible results.

The CMHP is estimated to have saved the county millions of dollars since its inception.<sup>281</sup> Its diversion programs alone save the taxpayers nearly \$6 million a year.<sup>282</sup> In addition, the population in the local jails has dropped from 7,800 to 4,800, which allowed for the closing of one of the county jails and has saved the taxpayers \$12 million per year.<sup>283</sup> The savings alone would seem to most to be a success, but the real success is that recidivism rates of those treated and participating in the program dropped from seventy-five percent to twenty percent annually.<sup>284</sup> This decline shows that the fight against the criminalization of mental illness is working as individuals suffering from SMI are not being repeatedly recycled through the criminal justice system. In addition, they are receiving the necessary treatments and services to help them lead a productive life.

The Chief Justice of the Florida Supreme Court, Jorge Labarga, summed up the work of Judge Leifman and the CMHP:

Judge Leifman epitomizes judicial excellence: "Troubled by people with mental illnesses cycling through his Miami courtroom, Judge Leifman

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277. *Id.*

278. Press Release, National Center for State Courts, Miami Judge Steve Leifman Wins William H. Rehnquist Award, (Aug. 12, 2015), [http://www.floridasupremecourt.org/pub\\_info/documents/pressreleases/2015/08-12-2015\\_Leifman-Wins-Rehnquist-Award.pdf](http://www.floridasupremecourt.org/pub_info/documents/pressreleases/2015/08-12-2015_Leifman-Wins-Rehnquist-Award.pdf).

279. CMHP A, *supra* note 25, at 8.

280. *Id.*

281. *Id.* at 3.

282. CMHP STATISTICS AND OUTCOMES, *supra* note 176, at 6.

283. CMHP A, *supra* note 25, at 3.

284. *Id.* at 4.

decided to take action. His unwavering commitment and compassion in the years since that moment have brought astounding results, changing and saving lives, and bringing families back together. He has made our courts more just and our society more humane.”<sup>285</sup>

#### IV. DO THE PRINCIPLES OR PARTS OF THE CMHP WORK IN OTHER JURISDICTIONS?

The CMHP has been shown to be an innovative program that helps solve the problem of the criminalization of mental illness. It is clear that the problem of the criminalization of mental illness occurs across the nation. If the problem is so widespread, the question is whether other areas or jurisdictions have adopted the CMHP’s program or similar components of the program. If these areas or jurisdictions have adopted the programs or components of the program, then the question becomes whether these areas or jurisdictions are seeing similar successes.

In making this determination, research was conducted on eighteen different jurisdictions suffering from the effects of the criminalization of mental illness that are utilizing diversionary programs similar to the CMHP.<sup>286</sup> Fifteen of these jurisdictions made site visits to Miami, Florida to view the CMHP.<sup>287</sup> One jurisdiction worked closely with Judge Leifman and his staff in developing their programs but did not make a site visit.<sup>288</sup> Interviews were done with representatives of seventeen of the eighteen jurisdictions.<sup>289</sup>

##### A. Site Visits

Fifteen of the eighteen jurisdictions researched made site visits to the CMHP and viewed the CMHP’s programs. One jurisdiction did not make a site visit but has worked closely with the Judge Leifman and the staff of the CMHP in developing its programs.<sup>290</sup> Seventy-five percent of the jurisdictions making visits or working directly with Judge Leifman and his staff adopted parts of the CMHP.<sup>291</sup> None

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285. Press Release, National Center for State Courts, *supra* note 278.

286. The jurisdictions researched were as follows: Duval Cnty., Fla.; Shelby Cnty., Tenn.; Broward Cnty., Fla.; Pinellas Cnty., Fla.; 19th Judicial Circuit, Fla.; Franklin Cnty., Ohio; Cook Cnty., Ill.; Orange Cnty., Fla.; 20th Judicial Circuit, Fla.; Bexar County, Tex.; Hillsborough Cnty., Fla.; Alachua Cnty., Fla.; Harris Cnty., Tex.; Cuyahoga Cnty., Ohio; Palm Beach Cnty., Fla.; King Cnty., Wash.; Douglas Cnty., Kan.; Los Angeles Cnty., Cal.

287. Telephone interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017).

288. 19th Judicial Circuit, Fla.; King Cnty., Wash.; and Douglas Cnty., Kan., did not make site visits.

289. Only King Cnty., Wash., was not interviewed. They did not visit the CMHP. Information on their program was gathered by web-based sources.

290. Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017).

291. *See id.*; Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview

of those jurisdictions adopted the entire CMHP program and all cited lack of financial resources as the major reason.<sup>292</sup> Twenty-five percent of the jurisdictions did not adopt parts of the program after their visit because they already had similar programs in place. Only one of the sixteen jurisdictions did not adopt any parts of the CMHP because their studies on the subject area showed that their program worked better, although they had some similar components in place.<sup>293</sup> All those that visited the CMHP stated that the visit was valuable and that they gained valuable ideas that could be helpful in the future for solving the problem of the criminalization of mental illness in their jurisdictions.<sup>294</sup>

### B. Main Components

All of the eighteen researched jurisdictions utilize CIT.<sup>295</sup> However, only 66 percent of those had a triage or crisis stabilization center similar to that of the CMHP.

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with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

292. See Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

293. Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017).

294. See *id.*; Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

295. See Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter

This crisis stabilization center is an important component because it gives CIT officers a place away from the county or local jail to which individuals suffering from SMI can be diverted. A representative of one of the jurisdictions stated, “[i]t is frustrating when CIT has been completed but there is no facility to divert individuals to other than the county jail.”<sup>296</sup>

In regard to mental health diversion, 66 percent of the jurisdictions had a pre-trial diversion program for those suffering from SMI.<sup>297</sup> Eighty-three percent of the jurisdictions had a mental health court system in place. Sixty-six percent of the jurisdictions used their pre-trial diversion program as their main diversionary component for people with mental illnesses.<sup>298</sup> Twenty-six percent of those operating a mental health court used this court as their main diversionary program for those suffering from SMI.<sup>299</sup>

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Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep’t (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

296. Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

297. *Blueprint for Success: The Bexar County Model, How To Set Up A Jail Diversion Program In Your Community*, <http://passthrough.fw-notify.net/download/318528/http://www.fairfaxcounty.gov/policecommission/subcommittees/materials/jail-diversion-toolkit.pdf>; Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017).

298. See Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep’t (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

299. See Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep’t (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

In regards to the CMHP's other components, only 38 percent were utilizing SOAR.<sup>300</sup> Only one jurisdiction had adopted a school program to target those in schools suffering from SMI.<sup>301</sup> No jurisdiction had developed a dedicated mental health diversion facility.<sup>302</sup>

All of the jurisdictions interviewed cited two major problems in limiting the success of their programs. All of the jurisdictions stated that financial resources are the biggest barrier in limiting their success.<sup>303</sup> For example, many interviewed cited the fact that the CMHP was spending \$42 million on a dedicated mental health diversion facility,<sup>304</sup> which they would never be able to do in their jurisdiction. Further, all of the jurisdictions cited the need for changes in legislation or new legislation to provide help and tools in the fight against the criminalization of mental illness.<sup>305</sup>

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300. Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017).

301. Times-Union Editorial Board, *JCCI Mental Health Study has produced lasting impact*, FLA. TIMES UNION (Dec. 23, 2016, 6:02 PM), <http://jacksonville.com/opinion/2016-12-23/jcci-mental-health-study-has-produced-lasting-impact>.

302. See Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

303. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

304. Ovalle, *supra* note 257.

305. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with

From the visits, all of the representatives of the jurisdictions stated that they gained valuable ideas on how to implement or make their diversion programs better.<sup>306</sup> Further, they stated that it helped bring community leaders together.<sup>307</sup> For the majority of these jurisdictions, their programs had not been in place long enough to gain valuable statistics as to whether the ideas they implemented had been successful. However, the perception by these representatives was that they had made strides in the right direction and that their programs were going to be successful.<sup>308</sup>

### *C. Examples and Models*

It is clear from the interviews and web-based resources that areas and jurisdictions that suffer from the criminalization of mental illness have attempted to solve their problem by adopting parts of the CMHP's programs or by adopting similar components. Some have been very successful. Others have just started to implement programs so that there are no concrete numbers with which to measure success. Most have financial restrictions but are using creative methods to craft

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Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

306. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

307. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017); Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017); Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017); Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017); Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cnty., Ohio (July 26, 2017); Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017); Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts, (July 31, 2017); Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017); Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017); Telephone Interview with Kelly Steele, Manager, Ninth Circuit Problem Solving Court Programs, (July 18, 2017).

308. Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry (Feb. 17, 2017); Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017).



successful programs. Below are models from other areas and jurisdictions and their successes.

### 1. Duval County, Florida

In 2015, community leaders who were part of the Jacksonville Community Council Inc. (“JCCI”) realized they had a mental health crisis.<sup>309</sup> JCCI commissioned a study on the mental health crisis in Duval County. As part of that study, community leaders visited the CMHP.<sup>310</sup> As a result of the study and the visit, several programs were put in place.

In 2016, First Schools Plus, a mental health service program in Duval County schools, began to put licensed mental health professionals in selected schools.<sup>311</sup> In 2016, there were nearly 1,000 referrals and sixty-one percent of those students received services.<sup>312</sup> This program has been seen as an immense success based on the number of individuals receiving services.

In 2017, a mental health central receiving system was opened to divert people suffering from mental illnesses from the local jail to receive mental health services.<sup>313</sup> All officers receive CIT training through the Jacksonville Sheriff’s Office.<sup>314</sup> These officers now have a way to divert individuals suffering from SMI rather than taking them to the county jail. This is important because the Duval County Jail is the largest mental health provider in the county.<sup>315</sup>

Duval County also uses some similar components of the CMHP. The county operates a mental health court.<sup>316</sup> In addition, Duval County, through some of its non-profit hospitals, provides training to 10,000 individuals in the community for recognizing signs of severe mental illness and to help connect high risk individuals to services faster.<sup>317</sup> This is a way of trying to keep people suffering from mental illnesses from entering the court system by recognizing their mental health issues and stabilizing them before they would enter the court system.<sup>318</sup>

Judge Karen Cole has been an instrumental figure in helping solve the mental health crisis in Duval County. She along with community leaders made a site visit

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309. See Times-Union Editorial Page, *Florida’s mental health crisis deserves to be a high priority*, FLA. TIMES UNION (Feb. 18, 2015, 4:23 PM), <http://jacksonville.com/opinion/editorials/2015-02-18/story/floridas-mental-health-crisis-deserves-be-high-priority> (describing two panel discussions emphasizing the high priority for prevention, adequate resources, and to remove stigma).

310. Telephone Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017).

311. Editorial Board, *JCCI Mental Health Study has produced lasting impact*, *supra* note 301.

312. *Id.*

313. Jessica Palombo, *Duval Needs \$1.5 Million to Open Mental Health Care ‘Central Receiving System’*, WJCT PUB. MEDIA (Nov. 23, 2016), <http://news.wjct.org/post/duval-needs-15-million-open-mental-health-care-central-receiving-system>.

314. *Id.*

315. *Id.*

316. Telephone Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017).

317. Ryan Benk, *10k to Receive Mental Health Training in Jacksonville*, WJCT PUB. MEDIA (Jan. 26, 2017), <http://news.wjct.org/post/10k-receive-mental-health-training-jacksonville>.

318. *Id.*

to the CMHP. Judge Cole stated that the visit was a huge success.<sup>319</sup> It brought community leaders together and helped with the development of a number of programs.<sup>320</sup> The county's program is still in its inception and pieces are being borrowed from the CMHP.<sup>321</sup> However, the county does not have the same type of funding as Miami-Dade County. There are no statistics as to the success of the programs as it is in its inception, but it is perceived in the coming years that the statistics will justify the program's funding.<sup>322</sup>

## 2. Pinellas County, Florida

Pinellas County visited the CMHP in December 2013.<sup>323</sup> Pinellas County operates a unique mental health jail diversion program.<sup>324</sup> The program was started in 2004.<sup>325</sup> The program has diverted nearly 6,000 individuals suffering from mental illnesses out of the criminal justice system.<sup>326</sup> There has been a ninety percent reduction in recidivism among those that have completed the program.<sup>327</sup> The jail diversion program diverts individuals out of the criminal justice system into community-based treatment.<sup>328</sup> The program lasts ninety days.<sup>329</sup> The program acts in the place of a mental health court.<sup>330</sup>

The ninety-day program provides services which include "face-to-face assessments, transportation, transitional housing, psychiatric evaluations, treatment plans, prescription medication therapy, intensive case management, court liaisons, and finding additional community resources."<sup>331</sup> "The program provides access to community-based health and substance-abuse treatment services."<sup>332</sup> "Clients receive treatment services, case management, housing, and medications."<sup>333</sup>

Pinellas County has CIT training but lacks a triage or central receiving facility and adequate housing for placement of individuals once they have completed the program.<sup>334</sup> This is due to a lack of funding.<sup>335</sup> However, it is estimated that the jail

319. Telephone Interview with Karen Cole, Circuit Judge, Fourth Judicial Circuit (July 17, 2017).

320. *Id.*

321. *Id.*

322. *Id.*

323. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (May 25, 2017).

324. Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017). *See also, Jail Diversion Program*, PUB. DEF. SIXTH JUDICIAL CIRCUIT, [http://www.wearethehope.org/jail\\_diversion.htm](http://www.wearethehope.org/jail_diversion.htm)(last visited Aug. 26, 2018).

325. *Jail Diversion Program*, *supra* note 324.

326. *Id.*

327. *Id.*

328. *Id.*

329. Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017).

330. *Id.*

331. *Jail Diversion Program*, *supra* note 324.

332. *Id.*

333. *Id.*

334. Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017).

335. *Id.*

diversion program saves the taxpayers millions of dollars each year.<sup>336</sup> For example, in 2004, it was estimated the program saved the taxpayers over \$5 million.<sup>337</sup>

Pinellas County has not adopted all of the CMHP programs because of a lack of funding.<sup>338</sup> However, it has become creative by instituting the Safe Harbor homeless facility and a chronic inebriation program that helps with those suffering from mental illness and co-occurring substance abuse issues.<sup>339</sup> Although the county does not have the same financial resources as Miami-Dade County, it has become creative and successful with the programs it has initiated.

### 3. Nineteenth Judicial Circuit, St. Lucie and Indian River County, Florida

The Nineteenth Judicial Circuit, which includes St. Lucie and Indian River counties, deals with the problem of the criminalization of mental illness.<sup>340</sup> Although no representative has visited the CMHP from the Nineteenth Circuit, Circuit Court Judge Cynthia Cox has worked closely with Judge Leifman on issues dealing with mental illnesses in the criminal justice system.<sup>341</sup> She has been the administrative judge for the mental health courts in the Nineteenth Circuit and has been instrumental in their success.<sup>342</sup> The Nineteenth Circuit does have CIT training but does not have a central receiving system due to a lack of funding.<sup>343</sup> As a result, mental health diversion and services are provided through the mental health courts.<sup>344</sup>

The mental health courts were started in the early 2000s.<sup>345</sup> Currently, there are roughly 500 participants in the mental health courts in St. Lucie and Indian River counties.<sup>346</sup> The mental health courts have adopted many of the principles of the CMHP.<sup>347</sup> Inside the mental health courts, there is a misdemeanor and felony diversion program.<sup>348</sup> The mental health courts also offer services and programs similar to those in the CMHP to those found not guilty by reason of insanity and with competency issues.<sup>349</sup> In addition, there is a traditional track through which participants are placed on probation.<sup>350</sup> Finally, the courts also utilize the SOAR

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336. *Id.*

337. *Jail Diversion Program*, *supra* note 324.

338. Telephone Interview with Bob Dillinger, Public Defender, Sixth Judicial Circuit (July 18, 2017).

339. *Id.*

340. Telephone Interview with Cynthia Cox, Circuit Judge, Nineteenth Judicial Circuit, Fla. (July 26, 2017).

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

program to help the participants receive the government benefits they need for housing and treatment.<sup>351</sup>

Lack of funding is a major reason for not adopting all of the CMHP.<sup>352</sup> However, the program in place has been very successful and saves the circuit an average of \$3 million a year in jail costs.<sup>353</sup> According to Judge Cox, this is due to the creative use of funds and building programs within the mental health court system.<sup>354</sup>

#### 4. Franklin County, Ohio

Franklin County, Ohio, has problems with the criminalization of mental illness.<sup>355</sup> The county currently houses 2,300 inmates in its county jail with forty-five percent suffering from some type of mental illness.<sup>356</sup> Representatives from the county visited the CMHP in October 2015.<sup>357</sup> Based on the visit, the county developed a number of programs to help with their mental health crisis.<sup>358</sup> First, the county instituted CIT training for law enforcement officers and developed a mental health crisis center where law enforcement officers could divert individuals with SMI to provide mental health and co-occurring substance abuse services.<sup>359</sup> In addition, a program was developed to place individuals with SMI, who have been deemed frequent users of the system, in social service programs to obtain the needed services.<sup>360</sup> In 2016, a misdemeanor and felony diversion program was started for individuals involved in the criminal justice system who suffered SMI.<sup>361</sup> Finally, a mental health court was instituted. Funding mental health diversion programs is an issue. However, the county has tried to be creative in using the key components of the CMHP that are financially feasible in order to reduce the criminalization of mental illness in the county.

#### 5. Cook County, Illinois

Cook County, Illinois, has adopted some components of the CMHP. In particular, it uses a combination of supportive housing, which includes community mental health treatment services and rent subsidies.<sup>362</sup> In addition, Cook County utilizes

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351. *Id.*

352. *Id.*

353. *Id.*

354. *Id.*

355. Telephone Interview with Michael Daniels, Justice Policy Coordinator, Franklin Cty., Ohio (July 26, 2017).

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*

362. Michael Ollove, *New Efforts Aim To Keep The Mentally Ill Out Of Jail*, HUFF POST (May 19, 2015), [http://www.huffingtonpost.com/2015/05/19/mentally-ill-jail\\_n\\_7316246.html](http://www.huffingtonpost.com/2015/05/19/mentally-ill-jail_n_7316246.html).

Assistive Community Treatment (“ACT”) teams composed of mental health specialists who help coordinate treatment, housing, and employment.<sup>363</sup> Finally, Cook County utilizes CIT training and has adopted a mental health court for felony offenders.<sup>364</sup>

In fact, Cook County has a successful mental health diversion program which operates through its mental health court.<sup>365</sup> Unlike the CMHP, the diversion program only focuses on felony offenders.<sup>366</sup> According to Judge Lawrence Fox, Director of Problem Solving Courts in Cook County, the county’s studies show that misdemeanor diversion does not work as well as focusing on felony offenders.<sup>367</sup> According to Fox, the idea is to target high risk offenders and the model has been a success.<sup>368</sup>

In using these components and strategies, Cook County has experienced success in combating the criminalization of mental illness. There has been an eighty-six percent reduction in arrests of those with mental illnesses.<sup>369</sup> Further, there has been an eighty-six percent reduction in jail time for those suffering from mental illnesses.<sup>370</sup> Finally, there has been a seventy-six percent reduction in hospitalizations for those participating in the programs.<sup>371</sup>

#### 6. King County, Washington

King County, Washington, utilizes several components of the CMHP in its mental health diversion programs. King County utilizes supportive housing and ACT which has provided for intensive community-based mental health treatments.<sup>372</sup> This is done through jail diversion programs that utilize CIT training and a crisis solutions center.<sup>373</sup> These programs have led to a forty-five percent reduction in jail booking for those participating in the programs.<sup>374</sup>

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363. *Id.*

364. Thomas J. Dart, *Mental Health Template*, COOK CTY. SHERIFF’S OFF., <https://www.cookcountysheriff.org/mental-health-template/> (last visited Sept. 9 2018); *see also*, *Eliminating Barriers To The Treatment of Mental Illness*, TREATMENT ADVOC. CTR., <http://www.treatmentadvocacycenter.org/browse-by-state/illinois> (last visited Sept. 9, 2018).

365. Telephone Interview with Lawrence Fox, Director, Cook Cnty., Ill., Problem Solving Courts (July 31, 2017).

366. *Id.*

367. *Id.*

368. *Id.*

369. Ollove, *supra* note 362.

370. *Id.*

371. *Id.*

372. *Id.*

373. *Crisis Diversion Programs*, KINGCOUNTY.GOV, <http://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/crisis-diversion-programs.aspx> (last updated Oct. 27, 2017).

374. *Id.*

One of the unique features of King County program is the development of a crisis solutions center, which has three linked programs.<sup>375</sup> First, there is a crisis diversion facility “for adults in crisis who need stabilization and referral to appropriate community-based services.”<sup>376</sup> Second, there are crisis diversion interim services “for individuals who need intensive case management to identify and engage in available housing and support options upon returning to their home community.”<sup>377</sup> Finally, there is a mobile crisis team “that responds with police and other first responders in the community to provide . . . crisis stabilization and linkage to appropriate services and supports” in moments of crisis.<sup>378</sup>

King County also utilizes a mental health court program.<sup>379</sup> This program provides a diversionary court for those whose crimes are linked to a mental illness.<sup>380</sup> The diversionary court is open to individuals with both misdemeanor and felony charges.<sup>381</sup>

King County’s diversion program was evaluated by researchers at Seattle University, who concluded that the program was successful.<sup>382</sup> The evaluation results suggest that the program is relieving an otherwise substantial and unnecessary burden on law enforcement officers.<sup>383</sup> This is done by diverting individuals with SMI out of the criminal justice system to mental health professionals who can triage cases and divert the individuals to more appropriate treatment.<sup>384</sup>

### 7. Bexar County, Texas

Bexar County, Texas, utilizes a complex jail diversion program in its fight against the criminalization of mental illness that incorporates a number of the components of the CMHP.<sup>385</sup> First, the county utilizes a pre-arrest diversion program which includes CIT training and the use of a crisis center to provide needed mental health and substance abuse services.<sup>386</sup> In addition, there is a pre-trial diversion

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375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. *Welcome to the King County District Court Regional Mental Health Court*, KINGCOUNTY.GOV, <https://www.kingcounty.gov/courts/district-court/regional-mental-health-court.aspx> (last updated Jan. 24, 2017).

380. *Id.*

381. *Id.*

382. Jacqueline B. Helfgott et al., *A Descriptive Evaluation of the Seattle Police Department’s Crisis Intervention Team/Mental Health Partnership Pilot Project*, SEATTLE UNIVERSITY (2012); see also Sarah C. Walker et al., *Washington State Mental Health Diversion Guidebook: A Guide for Juvenile Courts*, UNIV. OF WASH. & CTR. FOR CHILD. & YOUTH JUST., [http://www.modelsforchange.net/publications/765/Washington\\_State\\_Mental\\_Health\\_Diversion\\_Guidebook.pdf](http://www.modelsforchange.net/publications/765/Washington_State_Mental_Health_Diversion_Guidebook.pdf).

383. *Id.*

384. *Id.*

385. Leo Evans, *Blueprint for Success: The Bexar County Model, How To Set Up A Jail Diversion Program In Your Community*, <http://www.naco.org/sites/default/files/documents/Bexar-County-Model-report.pdf>.

386. *Id.* at 11–21.

program offering pre-trial mental health services and a court diversion program.<sup>387</sup> Finally, the county has adopted a collaboration model involving different agencies and different members of the community to cooperate in facilitating proper services.<sup>388</sup>

The program has seen immense success. On average, the program diverts 4,000 individuals annually from incarceration to treatment and has diverted 20,000 individuals since the program's inception.<sup>389</sup> In addition, the county saves \$5 million for jail costs and \$4 million annually for inappropriate admissions to the emergency room.<sup>390</sup> Finally, before the program, physical force was required at least fifty times each year in taking the mentally ill into custody.<sup>391</sup> Since the inception of the program, only three incidents of physical force have been used in dealing with the mentally ill.<sup>392</sup> The program has had immense success as there is only a four percent recidivism rate for those completing programs and seventy to eighty percent of the participants complete the program.<sup>393</sup> Based on its success, Bexar County has become a national model for success in the area of fighting criminalization of mental illness.<sup>394</sup>

Even with its immense success, representatives from Bexar County visited the CMHP.<sup>395</sup> The reason for the visit was to see how the CMHP's diversion programs worked within the court system.<sup>396</sup> Bexar County's programs focus on the law enforcement side and in particular its CIT and pre-arrest diversion.<sup>397</sup> They viewed the CMHP to help develop their court programs.<sup>398</sup> The reason for this, according to Gilbert Gonzalez, Director of the Mental Health Department for Bexar County, is that the CMHP approach is different in that Bexar County's programs focus on law enforcement diversion where Judge Leifman brings "great experience in fighting the criminalization of mental illness through the court system."<sup>399</sup> Gonzalez said the greatest challenge for Bexar County's programs, other than that of funding, is that of "educating those within the court system of the value and need for mental health diversion."<sup>400</sup>

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387. *Id.*

388. *Id.*

389. *Id.* See also Susan Parmerleau, *Jail Diversion Program A Huge Success*, MY SAN ANTONIO (January 22, 2016, 3:54 PM), <http://www.mysanantonio.com/opinion/commentary/article/>.

390. Evans, *supra* note 385, at 1.

391. *Id.*; see also Parmerleau, *supra* note 389.

392. *Id.*

393. Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017).

394. Parmerleau, *supra* note 389.

395. Telephone Interview with Gilbert Gonzalez, Director, Bexar Cnty., Tex., Mental Health Dep't (Aug. 22, 2017).

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

### 8. *Douglas County, Kansas*

Douglas County, Kansas faces the problem of the criminalization of mental illness. The county has adopted a number of components similar to those of the CMHP in its fight against the criminalization of mental illness. Douglas County has provided CIT training to law enforcement officers throughout the county.<sup>401</sup> The county and municipal courts in Lawrence, Kansas have developed a mental health diversion program that includes both pre-booking and post-booking diversion programs for misdemeanors.<sup>402</sup> As part of the post-booking diversion program, the county has created mental health courts.<sup>403</sup> Finally, the county has a goal in the near future of creating a mental health crisis stabilization and treatment center.<sup>404</sup>

Douglas County's program is in its infancy and there are no statistics available concerning the success of the program at this time.<sup>405</sup> However, the county is unique in that it has hired a special consultant from the academic community, Margaret E. Severson, to help with the creation of its program.<sup>406</sup> Ms. Severson is a professor at the University of Kansas and has studied mental illness in the court systems for many years.<sup>407</sup> Based on her studies, she recommended the current components for Douglas County's program.<sup>408</sup> According to Professor Severson, she is "optimistic that the Douglas County program is a successful approach to combating the criminalization of mental illness and that in the future the statistics will provide proof of this successful approach."<sup>409</sup>

### 9. *Los Angeles County, California*

In 2015, Los Angeles County, California, instituted a mental health diversion program to help reduce the number of individuals suffering from SMI who are housed in the county jail.<sup>410</sup> Los Angeles County currently has over 16,000 inmates housed in its jail system, which ranks as one of the largest in the United States.<sup>411</sup> Roughly 4,000 of those inmates suffer from SMI.<sup>412</sup>

The mental health diversion program, which is called the Office of Diversion and Reentry, is headed by retired Superior Court Judge Peter Espinoza.<sup>413</sup> In

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401. Rick Cagan, *Mental Illness & Jails*, JUST. MATTERS IN KAN., [http://www.justicemattersinkansas.org/mental\\_illness\\_jails](http://www.justicemattersinkansas.org/mental_illness_jails) (last visited on Sept. 9, 2018).

402. *Id.*

403. *Id.*

404. *Id.*

405. Telephone Interview with Margaret E. Severson, Professor, Univ. of Kan. (Feb. 17, 2017).

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. Telephone Interview with Peter Espinoza, Director, Los Angeles Cnty. Office of Diversion and Reentry.

411. *Id.*

412. *Id.*

413. *Id.*



addition to the fact that key roles are played by judges in both the CMHP and the Office of Diversion and Reentry, the Los Angeles County program shares a number of other characteristics with those of the CMHP. First, the Los Angeles County program has a pre-booking diversion program which includes CIT training for law enforcement and four urgent care centers to provide mental health services to those diverted.<sup>414</sup> In addition, the program has a post-booking diversion program which consists of a misdemeanor diversion program that aims to place those diverted in community based treatment.<sup>415</sup> Finally, the program consists of a pre-trial felony diversion program which currently provides 1,000 beds for those experiencing mental health and co-occurring substance abuse issues.<sup>416</sup>

According to Judge Espinoza, the program has been in place for a year and “we are starting to see some success.”<sup>417</sup> Currently, there are no concrete statistics available for the pre-booking diversion program due to the number of agencies involved and the age of the program.<sup>418</sup> However, at least 291 inmates have been diverted from the county jail to community-based treatment through the misdemeanor diversion program and eighty percent of the individuals have successfully completed or continue to receive services.<sup>419</sup> In addition, 127 individuals have been diverted through the felony diversion for case management services and 209 have been placed in the community re-entry program.<sup>420</sup>

Judge Espinoza is very optimistic that the program will be successful.<sup>421</sup> According to Espinoza, “we are already seeing positive results even though the program is just in its inception.”<sup>422</sup> “However, the success of the program will ultimately be based on the development of resources to provide resources to those suffering from severe mental illness within the county.”<sup>423</sup>

#### 10. *Lee County, Florida*

Lee County, Florida suffers from the effects of the criminalization of mental illness like many other areas.<sup>424</sup> Lee County has implemented some of the major components of the CMHP.<sup>425</sup> There has been CIT training in the county since 2005.<sup>426</sup> Eighty percent of Ft. Meyers police officers, forty percent of Cape Coral

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414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.*

423. *Id.*

424. Telephone Interview with Belinda Smith, Administrative Services Coordinator for Specialty Courts, Lee Cnty., Fla. (Aug. 22, 2017).

425. *Id.*

426. *Id.*

police officers, twenty-five percent of the deputies at the Lee County Sheriff's Office, and five percent of the county's correctional officers have been trained.<sup>427</sup> Similar to the CMHP, the county uses the CIT training to divert individuals to a triage center which was started in 2008.<sup>428</sup>

The main component of mental health diversion is managed through the mental health courts in Lee County.<sup>429</sup> The court handles both misdemeanor and felony cases.<sup>430</sup> The court diverts about seventy percent of the participants while thirty percent enter pleas and are placed on probation or community control.<sup>431</sup> Seventy-two percent of the participants graduate from the program and, of those graduates, only six percent reoffend within a year of graduation.<sup>432</sup> Those in the program tend to be those with higher risks of reoffending and have greater mental health needs.<sup>433</sup> Lower level offenders are diverted through the triage center.<sup>434</sup> The county utilizes the SOAR program.<sup>435</sup> Thus, Lee County has been successful in its use and implementation of the mental health diversion programs.

#### *D. Conclusion of Jurisdictional Study*

Jurisdictions and areas across the country suffer from the criminalization of mental illness. Some of these jurisdictions have been proactive by developing programs to combat the criminalization of mental illness. At least fifteen different jurisdictions have visited the CMHP to gain ideas and most have implemented programs based on some of those ideas. Reports from the previously identified jurisdictions indicate that these implemented programs have been a success. They also provide examples of how different areas have been creative due to financial limitations in combating the criminalization of mental illness. They also provide a good framework of ideas for other jurisdictions trying to implement similar programs. In all, the research described in this thesis indicates that the CMHP has had a positive influence on other jurisdictions and that other jurisdictions are finding success in implementing parts of the CMHP or utilizing similar components to those of the CMHP.

#### V. THE NEED FOR IMPROVEMENT

Programs like the CMHP have been tremendously successful. However, programs like these also have weaknesses. First, programs like the CMHP do not address every issue that the communities and court systems face in regard to the

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427. *Id.*

428. *Id.*

429. *Id.*

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

criminalization of mental illness. This is often the case because there is a lack of legislation to adequately address mental health issues in the court system and the community. Further, in order for programs like the CMHP to operate effectively, they must be adequately funded. Many communities do not have the resources to effectively run programs like the CMHP and thus, they are not as successful. The lack of funding and effective legislation are two of the major issues cited by all jurisdictions dealing with the issue of the criminalization of mental illness.

#### A. *The Need for More Legislation*

##### 1. *Legislative Help for Court Systems*

The CMHP and other similar programs have been extremely successful. But even with their success, the CMHP and other similar programs do not adequately address every issue and cannot solve every problem relating to the criminalization of mental illness. A major weakness is the lack of legislation to help court systems and communities battle this problem.

One of the major problems facing courts is the lack of legal remedies to help alleviate the problems associated with the criminalization of mental illness. In most cases, it is the lower courts that deal with the problems of criminalization of mental illness. The reason for this is that these courts are usually the courts that are assigned or have jurisdiction over misdemeanor-type cases. The problem arises because most states will not allow a county court judge presiding over misdemeanor cases to order an involuntary forensic commitment. As a result, the defendant is normally released from custody as soon as he is found incompetent to proceed only to be repeatedly recycled through the court system after each arrest.

In Florida, for example, the Florida Supreme Court has held that a judge cannot order a defendant charged with a misdemeanor in a criminal case to be involuntarily committed to a forensic mental health facility.<sup>436</sup> In *Onwu v. State*, a county court judge presiding over a misdemeanor case ordered a mental evaluation of the defendant to determine his competency to proceed in the criminal case.<sup>437</sup> After receiving the competency evaluations, the defendant was found to be incompetent to proceed.<sup>438</sup> As a result, the judge moved to initiate proceedings in order to involuntarily commit the defendant to a state forensic mental health facility.<sup>439</sup> The defendant challenged the judge's authority claiming that under chapter 916, Florida Statutes, only a circuit court judge has the authority to involuntarily commit the defendant to a state forensic mental health facility.<sup>440</sup>

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436. *Onwu v. State*, 692 So. 2d 881, 883 (Fla. 1997).

437. *Id.* at 882.

438. *Id.*

439. *Id.*

440. *Id.*

The Florida Supreme Court held that the county court judge did not have the authority to commit the defendant to a state forensic mental health facility.<sup>441</sup> The court relied on the statutory language which provides that only a circuit court judge can make the necessary findings to order a forensic commitment.<sup>442</sup> As a result, the court reasoned that a judge did not have the authority to order an involuntary forensic commitment in a misdemeanor case.<sup>443</sup>

Most states follow the same approach as provided for in Florida law and do not allow forensic commitment in misdemeanor cases.<sup>444</sup> As argued in *Onwu*, the main reason for this is that there is usually a shortage of bed space in state forensic facilities and a forensic commitment of misdemeanants would only exacerbate the situation.<sup>445</sup> Due to the lack of bed space, the states are concerned with the fiscal impact of flooding the forensic hospitals with misdemeanants.<sup>446</sup> However, as the court noted in *Onwu*, it only takes the legislature to amend the statute or draft new legislation that would allow misdemeanants to be committed to forensic hospitals.<sup>447</sup>

The Florida legislature has recently passed legislation that will help county courts combat the criminalization of mental illness. The amended portions fall under the civil mental health laws commonly called Baker Act proceedings. In particular, the legislature recently amended statutory provisions that allow a criminal county court judge to make an ex-parte order requiring an involuntary examination if the judge believes the person is suffering from mental illness.<sup>448</sup> Further, under Fla. Stat. § 394.4655, a criminal county court judge can now order the individual to involuntary outpatient treatment services.<sup>449</sup> However, the statutes still will not allow the criminal county court judge to order and require involuntary inpatient placement.<sup>450</sup>

These amended provisions do not address the problem discussed in the *Onwu* decision. However, they do provide a tool for criminal county court judges when facing mental health issues in their courts. In particular, in the event that a defendant is found incompetent to proceed, rather than just releasing the defendant, the county court judge could enter an order under Fla. Stat. § 394.4655 requiring an involuntary mental health examination and if appropriate, could order outpatient treatment. Although not perfect, this provides a significant tool for a criminal

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441. *Id.* at 883.

442. *Id.*

443. *Id.*

444. See Symposium: *The Criminal Defense Lawyer's Fiduciary Duty to Clients With Mental Disability*, 68 *FORDHAM L. REV.* 1581, 1624 (2000).

445. *Onwu*, 692 So. 2d at 882.

446. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Apr. 28, 2017).

447. *Onwu*, 692 So. 2d at 883.

448. FLA. STAT. § 394.463(2)(a)(1) (2016).

449. FLA. STAT. § 394.4655(2) (2016) (stating that "a person may be ordered to involuntary outpatient services" by the court if the person is at 18 years old, has a mental illness, is unlikely to survive safely in the community without supervision, and has a history of lack of compliance with treatment for their mental illness).

450. FLA. STAT. § 394.467 (2016); FLA. STAT. § 394.455(10) (2016).

county court judge that did not previously exist. Further, these types of legislation can be a model for other jurisdictions to follow.

## 2. *Legislation for Communities at Large*

The National Alliance for Mental Illness (“NAMI”) recently “warned the U.S. Senate Judiciary Committee that the criminalization of people living with mental illnesses has reached crisis proportions and called for support of federal, state, and local reforms to overcome failings in both the mental health care and criminal justice systems.”<sup>451</sup> NAMI has urged for more legislation to help in the fight against the criminalization of mental illness.<sup>452</sup> In particular, NAMI supports bills like the Mental Health and Safe Communities Act, introduced by Senator John Cornyn of Texas, and similar bills that would help in combating the criminalization of the mentally ill.<sup>453</sup>

Bills like the Mental Health and Safe Communities Act are essential in solving the problem of criminalizing the mentally ill.<sup>454</sup> If passed, the Mental Health and Safe Communities Act will provide more funding for mental health care especially in the area of the criminal justice system.<sup>455</sup> It will provide for the collection of data concerning the role of mental illness in homicides.<sup>456</sup> Also, it will provide funding for training of law enforcement officers in active shooter scenarios especially when dealing with those that have mental illnesses.<sup>457</sup> Finally, it will correct errors in background checks and qualifications for gun ownership in order to keep those with severe mental illnesses from owning guns.<sup>458</sup>

These are just examples of current legislation that will help both the court systems and communities combat the criminalization of mental illness. It is clear that this type of legislation will help fill in gaps that cannot otherwise be handled by programs such as the CMHP. It is also evident that these types of legislative helps will be very successful in alleviating the problems associated with the criminalization of mental illness.

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451. Press Release, National Alliance for Mental Illness, NAMI Warns Senate about Criminalization of Mental Illness; Supports Cornyn Bill (Feb. 2016), <https://www.nami.org/Press-Media/Press-Releases/2016/NAMI-Warns-Senate-about-Criminalization-of-Mental>.

452. *Id.*

453. *Id.* In February 2016, NAMI Senior Policy Advisor Ronald S. Honberg presented NAMI’s support of the Mental Health and Safe Communities Act, introduced by Senator John Cornyn of Texas, before the Senate Judiciary Committee.

454. Mental Health and Safe Communities Act of 2015, S. 2002, 114th Cong. (2015).

455. *Id.* at § 105(a)(2)(A)-(B); see also Sarah Trumble, *Mental Health and Safe Communities Act: The Good, the Bad, and the Fixable*, THIRD WAY (Oct. 30, 2015), <http://www.thirdway.org/memo/mental-health-and-safe-communities-act-the-good-the-bad-and-the-fixable>.

456. Mental Health and Safe Communities Act of 2015, S. 2002, 114th Cong. § 2992(c)(6) (2015).

457. *Id.* at § 2992(c).

458. *Id.* at § 305(1) (correcting system errors that previously prevented individuals from purchasing a firearm); see also Sarah Orick, *Guns and Mental Health*, CONG. DIGEST (Apr. 9, 2016), <http://congressionaldigest.com/guns-and-mental-health/>.

### B. Lack of Funding

The CMHP is an incredible program. However, many communities cannot establish such a program or even parts of the program because of a lack of resources. The monetary limitations keep most communities from experiencing the type of success that has been experienced by Miami-Dade County.

The CMHP initially started its program with a \$50,000 grant and later secured a \$300,000 federal grant to help build its program.<sup>459</sup> However, the CMHP now spends nearly \$1.2 million each year on its program.<sup>460</sup> In addition, Miami-Dade County is in the process of building a dedicated mental health diversion facility which will cost taxpayers over \$40 million.<sup>461</sup>

Funds such as those spent by Miami-Dade County are not always available to other counties. Many counties resort to grants and other government aids in order to institute mental health programs that work with the criminal justice system. Many communities do not even have a dedicated facility or funds for treatment programs in order to divert individuals with SMI out of the criminal justice system. Thus, funding is a major issue for smaller communities.

Larger communities are not immune to the problem of limited funding. Los Angeles County has based the success of its program on the development of resources.<sup>462</sup> Bexar County, which promotes one of the best mental illness diversion programs in the country, faces funding issues. Officials in Bexar County noted that with budget cuts, the lack of resources makes it hard to service individuals with SMI in the criminal justice system.<sup>463</sup> Thus, funding of mental health diversion programs is an issue for counties both large and small.

However, some jurisdictions are learning how to cope with less funding. For example, in Florida's Seventh Judicial Circuit, SMA Behavioral, which is the mental health provider for the circuit, has begun to develop pilot programs using grant money.<sup>464</sup> Currently, they are using grant money to create crisis treatment units in the circuit's smaller counties to service individuals with episodes of severe mental illness.<sup>465</sup> In addition, they have started a FACT program with non-recurring state funds to identify, target and service individuals in the circuit with a history of severe mental illness.<sup>466</sup> It is the hope of SMA to continue to build programs and services with grant money in order to fund necessary programs. Other jurisdictions

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459. Telephone Interview with Tim Coffey, Coordinator, Eleventh Judicial Circuit Mental Health Project (Apr. 28, 2017).

460. CMHP STATISTICS AND OUTCOMES, *supra* note 176, at 5.

461. Ovalle, *supra* note 257.

462. *See Jail Diversion Program*, *supra* note 324.

463. Matt Clarke, *Bexar County, Texas Fails to Properly Evaluate Mentally Ill Jail Prisoners*, PRISON LEGAL NEWS (Apr. 15, 2011), <https://www.prisonlegalnews.org/news/2011/apr/15/bexar-county-texas-fails-to-properly-evaluate-mentally-ill-jail-prisoners>.

464. Telephone Interview with Ivan Cosimi, CEO, SMA Behavioral Healthcare (Apr. 26, 2017).

465. *Id.*

466. *Id.*

could follow these examples to help build programs to service those with severe mental illness.

## VI. JUDICIAL INTERVENTION AND COMMUNITY SUPPORT

The criminalization of mental illness is a real problem in our country. It is important that communities and their stakeholders come together to solve this problem. Judges seem to be the catalysts in raising community awareness of this issue and helping coordinate efforts in counties, states, and throughout the country. The majority of programs researched and cited above include participation by a representative of the judiciary as a key component of the program's success. It seems that the judiciary has a unique way of bringing attention to the problem of the criminalization of mental illness. As one judge stated, "When I was a public defender trying to address this problem, I called a meeting of all the key stakeholders, and no one came. When I became a judge, I called the same meeting. Everyone was five minutes early."<sup>467</sup>

Two programs or organizations which have been developed through coordinated efforts of judges have helped to bring attention to and help solve the problem of the criminalization of mental illness. The first of these is the Judges Criminal Justice/Mental Health Leadership Initiative. The second is the Stepping Up Initiative. Both programs have been instrumental in educating and helping solve the problem of the criminalization of mental illness.

### A. *Judges Criminal Justice and Mental Health Leadership Initiative*

The Judges Leadership Initiative ("JLI") was founded to help harness the leadership skills of the judiciary in order to combat the criminalization of mental illness.<sup>468</sup> The organization is funded by the JEHT Foundation, the United States Department of Justice and the United States Department of Health and Human Services Administration, and Center for Mental Health Services.<sup>469</sup> The goal of the JLI is to support and enhance the efforts of judges who have already taken leadership roles in their communities fighting against the criminalization of mental illness.<sup>470</sup> In addition, the goal is to promote leadership among more judges that will improve the response to people with mental illnesses that are in the criminal justice system.<sup>471</sup> This is done by providing activities and resources to judges who wish to participate. Thus far, the JLI has provided help in addressing 400 to 500 issues that deal with mental health in the criminal justice system.<sup>472</sup>

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467. *Judges' Criminal Justice/ Mental Health Leadership Initiative* (Sept. 6, 2018), <https://www.bja.gov/publications/jli.pdf>.

468. *Id.*

469. *Id.*

470. *Id.*

471. *Id.*

472. Telephone Interview with Steven Leifman, Associate Administrative Judge, Eleventh Judicial Circuit of Florida (Oct. 19, 2017).

The JLI, led by one its co-founders and chairpersons, Judge Leifman, has recently partnered with Psychiatric Leadership Group to form the Judges and Psychiatrist's Leadership Initiative ("JPLI").<sup>473</sup> The goal of the JPLI is to stimulate, support, and enhance efforts by judges and psychiatrists to improve judicial, community, and systemic responses to people with behavioral health needs who are involved in the justice system.<sup>474</sup> This is done by creating a community of judges and psychiatrists through web-based and in-person training.<sup>475</sup> In addition, the JPLI seeks to increase the reach of trainings in order to build the non-clinical skills of court professionals which will help improve individual and public safety outcomes.<sup>476</sup> For example, the JLI recently provided training to effectively identify and manage individuals with mental illnesses within the Illinois court system.<sup>477</sup> Finally, the JPLI's goal is to develop educational resources to increase judges' and psychiatrists' understanding of the latest research and best practices for people with mental illnesses involved in the justice system.<sup>478</sup>

### *B. Stepping Up Initiative*

In 2015, the National Association of Counties, the Council of State Governments Justice Center, and the American Psychiatric Association Foundation launched the Stepping Up Initiative.<sup>479</sup> The goal of the Stepping Up Initiative is to advance counties' efforts in reducing the number of adults with mental illnesses and co-occurring substance abuse disorders in jails.<sup>480</sup> As part of this, elected officials of counties are being called upon to pass a resolution and "work with other leaders (e.g., the sheriff, judges, district attorney, treatment providers, and state and local policymakers), people with mental illnesses and their advocates, and other stakeholders to reduce the number of people with mental illnesses in jails."<sup>481</sup>

As part of this resolution, the counties' stakeholders are asked to take the following six actions. First, convene or draw on a diverse team of leaders and decision makers from multiple agencies committed to safely reducing the number of people with mental illnesses in jails. Second, collect and review prevalence numbers and assess individuals' needs to better identify adults entering jails with mental

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473. *Judges' and Psychiatrists' Leadership Initiative*, JUST. CTR.: COUNCIL OF ST. GOV'TS, <https://csgjusticecenter.org/courts/judges-leadership-initiative/> (last visited Sept. 6, 2018).

474. *Id.*

475. *Id.*

476. *Id.*

477. *Judges and Psychiatrists Partner to Deliver Training in Illinois on Individuals with Mental Illnesses in the Courts*, JUST. CTR.: COUNCIL OF ST. GOV'TS (June 29, 2011), <https://csgjusticecenter.org/cp/posts/judges-and-psychiatrists-partner-to-deliver-training-in-illinois-on-individuals-with-mental-illnesses-in-the-courts/>

478. *Judges' and Psychiatrists' Leadership Initiative*, *supra* note 473.

479. Nastassia Walsh, *The Stepping Up Initiative Overview*, NAT'L ASS'N OF COUNTIES, <http://www.naco.org/resources/programs-and-services/stepping-initiative> (last visited Sept. 6, 2018).

480. *Id.*

481. *Id.*



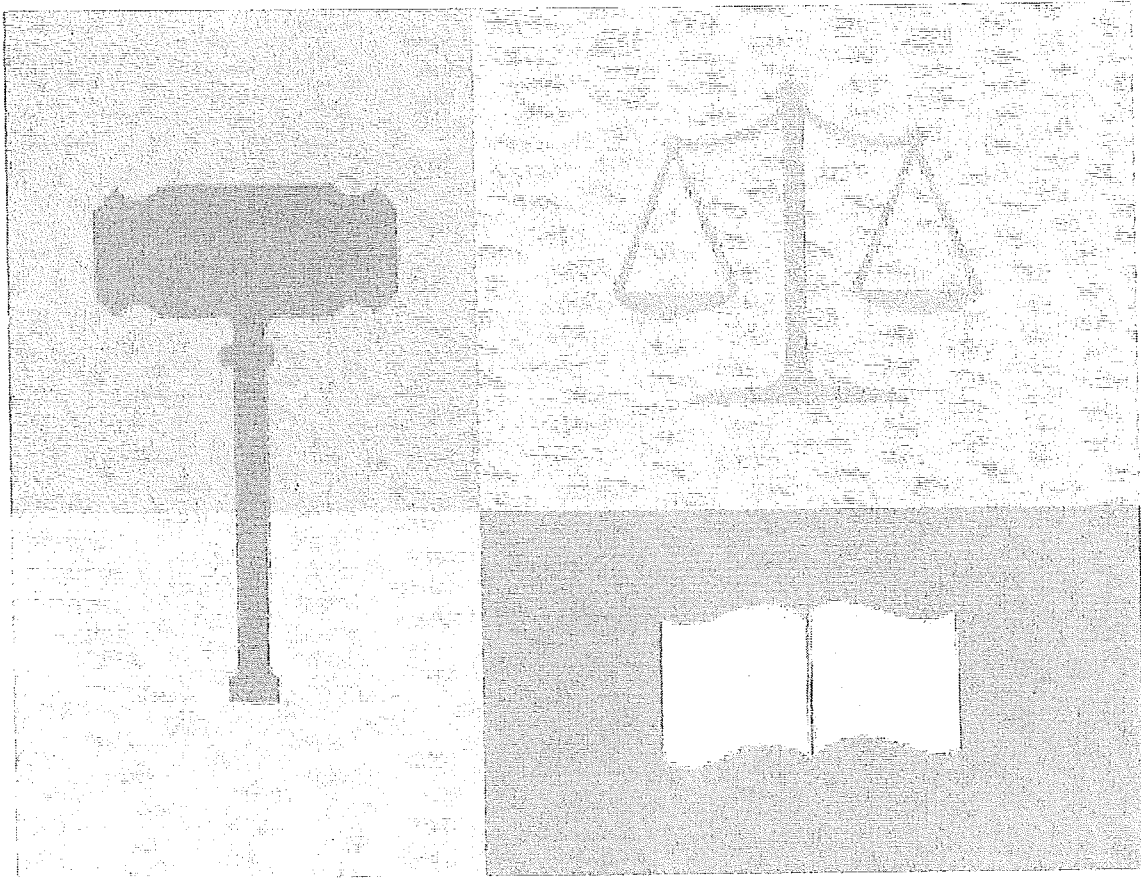
illnesses and their recidivism risk and use that baseline information to guide decision making at the system, program, and case levels. Third, examine treatment and service capacity to determine which programs and services are available in the county for people with mental illnesses and co-occurring substance use disorders. Then, identify state and local policy and funding barriers to minimize contact with the justice system and providing treatment and supports in the community. Fourth, develop a plan with measurable outcomes that draws on the jail assessment and prevalence data and the examination of available treatment and service capacity while considering identified barriers. Fifth, implement research-based approaches that advance the plan. Finally, create a process to track progress using data and information systems and to report on successes.

The Initiative has been very successful in that over 360 counties nationwide have adopted the resolution. A summit was held in 2016 to help refine strategies to implement the six-step plan. Further, the initiative is providing resources to counties in order to help them reduce their jail populations of those with mental illnesses and co-occurring substance abuse orders.

#### CONCLUSION

The CMHP has enjoyed tremendous success in its fight against the criminalization of mental illness. This is evident not only from the numerous statistics showing its success but also from the lives it has touched and the placement of individuals on the successful road to recovery. The CMHP has been nationally recognized and it is a model that has been followed by other jurisdictions and communities. These communities and jurisdictions have experienced successes the CMHP. The CMHP and other similar programs have provided a catalyst for other judges and community leaders to form national programs to combat the criminalization of mental illness like the Judges Leadership Initiative and the Stepping Up Initiative.

The only weakness is that the CMHP does not address every issue that encompasses the criminalization of mental illness. As a result, legislation is needed to address the problems of the criminalization of mental illness in the court systems and in communities. In addition, many communities lack the funding to experience the success of the CHMP. It is important for these jurisdictions to have proper funding or become creative in their use of funds. However, in light of these weaknesses, the CMHP is still the gold standard in providing an effective solution to the problem of criminalizing the mentally ill.



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July 31, 2008

LETTER FROM THE EDITOR

Dear Readers,

For those in the northern hemisphere, this is a time of steamy, hot days and longing for the cooler time of autumn. But work does not stop even in the heat, so we bring to you our latest issue of IJCSL filled with interesting articles to read (at the beach?)

The first article visits a question that is pressing not only in the United States, but also in many other countries where CSOs are restricted in the amount of advocacy activities they can pursue if they wish to achieve the highest level of tax benefits. The author, **C. Joseph Boatwright**, a Jacksonville, FL attorney, discusses the **“political activity prohibition” in Internal Revenue Code § 501 (c)(3), with particular reference to religious organizations.**

This topic is one that has received a great deal of attention in both the popular and the academic press because of the Internal Revenue Service (IRS) initiative to restrict election-related activities at churches and other religious institutions throughout the United States (among other organizations). Readers of the Newsletter will recall discussions of the controversy involving All Saints Episcopal Church in Pasadena, CA as well as other aspects of the IRS initiative. Mr. Boatwright’s careful and considered analysis of the situation gives a great deal of historical background for the “political activity prohibition” and makes a well-reasoned argument as to why it should be repealed, at least with respect to religious organizations.

The Special Section this quarter includes three items of interest with regard to **anti-terrorism legislation**. At a time when serious concerns have been raised about potential and actual infringement of civil liberties as a result of legislation and other government activities related to pursuing terror suspects, the Special Section is quite significant in bringing together three different approaches to the issue, specifically as it affects charities and other not-for-profit organizations. Concerns have been raised in developing countries, where anti-terrorism legislation is frequently used to target CSOs that are not in favor with the government. In addition, as this Special Section demonstrates, the issues are pertinent in developed countries once thought to be bastions of civil liberties.

The first of the items in the Special Section, an excerpt from the new (July 2008) **Charity Commission for England and Wales “Counter-terrorism Strategy”** describes how an independent agency within government seeks to thread its way between effective oversight and enforcement and respect for the sector it oversees. For example, the Commission stresses that it seeks “a balance between support and guidance, prevention and compliance intervention.” Whether its efforts to do so will be successful remains to be seen.

The second item is a paper by **Terrance S. Carter**, a lawyer practicing in Toronto, Canada, which addresses concerns about the way in which the legislation adopted to address the potential for terrorism in Canada has had an adverse impact on charities working there and internationally. Presented in April at the University of Iowa Provost’s Forum on International Affairs 2008:

Counter-Terrorism and Civil Society, Mr. Carter's article is entitled **"The Impact of Anti-terrorism Legislation on Charities in Canada: The Need for Balance."**

The article discusses the fairly onerous requirements of recent legislation aimed at combatting terrorism in Canada and their disparate impact on charities. Many clearly seek to ignore or avoid the application of the laws, while others will be subject to extreme paperwork burdens involved with compliance. In seeking the balance he proposes, Mr. Carter urges regulators to try to fit the oversight regime to the circumstances, arguing that most charities are not going to be potential targets of terrorist's activities.

Rounding out the Special Section is a publication co-authored by **Kay Guinane of OMB Watch and Vanessa Dick of Grantmakers Without Borders**. It details the ways in which anti-terrorism legislation in the United States has adversely affected "charities, foundations, and the people they serve." This article, entitled **"Collateral Damage,"** has received significant attention since its original publication on the OMB Watch website, and we are very pleased to present it to an international audience.

Guinane and Dick's article details the flawed assumptions on which the U. S. anti-terrorism measures aimed at charities are based, the barriers they create for international philanthropy and programs, the failure to grant adequate due process rights and the damaging effect that has had on charities, etc. They also discuss other implications of the legislation and other rules, including the curtailment of free speech. This article is truly an indictment of the manner in which the government has pursued its anti-terrorist agenda in ways that harm civil liberties.

All in all both the stand-alone article and the Special Section offer much food for thought. Any reader comments and letters in response would be welcome. In the meantime, happy reading!

Karla W. Simon, Editor-in-Chief

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## IJCSL EDITORIAL POLICY

July, 2008

Dear Reader,

**CONTENT** – The IJCSL publishes articles on a variety of topics, seeking to provide a venue for an international readership to learn about and express opinions on developments in law affecting civil society. These topics and the array of opinions on them are complex and sometimes controversial. The opinions expressed herein do not necessarily reflect the views of the IJCSL or its editorial staff.

**STYLE** – The IJCSL publishes articles by contributors from around the world. Therefore, the IJCSL uses a flexible editorial policy regarding questions of style. Articles submitted by persons for whom the English language is native are edited based on the author's original syntax and spelling. Articles submitted by persons for whom the English language is not native are edited according to American English style.

Occasionally, the IJCSL publishes articles in languages other than English. In those instances, articles are published as submitted and the IJCSL provides an English-language summary.

**QUESTIONS & COMMENTS** – The IJCSL welcomes readers' questions and comments on items it publishes. If you have a question or comment, please contact:

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We look forward to hearing from you, and thank you for your interest in the IJCSL.

Sincerely,

The IJCSL Editorial Staff and Editorial Board

PLEASE CITE AS

6 INT'L J. CIV. SOC. L. 3 at [http://www.iccs1.org/pubs/08-07\\_IJCSL.pdf](http://www.iccs1.org/pubs/08-07_IJCSL.pdf)

## ARTICLES

### SHOULD THE 501(C)(3) POLITICAL ACTIVITY PROHIBITION BE REVOKED?

BY C. JOSEPH BOATWRIGHT\*

#### I. INTRODUCTION

Churches and other tax exempt organizations that meet the qualifications of §501(c)(3) are exempt from federal income taxes.<sup>1</sup> However, the churches and organizations are only tax exempt if they do not “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”<sup>2</sup> This language is known as the “Political Activity Prohibition.”<sup>3</sup> Any church or organization violating this part of §501(c)(3) can lose its tax exempt status or be subject to penalties.<sup>4</sup>

In 2000, the U.S. Court of Appeals for the District of Columbia upheld the constitutionality of the “Political Activity Prohibition” and allowed the Internal Revenue Service (IRS) to strip a church in Binghamton, New York, of its tax exempt status for being involved in political activity that violated the prohibition in §501(c)(3).<sup>5</sup> In light of the decision, Walter Jones, a Congressman from North Carolina, and representatives from the American Center for Law and Justice worked together to propose an amendment to §501(c)(3) which would allow churches the freedom to be involved in political activities including but not limited to speech “on behalf of or opposition to a political candidate.”<sup>6</sup> The concern was that churches would not be able to engage in political speech from the pulpits of churches without losing their tax exempt

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<sup>1</sup> 26 U.S.C. §501(c)(3) (2006).

<sup>2</sup> *Id.*

<sup>3</sup> DARRYLL K. JONES ET. AL., *TAX LAW OF CHARITIES AND OTHER EXEMPT ORGANIZATIONS* 471 (1<sup>ST</sup>. ED. 2003).

<sup>4</sup> See *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).

<sup>5</sup> *Id.* The church ran newspaper ads that opposed a political candidate for office which violated the political activity prohibition.

<sup>6</sup> American Center for Law and Justice, *Permissible and Impermissible Political Activity by Houses of Worship*, <http://www.aclj.org/news/Read.aspx?ID=86>



status. As a result in 2002, Walter Jones sponsored HR-235 which was entitled the “Houses of Worship Free Speech Restoration Act” in an attempt to amend §501(c)(3).<sup>7</sup> The bill was voted down by the House of Representatives in 2003.<sup>8</sup> Congressman Jones has tried on numerous occasions since 2003 to amend §501(c)(3) by sponsoring different versions of bills that would do away with the “Political Activity Prohibition,” but as of yet none of the versions have passed.<sup>9</sup> In 2007, Congressman Jones sponsored H.R. 2275 which will seek to strike the entire portion of the “political activity prohibition” language and as of January, 2008 the bill has been referred to House Committee on Ways and Means.<sup>10</sup>

This article will discuss whether the “political activity prohibition” should be revoked. In discussing whether the “political activity prohibition” should be revoked, this article will first discuss the history behind the political activity prohibition. Next, the article will discuss the different tax exempt theories which allow the charitable deduction. Third, the article will discuss the tax consequences of violating the “political activity prohibition.” Fourth, the article will discuss exactly what type of political activity would be allowed if the “political activity prohibition” were revoked. Then, this article will discuss the tax effect and consequences of revoking the “political activity prohibition.” Then, the article will discuss free speech and establishment clause issues that relate to the “political activity prohibition.” Next, the article will discuss the dilemma that the IRS faces by holding to strict enforcement of the prohibition against political activity. The IRS faces a dilemma in that strict enforcement of the prohibition would require costly monitoring of every church in the country. Further, if the IRS selectively enforces such a provision, targets could claim that the government is favoring different religions over others. Conversely, if the IRS sits idle, there will be rampant abuse of the prohibition. Last, the article will conclude that a revocation of the political activity prohibition should not be allowed, but Congress should amend the prohibition to allow an insubstantial amount of political conduct which would in turn allow the IRS to properly enforce the provision.

## A. II. HISTORY OF THE POLITICAL ACTIVITY PROHIBITION

Most proponents of bills such as H.R. 2275 believe that the “Political Activity Prohibition” as it stands in its current form was never meant to apply to churches.<sup>11</sup> Some individuals take the position that the “Political Activity Prohibition” came about during the Senate administration of Lyndon Johnson. During Johnson’s administration, two non-profit organizations were causing Johnson political problems by actively supporting those candidates that opposed Johnson, and as

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. Jones has proposed different versions of the a bill to amend §501(C)(3) between 2002-2007 but none have passed as to date.

<sup>10</sup> H.R. 2275, 110<sup>th</sup> Cong. (2007). The Bill is entitled “To restore the Free Speech and First Amendment rights of churches and exempt organizations by repealing the 1954 Johnson Amendment.”

<sup>11</sup> See Jennifer M. Smith, *Article: Morse Code, Da Vinci Code, Tax Code and... Churches: An Historical and Constitutional Analysis of Why Section 501(C)(3) Does Not Apply to Churches*, 23 J.L. & Politics 41 (Winter 2007).

a result, he sought to have their non-profit status revoked.<sup>12</sup> Regardless of Senator Johnson's motivations, there are those that argue that the tax exempt status of an organization under §501(c)(3) is based on the charitable nature of the organization.<sup>13</sup> Thus, if an organization is involved in politics then it is not by its nature charitable. A brief look at the history of the charitable deduction will tend to show that the political activity prohibition has its roots in common law and that even prior to 1954, Congress sought to place limits on political activity and charitable status of entities.

#### A. Pre-1954 History

Tax exempt status for churches and other charitable organizations under §501(C)(3) has its roots in the common law of "Charitable Trusts."<sup>14</sup> A charitable trust is a trust that either provides for relief of poverty, advances education, advances religion, or includes trusts for other purposes that are beneficial to the community.<sup>15</sup> In order for the trust to obtain tax relief, the trust must be charitable and must provide a public benefit.<sup>16</sup> A trust that serves political purposes is not charitable and does not provide a public benefit.<sup>17</sup> As a result, a trust that serves political purposes does not qualify as a "charitable trust" under the common law.

The Courts and the IRS have recognized that charitable exemptions are based on the common law of concept of charity as found in the law of charitable trusts.<sup>18</sup> One of the requirements of the common law concept of a charity is that the charity must provide a public benefit.<sup>19</sup> In analyzing the roots of the common law charity, a political purpose was held not to be a public benefit because courts were unable to tell whether the political activity would or would not benefit the public.<sup>20</sup>

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<sup>12</sup> *House Committee on Ways and Means*, May 14, 2002 (Statement of the Hon. Walter B. Jones, a Representative in Congress from the State of North Carolina).

<sup>13</sup> Karla W. Simon, *The Tax-Exempt Status of Racially Discriminatory Religious Schools*, 36 Tax L. Rev. 477 (1981).

<sup>14</sup> *Id.*; See also *Green v. Connally*, 330 F. Supp. 1150 (D.C. Cir. 1971)(holding that § 501(C)(3) has its roots in charitable trust law.)

<sup>15</sup> Abraham Drassinhower, *The Doctrine of Political Purposes in the Law of Charities: A Conceptual Analysis* 289 (2007) (citing to Lord Macnaghten's oft-cited definition in *Commissioners for Special Purpose of Income Tax v. Pemsel*, [1891] A.C. 531, 583.

<sup>16</sup> *Id.*

<sup>17</sup> *Bowman and Others v. Secular Society*, [1916-1917] 1 ALL ER at 18. (stating that a trust for the attainment of political objects has always been held invalid, not because it is illegal, for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure change is a charitable gift.)

<sup>18</sup> *Bob Jones Univ. v. United States*, 461 U.S. 574, 579 (1983).

<sup>19</sup> *Id.*

<sup>20</sup> Drassinhower, *supra* note 15.

It was based on this idea of charitable trust law that an exemption provision to similar to 501(C)(3) was enacted by Congress in the Revenue Act of 1894.<sup>21</sup> In 1913, the first formal exemption for charitable organizations was enacted under the Revenue Act of 1913.<sup>22</sup> Debates prior to the passage of the Act indicated that the charitable exemption would be only for those organizations that were not organized for profit and were charitable.<sup>23</sup> The Supreme Court interpreted the exemption provision in the 1913 Act and noted that the exemption for the charitable organizations was based on the public benefit they provide.<sup>24</sup>

It was not until 1920 that language prohibiting political activity began to surface in Regulations promulgated under the Revenue Act of 1918.<sup>25</sup> Under Regulation 45 Article 517(1), an “association formed to disseminate controversial or partisan propaganda” was not considered to be charitable under the Act.<sup>26</sup> In 1927, the United States Board of Tax Appeals, applying the above regulation, held that a contribution to an organization which had as one of its purposes to support candidates for public office that advocated the organization’s positions was not charitable.<sup>27</sup> As a result, since the organization was not charitable, any deductions based on contributions to the organization were disallowed.<sup>28</sup>

In the Revenue Act of 1934, Congress denied charitable status to organizations which devoted a substantial part of their activities to “carrying on propaganda, or otherwise attempting to influence legislation.” This addition was known as the “lobbying restriction.” Although this provision is different from the “political activity prohibition” of the 1954 and 1987 act, it showed a move by Congress to address the issues of political activity by charities prior to the 1954 Johnson amendment.<sup>29</sup>

In summary, the “political activity prohibition” was recognized prior to the 1954 Revenue Act. Courts have recognized that even though there was no political activity prohibition in the code, the prohibition was rooted in the common law on which 501(c)(3) was conceptually based.<sup>30</sup> The law of charitable exemptions and deduction under 501(c)(3) has its root in the

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<sup>21</sup> Simon, *supra* note 13; unrelated portions of the act were declared unconstitutional in *Pollock v. Farmer’s Loan & Trust Co.*, 158 U.S. 601 (1895).

<sup>22</sup> *House Committee on Ways and Means*, April 20, 2005 (Statement of Bruce Hopkins, Attorney, Polsinelli Shalton Welte Suelthaus, P.C., Kansas City, Missouri)(stating that this was the first formal constitutional exception.)

<sup>23</sup> Simon, *Supra* note 13.

<sup>24</sup> *Trinidad v. Sagrada Orden*, 263 U.S. 578 (1924).

<sup>25</sup> *Treas. Reg* 45 Art 517(1).

<sup>26</sup> *Id.*

<sup>27</sup> *Fales v. Commissioner*, 9 B.T.A. 828 (1927).

<sup>28</sup> *Id.*

<sup>29</sup> I.R.C. §103(6) (1934 Revenue Act).

<sup>30</sup> *Greene*, 330 F. Supp. 1150.

common law of “Charitable Trusts” which prohibited charitable status to trusts which engaged in political activity. The progression of history up until 1954 shows that there has always been some type of political activity prohibition even though it was not codified formally until 1954. The reason for this is that up until 1954 an organization that was involved in political activities was not deemed charitable and did not benefit the public.

### B. 1954 Amendment and Beyond

The first official language prohibiting political activity was added to the Code by Congress in 1954.<sup>31</sup> In pertinent part the added language read as follows: “and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”<sup>32</sup> The amendment was added as part of a floor amendment by Senator Lyndon B. Johnson.<sup>33</sup> In the brief discussion on the Senate Floor, Johnson sought to extend the §501(c)(3) provisions to deny tax exemption not only to those who influenced legislation but also to those who intervened “in any political campaign on behalf of any candidate for any public office.”<sup>34</sup> Subsequently, the added language was adopted in full.<sup>35</sup>

Many argue that Johnson only proposed the additional language because he was upset with two non-church groups operating as non-profit organizations. These two tax exempt groups supported his opponent in running for the Senate in Texas.<sup>36</sup> This was Johnson’s attempt to strengthen his position in his run for re-election by terminating the groups’ exempt status.<sup>37</sup> The two groups were anti-communist groups that opposed Johnson, and they were in no way affiliated with any church or religious organization.<sup>38</sup> It is based on this fact that many argue that the “political activity prohibition” was never meant to apply to churches.<sup>39</sup>

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<sup>31</sup> 68A Stat. 163 (1954).

<sup>32</sup> *Id.*

<sup>33</sup> 100 CONG. REC. 9604 (1954).

<sup>34</sup> *Id.*

<sup>35</sup> 68A Stat. 163 (1954).

<sup>36</sup> *House Committee on Ways and Means*, May 14, 2002 (Statement of Colby M. May, Director, American Center for Law and Justice, Alexandria); See also Patrick L. O’Daniel, *ARTICLE: More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by Churches*, 42 B.C. L. Rev. 733 (2001).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Smith, *Supra* note 11.

In 1987, Congress amended 501(c)(3) to prohibit political activity "in opposition to any candidate."<sup>40</sup> The rationale for adding this additional language was to prevent public funds from supporting political activity and to promote neutrality.<sup>41</sup> 501(c)(3) has not been amended since this time. However, the IRS issued proposed regulations in regards to the 1987 amendment in 1994.<sup>42</sup>

### III. WHAT TYPE OF POLITICAL ACTIVITY IS ALLOWED

#### A. In General

In 1967, the U.S. Court of Appeals for the Eight Circuit held that "activity which is not religious, charitable, scientific, literary or educational will not result in loss of deductibility or of exemption if that activity is only incidental and less than substantial."<sup>43</sup> Cases such as this allow a small amount of incidental non-charitable activity before an exempt status will be revoked. However, rulings such as this do not apply to the "no political activity" prohibition because such prohibition is absolute.<sup>44</sup> Thus, the question becomes what type of activity is prohibited if such prohibition is absolute.

The Internal Revenue Code does specify what constitutes political activities.<sup>45</sup> However, the Regulations provide that certain activities "constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate."<sup>46</sup> These activities include but are not limited to "the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such candidate."<sup>47</sup> A candidate for public office is defined as an individual who offers himself, or is proposed by others, as a candidate for an elective office, whether such office be national, state, or local.<sup>48</sup> From the language of the regulation and the code, political activities are not banned in total; it is only when there is an

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<sup>40</sup> Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085; see also H.R. Rep. No. 100-391, at 1621, 1625 (1987), reprinted in 1987 U.S.C.C.A.N. 2313-1, 2313-1201, 2313-1205.

<sup>41</sup> *Id.*

<sup>42</sup> DARRYLL K. JONES ET. AL, *Supra* note 3.

<sup>43</sup> St. Louis Union Trust Co. v. U.S., 374 F.2d 427 (8<sup>th</sup> Cir. 1967)(factually this case dealt with the exempt status of trust whose donations supported a local bar association which was not involved in political activities).

<sup>44</sup> United States v. Dykema, 666 F.2d 1096, 1101 (7<sup>th</sup> Cir. 1981)(the Seventh Circuit stated: "It should be noted that exemption is lost . . . by participation in any political campaign on behalf of any candidate for public office. It need not from a substantial part of the organization's activities." This unlike the lobbying restrictions found in 501(c)(3) which allows an insubstantial amount of lobbying.)

<sup>45</sup> *Id.*

<sup>46</sup> 26 U.S.C. § 501(C)(3).

<sup>47</sup> Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii).

<sup>48</sup> *Id.*

activity that shows bias for or against a candidate that the organization violates the “political activity prohibition” of 501(c)(3).<sup>49</sup> Thus, an organization must remain neutral.<sup>50</sup>

The IRS has taken the position that such political activities must be strictly neutral in nature to receive tax exempt status.<sup>51</sup> For example, in Association of the Bar of New York City, the New York City Bar Association produced a publication that was released to the general public which ranked judicial nominees for New York at the federal, state and local level.<sup>52</sup> The publication rated the candidates as not approved, approved, or approved as highly qualified.<sup>53</sup> The court held that these activities favored one judicial nominee over another.<sup>54</sup> Thus, the activity was considered impermissible under 501(c)(3).<sup>55</sup>

An illustration of this lack of neutrality was present in the 10<sup>th</sup> Circuit Court of Appeals case of Christian Echoes Nat'l Ministry v. United States.<sup>56</sup> In Christian Echoes, a religious organization that used the radio and publications to influence its followers published many statements and made numerous broadcasts that attacked candidates it thought were too liberal.<sup>57</sup> The organization went so far as to urge its listeners not to vote for John F. Kennedy but instead to elect individuals such as Strom Thurmond.<sup>58</sup> The court viewed this as impermissible political activity and upheld the government’s revocation of their tax exempt status.<sup>59</sup>

The IRS has issued a number of Revenue Rulings that describe types of political activities that are permissible. For example, a non-profit radio station that provided equal airtime and access to all legally qualified candidates for public office was not viewed as offering support “on or behalf of a political candidate.”<sup>60</sup> Also, the IRS has provided that an organization that is exempt under 501(c)(3) may distribute to the public a compilation of voter records of all

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<sup>49</sup> See The Association of the Bar of the City of New York v. Comm., 858 F. 2d 876 ( 2<sup>nd</sup> Cir. 1988) (holding that a New York Bar Association publication which rates candidates based on non-objective data should be denied exempt status because this activity violates the political activity prohibition.)

<sup>50</sup> Id.

<sup>51</sup> Id. See also Fuliani v. League of Women’s Voter Educ. Fund, 882 F. 2d 621 (2<sup>nd</sup> Cir. 1989) (holding that political activities must be strictly non-partisan in nature).

<sup>52</sup> Id. at 877.

<sup>53</sup> Id.

<sup>54</sup> Id. at 880.

<sup>55</sup> Id. at 881.

<sup>56</sup> Christian Echoes Nat'l Ministry v. United States, 470 F.2d 849 (10<sup>th</sup> Cir. 1972).

<sup>57</sup> Id. at 856.

<sup>58</sup> Id.

<sup>59</sup> Id. The organizations tax exempt status was also revoked for participating in substantial lobbying activities which also violated 501(c)(3).

<sup>60</sup> Rev. Rul 74-574, 1974-2 C.B. 160 (1974).

members of Congress on major legislative issues as long the publication does not contain an editorial opinion and its content or structure do not imply approval or disapproval of any member or their voting records.<sup>61</sup> Further, an organization exempt under 501(c)(3) may send a questionnaire to candidates for public office and may publish the comments and distribute them to the public as long as such questions proposed are non-biased in nature.<sup>62</sup> Further, tax exempt status will not be denied when an organization exempt under 501(c)(3) holds a public forum in which all candidates in a particular election are invited to speak on non-biased election topics.<sup>63</sup> The foregoing discussion is not meant to be exhaustive but is only an illustration of certain political activities that are permissible. The proper conclusion to this matter is that the Service approaches these issues on a case-by-case basis under a highly factual inquiry and looks to see if the organization is supporting a candidate or remaining neutral.<sup>64</sup>

### B. Code Words and Other Language

The IRS has taken the position that certain “coded language” violates the “political activity prohibition.”<sup>65</sup> The IRS has explained that certain words can have the connotation of supporting or opposing a political candidate without actually naming the political candidates.<sup>66</sup> According to the IRS,

the concern is that an §501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate's name in its messages, such as ‘conservative,’ ‘liberal,’ ‘pro-life,’ ‘pro-choice,’ ‘anti-choice,’ ‘Republican,’ ‘Democrat,’ etc., coupled with a discussion of the candidacy or the election.<sup>67</sup> When this occurs, it is quite evident what is happening -- an intervention is taking place.<sup>68</sup>

The issue really has become one of intent. According to the IRS, in order to violate the political campaign prohibition, an advocacy communication “should contain some relatively clear

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<sup>61</sup> Rev. Rul 78-248, 1978-1 C.B. 154 (1978).

<sup>62</sup> *Id.*

<sup>63</sup> Rev. Rul. 86-95, 1986-2 C.B. 73 (1986).

<sup>64</sup> See Rev Rul 80-282, 1980-2 C.B. 178 (1980) (finding that all inquiries to into whether an impermissible political activity is present is a highly factual inquiry that must ultimately include that the activity in non-biased) See also Rev. Rul. 2007-41, 2007-25 I.R.B. 1421 (2007) (where service analyzed 21 different factual issues ranging from voter education booths at local fairs to churches that use their internet website to support one of their parishioners for public office).

<sup>65</sup> See Colby May testimony regarding TAM 9117001 *supra* note 36.

<sup>66</sup> TAM 9117001(1990)( For example if a tax exempt organization under 501(c)(3) makes public comments regarding support for the conservative candidate then this could be viewed as violating the political activity prohibition.)

<sup>67</sup> *Election Year Issues* (2002 CETIP) at 345.

<sup>68</sup> *Id.* at 345, As for intervention, the IRS is referring to an intervention in the political campaign on or behalf of a candidate.

directive that enables the recipient to know the organization's position on a specific candidate or slate of candidates.”<sup>69</sup> This leaves the IRS to judge the intent behind the language or coded words.<sup>70</sup> Most opponents of the political activity prohibition have concerns that this gives the IRS too much discretion as to what constitutes impermissible activity.<sup>71</sup> This intent based discretionary judgment on the part of the IRS provides the basis for which most proponents of bills such as H.R. 2275 feel that the “political activity prohibition” should be revoked.<sup>72</sup>

#### IV. PENALTIES FOR VIOLATING THE POLITICAL ACTIVITY PROHIBITION

##### A. 4955 Excise Taxes

In 1987, Congress enacted §4955 of the Internal Revenue Code as a way to penalize § 501(c)(3) organizations which made political expenditures that violated the “political activity prohibition.”<sup>73</sup> The provision was passed in order to provide an additional penalty in addition to that of revocation,<sup>74</sup> since there were some situations in which revocation would not be a sufficient penalty alone.<sup>75</sup> Also, the excise tax was meant as an alternative to revocation in the limited situation where the expenditure of tax exempt dollars was unintentional and where the amount of the activity was unsubstantial.<sup>76</sup> Thus, the passage of §4955 was meant to strengthen and provide a deterrence factor for violations of the “no political activity” rule.<sup>77</sup>

According to §4955(a)(1) there is an initial tax on the organization equal to 10% of each political expenditure.<sup>78</sup> This tax is to be paid by the organization.<sup>79</sup> If the expenditure as

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<sup>69</sup> Id. at 346.

<sup>70</sup> Id. at 346.

<sup>71</sup> May testimony, *Supra* note 36.

<sup>72</sup> Id.

<sup>73</sup> 26 U.S.C. §4955(d)(1) (2006)(The term "political expenditure" is defined in §4955(d)(1) as "any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office,").

<sup>74</sup> H.R. Rep. No. 100-391, 100th Cong., 1st Sess. 1623-1624 (1987).

<sup>75</sup> Id. This situation would arise when the organization used all its contributions and revenue for improper purposes.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> 26 U.S.C. § 4955(a)(1).

<sup>79</sup> Id.



described in §4955(a)(1) is not corrected within the taxable year, then a tax equal to 100% of the amount of the expenditure is imposed on the organization.<sup>80</sup>

Section 4955 also provides a penalty for managers<sup>81</sup> who agree to make the political expenditure.<sup>82</sup> The tax is equal to 2½ percent of the amount of the expenditure.<sup>83</sup> However, the tax will not be imposed unless the manager knows that the expenditure is a political expenditure and it is willful and without good cause.<sup>84</sup> Any organization manager that will not agree to the correction of the political expenditure will be taxed an additional amount equal to 50% of the expenditure.<sup>85</sup> Under § 4955(c), if more than one manager is liable with respect to §4955(a)(2) or (b)(2), all managers are jointly and severally liable.<sup>86</sup> Furthermore, IRC 4955(c) provides that for "any one political expenditure," the tax under §4955(a)(2) is capped at \$5,000 and the tax under (b)(2) is capped at \$10,000.<sup>87</sup>

### B. Flagrant Expenditures

The IRS may seek to have an injunction entered pursuant to §7409 of the Internal Revenue Code to enjoin the flagrant political expenditures of §501(c)(3) organizations.<sup>88</sup> An injunction will prohibit the organization from making further political expenditures and will provide other such relief as may be appropriate to protect the assets of the organization so to ensure that they will be used for charitable purposes.<sup>89</sup> In order for a court to grant an injunction, the IRS must notify the organization that it will seek an injunction if the prohibited activity does not cease, the Commissioner of the IRS has personally determined that the organization has flagrantly violated the political campaign activity prohibition, and that injunctive relief is appropriate to prevent further political expenditures.<sup>90</sup> If the IRS does not meet these three requirements, then the injunction will not be granted.<sup>91</sup>

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<sup>80</sup> 26 U.S.C. 4955(b)(1).

<sup>81</sup> 26 U.S.C §4955(f)(2) (stating that an "organization manager" is any officer, director, or trustee of the organization (or individual having similar powers or responsibilities), or any employee of the organization having power or authority with respect to the expenditure. Per Treas. Reg. 53.4955-1(b)(2)(i), in order for a manager to be subject to the tax under IRC 4955(a)(2), the manager must either be authorized to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization, or be a member of a group (such as the organization's governing body) which is so authorized. *See also Election Year Issues* (2002 CETIP) at 358-359 for a detailed discussion of managers.

<sup>82</sup> 26 U.S.C. §4955(a)(2).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> 26 U.S.C. §4955(b)(2)

<sup>86</sup> 26 U.S.C. §4955(c)(1)

<sup>87</sup> 26 U.S.C. §4955(c)(2).

<sup>88</sup> 26 U.S.C. §7409.

<sup>89</sup> 26 U.S.C. §7409(a)(1).

<sup>90</sup> 26 U.S.C. §7409(a)(2).

Under §6852 of the Internal Revenue Code, the IRS can under certain circumstances consider the organization's tax year closed and may accelerate any taxes due under §4955.<sup>92</sup> This provision only applies when the organization's expenditures constitute a flagrant violation of the prohibition against making political expenditures.<sup>93</sup> When this flagrant violation occurs, the IRS will immediately determine the tax owed which shall be due and payable immediately.

### C. Revocation

It was not until a U.S. Court of Appeals decision from the District of Columbia in 2000 that the "political activity prohibition" was sought to be amended by local religious groups.<sup>94</sup> The decision by the U.S. Court of Appeals on the political activity prohibition sparked much controversy because it marked the first time that a church's tax exempt status was terminated for violating the political activity prohibition.<sup>95</sup> This decision led Walter Jones to propose an amendment to the "political activity prohibition."<sup>96</sup>

Branch Ministries, Inc. operated a church in Binghamton, New York.<sup>97</sup> Days before the 1992 presidential election, the church took out a full page add in USA Today and the Washington Times.<sup>98</sup> Each advertisement bore the headline "Christians Beware," and the adds opposed Governor Clinton for his stand on abortion, homosexuality, and distribution of condoms in the public schools.<sup>99</sup> The ads also sought donations from the public and stated that any contributions to the church would be tax-deductible.<sup>100</sup> As a result, the IRS began a church tax inquiry based on the belief that church had participated in impermissible political activities under 501(c)(3).<sup>101</sup> After a few meetings between the parties, the IRS revoked the church's tax exempt status.<sup>102</sup>

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<sup>91</sup> Id.

<sup>92</sup> 26 U.S.C. §6852.

<sup>93</sup> 26 U.S.C. §6852(a)(1)(B).

<sup>94</sup> Branch Ministries v. Rossotti, 341 F.3d 166 (D.C. CIR. 2000).

<sup>95</sup> Id. at 144; See Christian Echoes, 470 F.2d 849 ( where a religious organization had its tax exempt status revoked for participating in campaign activities but Christian Echoes was not a church.)

<sup>96</sup> Id. See also Congressman Walter Jones Testimony, *Supra* note 12.

<sup>97</sup> Id.

<sup>98</sup> Id. at 140.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> Id.

The church filed suit in District Court alleging that the IRS had no authority to revoke their tax exempt status.<sup>103</sup> The District Court then granted the IRS' Motion for Summary Judgment.<sup>104</sup> As a result, the church appealed the case to the District of Columbia Court of Appeals.<sup>105</sup>

In its analysis, the Court reasoned that the IRS had the authority to revoke the tax exempt status of a church pursuant to the requirements under 501(c)(3).<sup>106</sup> This authority is based on the power granted to the IRS in §7611 of the Church Audit Procedures Act.<sup>107</sup> The Court reasoned that the IRS has the authority to grant exempt status and under the Church Audit Procedures Act it has the power to revoke the exemption.<sup>108</sup> Further, the Court held that the activity was of the type that was prohibited by 501(c)(3).<sup>109</sup> Thus, the revocation of the tax exempt status of the church was ruled to be valid.<sup>110</sup>

Clearly, the actions of the church indicate the type of egregious conduct that "political activity prohibition" seeks to prohibit. This court decision marked the first revocation of exempt status for a church for violating the political activity prohibition,<sup>111</sup> due to the blatant violation of the prohibition against campaign activities.<sup>112</sup> However, it seems that unless there is a *blatant* violation, the exempt status is not likely to be revoked.

#### D. Enforcement

Many who support the revoking of the "political activity prohibition" through a bill such as H.R. 2275 do so because of the potential for harsh penalties.<sup>113</sup> There is a great fear, in light of the Branch Ministries case, that churches could lose their exempt status<sup>114</sup> if, for example, a pastor or minister made certain statements during a church service which have both a religious

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 141.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 141 (the church tried to argue that the IRS could not revoke the status of a church because only a religious organization and not a church was listed in 501(c)(3).)

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> DARRYLL K. JONES ET. AL, *Supra* note 3.

<sup>112</sup> *Id.*

<sup>113</sup> *House Committee on Ways and Means*, May 14, 2002 (Statement of the Hon. Walter B. Jones, a Representative in Congress from the State of North Carolina).

<sup>114</sup> *Id.*

connotation and which at the same time comment on a political candidate.<sup>115</sup> However, this position is not supported by the current statistics of IRS examinations.<sup>116</sup>

In 2004 and 2006 the IRS published results of its investigations of potential noncompliance by §501(c)(3) organizations that were suspected of participating in political campaign activities.<sup>117</sup> The investigations were part of a project called the “Political Activities Compliance Initiative” implemented by the IRS.<sup>118</sup> The IRS compiled results for both the 2004 and 2006 elections for which no church lost its tax exempt status.<sup>119</sup>

In 2004, the IRS received 166 referrals alleging campaign intervention by §501(c)(3) organizations which resulted in 110 of the organizations being selected for examination.<sup>120</sup> Of those, only 47 churches were selected for examination.<sup>121</sup> According to the 2004 Political Activities Compliance Initiative Final Report, only 19 allegations were made and investigated in 2004 regarding church officials making statements endorsing a candidate and only 12 were determined to be valid.<sup>122</sup> Other activities by churches investigated included endorsing or opposing candidates on websites, disseminating voter guides or candidate ratings, placing signs on property in favor of or opposition of a candidate, making cash contributions to candidates and showing preferential treatment by allowing some candidates to speak and not others.<sup>123</sup> In regard to the 47 churches, after examination, the IRS did not propose a revocation or revoke any of the churches’ tax exempt status nor penalize any of the churches.<sup>124</sup> The IRS did however find prohibited political activity in 42 of the churches but only issued a written advisory opinion to those churches.<sup>125</sup>

In 2006, the IRS selected 100 §501(c)(3) organizations for examination of which only 44 were churches.<sup>126</sup> Only 13 of the churches were investigated for church officials making

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<sup>115</sup> Id.

<sup>116</sup> 2004 Internal Revenue Service Political Activities Compliance Initiative Final Report Project 302; 2006 Internal Revenue Service Political Activities Compliance Initiative Executive Summary.

<sup>117</sup> Id.

<sup>118</sup> Id.

<sup>119</sup> Id.

<sup>120</sup> 2004 Internal Revenue Service Political Activities Compliance Initiative Final Report Project 302.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> Id.

<sup>126</sup> 2006 Internal Revenue Service Political Activities Compliance Initiative Final Report.

statements during the church services endorsing a candidate.<sup>127</sup> Again, no church had its exempt status revoked nor was there even a proposal to revoke the status.<sup>128</sup> In concluding their investigations, the IRS only found four churches to be in violation of the political activity prohibition.<sup>129</sup> Again, no penalties were levied and only written advisory opinions were issued.<sup>130</sup>

## V. HR 2275

HR 2275 as proposed seeks to alleviate the concerns of churches across America.<sup>131</sup> The bill as proposed by Congressman Jones will seek to amend the current language of §501(c)(3).<sup>132</sup> In particular, the amendment would strike the following language from 501(c)(3): “and which does participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” As stated in the title of the bill, the amendment would do away with the political activity prohibition first added to the code in 1954.<sup>133</sup>

Congressman Jones’ concern is that a minister would not be able to speak on political issues during a church service, which would be a hindrance to his freedom of speech.<sup>134</sup> According to Jones, there may be moral issues that a minister feels compelled to speak of which would also contain references to political candidates.<sup>135</sup> However, the minister could not speak on the issue for fear of placing his church’s exempt status in jeopardy.<sup>136</sup> Thus, Jones seems to be proposing the Bill so that pastors and churches will be able to speak on religious and political issues in the same breath without losing the tax exempt status.<sup>137</sup>

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<sup>127</sup> Id.

<sup>128</sup> Id.

<sup>129</sup> Id.

<sup>130</sup> Id.

<sup>131</sup> H.R. 2275, 110<sup>th</sup> Cong. (2007).

<sup>132</sup> Id.

<sup>133</sup> Id. The title of the Bill says it all: “To restore the Free Speech and First Amendment Rights of churches and exempt organizations by repealing the 1954 Johnson Amendment”

<sup>134</sup> *House Committee on Ways and Means*, May 14, 2002 (Statement of the Hon. Walter B. Jones, a Representative in Congress from the State of North Carolina).

<sup>135</sup> Id. (Jones testimony before Ways and Means refers to a priest bringing a sermon on abortion felt compelled to state that George Bush was pro-life and Al Gore was pro-choice but did not because of the fear of losing his tax exempt status.)

<sup>136</sup> Id.

<sup>137</sup> Id.

The language of HR 2275 will have a much broader effect than Jones may contemplate. The Bill will do away with the “political activity prohibition” altogether. This bill would allow churches to freely participate in political campaigns.<sup>138</sup> Further, the language of the Bill does not mention that the amendment will only apply to churches and therefore, it would apply to all §501(c)(3) organizations. Thus, all §501(c)(3) organizations would be allowed to participate in political campaigns without penalty.<sup>139</sup>

## VI. TAX EFFECT OF ABOLISHING THE “POLITICAL ACTIVITY PROHIBITION”

### A. Subsidy

Churches have historically received tax exempt status because their charitable activities have been seen as type of government subsidy.<sup>140</sup> In Bob Jones University v. U.S., the Supreme Court stated that,

The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare.<sup>141</sup>

Further, in Regan v. Taxation With Representation, the Supreme Court stated that “Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income.”<sup>142</sup> Thus, in essence the government is entering into a relationship with a church and is offering an exemption in return for the church performing a charitable function that would otherwise have to be provided by the government.<sup>143</sup>

The concern is that if HR 2275 is passed and the “political activity prohibition” is abolished, then a church would be allowed to participate in political activity with the help of the government. If this were to happen, the government would no longer be subsidizing a charitable

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<sup>138</sup> Wallbuilders, *Houses of Worship Free Speech Restoration Act*, <http://wallBuilders.com/LIBissuesArticles.asp?id=102>.

<sup>139</sup> *House Committee on Ways and Means*, May 14, 2002 (Statement of the Hon. Walter B. Jones, a Representative in Congress from the State of North Carolina)(Jones justification seems to be that the IRS targets some groups and not others. According to Jones there are too many 501(c)(3) organizations for the IRS to regulate and this would in a sense level the playing field.)

<sup>140</sup> Bob Jones University v. U.S., 461 U.S. 574 (1983).

<sup>141</sup> *Id.* at 590 (This principle is known as the public benefit theory or the subsidation model); See Simon *Supra* note 13; See also David M. Anderson, *Comment: Political Silence at Church: The Empty Threat of Removing Tax-Exempt Status for Insubstantial Attempts To Influence Legislation*, 2006 B.Y.U. L. Rev. 115 (2006).

<sup>142</sup> Regan v. Taxation with Representation, 461 U.S. 540, 544 (1983).

<sup>143</sup> *Id.*

venture but would rather be subsidizing political activity. The government would in essence be giving cash grants to churches in order to allow them to support candidates for political office. This violates the very rules of charitable trust law and the political benefit theory in that a charitable organization whose purpose is of a political nature is not a charity.<sup>144</sup>

In viewing the revocation of the “political activity prohibition” and the passing of a bill such as H.R. 2275 under this subsidy model, churches could now funnel large amounts of money into campaigns or use their facilities to support candidates while at the same time receiving exempt status. Not only could churches funnel large amounts of money into political campaigns but any §501(c)(3) organization could use government subsidies to fund political campaigns. This type of subsidy is what most opponents of revoking the “political activity prohibition” and bills such as HR 2275 disagree with. Most opponents of HR 2275 do not want to see the government subsidizing political campaigns. Thus, it is unlikely that a bill such as HR 2275 in its current form will pass.

### B. Substantive Horizontal Equity

Substantive Horizontal Equity is a tax principle which states that similarly situated taxpayers should be taxed the same.<sup>145</sup> The tax fairness principle of substantive horizontal equity is violated when similarly situated taxpayers are treated differently in regards to the same economic activity.<sup>146</sup> Further, the violation occurs when there is no tax policy reason for the differential treatment.<sup>147</sup>

The revocation of the “political activity prohibition” through HR 2275 violates the principle of substantive horizontal equity. HR 2275 would allow taxpayers to fund political speech through a §501(c)(3) organization and receive a deduction while a similarly situated taxpayer who chooses to fund political speech through a non-charitable organization would receive no deduction. This situation would provide a tax benefit for one taxpayer while disallowing the benefit to another taxpayer without any policy reason. Further, such an inequity would then favor political speech through §501(c)(3) organizations versus non- §501(c)(3) organizations and would cause disparate economic treatment for the taxpayers.

For example, taxpayer A and taxpayer B are both in the 33% income bracket and each wants to contribute to political speech. Taxpayer A and B both want to contribute \$1,000.00 to a political campaign. A will contribute the \$1,000.00 through his church which is a §501(c)(3) organization while B chooses to spend \$1,000.00 in support of a candidate through a non-§501(c)(3) organization. A will be able to take a deduction for the \$1,000.00 contribution while B will not. As a result, B’s contribution will cost him more. Thus, this violates horizontal substantive equity as A and B are being treated differently in regards to the same economic activity without a justifiable policy reason for doing so.

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<sup>144</sup> *Supra* note 17.

<sup>145</sup> *Supreme Court Jurisprudence of Tax Fairness*, 36 Seton Hall L. Review 421 (2006).

<sup>146</sup> *Id.* See also *PIOUS POLITICS: Political Speech Funded Through I.R.C. §501(C)(3) Organizations Under Tax Fairness Principles*, Richard J. Wood, 39 Ariz. St. L.J. 209 (2007).

<sup>147</sup> *Id.*

Substantive horizontal equity is violated by the revocation of the “political activity prohibition” through HR 2275 because it will treat similarly situated taxpayers differently. One taxpayer will receive a benefit for contributing to a political organization while the other will not. In essence, one taxpayer will be allowed to purchase political speech at a lesser price solely because of the tax deduction. Thus, since there is no justifiable policy reason for allowing such disparate treatment, the revocation of the “political activity prohibition” through HR 2275 violates the principle of substantive horizontal equity.

### C. Disparate Tax Treatment for Organizations

A similar substantive horizontal equity argument can be made by organizations that receive contributions for political campaign matters.<sup>148</sup> Political organizations are normally exempt from taxes under §527.<sup>149</sup> However, that does not mean they do not receive disparate treatment. The reason for this is that only the taxpayers contributing to a §501(c)(3) organization will receive a tax deduction via §170 of the Internal Revenue Code while the other taxpayers not contributing to a §501(c)(3) organization will not receive a deduction.<sup>150</sup>

The practical effect of the disparate treatment among the taxpayers making contributions is that the organizations will be affected. It is likely that the taxpayer who knows he will receive a deduction will make a contribution to the organization while another taxpayer may forgo making a contribution because he will not receive a deduction. Again, this would be treating similarly situated taxpayers differently as the §501(c)(3) organization will receive more income from tax deductible contributions than will the non §501(c)(3) organizations. Even if a taxpayer makes a contribution to a non §501(c)(3) organization, the §501(c)(3) organization will still likely be favored because the taxpayer contributing to the §501(c)(3) organization will be able to give a larger contribution because of the added value of a deduction under §170.<sup>151</sup> Thus, the §501(c)(3) organization will still receive more revenue.

### D. Conclusion

The tax effect of the abolishment of the “political activity prohibition through a bill such as HR 2275 would be substantial. First, the passage would act as government subsidy of political speech using taxpayers’ dollars. Also, the passage would treat similarly situated taxpayers differently by violating the principles of substantive horizontal equity. Further, it would cause disparate treatment among the organizations and taxpayers. The key issue then becomes whether there is a justification for abolishing of the “political activity prohibition” through HR 2275 in light of the tax consequences that it will cause.

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<sup>148</sup> *PIOUS POLITICS: Political Speech Funded Through I.R.C. §501(C)(3) Organizations Under Tax Fairness Principles*, Richard J. Wood, 39 Ariz. St. L.J. 209 (2007).

<sup>149</sup> 26 U.S.C. §527.

<sup>150</sup> 26 U.S.C. §§ 501(c)(3); 170

<sup>151</sup> *Id.*



## VII. FIRST AMENDMENT CLAIMS

Another question is whether the abolishment of the “political activity prohibition” through HR 2275 can be justified because of the perceived First Amendment protections it would afford.<sup>152</sup> A number of court cases have dealt with such First Amendment issues in light of exemptions under §501(c)(3) in regards to political activity. In all such cases, the courts have held generally that the prohibitions against political activity do not violate the First Amendment.

The prohibitions against participation in political campaigns by §501(c)(3) organizations are not in violation of the First Amendment of The United States Constitution.<sup>153</sup> In Christian Echoes, a ministry had its tax exempt status revoked for participating in prohibited campaign activities.<sup>154</sup> The ministry argued that prohibition in §501(c)(3) against participating in political campaign activities violated their First Amendment rights.<sup>155</sup> In particular the ministry claimed that their freedom of speech and free exercise rights had been violated.<sup>156</sup>

The court first addressed whether the restrictions in §501(c)(3) violated the ministry’s free exercise of religion. The Court reasoned that the “free exercise clause of the First Amendment is restrained only to the extent of denying tax exempt status and then only in keeping with an overwhelming and compelling Governmental interest: That of guarantying that the wall separating church and state remain high and firm.”<sup>157</sup> In balancing the church’s need for the tax exempt status versus the government’s need make sure that the church and state remain separated, the Court held that the government has a compelling interest that tax dollars are not used to subsidize political partisanship.<sup>158</sup> In balancing the two interests, the court held that the free exercise clause was not violated because whether a church lost its exempt status did not compare with the government’s compelling need to make sure that government was not subsidizing political campaign activities through churches and related religious organizations.<sup>159</sup>

The Court then addressed the issue of whether the ministry’s free speech rights under the first amendment were violated by application of §501(c)(3).<sup>160</sup> The court reasoned that that a tax exemption under §501(c)(3) was a privilege, and a matter of grace rather than right.<sup>161</sup> In holding

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<sup>152</sup> May testimony, *Supra* note 36.

<sup>153</sup> Christian Echoes Nat’l Ministry v. United States, 470 F.2d 849 (U.S. Ct. Appeals 10<sup>th</sup> Cir. 1972).

<sup>154</sup> *Id.* at 857.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

that the free speech rights were not violated, the court likened the ministry's claims to cases involving the Hatch Act.<sup>162</sup> In those cases, when certain government employees were prohibited from being involved in partisan politics, the employees claimed that their First Amendment rights were violated.<sup>163</sup> The courts in those cases stated that the employees could choose to work for the government under the conditions or not.<sup>164</sup> If they chose to work for the government, then they would have to comply with the rules of doing so.<sup>165</sup> The court paralleled this with §501(c)(3) organizations and stated that if an organization wanted the benefits of the exemptions then they would have to comply with the restrictions.<sup>166</sup> Thus, the tax exemption is not a guaranteed right but it is privilege that the ministry could forgo if they chose.<sup>167</sup> In concluding, the court stated, “

The Congressional purposes evidenced by the 1934 and 1954 amendments are clearly constitutionally justified in keeping with the separation and neutrality principles particularly applicable in this case and, more succinctly, the principle that government shall not subsidize, directly or indirectly, those organizations whose substantial activities are directed toward the accomplishment of legislative goals or the election or defeat of particular candidates.<sup>168</sup>

Subsequently, the United States Supreme Court faced a similar issue in 1983 and held that the prohibitions in §501(c)(3) to lobbying restrictions did not violate the First Amendment.<sup>169</sup> In Regan, an organization applied for tax exempt status under §501(c)(3) and the IRS denied the application for tax exempt status because the organization was involved in substantial lobbying activities.<sup>170</sup> The organization challenged the IRS' ruling on a number of grounds including that the government had violated its First Amendment rights.<sup>171</sup>

The Court in its analysis stated that deductions and exemptions for §501(c)(3) organizations are a type of government subsidy and there are certain activities in which the government chooses not to subsidize.<sup>172</sup> The Court stated:

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<sup>162</sup> Id.

<sup>163</sup> Id.

<sup>164</sup> Id.

<sup>165</sup> Id. (The court stated that if the organization wanted to “feed at the government troughs” then they would have to comply with the restrictions of doing so.)

<sup>166</sup> Id.

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983)(Although this case dealt with the lobbying restriction of 501(c)(3), the principles of the case were later used in Branch Ministries and are applicable to the “political activity prohibition” of 501(c)(3).

<sup>170</sup> Id at 541-542.

<sup>171</sup> Id.

<sup>172</sup> Id. at 544.

Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions. The system Congress has enacted provides this kind of subsidy to nonprofit civic welfare organizations generally, and an additional subsidy to those charitable organizations that do not engage in substantial lobbying. In short, Congress chose not to subsidize lobbying as extensively as it chose to subsidize other activities that nonprofit organizations undertake to promote the public welfare.<sup>173</sup>

Further, the Court stated that the organization was not being denied an exemption for its non-lobbying activity.<sup>174</sup> The Court went on to state that the Court had never held that Congress must grant the tax exemption in this area of law just because an organization wanted to exercise a constitutional right.<sup>175</sup> It is clear that the Court was holding firmly to the proposition that the government did not have to subsidize lobbying activity in light of a constitutional claim.<sup>176</sup> The Court ended its analysis that §501(c)(3) did not violate the first amendment by stating,

although government may not place obstacles in the path of a [person's] exercise of . . . freedom of [speech], it need not remove those not of its own creation. Although the organization does not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.<sup>177</sup>

In 2002 the U.S. Court of Appeals for the District of Columbia discussed the constitutionality of §501(c)(3) in regards to First Amendment rights in the Branch Ministries case.<sup>178</sup> In particular, the church claimed that its Free Exercise rights had been violated and that they could no longer freely worship.<sup>179</sup> Further, the church claimed that the loss of the exemption threatened their existence and violated the First Amendment.<sup>180</sup>

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<sup>173</sup> Id.

<sup>174</sup> Id. The concurrence by Justice Blackmun had a different view. The concurring justices stated that 501(c)(3) would be unconstitutional in regards to substantial lobbying activities if it were not for the fact that the organization could create a 501(c)(4) organization for all its lobbying activities.

<sup>175</sup> Id.

<sup>176</sup> Id. at 549. (The Court in Citing to Buckley v. Valeo, 424 U.S. 1 (1976) by stated "We have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny.

<sup>177</sup> Id.

<sup>178</sup> Branch Ministries v. Rossotti, 211 F. 3d 137 (D.C. Cir. U.S. Ct. App. ,2000) (For a discussion of the facts of the case see above analysis in this article on section on revocation.)

<sup>179</sup> Id. at 142.

<sup>180</sup> Id.

The court in its analysis stated that for the church to sustain its claim it must show that its free exercise rights had been substantially burdened.<sup>181</sup> The court reasoned that the church's position was that the withdrawal of a conditional privilege (a tax exemption) for the failure to meet the condition itself (being involved in prohibited political activities) constituted a substantial burden on their right to freely exercise their religion.<sup>182</sup> This would be true "only if the receipt of the privilege (in this case the tax exemption) is conditioned upon conduct proscribed by a religious faith, or ... denied ... because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs."<sup>183</sup> However, this was not the case, as the court pointed out that the church did not state that a withdrawal from politics would violate its beliefs.<sup>184</sup> Rather, the sole effect of the "loss of the tax exemption was to decrease the amount of money available to the Church for its religious practices."<sup>185</sup> The Supreme Court has declared, however, that such a burden "is not constitutionally significant."<sup>186</sup> Thus, the court held that the church's Free Exercise rights were not violated because the government was not substantially burdening the right of the church to freely worship.<sup>187</sup>

The Court also held that the prohibition against involvement in political campaign activities did not violate the church's freedom of speech under the First Amendment.<sup>188</sup> The reason for this is that the language in §501(c)(3) is viewpoint neutral.<sup>189</sup> The political activity prohibition applies to all §501(c)(3) organizations equally; "they prohibit intervention in favor of all candidates for public office by all tax-exempt organizations, regardless of candidate, party, or viewpoint."<sup>190</sup> Thus, the court denied any free speech claims on behalf of the church.

According to the Court, the "political activity prohibition" in §501(c)(3) does not violate the constitutional rights of §501(c)(3) organizations. Any rights that are violated are minor compared to the compelling governmental interest in not subsidizing political activities through churches or related organizations. Organizations are not prohibited from worshiping as they wish by participating in political campaign activities. If they choose to participate, they will merely not be

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<sup>181</sup> Id. (In so stating the test to be applied the court stated that the "Government shall not substantially burden a person's exercise of religion in the absence of a compelling government interest that is furthered by the least restrictive means.")

<sup>182</sup> Id.

<sup>183</sup> Id.

<sup>184</sup> Id.

<sup>185</sup> Id.

<sup>186</sup> Id.

<sup>187</sup> Id. (The court also held that the church had alternate means by which to participate in politics by establishing a 501(c)(4) organization for that purpose.)

<sup>188</sup> Id. at 144.

<sup>189</sup> Id.

<sup>190</sup> Id.

afforded a tax exemption but they will not be prohibited from participation in the political activity.

## VII. IS THERE A NEED FOR THE REVOCATION OF THE “POLITICAL ACTIVITY PROHIBITION?”

### A. Administrative Costs and Abuses

In a 2001 study by the Hartford Institute for Religion Research, it was estimated that there were between three to four hundred thousand churches in America as of 2000.<sup>191</sup> During the 1999-2000 election cycle the Federal Election Commission reported that 4 billion dollars were spent on election campaigns.<sup>192</sup> This number increased to 10 billion dollars during the 2003-2004 election cycle.<sup>193</sup> In light of the large amount of expenditures and the ever-present complaints about §501(C)(3) organizations being part of the contributors, the IRS initiated a Political Activities Compliance Initiative (PACI). As part of the initiative the IRS investigated political activity by non-profit organizations.<sup>194</sup>

The IRS released its PACI report for 2004 in which it received 166 referrals and investigated 110 non-profit organizations.<sup>195</sup> Only 47 of the 110 entities were comprised of churches.<sup>196</sup> In 2006, 237 referrals were made and 100 of those were investigated. Only 44 of the 100 investigations were conducted on churches.<sup>197</sup> These numbers are staggering in light of the large number of churches in America compared to the number of alleged abuses that arise during elections.

This large number of abuses is what causes the most friction about passing an amendment to §501(c)(3) to revoke to “political activity prohibition” such as is contained in HR 2275. Many opponents of the revocation of the “political activity prohibition” as found in HR 2275 state that such a Bill would lead to rampant abuse in political campaign activity which would be contrary to the spirit of the Bipartisan Campaign Reform Act of 2002.<sup>198</sup> The proponents of the Bill take the

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<sup>191</sup> *A Report of Religion in the US Today*, Carl S. Dudley, Hartford Institute for Religious Research March 2001. See also [www.ChurchSolutionsMag.com/Articles/191cover](http://www.ChurchSolutionsMag.com/Articles/191cover), *Church Solutions 2001 Year in Review* (where ABC News estimated 300 to 400 thousand churches in America. )

<sup>192</sup> 2006 Internal Revenue Service Political Activities Compliance Initiative Final Report.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> USCJ:Houses of Worship Free Speech Restoration Act Talking Points [www.uscj.org/Houses\\_of\\_Worship\\_Fr6794.html](http://www.uscj.org/Houses_of_Worship_Fr6794.html). See *House Committee on Ways and Means*, May 14, 2002 (Statement of American Jewish Congress ).

contrary position that the Bill is needed because of the rampant abuses that go unchecked by the IRS and because the IRS uses selective prosecution in enforcing the "political activity prohibition".<sup>199</sup> Thus, the proponents feel that "political activity prohibition" is not fairly administered.

The abuses noted by both those who support and those who oppose the revocation of the "political activity prohibition" are numerous. For example, during the 2000 election cycle the following are a few instances of campaign activity in churches as noted by Patrick L. O'Daniel in his 2001 article entitled *More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by Churches*<sup>200</sup> during the 2000 election cycle:

- Addressing the congregation at a Pittsburgh church, Al Gore criticized George Bush for saying he would appoint "strict constructionists" to the Supreme Court. Gore said that this term took him back to an era of "strictly constructionist meaning" in which, "some people were considered three-fifths of a human being."<sup>201</sup>
- Pastor Charles Betts, Sr. at the Morningstar Missionary Baptist Church in Queens, New York, introduced the First Lady, Hillary Rodham Clinton, who was running for the Senate, by saying, "I would like to introduce to you the next senator." He then stated, "I speak the word and the word is truth. After she goes to the Senate, she is going to come back to our communities and say 'Thank you.'" Another pastor at a Bronx church substituted her opponent's name, Representative Rick Lazio, for Satan in a service hymn during a visit by the First Lady.<sup>202</sup>
- Preaching at the Genoa Baptist Church in Ohio, the Reverend Jerry Falwell told the worshipers, "You vote for the Bush of your choice." He also warned that if Al Gore was elected, "Our country is going to pay a dear price." "We simply have to beat Gore," Falwell said.<sup>203</sup>
- At the Morris Brown AME Church, Al Gore told parishioners, "I have to appeal to you because you have the votes." He also stated, "I'm asking not only for your votes, but your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday."<sup>204</sup>
- The Reverend Billy Graham gave what was described as a "near endorsement" to George Bush: "I don't endorse candidates. But I've come as close to it, I guess, now as any time in my life because I think it's extremely important. I've already voted. I'll let you guess who I voted for."<sup>205</sup>

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<sup>199</sup> May testimony, *Supra* note 36.

<sup>200</sup> Patrick L. O'Daniel, *More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by Churches*, 42 B.C. L. Rev. 733 (July 2001).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

- In Flint, Michigan, Al Gore attended the evening service at New Jerusalem Full Baptist Church where the speaker, Kenneth Edmonds, urged congregants to kneel at bedtime and pray: "The Lord is my shepherd, I shall not vote for George Bush."
- In Milwaukee, Wisconsin, the Reverend Joseph Noonan of Our Lady of the Rosary Roman Catholic Church inveighed against candidates who were not pro-life and instructed, "I'm not telling you who to vote for. I'm telling you who you may not vote for."<sup>206</sup>
- At Detroit's New Bethel Baptist Church, the Reverend Robert Smith, Jr. preached that, "if Bush is elected, then we're going to war."<sup>207</sup>
- During Sabbath services at University Synagogue in West Los Angeles, Rabbi Allen Freehling spoke of Noah's drunkenness and remarked that the same "obscene behavior can be said of a certain Republican presidential candidate."<sup>208</sup>
- In Detroit, Al Gore told a Sunday congregation, "I need you to lift me up so I can fight for you." He was introduced by the church's pastor, Bishop Charles H. Ellis III, who offered a prayer for Mr. Gore's success and told his congregation that the choice "seems to be a no-brainer to me--if it ain't broke, don't fix it."<sup>209</sup>
- The Christian Coalition implemented plans to distribute 70 million copies of its voter guide at churches on the Sunday before the election. Critics have claimed that the guides are "partisan campaign fliers" because of their presentation of the candidates' positions on various issues.<sup>210</sup>
- Victory Baptist Church and Second Baptist Church were the only two stops that the Democratic Vice-Presidential candidate, Senator Joe Lieberman, made in Las Vegas during a campaign stop. At both churches he urged the congregations to vote for the Gore-Lieberman ticket.<sup>211</sup>
- President Bill Clinton spoke from the pulpit in a Harlem church to a group of African-American religious leaders and urged them that if they want to "keep the economy going" then "you have to vote for Hillary and Al Gore and Joe Lieberman."<sup>212</sup>
- In Chicago, about 20 ministers boycotted the Chicago Sun-Times for its endorsement of George Bush for President. The ministers said they will now rely on their pulpits and other newspapers to keep their communities informed about the elections.<sup>213</sup>

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<sup>206</sup> Id.

<sup>207</sup> Id.

<sup>208</sup> Id.

<sup>209</sup> Id.

<sup>210</sup> Id.

<sup>211</sup> Id.

<sup>212</sup> Id.

<sup>213</sup> Id.

- In Miami, 23 ministers met in the Jordan Grove Baptist Church to coordinate efforts to get out the vote for Al Gore. They agreed to do radio ads, to coordinate vans to get people to the polls, and pledged to preach from the pulpit about voting. John Sales of First Baptist of Brownsville explained: "You don't have to need someone to tell you to vote. We've got to watch out for what's in the Bushes."<sup>214</sup>
- David Horton of Greater New Bethel Baptist complained that "there should have been more of an effort by the Gore campaign to make itself visible in the black churches." Sales agreed, noting that although Gore had spoken in African-American churches elsewhere, the Gore campaign had turned to Clinton to energize African-American leaders and go to black churches.<sup>215</sup>
- In Arkansas, Kathy Robinson, a Democratic activist, complained about a county clerk refusing to open the clerk's office for early voting on Sunday, explaining, "I had 17 Afro-American churches lined up to be bussed to the courthouse to vote on Sunday." She then added, "Now I am going to have to retract that. We are trying to get Gore elected."
- Explaining why Al Gore attended so many churches, his campaign manager, Donna Brazile explained, "More African-Americans gather in church than any place else."
- "The churches are key," remarked David Bositis, senior political analyst at the Joint Center for Political and Economic Studies, an African-American think tank. "It's an organizational nexus. You've got people who come there every week."

Thus, the 2000 election campaign was rampant with political activity violations.

The 2004 election cycle included a number of abuses of political campaign activity. Some examples are as follows although they are not meant to be exhaustive:

- All Saints Episcopal Church in Pasadena, California had a guest speaker who brought a message entitled "If Jesus Debated Senator Kerry and President Bush" in which the speaker criticized Bush throughout but never made a negative comment about Kerry<sup>216</sup>
- Numerous Pastors urged their congregations to vote for John Kerry regardless of what the IRS might say.<sup>217</sup>
- In a church in Ft. Lauderdale, Florida, the pastor encouraged his congregation to vote for Senator Kerry while Kerry was present in the congregation.<sup>218</sup>
- In the first two weeks of June, 2004 election Bush staffers sought out 1600 churches in Pennsylvania to find out if they supported Bush<sup>219</sup>

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<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> Allan J. Samansky, *TAX CONSEQUENCES WHEN CHURCHES PARTICIPATE IN POLITICAL CAMPAIGNS*, 5 Geo. J.L. & Pub. Pol'y 145 (Winter 2007).

<sup>217</sup> Id.

<sup>218</sup> Id.



- President Bush also visited the Pope and reportedly complained to Cardinal Angelo Sodano, the Vatican Secretary of State, that “not all American bishops are with me.”<sup>220</sup>
- At Allen Temple AME church, the minister, Donald H. Jordan stated, “I’m not worried about the law; I’m asking you to support him,” after Senator Edwards had spoken.<sup>221</sup>
- At the Mt. Airy Church, Pastor Ernest C. Morris followed Sen. Kennedy to the pulpit and declared, “I can’t tell you who to vote for, but I can tell you what my mamma told me last week: ‘Stay out of the Bushes.’”<sup>222</sup>
- Jerry Falwell publicly supported Bush from his pulpit.<sup>223</sup>
- In July 2004, the Republican National Committee asked Roman Catholics who supported Bush to provide copies of their parish directories to the campaign.<sup>224</sup>
- In May, 2004, Bishop Michael Sheridan of the Colorado Springs diocese referred to the upcoming election in November and stated that Catholics who vote for candidates who stand for "abortion, illicit stem cell research or euthanasia" will "jeopardize their salvation."<sup>225</sup>

Thus, there were also numerous abuses during the 2004 election.

In light of the sampling of abuses mentioned above, it is remarkable that the IRS has investigated less than 150 churches total during the 2004 and 2006 elections.<sup>226</sup> This is remarkable especially in light of the fact that there are three hundred to four hundred thousand churches in this country. The administrative costs to keep up with these violations would be immense. Although no official report or position has been issued by the IRS, the IRS alluded to the great undertaking that would face the Service in order to investigate all violations.<sup>227</sup>

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<sup>219</sup> Alan Cooperman, *Churchgoers Get Direction from Bush Campaign*, Wash. Post, July 1, 2004, at A6.

<sup>220</sup> Don Lattin, *Politics and the Church: Bush Woos Faithful with a Religious Fervor*, S.F. Chron., June 21, 2004, at A1.

<sup>221</sup> See Edward E. Plowman, *Pulpit Politics*, World Mag., Nov. 6, 2004.

<sup>222</sup> Id.

<sup>223</sup> Chris Kemmitt, *RFRA Churches and the IRS: Reconsidering the Legal Boundaries of Church Activity in the Political Sphere*, [www.law.harvard.edu/students/orgs/jol/vol43\\_1/kemmitt.pdf](http://www.law.harvard.edu/students/orgs/jol/vol43_1/kemmitt.pdf)

<sup>224</sup> Id.

<sup>225</sup> See Samansky, *Supra* note 214.

<sup>226</sup> Id.

<sup>227</sup> 2004 Internal Revenue Service Political Activities Compliance Initiative Final Report Project 302 and 2006 Internal Revenue Service Political Activities Compliance Initiative Final Report (stating reasons that IRS does not want to investigate churches including the sensitiveness of the area and the huge undertaking to investigate all violation.)

This problem will only continue to compound itself as religious leaders seek to influence national elections.<sup>228</sup> A CNN Special, “God’s Warriors,” that aired on December 23, 2007, documented numerous religious leaders who were involved in politics and supported candidates from the pulpit.<sup>229</sup> Further, the special documented the fervor in churches to be involved in political campaigns.<sup>230</sup> In fact, one traveling evangelist stated in an interview that his whole ministry was traveling from church to church encouraging congregations to vote for conservative candidates.<sup>231</sup> The documentary concluded that there is an enormous move in churches to become involved in politics.<sup>232</sup>

It is clear in the 2008 presidential election that churches will only become more involved in politics. The IRS will either have to use more money to investigate and enforce the “political activity prohibition” or it will have to enforce only going after the most egregious cases. It is this lack of enforcement by the IRS that leads many to argue that there should either be more funds and time dedicated to enforcing the “political activity prohibition” or a lessening to an abolition of the political activities doctrine to make treatment of churches more equitable.

#### B. Does the 501(c)(3) Revocation of Exempt Status Really Have Teeth?

Claims by many supporters of bills such as HR 2275 state that the revocation of the exempt status for a church is akin to the death penalty.<sup>233</sup> Many churches claim the threat of revocation would threaten their existence.<sup>234</sup> The reason for this is that donors would no longer contribute money knowing that they would not receive a tax deduction, which would lead to the church losing operating revenue.<sup>235</sup> The court in Branch Ministries stated that these concerns were overstated.<sup>236</sup> Because of the unique treatment of churches under the Internal Revenue Code, the effect of the revocation is more symbolic than substantial.<sup>237</sup>

There are many reasons that the Court took the position that the effect of the revocation would likely have little to no impact.<sup>238</sup> First, after a church has its exempt status revoked, it may

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<sup>228</sup> *God’s Warriors* (CNN television broadcast December 23, 2007).

<sup>229</sup> *Id.* (Of the notables were John Hagee who encouraged his congregation to vote for candidates who supported the Nation of Israel.)

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *May* testimony, *Supra* note 36.

<sup>234</sup> Branch Ministries v. Rossotti, 211 F. 3d 137, 142.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

still hold itself out as a 501(c)(3) organization as long it does not participate in future political campaigns.<sup>239</sup> According to the position of the IRS taken at oral argument, all that would have been lost is the “advance assurance of deductibility by the donor in the event the donor is audited.”<sup>240</sup> Thus, the contributions will remain tax deductible as long as the taxpayer can show that the church is no longer involved in political campaign activities.<sup>241</sup>

Another concern by churches is that the revocation will make them liable for the payment of taxes.<sup>242</sup> However, according to Branch Ministries, the revocation does not necessarily make the church liable for the payment of taxes.<sup>243</sup> The IRS made it clear in its oral arguments that just because a church loses its tax exemption does not mean that church will be liable for the payment of taxes on all contributions.<sup>244</sup> Any donations that are bona fide, i.e. not linked to campaign activities, will be deductible. The rationalization by the court was that these donations were in essence gifts which are not included in the income of the recipient.<sup>245</sup> Further, the church can still reapply for a prospective determination of its tax exempt status and thus, regain advance assurance of the deductibility of contributions and its tax exempt status.<sup>246</sup> However, this ruling would be based on the church’s assurance that they would no longer be involved in campaign activities.<sup>247</sup>

### C. 501(c)(4) Alternative

Many proponents of revoking the “political activity prohibition” through a bill such as HR 2275 state that without such bill, churches will have no alternate way of speaking about political issues involving candidates in church.<sup>248</sup> This issue has been addressed by the Supreme Court<sup>249</sup> and in Branch Ministries.<sup>250</sup> In discussing the issue, the court in Branch Ministries relying on Regan provided that a church could separately incorporate a 501(c)(4) organization to operate its

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<sup>239</sup> Id.

<sup>240</sup> Id.

<sup>241</sup> Id. at 143.

<sup>242</sup> Id.

<sup>243</sup> Id.

<sup>244</sup> Id.

<sup>245</sup> Id.

<sup>246</sup> Id.

<sup>247</sup> Id.

<sup>248</sup> May testimony, *Supra* note 36.

<sup>249</sup> Regan, 461 U.S. 540.

<sup>250</sup> Branch Ministries v. Rossotti, 211 F. 3d 137, 143.

political activities.<sup>251</sup> Such organizations are exempt from tax but contributions are not tax deductible to the §501(c)(4).<sup>252</sup>

Unlike the Regan case which dealt with lobbying, §501(c)(4) organizations are prohibited from being involved in campaign activities like the §501(c)(3) organization.<sup>253</sup> However, unlike the §501(c)(3) organization, the §501(c)(4) organizations can set up a Political Activity Committee (PAC) that would be free to participate in political campaigns.<sup>254</sup> In setting up the PAC, the church must separately incorporate the §501(c)(4) organization and then set up the PAC as an arm of the §501(c)(4).<sup>255</sup> In all, the church must be careful to keep separate records and must be able to show that tax free contributions are not used for political activities.<sup>256</sup> Although this may seem like an extensive process and overly burdensome on the church, it will allow churches to participate in political campaigns with losing their tax exempt status.<sup>257</sup> The rationale is that churches are allowed to participate in political activities, but they are going to have to pay for those activities just as anyone else would engaging in similar activities.<sup>258</sup> If the church wants to participate in political activities and still remain tax exempt, then it must do so under the plan laid out by the courts.

## VIII. PROPOSAL

The “political activity prohibition” is proper because to allow a charity to be involved in political campaigns violates the very spirit of a charity. The government grants favorable status to a charity as a way of subsidizing the charity for work the government would otherwise have to perform. A passage of bill such as HR 2275 would give a blanket license for any §501(c)(3) organization to receive a government subsidy for participating in political campaign activity.

However, the law as it stands is very controversial in that it makes the IRS in some instances a type of “political speech police.”<sup>259</sup> This is very concerning to those who argue that the IRS is selectively enforcing the current prohibition of political activities under 501(c)(3).<sup>260</sup> This fact is

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<sup>251</sup> Id.

<sup>252</sup> Id.

<sup>253</sup> Id.

<sup>254</sup> Id.

<sup>255</sup> Id.

<sup>256</sup> Id.

<sup>257</sup> Id.

<sup>258</sup> Regan, 461 U.S. 540.

<sup>259</sup> May testimony, *Supra* note 36.

<sup>260</sup> Id.

even more concerning in that it seems that the IRS cannot proceed against as many organizations as it would like because of the high administrative costs involved.

The result is that the IRS has “hamstrung” itself. It has made a firm stance that there is to be no political activity on the behalf of a 501(c)(3) organization but it does not have to the resources to enforce every single violation. It would be much more feasible for the IRS to be able to enforce only egregious violations of the “political activity prohibition”. However, this is not possible under the language of §501(c)(3) and the current policy of the IRS.

A possible solution would be propose a “no substantial activities test” in relation to the “political activity prohibition.” The “no substantial activities test” is already present in 501(c)(3).<sup>261</sup> The language of the Code reads “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.”<sup>262</sup> It is this provision that allows 501(c)(3) organizations to participate in the lobbying process as long as the lobbying is not substantial.<sup>263</sup>

Courts have generally considered that if no more than 5% of the time and effort of the organization is devoted to lobbying then the lobbying is not substantial.<sup>264</sup> There are those that argue that the percentage test has been replaced by a facts and circumstances test balancing the organizations activities in relation to its objectives and circumstances in the context of the totality of the organization.<sup>265</sup> Even if the percentage test has become obsolete, it still is a good measure as to when lobbying activities have become substantial.

The same substantiality test could be used in relation to the “political activity prohibition.” This same test would allow churches in particular to be able to discuss religious issues involving candidates from the pulpit or during a church service without losing their exemption. As long as the churches were not using a substantial part of their resources for political campaign activities i.e. 5% then the church would not be in violation. Any church or organization that abuses this privilege like the church in Branch Ministries could have their exemption revoked.

This would seem to address the IRS’ concerns as stated in the PACI Executive Summary in 2006.<sup>266</sup> There the IRS admitted that the “political activity prohibition” raises issues freedom of speech and religious expression.<sup>267</sup> Also, the IRS admitted that there was no bright line test and

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<sup>261</sup> 26 U.S.C. §501(c)(3).

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Seasongood v. Comm., 227 F.2d 907 (6<sup>th</sup> Cir. 1955); See also World Family Corp. v. Comm. 81 T.C. 958(1983)(holding that lobbying activities that were less than 10% but greater than 5% were insubstantial.)

<sup>265</sup> Haswell v. U.S., 500 F. 2d 1133 (Ct. Cl. 1974)(rejecting the percentage test in favor of a balancing test using facts and circumstances); See also Kentucky Bar Foundation, Inc. v. Commissioner, 78 T.C. 971 (substantiality is determined by facts and circumstances).

<sup>266</sup> 2006 Internal Revenue Service Political Activities Compliance Initiative Final Report.

<sup>267</sup> *Id.*

alluded to the fact that a bright line test is needed to better handle the issue.<sup>268</sup> Further, when the IRS finds a violation it is often de minimis and does not warrant a revocation.<sup>269</sup> Thus, adding a provision that would allow the IRS a bright line test and some leeway—perhaps a five percent rule—might provide the balance that is needed to resolve the issue.

## IX. CONCLUSION

The “political activity prohibition” should not be revoked as proposed in bills such as HR 2275. In proposing HR 2275, Walter Jones was attempting to give churches more freedom and liberty to speak on political issues inside churches. However, the revocation of the “political activity prohibition” as proposed in HR 2275 does more than just provide relief to churches; it allows any §501(c)(3) organization to participate in political campaign activities and thus, such a revocation should not be allowed. A pure revocation of the “political activity prohibition” would violate the concept of charities in general. An amendment to §501(c)(3) such as HR 2275 providing for a revocation of the “political activity prohibition” would in essence provide a government subsidy for political campaign activities through §501(c)(3) organizations. This type of subsidy has always been forbidden under the law regarding the tax exempt status of charities. Further, the revocation would not only act as a subsidy but it would provide disparate tax treatment for individual taxpayers and other organizations not recognized under §501(c)(3).

The main concern of the proponents of the revocation is that churches face harsh penalties for violating the “political activity prohibition”. The harsh penalties that seem to be present for violating the “political activity prohibition” are in reality not so harsh. Even though penalties and revocation are possible penalties it is unlikely that many organizations will ever be penalized. In fact, after recent studies for the years of 2004 and 2006, no church has lost its exempt status. Further, not one church ever had a penalty levied against for violating the “political activity prohibition” during that period.

Even though the penalties have not in practice been that harsh there is reason for concern regarding the present status of the “political activity prohibition.” There seems to be rampant abuse of the privilege while the IRS is only able to investigate a small number of incidents. The IRS has voiced this concern in recognizing that it is difficult to monitor this area of law when free speech issues are at stake and the IRS does not have the manpower to fairly administer the prohibition.

It is preferable that the current rule not be so restrictive in light of the difficulty in monitoring every violation of the “political activity prohibition.” One possible solution is to allow an “insubstantial” amount of political activity with §501(c)(3) organizations just as is allowed for lobbying. This would allow §501(c)(3) groups the flexibility to be speak their minds on political issues without losing their exempt status. At the same time it would protect the interests of the general public in not having tax dollars support political campaign activities through §501(C)(3) organizations.

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<sup>268</sup> Id.

<sup>269</sup> Id.

# Supreme collaboration

Fun stories plus useful advice for would-be coauthors

Collaborative writing can be a delicate endeavor for many judges, especially when collaborating with someone who is not a judge. Bryan Garner's newest book, *Nino and Me*, offers not just an intimate portrait of Garner's friendship with Justice Antonin Scalia but also an insightful look at the challenges of writing with someone else.

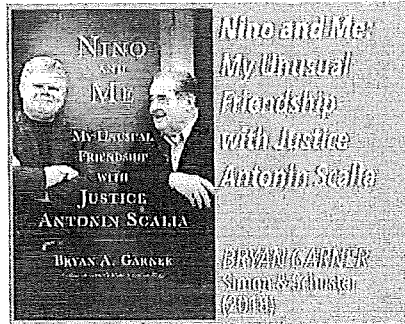
Written as a friend's tribute to Justice Scalia, *Nino and Me* focuses on the writing process behind the two books Garner and Scalia wrote together: *Reading Law: The Interpretation of Legal Texts* (West 2012), and *Making Your Case: The Art of Persuading Judges* (Thomson West, 2008). Interesting stories about their friendship abound: Garner recounts tales involving Justice Scalia performing at Garner's wedding, a trip the two took together to the Far East, and time spent together with their families. He also recalls cooking eggs for Scalia (and their disagreement as to how to properly cook eggs); getting haircuts together; and details of their exercise routines.

Garner also offers his insights into Scalia's judicial philosophies and perspectives, covering Scalia's thoughts on topics such as the difference between textualism and originalism; the role "justice" should play in judicial decisions; judicial appointments; originalism; separation of powers; and more.

But perhaps the most unexpected and useful insights of the book are Garner's thoughts on what it takes to successfully collaborate with a coauthor. Of course, most legal professionals know that Garner is a terrific writer, and he knows well that one of the most important parts of luring the reader is the "hook." Garner writes that he had the ideas and formats in mind for both books long before he had Scalia on board. But he knew Scalia would be the perfect hook for attracting readers. Of course, Garner acknowledges that he soon became the "sidekick,"

not the "superstar," emphasizing the point that sometimes one must yield to the "bigger player" in order to ensure a successful collaboration.

Garner suggests that, regardless of the imbalance in reputation between the writers, it was important that they find common ground. Both Garner and Scalia described themselves as "snoots," people who care intensely about words, usage, and grammar. Although their



political philosophies were on the opposite ends of the spectrum, both were textualists and originalists, which provided a foundation for their writing. These commonalities were key throughout their collaborative writing process and obviously contributed greatly to their successful partnership.

Both authors considered their books to be 50-50 collaborations, so much so that it is can be difficult to know who wrote what. They pulled off this seamless presentation by establishing a thoughtful writing process, including initial talks, negotiations, and drafting of contracts through to the final editing and publishing of the books. Beginning the collaborative process by drafting an outline and a table contents, he suggests, was a key step to setting the organizational framework for the writing process.

As seamless as the end products are, Garner describes their writing process as time consuming and difficult. *Reading Law* took over three years to write, and the two authors went through at least

250 drafts before final publication. They spent countless hours writing and editing in Scalia's chambers and Garner's office, all while working "day jobs" as a U.S. Supreme Court justice and a prominent writer and lecturer.

A thoughtful writing process and many hours of work, however, did not prevent the two from arguing. One argument over word processing programs — they used different programs, and neither wanted to give up his preferred software — nearly derailed a book. They also disagreed about the use of footnotes, gender-neutral language, and contractions, among other things. Thankfully, they were able to resolve their issues, and their compromises paid off in the form of two highly regarded legal texts.

One last story seems worth sharing: Before the two launched their now famous partnership, Garner had serious doubts about asking Justice Scalia to write with him. Garner recalls his own father chastising him for thinking that he was in the same league as Scalia. Garner even tried to stop the letter he had written to Scalia to invite him to collaborate. Fortunately, the letter went through and opened the door to *Reading Law*, now widely regarded as the authority on the legal interpretation of texts. Garner's experience should inspire those who have an idea but may be afraid to take action and encourage the use of collaboration to complement one's skills with those of a co-author.

Writers interested in the collaborative writing process will find *Nino and Me* helpful, and judges will find it useful for its insights on the process and pitfalls of collaborative writing. And its light-hearted look at a unique friendship between two legal luminaries makes *Nino and Me* a fun read for anyone interested in Scalia's life on and off the bench.

— JOE BOATWRIGHT, *Judge, Seventh Judicial Circuit Court of Florida*

**WRITING SAMPLE**

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

CASE NO: 2014-1924 MM

DIVISION: 62

STATE OF FLORIDA,

vs.

NICHOLAS JOHNSON,

Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS**

This matter came before the Court for hearing on March 13, 2015, upon Defendant's Motion to Suppress Stop and Search. Based on the testimony and evidence presented to the Court, the Court finds as follows:

**FACTS**

In the early morning hours of August 2, 2014 Florida Fish Game and Wildlife Officer James Bonds (hereinafter "Officer Bonds") was travelling South on Highway 17 when he noticed a vehicle in front of him exhibiting a suspicious driving pattern. The suspicious vehicle made a u-turn and began to travel north on Highway 17. Officer Bonds made a u-turn but lost sight of the vehicle. Officer Bonds continued to search the area and ended up travelling south on Old San Mateo Road when he noticed a vehicle ahead of him which turned out to be the Defendant's vehicle. Officer Bonds admitted that he could not be sure if this was the same vehicle that he was following originally. He observed the Defendant's vehicle activate its brake lights prior to coming to the intersection of North Boundary Road and Old San Mateo Road. Officer Bonds was roughly 200 yards directly behind the defendant's vehicle when the brake lights were activated. It was dark outside and there were no street lights in the area. Officer Bonds testified that the defendant's vehicle did not stop at the stop sign.

In Court, Officer Bonds testified that his basis for believing that the Defendant did not stop at the stop sign was due to the fact that the defendant's headlights had illuminated the



canopy of trees around the intersection, and he never saw the headlights stop moving. However, at the hearing there seemed to be some confusion as the officer had originally articulated in an earlier sworn statement that it was the brake lights that had illuminated the intersection. Finally, Officer Bonds did not originally know that the Defendant's vehicle had failed to stop at the stop sign. The reason for this was the officer did not know there was a stop sign in the area. It was only after driving up to the intersection did he notice the stop sign.

Officer Bonds did not choose to make a traffic stop after the alleged infraction of failing to stop at the stop sign. Instead, the officer continued to follow the Defendant's vehicle as it made a turn onto Highway 100 and then a turn onto East End Road. As the Defendant's vehicle travelled down East End Road it swerved to the left so that its back left tire was in the middle of the double yellow lines for about ten (10) yards. At that point, a vehicle approached the Defendant's vehicle in the opposite lane and the defendant's vehicle swerved back to the right where his right rear tire went off the roadway and it appeared that his full tire left the roadway for a brief moment. The Defendant's vehicle then corrected and went back to the center of the lane.

Officer Bonds admitted that there were no white lines on the right side of the roadway indicating where a lane would be on the road. Further, the oncoming vehicle was not affected by the swerving of the defendant's vehicle. Officer Bonds then initiated a traffic stop on the Defendant's vehicle which led to the Defendant's subsequent arrest for Driving Under the Influence.

Officer Bonds in his report stated that the basis for the stop was for failing to stop at the aforementioned stop sign and failing to maintain a single lane. At the hearing, Officer Bonds testified that this was the basis for the traffic stop. However, after some prodding by the State the officer admitted that he also believed the Defendant's driving pattern concerned him that Defendant might be impaired. It should be noted that nowhere in the officer's report was impairment listed as the basis of the stop. Further, on the State's re-direct examination, Officer Bonds was asked for the reason for the stop, and he stated that it was the totality of the circumstances. The officer only cited the Defendant for violating Florida Statute 316.074(1) – Obedience to a Required Traffic Control Device. The officer did not cite the Defendant for Failure to Maintain a Single Lane.

## APPLICABLE LEGAL AUTHORITY

All that is required for a valid vehicle stop is a founded suspicion by the officer that the driver of the car, or the vehicle itself, is in violation of a traffic ordinance or statute. Davis v. State, 788 So. 2d 308, 309 (Fla. 5<sup>th</sup> DCA 2001). A traffic stop is reasonable under the Fourth Amendment where the law enforcement officer had probable cause to believe a traffic violation had occurred and the reasonableness of the stop does not depend on the subjective motivations of the officer who stopped the vehicle. Whren v. United States, 517 U.S. 806, 810 (1996) *See also*, State v. Thomas, 109 So. 3d 814 (5<sup>th</sup> DCA 2013). The validity of the traffic stop depends solely on objective criteria. Id. The objective test “asks only whether any probable cause for the stop existed,” which makes the subjective motivations of the officer irrelevant. Holland v. State, 696 So. 2d 757, 759 (Fla. 1997).

Florida Statute §316.0875 (2014) defines and sets limits on no passing zones on the roadways of Florida. The relevant language Florida Statute § 316.0875 is as follows:

(1)The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones, and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), no driver shall at any time drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.(3) This section does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.

Courts have found a violation of this statute when a driver’s front and back tires have crossed over the double solid lines so that the vehicle was partially into the oncoming lane of traffic regardless of whether the defendant was creating a safety hazard. *See Lomax v. State*, 148 So. 3d 119 (Fla. 1<sup>st</sup> DCA 2014).

According to Florida Statute § 316.089(1), a vehicle shall be driven as nearly practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. Fla. Stat. §316.089(1) (2014). Courts

have found that a driver's failure to maintain a single lane as required by Florida Statute §316.089, does not by itself establish probable cause for a traffic stop unless the driver's behavior placed other vehicles in danger. *See Hurd v. State*, 958 So. 2d 600 (Fla. 4<sup>th</sup> DCA 2007). Because §316.089 prohibits leaving a lane unless it can be done safely, courts have reasoned that the failure to maintain a single lane alone cannot establish probable cause when the action is done safely. *Id.* Further, when a vehicle travels briefly outside of its margin for error without more is not sufficient to justify a stop for violating §316.089. *Crooks v. State*, 710 So. 2d 1041 (Fla. 2d DCA 1998). However, there is no requirement that the evidence show that the operator of the endangered vehicle took evasive action or was aware of the danger. *Williamson v. Dep't of Highway and Safety Motor Vehicles*, 933 So. 2d 665 (Fla. 1<sup>st</sup> DCA 2006).

Finally, an officer may conduct an investigatory stop on less than probable cause if the officer has a reasonable, articulable suspicion that a person has committed, is committing, or is about to commit a crime. *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993); *See also Tamer v. State*, 463 So. 2d 1236, 1239 (Fla. 4<sup>th</sup> DCA 1985). "In order not to violate a citizen's Fourth Amendment rights, an investigatory stop requires a well-founded, articulable suspicion of criminal activity. Mere suspicion is not enough to support a stop." *Popple*, 626 So. 2d at 186. A founded suspicion is a belief which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge. *Tamer*, 463 So. 2d at 1239. Courts have held that an officer has reasonable suspicion to justify a traffic stop if they have a belief that the driver is ill, tired, or impaired, and they observe a driving pattern that is sufficient to warrant such a belief even if there is no traffic violation. *See Yanes v. State*, 877 So. 2d 25, 26 (Fla. 5<sup>th</sup> DCA 2004) (finding that an officer had reasonable suspicion to stop a vehicle where he observed a vehicle cross the fog line with one half of the width of his vehicle on three occasions over a one mile period, coupled with a belief that the driver was possibly impaired).

There seems to be a conflict or confusion among different courts of this state as to whether the officer needs to articulate a basis for the stop when he/she feels that the driver is ill, tired or impaired or if simply the facts provided in an arrest report or testimony at a hearing provide an objective basis for the stop. *See David A. Demers, Florida DUI Handbook*, §4:9 (2013-2014 Ed. West Publishing). Some courts have suggested that for an investigatory stop to be lawful when based on unusual driving which falls short of a traffic violation, then it is

important for the officer to articulate both the facts and conclusions that the officer drew from those facts. State v. Davidson, 744 So. 2d 1180 (Fla. 2<sup>nd</sup> DCA 1999). Similarly, the Florida Supreme Court upheld a circuit court's order finding a stop unlawful because the officer's report "did not indicate that impairment was the reason for the stop." See Dobrin v. Fla. Dep't of Highway Safety and Motor Vehicles, 874 So. 2d 1171, 1172 (Fla. 2004). However, in that same case the Florida Supreme Court made it clear that based upon the finding of facts, the important determination is whether there is an objective basis for the stop. Id. Thus, it seems that officers must articulate facts sufficient for the stop, but the stop must be judged by an objective standard not just the subjective motivations of the officers. See Dep't of Highway Safety and Motor Vehicles v. Jones, 935 So. 2d 532 (3<sup>rd</sup> DCA 2006).

### CONCLUSION

The State argues in this case that there are three separate reasons for validating the traffic stop in question. First, the State argued that the Defendant violated Florida Statute § 316.074(1) by failing to stop at a stop sign at the intersection of North Boundary Road and Old San Mateo Road. Second, the State argued that the Defendant failed to maintain a single lane as defined by Florida Statute § 316.089 based on his driving pattern on East End Road. Finally, the State argues that the stop was valid because the officer had reasonable suspicion to believe the Defendant was impaired based on his driving pattern. The Court finds that the State did not meet their burden and therefore, the Motion to Suppress is granted.

First, Officer Bonds did not have probable cause to stop Defendant for violating Florida Statute 316.074(1). Although the Defendant was cited for failure to stop at a traffic signal, it is objectively unreasonable that Officer Bonds actually witnessed such violation occur. The probable cause affidavit states that the officers were approximately 100 yards behind Defendant's vehicle at the time this alleged failure to stop occurred. However, at the suppression hearing, Officer Bonds stated that he was over 200 yards behind Defendant's vehicle and that it was dark outside with no other lights in the area. This was distance was represented by Defendant's Exhibit 1(d).

At the hearing, Officer Bonds testified that he saw Defendant's brake lights activate as he approached the intersection. However, Officer Bonds did not even know where the stop sign was while he was watching the vehicle. It was not until he reached the intersection that he determined

that there was a stop sign in the area. Officer Bonds estimated that Defendant's vehicle moved at approximately five miles per hour through the intersection. However, Officer Bonds also admitted at the hearing that it would be impossible to perform a proper speed estimation as he was not trained in this area. Officer Bonds sole reason for believing there was a traffic violation is that he said he saw the headlights continue to move through the canopy of trees in the area of the stop sign. This reason alone is insufficient. Based on the facts before the Court, there is no reasonable objective basis for believing that the Defendant violated Florida Statute § 316.074(1) for failure to stop at a traffic signal.

Second, Officer Bonds did not have probable cause to stop the Defendant for failing to maintain a single lane as defined by Florida Statute § 316.089 based on his driving pattern on East End Road. First, the Defendant did not leave his lane of traffic when his car touched the center line and because of that, the oncoming car was never in any danger. Officer Bonds never testified that the Defendant's vehicle ever crossed over the center line, all he saw was the back left tire between the two double lines for about a distance of ten (10) yards. Officer Bonds testified that as the Defendant's vehicle travelled down East End Road it swerved to the left so that it's back left tire was in the middle of the double yellow lines for about ten (10) yards. This was only a slight margin of error for a brief period of time which would not justify a stop without the vehicle in the other lane being endangered as stated in Crooks v. State, 710 So. 2d 1041 (Fla. 2d DCA 1998) and that would not have been possible since the Defendant never fully left his lane to endanger the other vehicle.

At that point, a vehicle approached the Defendant's vehicle in the opposite lane and the Defendant's vehicle swerved back to the right where his right rear tire went off the roadway and it appeared that his full tire left the roadway for a brief moment. The Defendant's vehicle then corrected and went back to the center of the lane. The officer admitted that there were no white lines on the right side of the roadway indicating where a lane would be on the road. This conduct does not give rise to a violation of §316.089 because this was only a minor deviation, and the oncoming vehicle was not endangered.

Next, Officer Bonds never wrote any citation to the Defendant for violating Florida's no passing zones law. However, this issue was raised at the suppression hearing. Thus, to clarify any issue in this matter, the Court also finds that there was no violation of Florida Statute § 316.0875. The reason for this is that the Defendant's vehicle never fully crossed over the center line. The basis for the Court's conclusion is supported by Lomax v. State, 148 So. 3d 119 (Fla.

1<sup>st</sup> DCA 2014).

Finally, the Court does not find that there was reasonable suspicion to justify a stop on the basis that the Defendant was ill, tired, or impaired. Officer Bonds never placed in his probable cause affidavit that he stopped the Defendant because he thought he was ill, tired or impaired. In addition, he testified that he placed everything in his report that he thought was important for this case. It was only at the suppression hearing, after some prodding by the State, did he say he was concerned about possible impairment. However, he never articulated why he was concerned about possible impairment. Further, he was asked on re-direct why he stopped the vehicle and his response was the driving pattern and all his observations together, but he never articulated how this fit with an impaired driver. Thus, Officer Bonds never clearly articulated that he stopped the vehicle because he thought the Defendant was impaired.

Also, objectively looking at the facts before the Court there was no basis for the stop in question. The only driving pattern that the Court can consider is that of the pattern on East End Road. The driving pattern of having one tire in the middle of the double yellow lines for ten (10) yards and then correcting to the right to what appeared as a tire off the roadway where there was no designated lane for only brief period of time, does not constitute reasonable suspicion to believe the Defendant was ill, tired or impaired. That driving pattern only rises to the level of mere suspicion not reasonable suspicion. In fact, from the time that Officer Bonds saw the vehicle on Old San Mateo Road until the stop was made on East End Road, Officer Bonds and the Defendant covered a distance of a couple miles. Throughout the entire time the Officer followed the Defendant, he did not violate any traffic law or exhibit any suspicious driving pattern other than the perceived running of a stop sign which has already been discussed above before they reached East End Road. Thus, objectively, the minor deviations in the lane on East End Road do not give rise to a valid traffic stop.

**THEREFORE IT IS ORDERED AND ADJUDGED** that the Defendant's MOTION TO SUPPRESS is hereby **GRANTED**.

**DONE AND ORDERED** in Palatka, Putnam County, Florida this 20<sup>th</sup> day of March, 2015.

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**JOE BOATWRIGHT**  
**COUNTY COURT JUDGE**

WRITING SAMPLE

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

CASE NO: 2016-719-CC

DIVISION: 63

KEVIN SMITH and ELIZABETH SMITH,  
Husband and wife

Plaintiff

vs.

DUANE BROWN FILL DIRT, INC.,  
A Florida Corporation

Defendant.

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### **FINAL JUDGMENT**

This matter came before the Court for a Non-Jury Trial on November 22, 2017 on Plaintiffs' two count Complaint for Negligent Construction and Trespass on the Case. Both parties appeared with counsel. At the Trial, the Court heard and considered the testimony of the Plaintiff, Kevin Smith, and the Defendant, the owner of Duane Brown Fill Dirt, Inc., Alvin Harris. In addition, the Court heard testimony of Frank Pliska, Ricky J. Weathington, Gary Wheeler, and Robert Baggs. The Court also admitted and received in evidence various exhibits and heard and considered argument of counsel addressed to the issues tried before the Court.

In considering the weight given to the testimony of each of the witnesses, the Court has had the opportunity to consider the demeanor of each of the witnesses while testifying; the frankness or lack of frankness of each of the witnesses; the intelligence of the witnesses; and interest that the witness might have in the outcome of the case; the means and opportunity each witness had to know the facts about which the witness testified; the ability of each witness to remember the matters about which he/she testified and the knowledge, skill, experience, training, and education of the witness; the reasons given by the witness for the opinion expressed; and all the other evidence in the case.

### **FACTS**

Plaintiffs own property located at 133 Floridian Club Road in Welaka, Fl. The Plaintiffs

access their property by a private easement called Floridian Club Road (hereinafter roadway). Sometime in November, 2015 Alvin Harris of Duane Brown Fill Dirt, Inc. (hereinafter Harris) contracted with homeowner, Cherie Willis to improve the roadway by grading, crowning, and putting millings down on the roadway. Harris only met with Cherie Willis and did not discuss the road project with any of the other homeowners. There were 15 homeowners that used the private easement but not all of those homeowners paid for the road construction. In particular, the Plaintiffs were never consulted about the road project nor did they agree to pay for any of the project. In addition, the Plaintiffs never paid for the road construction and never met with Harris or any other representative of Duane Brown Fill Dirt, Inc.

On or about December 10, 2015, Harris graded and placed cement millings on the roadway and then crowned the roadway. This caused the roadway's height to be raised substantially from the roadway's previous position. Prior to the construction, upon raining, the surface water flowed from the top of the roadway, down the hill, to the river at the end of the roadway. After the construction, the surface water no longer flowed from the top of the road towards the river but rather flowed off of the sides of the roadway into the homeowners' yards. This was caused by the Defendant crowning and raising the height of the roadway. The Defendant in improving the roadway did not take into account any drainage issues that might result from the construction. In particular, the rain water ran off the roadway into the Plaintiffs' yard. This caused the Plaintiffs' septic tank to backup into their house. As a result, the Plaintiffs' use and enjoyment of their property was diminished. In addition, the Plaintiffs' garage would flood and the yard would flood making entrance in and out of the driveway problematic.

The Plaintiff, Kevin Smith, confronted Harris about the road conditions and Harris admitted that the road was too high. Harris also admitted to another neighbor, Rick Weathington, that he had built the road too high. However, at the time of trial, Harris had not repaired the roadway to fix the surface water runoff issue. Harris in constructing the roadway, did not take into account the surface water runoff issue and did not install or prepare proper drainage. At trial, Harris admitted he had a duty to the plaintiff to make sure that the road was constructed properly to make sure that the plaintiff did not suffer damages.

At trial, Ronald Baggs was called to testify based on his expertise on road construction. He testified that the road at issue "looked good to him" but he never actually went on the roadway at issue. In addition, he never inspected the roadway in front of the Plaintiff's property. He only looked at the roadway from afar. As such, the Court discounts his testimony.



### APPLICABLE LEGAL AUTHORITY

Under Florida law, to recover on a negligence claim, Plaintiff must prove that (1) defendant owed him a legal duty; (2) defendant breached that duty; (3) he suffered injury as a result of that breach; and (4) the injury caused damage. Kayfetz v. A.M. Best Roofing, 832 So. 2d 784, 786 (Fla. 3<sup>rd</sup> DCA 2002). "Trespass on the Case" is a proper remedy at law for the disturbance of an easement. Winselman v. Reynolds, 690 So. 2d 1325, 1327 (3<sup>rd</sup> DCA 1997). Where injury is indirect or a secondary consequence of the defendant's act, the proper cause of action is for "Trespass on the Case". Id. Thus, "Trespass on the Case" is an action to recover damages caused by a tort where the injury was not immediate but consequential. Id.

In actions where damages are claimed by the diversion of surface waters, "the almost universal rule, as gathered from the decisions, is that no person has the right to gather surface waters that would naturally flow in one direction by drainage, ditches, dams, or otherwise, and divert them from their natural course and cast them upon the lands of the lower owner to his injury." Westland Skating Center, Inc. v. Gus Machado Buick, 542 So. 2d 959, 961-962 (Fla. 1989). Florida has adopted the reasonable use rule to settle controversies when any party improves his land, thereby causing surface waters to damage his neighbor's property. Id. The reasonable use rule centers on whether the defendant's conduct was reasonable in causing surface waters to damage another's property, in view of all the circumstances. Id. at 963. The essence of the reasonable use rule is that the natural or original surface flow of water should remain unobstructed. Heritage 5, LLC v. Estrada, 64 So. 3d. 1292, 1293 (Fla. 4<sup>th</sup> DCA 2011). When one changes the surface flow from its original state then that is unreasonable and liability attaches because the reasonable use rule is violated. Id. (finding that liability had attached because the reasonable use rule was violated when the landowner changed the original flow of the surface water from the south to the northwest causing damages to the plaintiffs' property) .

### CONCLUSION

In applying the factual findings to the law, the Court finds for the Plaintiff. The Plaintiff has proven that the Defendant was liable under either a negligent construction theory and/or "Trespass on the Case." In particular, the Defendant in constructing the roadway violated the

reasonable use rule as articulated in Westland Skating Center, Inc. v. Gus Machado Buick by changing the flow of water as articulated in Heritage 5, LLC v. Estrada. The testimony showed that prior to the construction of the roadway, surface water flowed from the top of the hill down towards the homes on the river, with minimal water flow onto the Plaintiffs' property. After the construction, the surface water flow was changed to flow towards the sides of the road due to the crowning of the roadway and the increased height. This caused damages to the Plaintiffs' property. The appropriate remedy is to provide damages in order to fix the roadway and drainage issues. This would alleviate the need for any fencing as requested or a new septic tank as agreed by Plaintiff's counsel. The estimate stipulated into evidence as Plaintiff's Exhibit #4 provided an amount of \$7,500 to repair the roadway. The Court enquired of the Defendant if he had an alternative amount to fix the roadway and he stated \$500.00. The Court finds based on the limited evidence provided by both parties that the \$7,500.00 amount is the appropriate amount of damages.

**WHEREFORE**, based on the foregoing, it is hereby

**ORDERED AND ADJUDGED** that the Plaintiffs, Kevin and Elizabeth Smith, shall have and recover from the Defendant, Duane Brown Fill Dirt, Inc., principal damages of \$7,500.00 along with costs in the amount of \$350.00 for a total of \$7,850.00 that shall accrue interest per section 55.03 Florida Statutes, currently at 5.35%, until paid in full.

**ALL FOR WHICH LET EXECUTION ISSUE FORTHWITH**

**DONE AND ORDERED** in Palatka, Putnam County, Florida this 14<sup>th</sup> day of December, 2017.

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**JOE BOATWRIGHT**  
**COUNTY COURT JUDGE**

Copies furnished to:  
Timothy Keyser, Esq.  
Adam Rowe, Esq.