

APPLICATION FOR  
THE FIFTH DISTRICT COURT OF APPEAL



HEATHER L. HIGBEE

**APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT COURT**

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

**DATE:** August 22, 2019 Florida Bar No.: 0886173

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

1. Name Heather L. Higbee E-mail: ctjuhh1@ocnjcc.org

Date Admitted to Practice in Florida: May 1991

Date Admitted to Practice in other States: N/A

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

Circuit Court Judge, Ninth Judicial Circuit

3. Business address: 425 North Orange Avenue Suite 2015

City Orlando County Orange State FL ZIP 32801

Telephone (407) 836-0598 FAX (407) 835-5212

4. Residential address: [REDACTED]

City [REDACTED] County [REDACTED] State [REDACTED] ZIP [REDACTED]

Since October 2014 Telephone [REDACTED]

5. Place of birth: Wakefield, Rhode Island

Date of birth: [REDACTED] Age: [REDACTED]

6a. Length of residence in State of Florida: [REDACTED] years

6b. Are you a registered voter?  Yes  No

If so, in what county are you registered? Orange

7. Marital status: [REDACTED]

If married: Spouse's name [REDACTED]

Date of marriage [REDACTED]

Spouse's occupation [REDACTED]

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

[REDACTED]

8. Children

Name(s)

Age(s)

Occupation(s)

Residential address(es)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. Military Service (including Reserves)

Service

Branch

Highest Rank

Dates

N/A.

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

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

Service

Branch

Highest Rank

Dates

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

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

**HEALTH:**

11b.



12a.

12b.

13.

**EDUCATION:**

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

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

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

Duke University:

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

**NON-LEGAL EMPLOYMENT:**

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
N/A.			

**PROFESSIONAL ADMISSIONS:**

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

Florida Bar, Date of Admission May 1991 to present

United States Middle District of Florida, August 1997-2007 (did not renew membership after taking the bench)

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Assistant State Attorney	8 <sup>th</sup> Judicial Circuit	P.O. Box 600, Gainesville, FL 32602	1991-1996
Asst. Statewide Prosecutor	The Office of State-wide Prosecution	135 W. Central Ave., Orlando, FL	1996-1997
Attorney/President	Heather L. Higbee PA	56 Park Lake Street, Orlando, FL 32803	1997-1998 and again from 1999- 2007

Attorney/VP	Melander&Higbee PA	56 Park Lake St., Orlando, FL 32803	1998-1999
Attorney/Associate	Phillip Tatich PA	341 North Maitland Ave., Suite 240, Maitland, FL 32751	1999
Orange County Judge	Ninth Judicial Circuit	425 N. Orange Ave., Orlando, FL 32801	2007-2011
Circuit Judge	Ninth Judicial Circuit	425 N. Orange Ave., Orlando, FL 32801	2011-present

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

I am ca Circuit Judge in the Ninth Judicial Circuit. I am assigned to a domestic relations division, which was a large part of my practice from 1999 through 2007. Last year, however, I was assigned to a circuit civil division where I presided over a wide variety of civil causes of actions, including but not limited to, medical malpractice, automobile negligence, complex business court cases, foreclosure actions, construction, real property, and collection matters. I have served in a variety of other divisions subsequent to my appointments to both the circuit and county court benches, which will be detailed later in this application.

Prior to my appointment to the county court bench, I owned and operated my own law firm, Heather L. Higbee, P.A. When I first opened the practice, I represented individuals charged with criminal offenses from misdemeanors to capital felonies. As my practice grew, I took on domestic relations as well as both commercial and transactional real estate matters. I carried an average caseload of fifty litigation files, and many more simplified transactional matters. At the time of my first appointment, I was handling everything from complex financial dissolution and paternity matters to numerous uncontested and collaborative dissolutions. I started a general practice from scratch and over a twelve year period (with a short break in 1999) it grew into a boutique family law firm.

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

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

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

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

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

No

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

No

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

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

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



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

27b. For your last 6 cases, which were settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases).

1. Hershey v. Valent: Case No.: 2007-DR-14882-O (Orange County): opposing counsel Michael Morris, Esq. (407-316-7076), settled at mediation with Sam Weiss, Esq. (407-843-3990)
2. Withers v. Withers: Case No.: 2006-DR-15168-O (Orange County): opposing counsel Michael Walsh, Esq. (407-896-9431), settled at mediation with Sam Weiss, Esq. (407-843-3990)
3. Woodward v. Woodward: Case No.: 2003-DR-11908-O (Orange County): opposing counsel Amy Romaine, Esq. (321-574-1095), settled at mediation with Brenda Prewitt, Mediator (407-836-2004)
4. Young v. Young: Case No.: 2003-DR-3950 (Seminole County): opposing counsel Arlys Buschner, Esq. (407-823-8888), settled at mediation with Linda Schoonover, (no longer listed on the Florida Bar website)
5. Mack v. Mack: Case No.: 2007-DR-1533-O (Orange County): opposing counsel Victor Mead, Esq. (407-645-5352), went to mediation with Brenda Prewitt, Mediator (407-836-2004) however it settled later on the eve of trial.
6. Codron v. Codron: Case No.: 2007-DR-453 (Seminole County): opposing counsel Jennifer Frank, Esq. (407-629-2208), settled at mediation with Nancy Webber, Esq. (407-896-0491)

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

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

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

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

As an Assistant State Attorney, between 1991 and 1997, I appeared in Court almost every day. During this time I prosecuted cases in county, traffic and circuit courts. These cases ranged from second degree misdemeanors to homicides. By managing hundreds of cases at a time and trying jury and non-jury trials monthly, I gained invaluable courtroom experience. Additionally, during the last five years on the bench I have been in court almost every day.

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

N/A

30. List and describe the six most significant cases which you personally litigated giving case style, number and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant. Give the name of the court and judge, the date tried and names of other attorneys involved.

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

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

Attached is a form order that I created, now currently used by many of the civil judges as an "Order Preliminary to Attorneys' Fees". I authored this Order in its totality. Attached also is "Order Granting Defendant's, Walt Disney Parks and Resorts U.S., Inc., Motion for Summary Judgment" in 2015-CA-010434-O which I authored in totality. Finally, I have attached the "Order Granting in Part and Denying in Part Defendant/Counterclaimant, John E.'s Motion for Reconsideration" in case 2011-DR-111636. This Judgment was authored by me with help from my staff attorney. I authored all of the analysis, a majority of the history, organized all of the components and authored the ruling.

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

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

I was appointed in October 2007 by Governor Charlie Crist to serve as an Orange County Judge in Group Seven beginning November 13, 2007. In April 2010, I qualified and was elected without opposition to retain that seat. In October 2011, I was appointed by Governor Rick Scott to serve as a Circuit Court Judge in Group Sixteen for a term

beginning October 25, 2011. In May 2014, I qualified and was elected without opposition to retain that seat and still currently serve in this capacity.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
None		

Types of issues heard:

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

No.

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

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

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

Mayanne Downs, Esq., GrayRobinson PA, 301 E. Pine St. Ste 1400, Orlando, FL 32801  
(407-244-5647)

Michael J. Furbush, Esq., Dean Mead, 420 S. Orange Ave. Suite 700, Orlando, FL  
32801 (407-841-1200)

Michael Ferrin, Esq., Anderson & Ferrin, Attorneys at Law, P.A. 1115 Livingston St.  
Orlando, FL 32803-5717 (407-412-7041)

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

Stephen H. Price, Esq., Cramer, Price & de Armas, PA, 1411 Edgewater Drive, Suite  
200 Orlando, FL 32804 (407-843-3300)

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

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

From January 2009 to December 2009: Ninth Judicial Circuit Specialty Criminal Jail Division: Statistics for this division are more difficult to establish, however I estimate that approximately 20,000 people appeared before me that year. My role was to preside over first appearances, in-jail arraignments, and domestic

violence preliminary hearings. My initial appearance dockets ranged from 50 to 150 individuals per day. For each individual who appeared before me I addressed their charges, determined probable cause, established a bond when appropriate, set conditions of release, and accepted pleas on the pleable offenses. I also addressed immigration status, and collection court issues, conducted bond hearings and in-jail arraignments, held domestic violence hearings, managed a mental health docket, and addressed extradition matters.

From January 2010 to October 2011: Ninth Judicial Circuit County Civil Division 72: This docket covered a variety of county court and small claims matters. My caseload included credit card actions, landlord tenant suits, post judgment actions, foreclosures, contract disputes, and other matters where the claim was \$15,000.00 or less. According to clerk's office statistics, I carried a docket of approximately 5,000 cases, tried approximately 100 non-jury trials, two jury trials, and disposed of more than 3600 cases in those two years, not including post-judgment matters.

From October 2011 to December 2011: Ninth Judicial Circuit Court Specialty Domestic Violence Division: I do not have specific statistics for this division as I was only in the division for a short period of time. This division operated on a three week rotation. During the first week, I was the signing judge for all individuals who applied for a domestic violence injunction. During the second week, I conducted hearings on the temporary injunctions that I previously granted. During the third week, I conducted other types of hearings addressing domestic relations issues stemming from those domestic violence matters. Based on the statistics I have retrieved, there were approximately 200 new filings per month.

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

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

From January 2015 to December 2015: Ninth Judicial Circuit Court Criminal Specialty Violation of Probation Division 23: This division was a specialty criminal division at the Orange County Correctional Facility on John Young Parkway. Until May

2015, due to a shortage of judges as a result of a vacancy, I managed all of the violation of probation cases for Orange County and carried a docket of approximately 1800 cases. I conducted arraignment proceedings, technical and substantive hearings, bond hearings, pleas, sentencings, and addressed other administrative matters such as the execution of warrants and notices to appear. Offenses ranged from third degree felonies to capital offenses and violations ranged from small technical matters to new felony offenses. In May 2015, the second division was staffed, and in December 2015 the divisions were both dismantled and the criminal divisions were restructured.

From January 2016 to December 2017: Ninth Judicial Circuit Criminal Division 14: This general circuit criminal division started with approximately 700 cases in January 2016. I closed between 190 and 240 cases each month, and additionally focused on a backlog of old violation of probation warrants that remained unserved. By the end of the year with some case management, and work with the Clerk of Court to address the closing of old cases that still showed pending, the final docket numbers were closer to 400. I did not try any non-jury trials this year, but according to my records I tried twenty three jury trials to verdict, including many first degree and capital cases.

From January 2017 to December 2018: Ninth Judicial Circuit Civil Division 35: I presided over a circuit civil division. During the first year, my caseload consisted of medical malpractice, tort, automobile negligence, contract, real property, and collection actions. After January 2018, complex business court cases were added to the division as a result of the closing of the business court divisions. I presided over motion hearings, case managements, discovery disputes and other assorted hearings, and also addressed other areas of law such as commercial and contract disputes between businesses, complex construction litigation, receiverships, and other business related disputes. I tried thirty-three jury trials in twenty-four months, of which fourteen were a week or more in duration. I also tried fifteen non-jury trials that lasted a day or more in duration. These numbers do not include the significant number of short non-jury trials in other areas, such as residential foreclosure actions.

From January 2019 through the present: Ninth Judicial Circuit Civil Division 38A (Associate Administrative Judge 2019): This year I am back in a general domestic relations division. My caseload is approximately 2600 cases. I resolve approximately 200-250 cases per month, along with some secondary administrative responsibilities. These cases include but are not limited to adoptions, paternity, parental rights, child support, child custody, dissolution actions, termination of parental rights, and enforcement actions. As one additional responsibility, I have been appointed by the Chief Judge as the Hague Convention Judge for our Circuit. This means that I will handle any domestic relations cases for our circuit that involve Hague Convention issues.

In September 2015, I had the honor of serving as an Associate Judge for the Fifth District Court of Appeal. I was assigned six cases, however three of them withdrew their request for Oral Argument at the time I served. Those three cases are included in the citations below. I will be serving again on September 10, 2019 and I am looking forward to it.

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

- Rivera v. State, No. 5D17-1397, 2019 WL 2552628 (Fla. 5th DCA Jun. 21, 2019)
- Graulau Maldonado v. Orange Cty. Pub. Library Sys., 273 So. 3d 278 (Fla.5th DCA 2019)
- Otero v. Arcia, 264 So. 3d 1140 (Fla. 5th DCA 2019)
- Chaudhry v. Pederson, No. 5D18-709, 2019 WL 488861 (Fla. 5th DCA Feb. 8, 2019)
- Nemours Found. v. Arroyo, 262 So. 3d 208 (Fla. 5th DCA 2018)
- Firstserv. Residential Fla., Inc. v. Rodriguez, 261 So. 3d 674 (Fla. 5th DCA 2018)
- Nadeau v. Walt Disney Parks & Resorts US, Inc., 258 So. 3d 457 (Table) (Fla. 5th DCA 2018)
- Santiago v. U.S. Bank Nat'l Ass'n, 257 So. 3d 1145 (Fla. 5th DCA 2018)
- Foley v. Azam, 257 So. 3d 1134 (Fla. 5th DCA 2018)
- Evins v. State, 254 So. 3d 968 (Fla. 5th DCA 2018)
- Brown v. State, 254 So. 3d 973 (Fla. 5th DCA 2018)
- Vitaly v. Wells Fargo Bank, N.A., 189 So. 3d 935 (Fla. 5th DCA 2018)
- Young v. People's Tr. Ins. Co., 252 So. 3d 249 (Fla. 5th DCA 2018)
- Wilson v. State, 251 So. 3d 904 (Fla. 5th DCA 2018)
- Blade of Orlando, LLC, v. Delsanter, 249 So. 3d 797 (Fla. 5<sup>th</sup> DCA 2018)
- Pamphile v. State, 229 So. 3d 1270 (Fla. 5th DCA 2017)
- State v. Benjamin, 229 So. 3d 442 (Fla. 5th DCA 2017)
- Lazard v. State, 229 So. 3d 439 (Fla. 5th DCA 2017)
- Morency v. State, 223 So. 3d 439 (Fla. 5th DCA 2017)
- Ellis v. State, 221 So. 3d 1287 (Fla. 5th DCA 2017)
- Hogan v. State, 219 So.3d 1009 (Fla. 5th DCA 2017)
- State v. Vance, 218 So.3d 499 (Fla. 5th DCA 2017)
- Gray v. State, 220 So. 3d 464 (Fla. 5th DCA 2017)

Hogan v. State, 209 So. 3d 653 (Fla. 5th DCA 2017)  
Peng v. State, 202 So. 3d 459 (Fla. 5th DCA 2016)  
Elvins v. State, 201 So. 3d 212 (Fla. 5th DCA 2016)  
Owens v. State, 199 So. 3d 930 (Fla. 5th DCA 2016)  
State v. Browne, 187 So. 3d 377 (Fla. 5th DCA 2016)  
Harris v. Harris, 162 So. 3d 1108 (Fla. 5th DCA 2015)  
Merkulova v. Elbouatmani, 150 So. 3d 1271 (Fla. 5th DCA 2014)  
Hedstrom v. Hedstrom, 123 So. 3d 150 (Fla. 5th DCA 2013)  
Kelly v. Hall, 123 So. 3d 147 (Fla. 5th DCA 2013)  
Robinson v. Dunbar, 102 So. 3d 747 (Fla. 5th DCA 2012)  
Strawcutter v. Strawcutter, 101 So. 3d 417 (Fla. 5th DCA 2012)  
State v. Atkins, 16 Fla. L. Weekly Supp. 251a  
Hurley v. Odum, 18 Fla. L. Weekly Supp. 697b  
PDQ Coolidge Formad LLC v. Monroe, 18 Fla. L. Weekly Supp. 689b  
Duncan v. Washington, 18 Fla. L. Weekly Supp. 608b  
River v. Hodge, 18 Fla. L. Weekly Supp. 607e  
Rodrigues v. Bello, 18 Fla. L. Weekly Supp. 595b  
Advanced 3-D Diagnostics v. Liberty Mut. Ins. Co., 18 Fla. L. Weekly Supp. 552a  
Awad v. Dreggers, 18 Fla. L. Weekly Supp. 296b  
Emergency Physicians of Cnt. Fla. LLC v. State Farm Mut. Ins. Co., 18 Fla. L. Weekly Supp. 204b  
Jean v. Moore, 18 Fla L. Weekly Supp. 115a  
Forrest v. Darden, 18 Fla. L. Weekly Supp. 83a  
V&T Inv. Partners LLC v. State Farm Fire & Cas. Co. 17 Fla. L. Weekly Supp. 1110a  
Preval v. Kitchen, 17 Fla. L. Weekly Supp. 1029b

- (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.

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

1. Ninth Judicial Circuit Case 2011 DR-11136 as consolidated with 2011-CA-010636: David C., Petitioner/Husband v. Kimberly C., Respondent/Wife In Re: K.M.C. David C., Plaintiff Counter Defendant and John E., Defendant/Counterclaimant: Judgment issued September 18, 2013.

This was a paternity action that was consolidated into a dissolution action and resolved by final summary judgment. The attorneys were Mayanne Downs, Esq. and Kimberly D. Healy, Esq. with GrayRobinson, PA for the Husband, John W. Foster, Sr., Esq., and Joe L. Fore, Jr., Esq. with Baker & Hostetler LLP for John E., and Caryn M. Green, Esq. with West, Green & Associates PL for the Wife.

In this matter a child was born of the marriage but was the biological child of a man outside the marriage. This was a hotly contested case where the biological father was attempting to unseat the legal father and assert his rights of parantage despite the child being born during the marriage. At the time, there was a conflict between two District Courts of Appeal as to whether a punitive father had standing in a Privette scenario. Dep't of Health & Rehabilitative Servs. v. Privette, 617 So.2d 305 (Fla. 1993); see also Art. V, S 3(b)(3), Fla. Const. While some aspects of this case have now been addressed in Simmons v. Perkins, 247 So. 3d 397 (Fla. 2018), I have attached this document because it is by far the longest judgment that I have ever written, and it also exemplifies my application of the facts in a complex case to the statute, case law, and the Florida Constitution.

2. DP12-631: In the Interest of E.C. and E.C.: (The names of the parties in this matter are sealed and not a matter of public record).

Following the entry of a Judgment of Involuntary Termination of Parental Rights by Judge Latimore in the above referenced case, I had the privilege of presiding over the childrens' subsequent adoption. I knew of the parties and their long journey to become parents, and was excited to be a part of the final chapter in their adoption story. Both children were born drug dependent, and both children had--and will always have--a myriad of special emotional and physical needs. The couple sought permanency almost immediately after the children were born, and embarked on a four year journey before finally becoming their legal parents. At the adoption hearing my large courtroom was completely full. Family, friends, and neighbors filled all the seats and it was standing room only. This case is significant to me because unlike the vast majority of cases that I have presided over, this one had a happy ending. These children who were previously neglected, addicted, abandoned and disregarded, will forever be a part of a loving family. This was an opportunity to see grace in action; and it's moments like these that I have cherished as a trial judge. The lawyer for the adoption was Wayne Starr, of Wayne Starr, P.A. and the date of the adoption was May 18, 2016.



3. 2014 CF 016745: State of Florida v. Elizabeth Garcia: Debra Barra Esq. and Ryan Williams Esq. for the State and Jonathan Rose, Esq. for the Defendant.

This case involved one charge of accessory after the fact to capital murder under Florida Statute 777.03(1). I presided over the trial in this case in March 2016. The jury found the Defendant guilty, and after a pre-sentence investigation I presided over the sentencing on June 15, 2016. At the trial, Defendant moved in limine to exclude alleged hearsay evidence, and at the conclusion of the State's case the Defense moved for a judgment of acquittal. This was an extremely serious case and hard fought. The facts in this case were troubling, violent, and detailed; the underlying case was high profile and covered by the media. The defense did everything they could to paint the Defendant in a sympathetic light and to divert attention from the statutory guidelines. Defendant had no prior record, and despite the heinous nature of the crime, her attorney argued that the Court should improvise and enter a departure sentence where one was not statutorily appropriate. There was no ambiguity in the statute or sentence that could be resolved in the Defendant's favor. I sentenced her to the guideline sentence. The significance of this case is that I set aside any extraneous pressures and distractions, focused on the legal matters before me, and did not let emotion or media coverage interfere with my decisions. In February 2018 all pending issues on appeal were affirmed.

4. 5D18-2470: Eric Santiago v. U.S. Bank Nat'l Ass.: This was a Petition for Writ of Prohibition filed by Attorney Christopher M. Sprysenski on behalf of his client. The Bank was represented by David Rosenbert of Robertson, Anschutz & Schneid, P.L.

After dismissal of their foreclosure action, Santiago petitioned the Fifth District Court of Appeal to issue a writ of prohibition to prevent a hearing on Respondent's motion for release of the original promissory note and mortgage. Defendant argued that the notice of voluntary dismissal filed by the bank divested the trial court of any further jurisdiction to consider the motion, and that if the bank desired the original documents, it must file a new and separate lawsuit for declaratory relief. Because the bank was not requesting that the trial court grant substantive relief, and as under the Florida Rule of Judicial Administration 2.430(f)-(h) the Court can release exhibits or other parts of the court records that are the property of the party who placed them there, the writ was denied. I held the hearing, and the note was returned. This is a good example of the difference between applying the law in a literal way that is illogical, and taking the plain meaning in context. The Defendant argued the literal idea that because the case was closed, the Court had no power to render an appropriate ministerial function.

5. Nadeau v. Walt Disney Parks and Resorts US, Inc. 5D17-2246: On October 30, 2018, I was affirmed in the above referenced case after awarding summary judgment to the Defendants. Matthew Posegay of Coker, Schickel, Sorenson & Posgay represented the Plaintiff and Joseph P. Menello of Wicker Smith O'Hara, McCoy & Ford PA represented the Defendant.

This case is an example of having the right set of facts and law to render a summary judgment in a tort action. The facts involved a woman who allegedly miscalculated her step as a result of two colors of paint on the curb, fell, and was

injured. I found that there was no dangerous condition despite the Plaintiff's claim that the reason she fell was an optical illusion of flatness created by the paint. I made a finding that some conditions were so open and obvious that as a matter of law they did not constitute a hidden dangerous condition. This case was appealed and per curiam affirmed. I list this case as an example of my ability to parse through facts to come to a clear conclusion and follow the law even when it might seem easier to allow a case to progress to trial and not risk being overturned. It is important that when the law is clear you find it and follow it.

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

No.

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

No.

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

N/A.

#### **BUSINESS INVOLVEMENT:**

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

My husband and I created a small limited liability company called Stock Options Media in 2016.. When we travel, we take photographic images, process them, and sell them through stock photography agencies such as Getty and Adobe. Additionally, we photograph community events, and do community service projects. This is a hobby business we enjoy together in our spare time. I do not intend to make any changes to this if appointed.

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

I was an adjunct professor for the Legal Studies Department at the University of Central Florida from 2009 to 2014, a part time adjunct instructor for Webster University from 1993-1995, and a substitute adjunct professor for Santa Fe Community College during the early 1990's. Other than teaching, my only other business involvement is the family photography business listed above.

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

the nature of the business enterprise, institution, organization or association involved and the dates such compensation was paid and the amounts.

During the time I was an adjunct professor at the University of Central Florida, I received [REDACTED] per semester. My last semester was in the fall of 2014.

Our hobby business is still new, and despite consistent sales, has not made a profit since its inception in 2016

**POSSIBLE BIAS OR PREJUDICE:**

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

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

**MISCELLANEOUS:**

- 36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.
- No.
- 37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?
- No.
- 37b. Have you ever owned more than 25% of the issued and outstanding shares or acted as an officer or director of any corporation by which or against which a petition in bankruptcy has been filed? If so, give name of corporation, your relationship to it and date and caption of petition.
- No.
38. Have you ever been a party to a lawsuit either as a plaintiff or as a defendant? If so, please supply the jurisdiction/county in which the lawsuit was filed, style, case number, nature of the lawsuit, whether you were Plaintiff or Defendant and its disposition.
- I have been the petitioner in two dissolution of marriage actions listed above.
- In 2005, I changed my married name back to my maiden name creating Orange County Court case number 1997-DR-5128-O.
- In 2005, I petitioned for and was awarded guardianship of an unrelated minor child in Orange County case number 2005-CP-1990-O. This child reached maturity in 2007 and the case was closed.
- On January 10, 2018, I was sued along with the State of Florida, a general magistrate, and several other judges by a plaintiff named "Montego El Xaymalali Bey" in Federal Court in case 6:17-cv-2144-Orl-18DCA, which was dismissed by Judge G. Kendall Sharp with prejudice on February 14, 2018.
39. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group. If so, give the particulars.
- No.
40. To your knowledge within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a formal complaint or formal accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? If so, please state the date(s) of such formal complaint or formal accusation(s), the specific formal complaint or formal accusation(s) made, and the background and resolution of such action(s). (Any complaint filed with JQC, refer to 32d(v)).
- No.
41. Are you currently the subject of an investigation which could result in civil, administrative or criminal action against you? If yes, please state the nature of the investigation, the agency conducting the investigation and the expected completion date of the investigation.

No.

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

No.

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

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

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

Twice, both times  
were small  
miscalculations, and  
both times taxes  
were amended and  
paid \_\_\_\_\_

Yes  No  If yes, please explain what and why.

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

No.

#### HONORS AND PUBLICATIONS:

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

No.

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

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

1997: Recognition Award for services performed as an Assistant Statewide Prosecutor

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

2010: Orange County Bench and Bar: Lecture on "Domestic Relations"

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

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

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

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

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

2017 Judicial Panelist CFTLA: Raising the Bar Seminar

2019 July Fourth speaker, Saint Margaret Mary Church: Topic "Let Freedom Ring"

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

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

**PROFESSIONAL AND OTHER ACTIVITIES:**

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

Florida Bar Association (1991-Present)

Eighth Judicial Circuit Bar Association (1994-1996)

Orange County Bar Association (1997-present)

Family Law Committee (1998-2011)

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

Judicial Relations Committee (2017-present)

Orange County Chamber of Commerce (1997-1998)

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

American Bar Association (2002-2009)

American Academy of Trial Lawyers (2003-2009)

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

Winter Park Chamber of Commerce (2006-2007)

Hispanic Bar Association of Central Florida (2007-present)

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

Orange County Family Law Inns of Court (2012-2014, 2019)

Executive Committee (2012-2014)

Conference of County Court Judges of Florida (2007-2011)

Chair: Criminal Rules Committee (2009-2010)

Vice Chair: Small Claims Rules Committee (2011)

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

- 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.

Saint Margaret Mary Catholic Church: (1978-present)

Divorce Care Facilitator (2012)

Guest Speaker Catholic Divorce Fellowship (2012-2014)

Liturgy of the Word Lector (2017-present)

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

City of Maitland Youth Soccer League (1998-2005)

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

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

Orlando Science Center (2004-2011)

Tiger Bay Club (2006-2011)

League of Women Voters (2006-2012)

Downtown Orlando Rotary Club (2006-2015)

Rotary Youth Services Committee Chair (2007-2012)

Rotary Youth Leadership Award Committee Member (2007-2015)

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

Paul Harris Fellow 2014

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

Parent Teacher Association Auburn University (2008-2012)

University Club of Orlando: (2008-2012)

University Club Advisory Board (2010-2011)

University Club Charitable Works Committee (2010-2011)

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

Executive Committee (2017-present)

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

Citrus Club of Orlando: (2013-2015)

Daughters of the American Revolution: (2015-present)

Central Florida Camera Club: (2015-present)

The Federalist Society (2018-present)

48c. List your hobbies or other vocational interests.

I enjoy photography, art, and travel

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

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

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

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

#### **SUPPLEMENTAL INFORMATION:**

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

Since becoming a judge, I have attended the county, circuit, and advanced judicial studies conferences. These conferences covered criminal, civil, and domestic relations, docket management, trial practice, evidence, death penalty, ethics and a myriad of other topics. In 2015 I also traveled to Washington, D.C. for special training in alternative judicial programs. This year I also received special training on the Hague Convention.

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

1992-1995 Instructor at Webster Educational Center for their Paralegal Program: Taught courses in family law, research and writing.

1994-1996 State of Florida Prosecutor's School: Driving under the influence lecture leader and trial advocacy judge where I taught and critiqued young prosecutors and presided over mock trials.

2006-2013 Moot Court Competition Judge, Southeastern Championship; Presided over several rounds of this moot court competition.

2008-2014 University of Central Florida Adjunct Professor: I taught a senior level "capstone class" for the Legal Studies Department. This was a seminar that covered a variety of legal topics, was designed to summarize the legal studies curriculum, and prepare students for law school or other careers in law. Topics included criminal, civil, family law, big law, Myers-Briggs type personality analysis, and had a heavy writing component to assist in student writing proficiency.



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

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

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

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

2019: Co presenter with Chief Judge Don Myers "Inside the Court"

2019: Instructor Orange County Bar Association on Domestic Relations Issues including procedural and trial presentations in domestic relations cases

2019: Lecturer Orange County Bar Association, "Meet the Judge"

2019: Participant in Judicial Panel, Mediator Training

2019: Participant in Appellate Panel Discussion, Orange County Bar Association

2019: Speaker, Brown Bag Lunch Series, paternity issues in marital and family law

2019; Guest Lecturer, University of Central Florida, domestic relations issues

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

As a Circuit Judge, I sit on multiple panels and preside over county court appeals. I have found this to be intellectually rewarding, both in the opportunity to provide judicial review, but also in engaging in collegial discourse and debate. Being a trial judge is largely a solitary experience. I enjoy this opportunity to be part of a group decision, and to write appellate opinions. I believe that working with others in my current appellate capacity is great experience for the Fifth District Court of Appeal.

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

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

I believe that all of the areas in which I have practiced as an attorney, and all of the areas in which I have served as a judge, have brought me to the place I am now; where I have the maturity, experience, and legal knowledge to apply for the Fifth District Court of Appeal. As judges we must balance the need to rule expediently with the litigant's right to be heard. I believe my record as both a county and circuit judge reflects prompt decision making, respect for the litigants, and a clear application of the rule of law.

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

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

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

I submitted my application to the Judicial Nominating Commission for the Ninth Judicial Circuit on or about January 26, 2006, January 3, 2007, July 6, 2007, September 1, 2010, and December 21, 2018. This is a revised application.

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

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

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

#### REFERENCES:

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

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**CERTIFICATE**

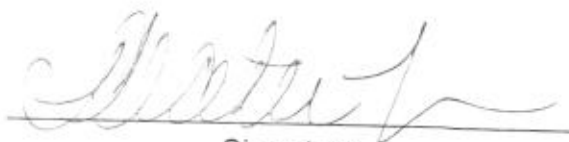
I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any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

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

Dated this 22 day of August, 2019.

Heather L. Higbee

Printed Name



Signature

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

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SAMPLES ARE NOT ATTACHED