

APPLICATION FOR NOMINATION TO THE 5th DCA COURT

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

DATE: 8/19/2019 Florida Bar No.: 0155756

GENERAL: Social Security No.: [REDACTED]

1. Name Donna Michelle Keim E-mail: donnakeim44@gmail.com

Date Admitted to Practice in Florida: 10/19/1998

Date Admitted to Practice in other States: NA

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

Circuit Judge, Eighth Judicial Circuit, Florida

3. Business address: 201 East University Avenue #304

City Gainesville County Alachua State FL ZIP 32601

Telephone (352) 374-3646 FAX () -

4. Residential address: [REDACTED]

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

Since Dec. 2004 Telephone (352) 362-3787

5. Place of birth: Shreveport, La

Date of birth: 11/18/1970 Age: 47

6a. Length of residence in State of Florida: 44 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Alachua

7. Marital status: Married

If married: Spouse's name Robert Keim

Date of marriage 07/04/1992

Spouse's occupation Firefighter

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>
Michael Keim	26	Firefighter	[REDACTED]
Christopher Keim	26	Firefighter	[REDACTED]
Rachel Keim	10	Student	[REDACTED]
Benjamin Keim	8	Student	[REDACTED]

9. Military Service (including Reserves)

Service *Branch* *Highest Rank* *Dates*

NA

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>
Miami Southridge		1985-1988	HS Diploma
Santa Fe College	Top 5%	1993-1994	AA
University of Florida	Top 10%	1994-1995	BS Bus. Adm.
UF Levin College of Law	Top 33%	1995-1998	JD

18b. List and describe academic scholarships earned, honor societies or other awards. Graduated with honors from Santa Fe College and University of Florida; earned an academic scholarship from the University of Florida in 1994; and earned the Book Award from the Virgil Hawkins Civil Clinic in law school.

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>
NA			

PROFESSIONAL ADMISSIONS:

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

<i>Court or Administrative Body</i>	<i>Date of Admission</i>
Florida State Courts	Oct. 19, 1998
Northern District of Florida	2004
Middle District of Florida	2012
Southern District of Florida	2012

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>
Attorney	Fidelity National Ins.	Miami, FL	Oct. 1998- May 1999
Attorney	Siegfried, Rivera, Lerner, DeLatorre, & Sobel	201 Alahambra Cir., Coral Gables, FL 33134	May 1999- Nov. 1999
Attorney	Dell Graham	203 NE 1 st Gainesville, FL 32601	Nov. 1999- Sept. 2004
Attorney/Partner	Bice Cole Law Firm	PO Box 1860 Alachua, FL 32616	Sept. 2004- Apr. 2015

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 a Circuit Judge currently assigned to Division J, Circuit Civil since Jan. 2019. I was previously assigned to Division J, Circuit Civil, Probate and Guardianship, and Foreclosures from June 2017 until Jan. 2019 and to Family Law Division 4 from Apr. 2015 until June 2017. I practiced as a civil defense attorney representing insurance companies and their insureds in a variety of civil cases including personal injury, breach of contract, insurance coverage, wrongful death, premises liability, construction defects, and asbestos litigation from Oct. 1998 until Apr. 2015.

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	_____ 100
Federal Trial	_____	%	Criminal	_____
Federal Other	_____	%	Family	_____
State Appellate	_____ 2	%	Probate	_____
State Trial	_____ 97	%	Other	_____
State Administrative	_____ 1	%		
State Other	_____	%		
	_____	%		
TOTAL	_____ 100	%	TOTAL	_____ 100

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

Jury?	_____ 8	Non-jury?	_____ 75
Arbitration?	_____ 12	Administrative Bodies?	_____ 1

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).

James Barron v. Williams Thomas Funeral Home 01-05-CA-004794 Alachua Co.
Opposing Counsel: Thomas Carey (800) 927-0400

Jeffrey Tyler and Marcheale Tyler v. Henry Dennard and O'Steen Brothers, Inc. 01-08-CA-5014 K Alachua Co. Opposing Counsel: Kenneth Glaspey (352) 304-5454

David Russ v. Todd McGowan 01-09-CA-004806 K Alachua Co. Opposing Counsel:
David Russ (352) 225-3919

Department of Health v. Snehal Patel (Adm. Judge) 2005-58289 Opposing Counsel:
Lynne A. Quimby-Pennock (850) 245-4640 ext. 8154

Mirvelle Cox v. Laverne McClanahan 2003-CA-394 Bradford Co. Opposing Counsel:
Timothy Keyser (386) 684-4673

Charles D. Walker and Sandra A. Walker v. USAA Insurance Company (arbitration) 01-
2007-CA-4815K Alachua Co. Opposing Counsel: Martin Goldberg (352) 376-1200

- 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).

Wilhelmina Gibbs v. McClellan, 01 2013 CA 005130 Alachua County.

Opposing counsel: Jack Fine (352) 559-2318

Jean Tokarz v. Edward Brezina, 01 2013 CA 003852, Alachua County.

Opposing counsel: Maxwell Minch (352) 514-8667

Robert V. Taylor & Wendy L. Taylor v. Mary Whitty & Elmo Whitty, 01-2014-CA-000090,
Alachua County, Opposing Counsel: Ben Steinberg (352) 372-9999 & Kevin McNeil
(386) 719-4357

John Ealum v. Brian Cooke, 01 2012 CA 004732, Alachua County.

Opposing Counsel: Dan Vasquez (352) 559-2318

Lataya Veal v. George Deitchman, 01 2012 CA 004503, Alachua County.

Opposing Counsel: Leonard Ireland (352) 376-4694

Zachary Brown v. Ashley Blanchard and Dock Blanchard, 12-4965-CAG, Marion County.
Opposing Counsel: Craig Cannon (352) 369-0529

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

- 27d. During the last five years, how frequently have you appeared in Court?
5-10 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? 3% Defendants?
97%

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.

From 1998-1999, I appeared in court 3 times a week as house counsel for Fidelity
National Insurance Company. As a Circuit Judge, I preside over multiple hearings daily.

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.

Sole counsel.

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.

As a law student in the Virgil Hawkins Civil Clinic, during the Spring of 1998, I represented a young lady with a small child in a divorce case. I do not have a record of the case number or style. She had been represented by several prior attorneys through the Clinic and the case had been pending for over 18 months when I became involved. It was a difficult divorce as there was domestic violence and her husband was avoiding paying child support. I represented her at the dissolution hearing and obtained a substantial child support award based on the Husband's imputed income established by witness testimony about the Husband's income from construction work for which he was paid under the table. It was significant as I had previously planned on practicing transactional law, but, due to this trial experience, I decided to pursue a career as a trial attorney. It was also thrilling to win for my client, especially against a seasoned family law attorney.

Hernandez v. Fidelity National Insurance Co., Miami, FL., Nov. 1998. I defended a personal injury protection suit as in house counsel for Fidelity National Insurance Company. This was significant as it was my first jury trial. During the trial, after my cross examination of the Plaintiff's treating doctor, Plaintiff's attorney asked if we would settle for the amount of our last pre-suit offer. It was a victory as we settled for a small sum, but, a disappointment in that it did not go to the jury for a verdict. This case also reinforced for me that I was meant to be a trial attorney rather than a transactional attorney.

William Studer v. Raymond Ortega, Case # 01 2002 CA 003122, Alachua County, was a bodily injury case involving a significant lost wage claim by a self-employed gentleman. I prevailed on a pretrial motion to strike the lost earnings claim as overly speculative which substantially decreased the value of the claim and resulted in a minimal verdict and ultimately entry of fees and costs in favor of the Defendant. The ruling on the overly speculative lost earnings was significant as I have used it to prevail in subsequent cases involving similar claims. Judge RA Green presided over the trial and opposing counsel was Leonard Ireland.

James Barron, Katherine Tansey: Petra Lee, et- al. v. Williams Colonial Crematory and Williams-Thomas Funeral Home, Case # 01 2005 CA 4794, Alachua County. I was second chair to Marcia Davis in this case which involved a claim for damages due to alleged mishandling of a cremation. I argued a Motion for Directed Verdict after the close of Plaintiffs' case which was granted. This was a significant case as it involved a complicated factual scenario and a complex legal argument regarding improper stacking of inferences. Judge Toby Monaco presided and opposing counsel was Thomas W. Carey.

Jeffrey Tyler v. Henry Dennard and O'Steen Brothers, Case # 01-08-CA-5014-K, Alachua County. I prevailed at a hearing on a Motion to Dismiss for Fraud on the Court just weeks before the trial due to deposition testimony and evidence obtained that clearly conflicted with the Plaintiff's testimony. This was significant as the Plaintiff was seeking in excess of \$500,000 for damages for multiple cervical and lumbar surgeries allegedly due to a minor impact automobile accident. He did not recover, but, instead, I obtained a judgment for my clients for fees and costs against the Plaintiff as I was able to uncover extensive records of pre-existing medical conditions which he did not disclose at two lengthy depositions. This case taught me the importance of thoroughly conducting discovery and persevering to obtain records. It took me over eighteen months and several Motions to Compel to obtain the Social Security Disability records which were the key evidence which revealed the Plaintiff's fraud. Judge Victor Hulslander presided and Kenneth Glaspey was opposing counsel.

Department of Health, Board of Physical Therapy Practice v. Snehal Jawaharlai Patel, P.T., Case # 07-1057PL. Reported on Westlaw # 2007 WL 2253614 (Fla. Div- Admin. Hrgs.) I represented a physical therapist charged by administrative complaint with alleged violations of Florida Administrative Code Rule 64B17-6.001. After an administrative hearing, the complaint was dismissed as it was held that my client provided the appropriate standard of care. This was a significant case as it was my first administrative law case, it involved complex medical issues, and my client prevailed. My client's career would have been significantly impacted by an adverse outcome. In addition, my client had little faith in the judicial system at the onset of the case and his opinion changed because of his experience. He changed careers and entered the legal field because of his experience. The presiding judge was Charles Adams, Administrative Law Judge, and opposing counsel was Lynne A. Quinby-Pennock.

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 an order that I personally drafted.

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.

Circuit Court Judge, 8th Judicial Circuit, since Apr. 2015.

- 32b. List any prior quasi-judicial service:

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

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.

I applied for Alachua County Court Judicial office in Aug. 2014. I applied to the 5th DCA in Feb. 2017 and May 2018. I applied to the 1st DCA in July 2019.

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.

Daniel Glassman, Esq.
804 NW 16th Ave. Ste B
Gainesville, Florida 32601
(352) 505-4515
dan@putclientsfirst.com

Rod Smith, Esq.
Avera & Smith, P.A.
2814SW 13th ST
Gainesville, Florida 32608
(352) 372-9999
rodsmith@avera.com

Leonard Ireland.
Clayton-Johnston, P.A.
18 NW 33rd Court
Gainesville, Florida 32607
(352) 376-3694
Llreland@Clayton-Johnston.com

S. Scott Walker, Esq.
Folds & Walker, LLC
527 E. University Avenue
Gainesville, Florida 32601
(352) 372-1282
scott@foldsandwalker.com

John Jopling, Esq.
Dell Graham
203 NE 1st St.

Gainesville, Florida 32601
John.Jopling@dellgraham.com
Robert E. Schraeder, III
Boyd & Jenerette, PA
201 N Hogan St Ste 400
Jacksonville, FL 32202
(904) 493-3762
bschrader@boydjen.com

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

I have been assigned to Division J, Circuit Civil, since June 2017. This assignment includes 50% of the circuit civil cases filed in Alachua County (currently 485 cases). In addition to the above assignment, from June 2017 - Jan. 2019, I handled 100 % of the Probate and Guardianship cases (1550 cases), and 100% of the Foreclosure cases (328 cases) filed in Alachua County. I was previously assigned to Family Law Division 4 from Apr. 2015 until June 2017 where I was assigned 30% of all family law cases in Alachua County, 100% of the pro-se family law cases, and Division N, DOR child support enforcement. As a Circuit Civil Judge, I handle a large variety of civil cases ranging from simple automobile accidents and premises liability cases to complex construction litigation, wrongful death, and medical malpractice cases. I have presided over more than 18 jury trials, 100 bench trials, and 100s of substantive hearings.

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

Hall v. Freedom Mortgage, 242 So.3d 531 (Fla. 1st DCA 2018). Costello v. City of Archer, 263 So.3d 290 (Fla. 1st DCA 2019). Amalgamated Transit Union, Local 1579 v. City of Gainesville, 264 So.3d 375 (Fla. 1st DCA 2019). Katherine Herman, Personal Representative for the Estate of Steve Allen Herman, a/k/a Steve A. Herman v. Nancy Herman BENNETT, 2019 WL 3296631 (Fla. 1st DCA 2019).

- (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.

1-2011-DR-2234 Joshua Gibson v. MaryAnne Phillips. Trial Aug. 26, 2015. This was a Petition for Modification of Parenting Plan and Time Sharing in a very high conflict, pro-se family law case. Multiple Motions for Contempt were filed on behalf of the Former Husband and Former Wife over a period of several years. The Former Wife was obviously alienating the two teenage children and the relationship between the Former Husband and the two teenagers was almost destroyed when I became involved. After several lengthy review hearings over a period of months, I ordered various types of counseling in combinations

recommended by the three counselors. Ultimately, the case was resolved after the Former Wife, who had not been involved in counseling previously, participated in individual and family counseling. The family last came before me over one year ago on a minor matter and quickly reached a resolution. The Former Husband's relationship with his children and the Former Wife had improved. It was rewarding to see a high-conflict case resolve through repeated review hearings and trying alternative types of counseling. I now always consider counseling for the person potentially causing the alienation in these types of cases and I also set cases such as this for multiple review hearings before closing the case.

IN RE: K.L.B., 01-2015-DP-993. Attorney Adrienne Isenberg represented KLB. This was significant as it was my first judicial waiver case. There are so many variables in these cases combined with the fact that these are very emotional cases for the young Petitioners. I carefully considered all of the factors and evidence provided and decided that the Petitioner was not emotionally mature enough and had not proven the elements necessary to grant a judicial waiver. This was significant due to the intense time pressure to both schedule and decide the case. My ruling was affirmed on appeal.

IN re the TPR of NJM 01-2016DR1871. Trial on Oct. 5, 2016 and Nov. 16, 2016. Attorney Vera Page represented the Birth Father. Attorney Katy Bost represented the prospective adoptive parents. This Termination of Parental Rights (TPR) case involved significant procedural issues as the biological Father was appearing while incarcerated in Texas and there were many hurdles with arranging for his appearance. The case was significant due to the balancing of the procedural challenges with the best interest of the child in reaching a timely decision. This TPR case involved weighing many competing factors in deciding whether to terminate the Father's parental rights and what was in the best interest of the child. I terminated the parental rights of the Father. He appealed; however, the appeal was dismissed.

LC BRADLEY, and BEFAITHFUL COKER, and RODGER HADLEY, AND ZACCHEUS PAULK, and AUDRE WASHINGTON v JEFF ATWATER, CHIEF FINANCIAL OFFICER, KEN DETZNER, SECRETARY OF STATE, and STATE OF FLORIDA GOVERNOR RICK SCOTT, and COLUMBIA COUNTY CANVASSING BOARD, COLUMBIA COUNTY JUDGE TOM COLEMAN, COLUMBIA COUNTY, COUNTY COMMISSIONER RUSTY DEPRATTER, COLUMBIA COUNTY COMMISSIONER EVERETT PHILIPS (alternate) and COLUMBIA COUNTY SUPERVISOR OF ELECTION, ELIZABETH HORNE, DEPUTY SUPERVISOR OF ELECTION, MELINDA FRYMAN, and DEPUTY SUPERVISOR OF ELECTION, AUDREY SYKES, DEPUTY SUPERVISOR OF ELECTION, TOMI BROWN, COLUMBIA COUNTY ATTORNEY, JOEL FOREMAN (attorney to the Supervisor of Elections and attorney to the Columbia County Canvassing Board), and JAKE HILL, elected City Councilman for the City of Lake City, Precinct 12. 12-2016-CA-000348 Final Hearing Dec. 15, 2016. The Plaintiffs were pro-se litigants. Defense Counsel: Ashley Davis, Joel Foreman, David Andrew Fugett, Ronald A. Labasky, John Thomas La Via, Lydia J. Atkinson. This was a Complaint to contest an Aug. 2016 Election in Columbia County. This was the first case I have handled as a conflict Judge. It involved an area of law that was unfamiliar and required traveling to another circuit to preside over the matter. The case was resolved on a Motion to Dismiss.

TAMMY WHITEHEAD, as Personal Representative of the Estate of GERALD WHITEHEAD v. GILLIAM MARIE ELIZABETH VANSLUYTMAN, M.D, TIMOTHY HARRISON ELDER, M.D., and SOUTHEASTERN INTEGRATED MEDICAL, P.L. 01-2015-CA-003689. Jury Trial Oct. 2017. This case was significant as it was the first medical malpractice jury trial I conducted. The case involved multiple complex issues including the application of the Good Samaritan Act to medical care provided in an emergency and the Plaintiff was a well-known public official. The jury verdict was not appealed.

- (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.

NA

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.

NA

- 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.

No.

- 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.

I received a payment of \$1,000.00 per year as Treasurer of the James C. Adkins, Jr. Inn of Court from Jan. 2011- Jan. 2015.

POSSIBLE BIAS OR PREJUDICE:

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

I have recused myself from a case where a paralegal in a law firm representing one of the parties was a family member and in a case where one of the parties was the parent of my childrens' classmates with whom I had attended social events in the past. I offered to recuse myself in a case involving three firefighter Plaintiffs against a siren manufacturer due to the possible perception of bias as my husband is a firefighter. The parties did not wish to have me recused.

MISCELLANEOUS:

35a. Have you ever been convicted of a felony or a first degree misdemeanor?
Yes _____ No x 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 x 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 x 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. Case 01 1999 CA 003497K. Atlantic Mortgage v. Donna Keim and Robert Keim. I was a Defendant in a Lis Pendens action as I defaulted on a mortgage payment due to failure of my tenants to pay rent shortly after I graduated from law school in 1998. The case was dismissed when I made the payment.

Case 01 2002 CC 002613, PRA, III, LLC v. Donna and Robert Keim, a collection matter which was also the result of being late on payments due to the failure of the same tenants to pay their rent. However, the creditor was claiming the incorrect amount was due and I disputed the amount claimed. After several motions to dismiss and a motion for summary judgment, we agreed upon a settlement amount which I paid to the creditor.

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.

Rash: Valuation is Still Not Clear. Published in 1998 in the Florida Bar Bankruptcy Publication.

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

Book Award for the Virgil Hawkins Civil Clinic at Levin College of Law in Spring 1998.

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

I have spoken to Professor Steinberg's Appellate Advocacy Classes in Spring 2017 and Spring 2018 and Professor Schwait's trial practice class in Fall 2016 and Fall 2018 about legal practice with an emphasis on the importance of preparation and professionalism as well as the importance of developing a moral compass and work life balance. I have spoken as a panel member at the Eighth Judicial Circuit Professionalism Seminar each year from 2015-2019 discussing professionalism issues with members of the local bar.

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.

Eighth Judicial Circuit Bar Association member since 1999.

James C. Adkins, Jr. Inn of Court, Member since 1999; Treasurer 2002-2015; Vice President 2015-2016; President 2016-2017; Advisor to the President 2018-present.

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.

At various times, I have been a member of the Florida Defense Lawyers' Association, CGAWL, and the American Bar Association. I have not held any offices.

48c. List your hobbies or other vocational interests.

I enjoy gardening, craft projects, traveling, volleyball, tennis, hiking, the beach, church events, and cheering on my children at their various sports activities.

48d. Do you now or have you ever belonged to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, national origin or sex? If so, detail the name and nature of the

club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

No.

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

From 1999-2015, I volunteered to provide assistance to clients of Three Rivers Legal Services in matters regarding civil and insurance issues. I have also helped several churches with legal matters including real estate matters, fire code compliance, and drafting and interpreting governing documents. Since becoming a Judge, I have been a member of the Black on Black Task Force and have volunteered to speak at seminars at the Levin College of Law and the Professionalism Seminar.

SUPPLEMENTAL INFORMATION:

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

I have attended over 135 hours of judicial training in the past 4 years. The training has included a variety of family law and civil track sessions, including topics such as case management, evidence, discovery, voir dire, and fairness and diversity.

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?

I have participated in panel discussions at the Eight Judicial Circuit Bar Association Professionalism Seminar in 2016, 2017, and 2018. The topics addressed focused on dealing with difficult counsel, motion practice, discovery violations, and professionalism matters.

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

I have received extensive judicial training throughout the past 4 years in addition to presiding over thousands of family law cases and civil hearings during that time. As a civil defense attorney for sixteen years prior to becoming a circuit judge, I have been exposed to a variety of cases and clients which provides me with invaluable experience in dealing with a large variety of situations and personalities. My education in business administration provides me with analytical skills and problem solving skills which are helpful in complex business matters.

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

My sixteen years of civil litigation experience and four years of judicial experience make me uniquely qualified for the appellate court as I have relevant, practical experience in handling the issues the appellate court considers. In addition, I would bring a high level of dedication to ensuring that I provide sound, well-reasoned, timely, and fair legal opinions. My life experience as the mother of four children and an active member engaged in my community gives me a well-rounded perspective when addressing complex appellate matters.

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.

JNC for the 8th Judicial Circuit in Aug. 2014 and Nov. 2014. JNC for the 5th DCA in Feb. 2017 and May 2018. JNC for the 1st DCA in July 2019.

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

NA

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. Bob Roundtree, 8741 SW 46th Lane, Gainesville, FL 32608 (352) 318-2403

2. Judge Susanne Wilson Bullard, 201 E. University Ave. Gainesville, FL 32601 (352) 215-7413

3. Judge Robert Groeb, 201 E University Ave., Gainesville, FL 32601. (352) 745-6358

4. Charles Carter, 4739 NW 53rd Avenue, Ste. B, Gainesville, FL 32653. (352) 381-9991

5. Carl Schwait, 2221 NW 23rd St., Gainesville, FL 32605-3833 (352) 538-3221

6. Candice K. Brower, Office of Regional Counsel, 235 S. Main Street, Ste. 205 Gainesville, Florida 32601-6585, (352) 278-0570

7. Judge James Colaw, 220 S. Main St., Gainesville, FL 32601. (352) 548-3784

8. Theresa Murphy, 2000 Merchants Row Blvd, Apt. # 632, Tallahassee, FL 32311 (352) 494-6694; (850) 717-8213

9. Judge Browning, 355 S. Court St., Bronson, FL 32621. (386) 486-5224; (352) 486-5384

10. Phil Beverly, 408 W University Ave. Ste. 500, Gainesville, FL 32601. (352) 371-0858

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 19th day of August, 2019.

Donna Heim

Printed Name

Donna Heim

Signature

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

FINANCIAL HISTORY

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

Current year to date	93,734.69		
List Last 3 years	156,343.56	149,731.98	146,079.00

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current year to date	93,734.69		
List Last 3 years	156,353.4	149,731.98	146,079.00

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

Current year to date	0		
List Last 3 years	0	0	0

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

Current year to date	0		
List Last 3 years	0	0	0

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

PART A – NET WORTH

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

My net worth as of Dec. 31, 2018 was \$510,796.01.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$ 74,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
House - [REDACTED]	380,000.00
Florida Credit Union Savings Accounts	13,962.00
Florida Credit Union Checking Account	10,790.00
Campus USA Savings Account	35,645.92
Oppenheimer Funds Retirement	13,410.81
TransAmerica Life Insurance	8,621.50

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Navient (Student Loan) POB 9500 Wilkes Barre, Pa. 18773	9,923.29
Mr. Cooper (Home Mortgage) POB 650783, Dallas, Tx. 75265	91,032.15
Campus USA (Car Loan) POB 147029 Gainesville, FL 32614	16,426.90

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St., Tallahassee, FL 32399-0356	156,343.56

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

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

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

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

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

OATH

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

Donna Keim
SIGNATURE

STATE OF FLORIDA

COUNTY OF Alachua

Sworn to (or affirmed) and subscribed before me this 19 day of Aug, 20 19 by Donna Keim

TJ Hall

(Signature of Notary Public—State of Florida) Theresa J. Hall
 (Print, Type, or Stamp Commission # GG008990 Expires August 29, 2020)



Personally Known OR Produced Identification

Type of Identification Produced _____

FORM 6 Attachment

Assets Continued:

Campus USA Checking Account	\$862.00
State of FL Retirement	\$ Value unknown as not yet vested

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: 8/19/2019

JNC Submitting To: 1st DCA

Name (please print): Donna Keim

Current Occupation: Circuit Judge

Telephone Number: 3523623787 Attorney No.: 0155756

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Alachua

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.

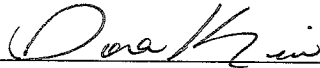
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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:

Donna M. Keim

Signature of Applicant:



Date: 8/19/2019

WRITING SAMPLE

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA**

**CITY OF GAINESVILLE, FLORIDA,
Plaintiff,**

**Case No. : 01-2017-CA-000643
Circuit Civil Division J**

-vs-

**AMALGAMATED TRANSIT UNION LOCAL NO. 1579,
Defendant.**

**ORDER ON PLAINTIFF'S AMENDED
COMPLAINT TO VACATE ARBITRATION AWARD**

THIS MATTER was heard on July 28, 2017 on the Plaintiff, City of Gainesville's Motion to Vacate Arbitration Awards ("Amended Complaint"). Having heard argument of counsel and reviewed the evidence presented, the Court grants the City of Gainesville's Motion to Vacate Arbitration Awards pursuant to Section 682.13(1)(b)(1) and (d), Florida Statutes and finds as follows:

1. The City of Gainesville terminated Desiree Heyliger ("Grievant"), a City bus driver, on November 9, 2015, due to two separate incidents, which occurred on two different days, within 48 hours of each other, wherein the Grievant yelled at and struck the arm of passengers on the bus she was driving. (Am. Compl. Ex. 1 at 2; Memorandum of Law in Support of Amended Complaint, Ex. B and D, videos of both incidents). The parties went to arbitration and the first award ("Award"), which ordered reinstatement and back pay to the Grievant, was entered on November 23, 2016, (*Id.*). The Grievant had not sought, and the Award did not provide for, interest on the back pay that was awarded. The second award, styled a "Supplemental Award," was entered by the arbitrator at the Union's request, on March 6, 2017.

(Am. Compl. Ex. 5). It required the City to pay interest on the award, retroactive to January 1, 2017.

2. Section 682.13(1)(b)(1) and 682.13(1)(d) provide:

(1) Upon motion of a party to an arbitration proceeding, the court shall vacate an award if:

(b) There was:

1. Evident partiality by an arbitrator appointed as a neutral arbitrator;

(d) An arbitrator exceeded the arbitrator's powers.

3. The language of the statute is mandatory and requires vacatur of an award when any of the prohibited acts has been shown. The Plaintiff presented extensive evidence to support three statutory bases for vacatur which are set forth in detail below.

I. The Arbitrator Demonstrated Evident Partiality Requiring Vacatur of the Award

4. An arbitrator may exhibit evident partiality through his words and actions, such as where he "malign[s] the character of a party or ma[kes] outrageous findings." *United Indus. Workers, Serv., Transp., Prof'l Gov't of N. Am. of Seafarers' Int'l Union of N. Am., Atl., Gulf, Lakes & Inland Waters Dist. AFL-CIO, (Local No. 16) on Behalf of Bouton v. Gov't of Virgin Islands*, 987 F.2d 162, 171 (3d Cir. 1993); see also *Holodnak v. Avco Corp., Avco-Lycoming Div., Stratford, Conn.*, 381 F. Supp. 191, 199 (D. Conn. 1974) (vacating award because of "[t]he clear bias revealed by the arbitrator's comments," such as irrelevant inquiries into the grievant's social and political beliefs), *aff'd in part, rev'd in part on other grounds*, 514 F.2d 285 (2d Cir. 1975).

5. The City argues that the arbitrator made the outrageous finding that the Grievant's conduct, be it characterized as rudeness or violence "on the low end of the spectrum," was justified because the recipients of those acts deserved it, and this finding was informed by the arbitrator's antipathy toward those recipients, as evidenced by the arbitrator's descriptions of the

passengers and the incidents. It is clear to the Court that the arbitrator demonstrated bias as evidenced by his description of the passengers involved in these two incidents and his description of the two incidents which can clearly not be gleaned from the record or the video of these incidents. The arbitrator also clearly demonstrates bias in favor of the Grievant in his description of a prior incident wherein the Grievant was disciplined for improper behavior on the job.

6. The arbitrator expressly found that the Grievant did “move (or strike) [a passenger’s] arm and move it away,” but, then attempted to justify this improper behavior by stating that it was “an underhand defensive move” and she was “clearly reacting to [the passenger’s] aggressive move toward her,” thereby “avoiding any further risk of danger.” (Award at 6, 6-7). The arbitrator found that the Grievant “mov[ed another passenger’s] arm and hand away from her in a defensive maneuver.” (*Id.* at 8). In both instances, the arbitrator justified the Grievant’s conduct based on the passenger’s conduct.

7. In the first incident, the Grievant forcefully struck the arm of a female passenger, later identified as “Gloria,” as Gloria attempted to move her bus pass into the Grievant’s field of vision in response to the Grievant’s request. (*Id.* at 6). In addition to striking Gloria, the Grievant yelled at Gloria both prior to and subsequent to striking her. (Memorandum of Law in Support of Amended Complaint, Ex. B , video). The arbitrator described Gloria as “an embittered, angry old woman who was mad at the world and spoiling for a verbal fight before she even boarded the bus.”

8. The arbitrator noted that the Union defended the Grievant on the grounds that “she just defended herself, she just protected herself, ... because she was afraid of what would happen if she lost control of the bus.” (*Id.* at 5). The arbitrator found that Gloria did not

reasonably present a physical threat to the Grievant and found that the Grievant's blow was an act of "violence," but, seemingly justifies the behavior by characterizing the act as being "on the low end of the spectrum of possible 'violence'" (*Id.* at 6, 7). The arbitrator further demonstrated bias by dismissing the City's arguments as to applicable Florida law on self-defense as "legalistic." But above all, he found in the most uncomplimentary of terms, that Gloria had it coming. She was "childish and obnoxious," and exhibited a "hostile, mean attitude." (*Id.* 4). The arbitrator found that she brought violence on herself by (1) "put[ting] on [a] dramatic display" of "rummaging through her purse" for her bus pass, (2) making a "gruff comment" and later sitting in "fuming silence," and (3) acting in "deliberate defiance" of the rule against open containers by finishing her beverage before "march[ing] over to the trash can . . . and slamm[ing] the drink cup into the trash." (*Id.* at 3-6). She was "angry, and therefore unpredictable" (*Id.* At 6). Despite finding that there had been a "move (or hit or strike)," the arbitrator demeaned it as an "underhand defensive move." (*Id.* at 6) and while he acknowledged that the "thrust" of the City's argument was that it has "zero tolerance for 'violence or anything approaching violence,'" he observed that "if violence lies at the heart of the City's case," the Grievant's "move" surely belongs at the low end of the spectrum of possible 'violence.'" (*Id.* at 7).

8. The arbitrator further disclosed his prejudice against the first passenger in his description of the reactions of two "young ladies," neither of whom appeared to be "profoundly disturbed by the incident, to say the least." (*Id.* at 10). The video, he wrote, "shows a *young* lady looking across the aisle to another *young* lady and emitting a burst of laughter," "perhaps at the bizarre sound of an *elderly* woman losing all of her composure and dignity." (*Id.* at 10, emphasis added). And the arbitrator found the Grievant to have been so righteously entitled to her actions that despite the witnesses' reactions to what they beheld, there was no harm done to the City's

“goodwill in the community.” (*Id.* at 9). Putting hands on an angry old woman spoiling for a fight are but “minor” incidents on the City’s buses.

9. As to the second incident, which involved the Grievant yelling at and striking a male passenger upon his boarding the bus, the arbitrator described the passenger as “an already angry man who got on the bus fussing at the driver, and who was also looking for trouble.” (*Id.* at 9.) The characteristics attributed to the passenger cannot be found in observing the video and are evidence of the clear bias of the arbitrator. (Memorandum of Law in Support of Amended Complaint, Ex. D, video). The arbitrator appears to justify a finding that this passenger was struck because he was “a rather bulky, stocky man” who spoke “in an unfriendly, even aggressive tone of voice,” “harshly, and without justification,” and “reach[ed] behind the Grievant’s right shoulder.” (*Id.* at 7, 8). The arbitrator expressly found that the evidence was insufficient to determine whether the man intended any harm, but, found the Grievant deserved the benefit of the doubt because she “could still have been on edge after her run-in with Gloria, a little over 48 hours before.” (*Id.* at 7).

10. The arbitrator’s ruling exhibits evident partiality by concluding that the Grievant, a City bus driver, must be excused for striking someone because the person is “childish and obnoxious,” (*Id.* at 4), or for striking a person because he was “unfriendly” and “fussing at the [Grievant],” (*Id.* at 7, 9), especially where, as here, there was no finding that either passenger reasonably posed a physical threat. The instant case is thus similar to *Stroehmann Bakeries, Inc. v. Local 776, Int’l Brotherhood of Teamsters*, 969 F.2d 1436, 1446 (finding arbitrator exhibited evident partiality by reinstating former employee who had been discharged for sexual harassment, where arbitrator had reasoned that “[the complainant] weighed 224 pounds and had no social life, and . . . characterized her as ‘unattractive and frustrated,’ among other things.”).

11. The arbitrator did not restrict his bias to the events involved in the two incidents for which the Grievant was disciplined. He discounted as unrelated and therefore irrelevant an earlier incident in which the Grievant had been given a five-day suspension for her verbal assault on a dispatcher but he nevertheless felt compelled to note that the dispatcher had “richly deserved it, in [his] opinion,” based on the Grievant’s testimony “describing the dispatcher’s meddlesome and inconsiderate behavior.” (*Id.* at 2).¹ The Grievant, after having been told to go home, told the dispatcher “that she needed to mind her motherfucking business.” (T 242). The arbitrator’s partiality to the Grievant is obvious.

12. At the Union’s request, the arbitrator awarded interest on the award of back pay, because the City, in his opinion, was dilatory in its compliance with the award, notwithstanding the fact that the Grievant had not requested it before the award was made, the Union did not timely move for clarification, the Union could have moved to confirm the award at any time after it was entered, and the City was entitled to file a motion to vacate within ninety days of issuance.

13. The arbitrator could have decided that the conduct with which Grievant was charged did not happen. He did not. He could not, however, indulge his biases by attacking the character of those on the receiving end of the Grievant’s behavior which he found to have

¹ The Grievant’s version of the facts to which the arbitrator referred (T 255-260) underscores his evident partiality. The Grievant was involved in an incident in which she had “bumped” a child at a bus stop. The Grievant testified that the child had bumped into the bus but had suffered no injury. The Grievant was asked if she wanted a relief driver. The Grievant said she did. The dispatcher responded that the Grievant could get relief for an hour. The Grievant returned to the office and was in the drivers’ lounge when she saw the dispatcher go into another supervisor’s office. After the dispatcher exited that supervisor’s office, he called the Grievant in and told her she had to go home. When the Grievant asked why she had to go home, the supervisor directed her to the departmental director. She instead went to the dispatcher and asked her why she had to go home and told her that “she needs to mind her motherfucking business.” (T 259-260). That the arbitrator not only ignored this incident, which was obviously relevant, but, took pains to find the object, who was the object only because the Grievant went out of her way to confront her even after being directed elsewhere, of the Grievant’s anger “richly” deserving of it because of whatever meddling the arbitrator had in mind but did not disclose, shows partiality.

occurred. That he did so, in the words he used, to reach the finding that was at the core of his reasoning displayed partiality that cannot be condoned. The Award is due for vacatur on the grounds of evident impartiality.

II. The Arbitrator Exceeded his Authority Requiring Vacatur of the Award

14. An arbitrator exceeds his arbitrator's powers when he renders an award that does not "draw its essence" from the collective bargaining agreement, *Raynor v. Fla. State Lodge*, 987 So. 2d 152, 154 (Fla. 1st DCA 2008) (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987)); see also *Visiting Nurse Ass'n of Fla., Inc. v. Jupiter Center, Inc.*, 154 So. 3d 1115, 1132-35 (Fla. 2014) (construing Federal Arbitration Act), such as where the arbitrator "ignore[s] the plain language of the contract." *Georgia-Pac. Corp. v. Local 27, United Paperworkers Int'l Union*, 864 F.2d 940, 944 (1st Cir. 1988). It is a well-settled principle of law that "although [an arbitrator] may construe ambiguous contract language, he is without authority to disregard or modify plain and unambiguous provisions." *Detroit Coil Co. v. Int'l Ass'n of Machinists & Aerospace Workers, Lodge 82*, 594 F.2d 575, 579 (6th Cir. 1979), cert. denied, 444 U.S. 840 (1979). In other words, an arbitrator may not "substitute his own brand of industrial justice for what has been agreed to by the parties in that contract." *Georgia-Pac. Corp. v. Local 27, United Paperworkers Int'l Union*, 864 F.2d at 944 (some alterations in original) (citations omitted); see also *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).

15. The collective bargaining contract between the City and the Union ("CBA") makes these limitations a matter of contract as well as law. Section 8.7 denies an arbitrator the authority to "modify, amend, ignore, add to, subtract from, or otherwise alter or supplement this Agreement or any part thereof or amendment thereto." (CBA, Page 17, Art. 8.7). The arbitrator

“shall have no authority to impose on either the City or the Union any limitation or obligation not specifically provided for herein.” (*Id.* at 17).

16. The arbitrator exceeded his authority in several ways. First, he ignored the plain language of the Rules he was charged with enforcing. The City charged the Grievant with violating Rules 17 and 19 of the Code of Conduct (“Code”). Rule 17 prohibits “[f]ighting, provoking, or instigating a fight.” (Am. Compl. Ex. 4 at 8). Rule 19 prohibits “[i]mmoral, unlawful, or improper conduct or indecency, whether on or off the job, which would tend to affect the employee’s relationship to his or her job, fellow workers’ reputations, or goodwill in the community.” (*Id.* at 9). For each of these rules, the Code provides as the discipline for a first offense a minimum of either (1) a written instruction and 5 days suspension or (2) dismissal. (*Id.* at 8, 9). For a second offense, the Code provides for dismissal. (*Id.*). In the instant case, the City dismissed the grievant. (Am. Compl. Ex. 3). The dismissal was clearly warranted given the Grievant’s behavior as evidenced in the videos of both incidents. (Memorandum of Law in Support of Amended Complaint to Vacate Arbitration Award, Ex. B and D). The Grievant’s behavior in yelling at and striking two passengers, on two separate occasions, in the presence of other passengers, while driving a City bus violates Rule 17 as she instigated and provoked a fight and violates Rule 19 as her conduct certainly affects goodwill in the community.

17. The arbitrator also exceeded his powers by striking the word “unlawful” from Rule 19 and thereby imposing his own brand of industrial justice. Rule 19 prohibits “[i]mmoral, *unlawful*, or *improper* conduct or indecency ...” (Am. Compl., Ex. 4 at 9) (emphases added). The arbitrator’s own findings of fact establish that the Grievant committed a battery on both passengers and did not act in self-defense. He found that (1) the Grievant struck the first or only blow in each encounter, (2) she did not reasonably fear for her physical safety when she did so,

and (3) the blows were unwelcome. (Am. Compl. Ex. 1 at 6). Yet he expressly declined to reach the issue of whether the Grievant's behavior was unlawful, reasoning that "Florida criminal law is inapposite to this case" and therefore the Grievant's inability to prove self-defense was irrelevant. (*Id.*). In doing so, he impermissibly ignored the plain language of Rule 19. The word "unlawful" in Rule 19 unambiguously incorporates Florida's criminal law by reference because the notion of unlawfulness is meaningless without reference to the law. While the arbitrator had the authority to make mistakes of fact or to apply criminal law incorrectly, he did not, on the plain language of Rule 19, have the authority to decline to apply criminal law at all to the facts as he found them. *See, e.g., Int'l Bhd. of Firemen & Oilers, AFL-CIO, Local No. 935-B v. Nestle Co.*, 630 F.2d 474, 477 (6th Cir. 1980) (holding arbitrator impermissibly ignored plain language of work rule prohibiting "insubordination" by ordering reinstatement despite finding grievant "refused a direct order (of his foreman) two or three times").

18. Second, the arbitrator exceeded his authority by striking the word "improper" from Rule 19. He made findings of fact that clearly amounted to improper conduct and yet did not sustain the charge. Specifically, he found that the Grievant (1) repeatedly ignored Gloria's attempt to show a bus pass, (2) loudly exclaimed that Gloria was "miserable," and then (3) struck Gloria's arm. Indeed, the arbitrator "readily agree[d] [with the City] that Ms. Heyliger was wrong to ignore Gloria's attempt to display her bus pass, she shouldn't have done that" (Am. Compl. Ex. 1 at 5). Yet the arbitrator declined to reach the issue of whether the Grievant had acted improperly, declaring that "[the Grievant] was disciplined for 'striking' Gloria, not for being rude to her." (*Id.* at 5). But, in fact, the Grievant was disciplined for violating Rule 19—which prohibits improper conduct. Indeed, the Notice of Disciplinary Action expressly indicates that the Grievant was disciplined not only for striking Gloria, but, for acting inappropriately.

(Am. Compl. Ex. 3 at 4). The arbitrator ignored his own factual findings and the language of Rule 19 and thereby imposed his own brand of industrial justice.

19. Third, the arbitrator exceeded his authority by finding that discharge was too severe a penalty for the charges. The Code “provide[s] a minimum range of penalties which apply for ... specific offenses” (Am. Compl. Ex. 4 at 1) and expressly reserves for the City the unqualified right to discharge an employee, or not, for a first violation of Rules 17 or 19. (Am. Compl. Ex. 4 at 9). “When the general just cause provision for discharge is coupled with a specific penalty provision, the appropriateness of the penalty is removed from consideration and is without the scope of review of the arbitrator.” See, e.g., *S.D. Warren Co., Div. of Scott Paper Co. v. United Paperworkers' Int'l Union, AFL-CIO, Local 1069*, 815 F.2d 178, 180 (1st Cir.), cert. granted, judgment vacated sub nom. on other grounds, *United Paperworkers Int'l Union, AFL-CIO, No. 1069 v. S.D. Warren Co.*, 484 U.S. 983, 108 S. Ct. 497, 98 L. Ed. 2d 496 (1987); *Georgia-Pac. Corp.*, 864 F.2d at 943; *Mistletoe Express Service v. Motor Expressmen's Union*, 566 F.2d 692, 694 (10th Cir. 1977).

20. Against this, the Union argues that where, as here, the CBA provides that an employee may be disciplined for “just cause,” an arbitrator may review the level of discipline, even if the CBA mandates that specific penalties be imposed for violations of stated work rules. In support of this argument, the Union cites *Raynor v. Florida State Lodge*, 987 So. 2d 152 (Fla. 1st DCA 2008). However, *Raynor* does not control because the CBA in that case is distinguishable from the one at bar. In the instant case, the Code predetermines, in exhaustive detail, specific penalties applicable to first, second, third, or fourth violations of each of the fifty disciplinary rules applicable to City employees. Nothing comparable existed in *Raynor*. In addition, the CBA in *Raynor* required the employer to “consider the ‘seriousness and frequency’

of the offense or the possible use of progressive discipline” in determining the appropriate penalty. *Id.* at 153. There is no comparable language in the CBA at issue. In fact, the Code expressly states that it is “not to be construed as a limitation upon the retained rights of the City, but rather serve[s] as guidelines. These rules and regulations provide a minimum range of penalties which apply to the specific offenses. This means that a more severe penalty may be issued than that which appears in the standard procedure if sound discretion requires it.” (Am. Compl., Ex. 4 at 1). Yet the arbitrator did just that. He reasoned that because the Code provided a range of penalties for each offense, it therefore imposed on the City the burden to justify any particular penalty within that zone of discretion. The arbitrator’s construction is inconsistent with the Code’s plain language. The City, pursuant to Article 5.2, unambiguously reserved the right to predetermine specific penalties for various violations of the Code, and it acted within its authority by exercising that right. *See, e.g., Mountaineer Gas Co. v. Oil, Chem. & Atomic Workers Int’l Union*, 76 F.3d 606, 610 (4th Cir. 1996) (holding arbitrator could not, under the guise of applying CBA’s “just cause” provision, decline to enforce zero-tolerance drug policy incorporated by reference into CBA and promulgated by employer pursuant to reservation-of-rights clause).

21. The arbitrator exceeded his powers and his Award did not draw its essence from the collective bargaining agreement and must be vacated.

**III. The Arbitrator Exceeded His Authority by Awarding Interest on the Award
and the Supplemental Award is Due for Vacatur.**

22. The City argues that the Supplemental Award is due for vacatur because the Union's request for interest on the Grievant's original back pay award was untimely under Section 682.10(2), Florida Statutes (2016). The Court agrees. Section 682.10(2), Florida Statutes (2016), provides that any motion made to an arbitrator to "modify or correct an award . . . must be made and notice given to all parties within 20 days after the movant receives notice of the award." In the instant case, the Union received notice of the Award on the date of its issuance, November 23, 2016, (Memorandum of Law Ex. J), and it was not until January 16, 2017, that the Union emailed the arbitrator to request interest on the original back pay award. (Am. Compl. Ex. 5). Because the Union's motion for modification was untimely, the arbitrator was without authority to modify the Award. *See NationsBanc Sec., Inc. v. Aron*, 787 So. 2d 881 (Fla. 2d DCA 2001) (holding arbitration panel lacked authority to modify award pursuant to Section 682.10, Florida Statutes, because the motion for modification had been untimely).

23. Even if the Union's motion for modification were timely, it would still be due for vacatur because it violated the doctrine of *functus officio*. *Functus officio* provides that "once an arbitrator has issued a final award and thus discharged his or her office, that arbitrator lacks any continuing power to revise the award or issue a new one." *Int'l Bhd. of Elec. Workers, Local Union 824 v. Verizon Florida, LLC*, 803 F.3d 1241, 1245-46 (11th Cir. 2015). Section 682.10(1), Florida Statutes (2016), sets forth the exclusive exceptions to the doctrine of *functus officio*. It provides that an arbitrator may change an award only if (1) the award was premised on "evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award," (2) "[t]he award is imperfect as a matter of form, not affecting the merits of the controversy,"² (3) "[b]ecause the arbitrator has not made a final and definite

² The first two quotations are taken from Section 682.14(1)(a) and (c), respectively, which are incorporated by reference into Section 682.10(1).

award upon a claim submitted by the parties to the arbitration proceeding,” or (4) “[t]o clarify an award.”³ No such ground was present here.

24. The Union asserts that “§ 682.10, Fla. Stat., is inapplicable because [the Union]’s motion did not ask to ‘modify or correct’ the original award. Rather, [the Union]’s motion was made pursuant to the arbitrator’s continuing jurisdiction to enforce the remedy of the original award.” (MTD Am. Compl., ¶ 37). In support, the Union cites the last page of the Award, which reads: “The arbitrator will retain jurisdiction over this case only to the extent necessary to resolve disputes as to the remedy applied, should such a dispute arise.” (Am. Compl. Ex. 1 at 19).

25. The Supplemental Award does not “address a dispute as to the remedy applied ...” Rather, it imposes a new sanction on the City, different in kind from the original. That is impermissible. Arbitrators may retain jurisdiction only to “decide disputes arising in the administration of the award” or to “interpret[], clarify[], or complet[e] [an] . . . award” *Int’l Ass’n of Machinists & Aerospace Workers, Dist. Lodge 141 v. Hawaiian Airlines*, No. CIV. 11-00271 LEK, 2012 WL 253141, at *13 (D. Haw. Jan. 25, 2012) (“*Hawaiian Airlines II*”). A supplemental award runs afoul of these principles if “the specific remedy ordered by the arbitrator in the original award; and . . . the specific remedy ordered by the arbitrator in the clarification” are different. *See Serv. Employees Int’l Union, Local 1107 v. Sunrise Hosp. & Med. Ctr., LLC*, No. 2:12-CV-00199-GMN, 2013 WL 5324897, at 9 (D. Nev. Sept. 19, 2013) (citing *Hughes Aircraft Co. v. Elec. & Space Technicians, Local 1553, AFL-CIO*, 822 F.2d 823, 825, 827 (9th Cir. 1987)); *see also Domino Grp., Inc. v. Charlie Parker Mem’l Found.*, 985 F.2d 417, 418 (8th Cir. 1993) (holding arbitrator violated *functus officio* where initial award ordered only

³ These subsections clearly codify the common-law exceptions to *functus officio*. For example, at common-law, an arbitrator can modify the award in order “to correct a mistake apparent on the face of the award; rule upon an award presented to the panel but not yet ruled upon; and clarify an ambiguity in a seemingly complete award.” *In re Rollins*, 552 F. Supp. 2d at 1325.

specific performance, and subsequent “Clarification of Award” added that the losing party would owe monetary damages if it failed to comply with the order of specific performance).

26. In addition, an arbitrator may not, under the guise of retained jurisdiction, “weigh the employer’s and employee’s post-decision actions and make a determination as to the appropriateness of those actions and what subsequent awards must be made,” *Int’l Ass’n of Machinists & Aerospace Workers v. Hawaiian Airlines*, No. CV. 09-00275 DAE-BMK, 2010 WL 4688809, at *7 (D. Haw. Nov. 9, 2010) (“*Hawaiian Airlines I*”), nor may the arbitrator “impose[] a new sanction.” *Hawaiian Airlines II* at *13.

27. The original Award does not set a deadline by which the City must tender back pay, nor does it provide for interest. (Am. Compl. Ex. 1 at 20). Interest is a separate component from back-pay. “[I]t is not customary in arbitrations for the arbitrator to grant interest on claims which he finds owing . . . [unless] . . . the contract or submission agreement . . . expressly authorize[s] the arbitrator to grant interest.” *Intermountain Operators League*, 26 LA 149, 154 (Kadish, 1956); see also *Safeway Stores*, 114 LA 1551, 1556 (DiFalco, 2000) (same). In the instant case, the original Award provides precise instructions on how to calculate back pay, and those instructions do not allow for the addition of interest. (Am. Compl. Ex. 1 at 20). Thus, contrary to the Union’s argument, the Supplemental Award does indeed constitute a “modif[ication]” of the original Award under Section 682.10, Florida Statutes (2016), and therefore violates *functus officio*.

28. The Supplemental Award also substantively modifies the original Award by imposing a retroactive deadline for the City’s compliance which expired before the deadline was announced. Compliance with the deadline is impossible, so it violates *functus officio* because it qualifies as a new sanction. See *Hawaiian Airlines II*, 2012 WL 253141, at *13 (vacating

supplemental award that imposed a retroactive, already expired deadline for compliance with original award, reasoning the supplemental award violated *functus officio*).

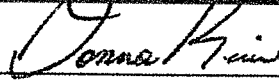
29. The arbitrator reasoned that interest on the back pay award was appropriate because the “dispute” had been “protracted.” (Am. Compl. Ex. 5 at 2). However, the Union could have moved for confirmation of the Award at any time after it was issued. § 682.12, Fla. Stat. (2016). There was no need for the arbitrator unilaterally to reassume jurisdiction over the matter. In this context, it is significant that the arbitrator himself significantly contributed to any delay by issuing the Award seventy-five days after the deadline set forth in the CBA. Indeed, the CBA provides that an arbitrator’s written decision is due within thirty days of the date of the hearing, excluding weekends and holidays. (Arts. 8.3(D), 8.7). In the instant case, the hearing was held on July 28, 2016, so the Award was due to be issued by September 9, 2016. Nevertheless, after the parties submitted post-hearing briefs, they did not hear from the arbitrator until October 10, 2016, when, in response to an inquiry from the Union as to the status of the Award, he requested an extension of time until November 21, 2016. (Ex. I). The request was granted, (*id.*), but even then, he did not issue the Award until November 23rd.

30. The arbitrator had neither jurisdiction nor authority to award interest on his original Award and the Supplemental Award is due for Vacatur.

WHEREFORE it is **ORDERED** and **ADJUDGED** that the Awards are **VACATED** and the matter remanded for rehearing before a different arbitrator.

DONE AND ORDERED in Chambers at the Alachua County Courthouse, Gainesville,
Florida this Friday, September 15, 2017.

01-2017-CA-000643 09/15/2017 08:05:54 PM



Donna M. Keim, Circuit Judge
01-2017-CA-000643 09/15/2017 08:05:54 PM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was
furnished to:

TRISTAN REINIERS, ESQ
treiniers@tsghlaw.com
ckaniecki@tsghlaw.com

THOMAS M GONZALEZ, ESQ
tgonzalez@tsghlaw.com
sknox@tsghlaw.com
kharris@tsghlaw.com

ERIC J LINDSTROM, ESQ
ELindstrom@eganlev.com
crojas@eganlev.com
LAguirre@eganlev.com

By E-Portal this Monday, September 18, 2017.

01-2017-CA-000643 09/18/2017 07:12:15 AM



Theresa Hall, Judicial Assistant
01-2017-CA-000643 09/18/2017 07:12:15 AM

