

APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT APPELLATE COURT

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

DATE: August 26, 2019 Florida Bar No.: 0746096

GENERAL: Social Security No.: *exempt

1. Name Michael G. Takac E-mail: _____

Date Admitted to Practice in Florida: April 1988

Date Admitted to Practice in other States: September 1987 - North Carolina

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

State of Florida, Fifth Circuit Judge

3. Business address: 550 West Main Street

City Tavares County Lake State FL ZIP 32778

Telephone (352) 742-4285 FAX (352) 742-4310

4. Residential address: *EXEMPT - Circuit Judge, Fla. Stat. Sec. 119.071(4)(d)

City _____ County _____ State _____ ZIP _____

Since _____ Telephone () - _____

5. Place of birth: Holy Name Hospital, Teaneck, New Jersey

Date of birth: January 26, 1962 Age: 57

6a. Length of residence in State of Florida: 45+ years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? *exempt

7. Marital status: married

If married: Spouse's name *exempt

Date of marriage *exempt

Spouse's occupation *exempt

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.

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
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9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
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Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

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

No.

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

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>
Ocala Vanguard H.S.		August 1976 - June 1980	H.S. Diploma with Honors
Wake Forest University		August 1980 - May 1984	B.A. Philosophy
Norman Adrain Wiggins School of Law Campbell University		August 1984 - May 1987	J.D.

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

Mu Alpha Theta (National math honor society); National Honor Society; Scholar Athlete

scholarship; Dean's List; Hankins Scholarship (financial award based on grades)

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>
1/1983	carpenter's helper	George Takac Builder (& father)	PO Box 13, Candler, FL 32111

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>Year Admitted</i>
North Carolina Bar	1987
Florida Bar	1988
United States Supreme Court	1993
11 th U.S. Circuit Court of Appeals	1988
U.S. District Court, Middle District of Florida	1988

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Senior Asst. Attorney General	Office of the Attorney General, State of Florida	The Capitol, Tallahassee, FL 32399	5/1995- 7/1997 & 5/2005- 12/2006
Assistant General Counsel	Governor's Legal Office, Executive Office of the Governor, St. of Fla.	The Capitol, Tallahassee, FL 32399	7/1997- 12/1998

Attorney	Moran, Tileston & Simon PA	Lakeland, FL	12/1998-3/2000
Attorney (solo practice)	Michael G. Takac, Attorney	520 SE Ft. King St., Ste B3, Ocala, FL 34471	3/2000-5/2005 (*see addendum I)

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.

During my years as an attorney prior to taking the bench I primarily practiced in the area of civil trial and appellate proceedings across Florida. That practice included domestic relations, contract, business and real property litigation, with the greater majority of that being eminent domain litigation, thus the "state-wide" nature of my practice. I did represent some clients in criminal proceedings, as well. Typical and former clients included: multi-million dollar corporations, small business and private citizens, judges, single moms, etc. Virtually people from all walks of life.

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

	Court		Area of Practice
Federal Appellate	<u>0</u> %	Civil	(2001-'06) <u>95</u> %
Federal Trial	<u>0</u> %	Criminal	(2001-'06) <u>1</u> %
Federal Other	<u>0</u> %	Family	<u>4</u> %
State Appellate	(2001 - '06) <u>10</u> %	Probate	<u>0</u> %
State Trial	(2001 - '06) <u>90</u> %	Other	<u>0</u> %
State Administrative	<u>0</u> %		
State Other	<u>0</u> %		
	<u> </u> %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

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

Jury?	<u>more than 20</u>	Non-jury?	<u>more than 30</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>0</u>

25. Within the last ten years, have you ever been formally reprimanded, sanctioned,

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

No.

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

No.

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

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

- 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).

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

- 27d. During the last five years, how frequently have you appeared in Court?
daily, 20+ 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? _____%
Defendants? _____%

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.

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.

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.

St. of Fla., Dept. of Transp. v. Kreider, 658 So.2d 548 (Fla. 4th DCA 1995), in which I was responsible for both the trial court and appellate proceedings necessary to represent the property and small, moving business owner that lost access to State Road 84, without having any physical land taken, in "inverse condemnation" proceedings against he Florida Department of Transportation. The case remains a leading precedent in access law today, which is why I characterize it among my most "significant." Opposing counsel were Henry Williams and Greg Costas, tried before Circuit Judge Lance Andrews, Ft. Lauderdale, Florida.

Beyond that, every case was "significant" to my client.

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 Orders written by me, as well as, proposed petition and order to facilitate recently enacted "Risk Protection Order" law. (addendum II of III)

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.

Yes. Fifth Circuit Judicial candidate: 2002, 2004 and 2006. Now serving as Circuit Judge since February 2007, re-elected unopposed 2012 and 2018.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
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Types of issues heard:

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

No.

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

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

Derek A. Schroth, (352) 589-1414, 600 Jennings Ave., Eustis, FL 32726

Michael A. Graves, (352) 742-4270, 123 N. Sinclair Ave., Tavares, FL 32778

John N. Spivey, (352) 742-9090, PO Box 989, Tavares, FL 32778

Michael J. Rogers, (352) 483-4888, 804 N. Bay St., Eustis, FL 32727

Phillip S. Smith, (352) 787-1241, 1000 W. Main St., Leesburg, FL 34748

James Argento, (352) 742-4398, 550 W. Main St., Tavares, FL 32778

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

One felony, DUI manslaughter; and more than 1,000 - domestic violence, juvenile delinquency, dependency, guardianship, civil trial, foreclosure, probate and domestic relations cases. Currently I am assigned approximately 1,000 cases representing 100% of the county's domestic violence, dependency, juvenile delinquency and guardianship dockets.

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

No circuit opinions published.

- (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.

I hesitate to describe any case as being more "significant" than another in deference to all parties that have, and may, appear before me. However, I have provided a list of attorneys involved in Department of Children and Families cases on addendum III of III attached. Those lawyers have represented parents, children and the Department in hundreds of "significant" cases, with various outcomes, all deemed by the legislature to have the health and safety of children as the paramount concern. I consider those cases to be among the most "significant" a circuit judge can be assigned.

- (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.

Several years ago I responded to a complaint concerning whether I had misused my office to gain favor. Apparently, a state trooper indicated I had "as a judge demand/request a tour of the courthouse" while entering Wakulla County Courthouse to resolve my traffic ticket issued by him. I had made no such request, attempted to handle the matter as any other citizen would, and the complaint was dismissed with no finding of probable cause. My payment was made in Wakulla in February 2014, the complaint was dismissed with no probable cause in May of that same year. The trooper, himself,

acknowledged in the complaint that my statement to him, at the time I was pulled over was to "treat me as you would anyone else."

In addition, while I have no direct knowledge (as I have never received a complaint, notice or other information) I did hear through a Bar attorney that I had been reported some years ago through a complaint to the JQC. The conversation came up either during the course of disciplinary proceedings (in which I had to testify) against an attorney, or incidental to conversations with a Bar attorney while preparing for an assignment I was given to serve as a referee for proceedings against a lawyer. Whenever I was told, I was also advised the complaint had been summarily dismissed. The attorney whom I had to testify against, and presumably filed the complaint against me, was suspended for more than ninety (90) days.

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

No. Discussed the possibility, but never held one in contempt.

(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.

BUSINESS INVOLVEMENT:

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

I own real property (out of state) that, from time to time, I will make available to renters. My only duties are collection and maintenance. To the extent this constitutes a "business enterprise" I see no reason to "resign" should I be fortunate enough to be appointed to the District Court and will continue to rent it, or make it available (anonymously) for charitable organizations to "auction" for their fund raising.

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.

None other than rents paid to periodically occupy my property disclosed at "33a" above.

POSSIBLE BIAS OR PREJUDICE:

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

None. I have recused myself from a civil suit brought against the partner of my fiance (now wife) alleging professional malpractice, and just after taking the bench in 2007, I recused myself upon receiving a motion alleging "concern" that a party to appear before me for a domestic violence matter would be represented by the very same attorney that had to represent a party against whom I had to obtain an injunction shortly before taking the bench. More recently, I have recused myself from a case, upon appropriate motion, by a party that was represented by an attorney that I had reported (by written order) to the Florida Bar for unethical conduct within the previous year.

MISCELLANEOUS:

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No.

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

No.

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

No.

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

been filed against you?

No.

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

No.

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

Yes. In Marion County Circuit Court (Fifth Circuit), case no. 42-2005-DR-00089, styled Michael G. Takac v. Jennifer Hoyles, I had to obtain a temporary injunction and subsequent extension (without objection) against the respondent that has now expired.

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, and there are none of which I have been made aware

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.
Eminent Domain Florida Bar CLE program 1996, "Compensation and Ethical Considerations."
45. List any honors, prizes or awards you have received. Give dates.
Fifth Judicial Circuit Guardian Ad Litem Program certificate of appreciation April 29, 2011.
46. List and describe any speeches or lectures you have given.
Lectured on: Trial preparation and use of expert witnesses; Ethics; several family law "view from the bench" panelist appearances for continuing legal education programs, and as part of a panel sponsored by NBI, Inc; judicial elections for a University of Florida undergraduate class and legal research and writing for UF law school class; and to high school students on law, as well as, dangers of drunk driving for Lake County public high schools.
47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No
I know I had a BV rating some time ago, never sought to have it reviewed amongst those with whom I practiced regularly, and I have not looked to see if it still exists.

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.
Lake County Bar Association.
- 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.
Florida bar's Eminent Domain Committee, Judicial Administration Committee, Code and Rules of Evidence Committee, and Juvenile Court Rules Committee; Rotary International; Kiwanis Safe Harbor (Tavares, FL); Greater Ocala Community Development Corporation (Board of Directors 2002-2005).
- 48c. List your hobbies or other vocational interests.
Snow skiing and coaching youth activities (recreation or YMCA leagues), four nephews and three children of my wife.

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.

None since private practice. Generally domestic relations cases.

SUPPLEMENTAL INFORMATION:

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

Yes. Both Florida and National Judicial College/Conference programs, as reported, and through the George Mason University Law & Economics Center Judicial Education program. Topics reviewed: evidence, ethics, domestic issues, economics and probate. Most recently completed the November, Handling Capital Cases program in Sarasota, FL.

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

Yes, all as disclosed in answer to question "46" above. Also served as a Moot Court Judge for Barry University School of Law.

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

My legal career now spans more than thirty (30) years, approximately twenty (20) years working as an advocate in private practice, as well as, in public service as a "government" lawyer and now exceeding twelve (12) years on the circuit bench. It has exposed me to a broad array of issues that present themselves to lawyers, litigants and the judiciary. Frankly, I believe that I have as broad a perspective as is available to bring to the appellate bench. Beyond my years as a member of the Bar, I am the first college graduate, lawyer and first "born in America" citizen in my family. My life growing up represents the good fortune of living, loving and working with parents and grandparents that worked hard to speak english, earn a living wage and assimilate themselves into the culture of their new homeland so that their children and grandchildren, of which I am the oldest, could become well educated and lead an even better life as American citizens. I am keenly aware of how lucky I am, and how lucky "we" are to be governed by our country's system of jurisprudence.

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

The point of view I have tried to describe in response to question "50" above will be brought to the bench and demonstrated through the work and writing of the disciplined jurist that I will continue to strive to be. Disciplined in the sense that I recognize the value and necessity of deciding only those issues that are ripe before me as demonstrated by the facts of record and the law(s) in effect, through concise, well written opinions. I will

also bring an extraordinary motivation to continue to improve my writing and analysis skills so that I communicate in a clear, easy to understand manner.

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

I had previously applied for appointment to the Fifth Circuit before my election sometime in 2002 or 2003. I previously applied for appointment to this District Court of Appeal in May 2012, August 2014, and May and December 2018.

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

First, is more a request from me. We learn valuable lessons from "mistakes," but due to the respect afforded sitting judges, candid criticism can be hard to come by. I would appreciate someone on the committee passing along any perceived "weaknesses" apparent from reviewing my application. A confidential letter would be fine.

Second, I must admit that having been fortunate enough to have had my name forwarded to the Governor's office once before for consideration for a Fifth District appointment, I would really appreciate a second chance! I would like to think I can do better, and it would be a different audience this time.

Finally, to the extent a "credit report" might impact your evaluation I feel compelled to disclose that I have previously fallen victim to identity theft/misappropriation. For that reason I have continued to withhold my residential address from this form, and ask that you please note that I do not now have, and never have had, an adverse judgment against me. I am sure that my "rating" is sound, as I cannot recall having been refused credit over the last decade. Recently, I was advised my rating exceeded 800.

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.

Todd E. Copeland, Esq.,

Derek A. Schroth, Esq.,

Bob McKee,

Ralph Smith,

Stephanie Modica, Esq.

Reynold Meyer, Esq. Deputy Chief of Staff

James Argento, Esq.,

Michael Graves, Esq.,

Charles Stratton, Esq.,

Sen., Gary M. Farmer, Jr., Esq.,

*exempt address

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 26th day of August, 2019.

Michael G. TAKAC

Printed Name



Signature

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

FINANCIAL HISTORY

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

Current year to date	\$93,734.69		
List Last 3 years	\$155,029.76	'17: \$143,340.02	'16: \$139,538.00

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	\$63,809.89		
List Last 3 years	\$155,029.76	'17: \$143,340.02	'16: \$139,538.00

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	\$1,000.00		
List Last 3 years	'18: \$3,000.00	'17: \$5,500.00	'16: \$6,050.00

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 (*estimate)		
List Last 3 years	'18: \$-4566.00	'17: \$-4,466.00	'16: \$-4,989.00

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

PART A – NET WORTH

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

My net worth as of December 31, 2018 was \$1,423,767.32.

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 \$ 557,000.00

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
See attached	

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

Franklin American Mortg. Co., Box 77404, Ewing, N.J. 08628	\$178,535.14
Capital City Bank, Box 900, Tallahassee, FL 32302	\$26,235.70
Fla. Central Credit Union, Box 18605, Tampa, FL 33679	\$13,083.17
Volkswagen Credit, Box 5215, Carol Stream, IL 60197	\$15,132.18
Provident Funding, Box 5914, Santa Rosa, CA 95402-4914	\$295,823.83

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

PART D -- INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 E. Gaines St., Tallahassee, FL 32399	\$ 155,029.76
Jenny Harris	P.O. Box 1033, Killington, VT 05751	3,000.00

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

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

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

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

PART F - TRAINING

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

I CERTIFY THAT I HAVE COMPLETED THE REQUIRED TRAINING.

OATH

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

STATE OF FLORIDA
 COUNTY OF Lake

Sworn to (or affirmed) and subscribed before me this 28 day of

June, 2019 by Michael G. Takac

(Signature of Notary Public--State of Florida)



(Print, Type, or Stamp Commissioned Name)

Personally Known

OR

Presented Identification

Type of Identification Produced

14 M. Sca

SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

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

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

Signature

Date

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

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

PART B – ASSETS

DESCRIPTION OF ASSET	VALUE OF ASSET
Real Property, Lake County, Florida *Exempt Fla.Stat.Sec 119.071(4)(d)	\$450,000.00
Real Property & Duplex Rutland County, Vermont *Exempt Fla.Stat.Sec 119.071(4)(d)	\$470,000.00
Real Property, Hwy 42, Marion County, Florida	\$ 30,000.00
Real Property, Franklin County, Florida *Exempt Fla.Stat.Sec 119.071.(4)(d)	\$215,000.00
United Southern Bank Accounts	\$ 30,503.43
T.D. Ameritrade Accounts	\$ 19,713.05
IRA	\$ 41,768.86
Florida Central Credit Union	\$ 30.00
Cash	\$ 11,562.00
Note (Cordell)	\$127,000.00

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: August 26, 2019

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Michael G. Takac

Current Occupation: Circuit Judge

Telephone Number: _____ Attorney No.: _____

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: _____

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:

Signature of Applicant:

Date:

Addendum I of III

Question 21.

<u>Position</u>	<u>Name of Firm</u>	<u>Address</u>	<u>Dates</u>
Of counsel	Thomas P. Callan, Esq.	Bradshaw Terrace Orlando, Florida	3/2000- 3/2001
Law Clerk; Associate; Partner	Piccin, Atkins, Krehl & Forman (subsequently Atkins, Krehl & Forman (subsequently Forman, Krehl & Albright	320 N.W. 3 rd Avenue Ocala, Florida 34470	6/1985- 5/1995

Addendum II of III

Question 31.

Writing Samples:

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN AND FOR
LAKE COUNTY, FLORIDA

STATE OF FLORIDA

v.

CASE NO: 2010 CF 367-01

BRUCE G. DUNCAN,

Filed in Open Court
Neil Kelly
Clerk of Circuit Court

Defendant.

APR 21 2011

ORDER

Lake County, Florida

THIS CAUSE came before the Court on Defendant's Motions to Suppress. The hearing was conducted February 25, 2011, with the Assistant State Attorney, the Defendant and both of his co-counsel present. The Court, having read the motions, considered the testimony, evidence, and arguments presented, and being otherwise fully advised in the premises, finds as follows:

This criminal case was filed by the State of Florida against Defendant, Bruce G. Duncan, after the pickup truck driven by Defendant struck a motorcycle broadside, killing the motorcycle's driver. The Defendant has filed two (2) motions to suppress from evidence certain items taken from the scene on the night of the accident without a warrant having been first obtained by the State. The items Defendant seeks to suppress are: the results of his blood test, which disclosed a blood alcohol content level of .16; a vodka bottle, one-half (1/2) empty, obtained from within Defendant's truck; and any photos of the bottle.

Findings of Fact:

1. On the evening of October 17, 2009, the Defendant was the driver of a white Nissan "Titan" "pick-up" truck that he was operating on Wolf Branch Road, in Lake County, Florida.

2. Sometime between approximately 8:30 p.m. and 8:49 p.m., the white Nissan "pick-up" driven by Defendant initiated a left turn, crossing over the road's "center line," and collided into the side of the motorcycle driven by the victim. The driver of the motorcycle was removed from the scene of the collision and, at some point, pronounced dead while law enforcement was investigating the scene. No evidence was presented to indicate the time of death or when or how investigating officers learned of the death. The arguments and evidence did, however, make it clear that the motorcycle driver's death occurred as a result of the accident.

3. Steve Fanning, called as an eyewitness to the accident by the State, testified that he observed the white Nissan driven by Defendant swerve off the right side of the road three (3) to four (4) times, and cross the center line into the path of oncoming traffic prior to its collision with the motorcycle. He stated that the Defendant's truck was "all over the

Case: 2010 CF 00367



00050326356
Date: CPOR

75

AB

place" while he drove behind it for two (2) to three (3) miles. The eyewitness further testified that he was stopped directly behind the Defendant, in a left-turn lane, at the time the Nissan initiated its left turn that resulted in the collision with the motorcycle. Fanning testified that from his position behind the white Nissan he could see the motorcycle approach from the opposite direction that he and the white Nissan had been traveling, i.e. he saw the motorcycle approach in the adjacent, oncoming (westbound) lane.

4. Witness Fanning testified that after observing the collision he: attempted to render aid to the victim; saw the Defendant exit the truck; and encountered the driver of the white Nissan truck, who approached him two (2) to three (3) times. Fanning identified the Defendant as the driver of the white Nissan "pick-up" that struck the motorcycle.

5. Fanning testified that after the collision the Defendant stated that he thought that he had hit "an animal." Fanning described the Defendant as stumbling, having slurred speech and rambling. Fanning's direct testimony essentially concluded with his statement that he had provided all of his observations, as just testified, to the Florida Highway Patrol. Fanning's specific statement being that he told the highway patrol, "all I just said."¹

6. Investigation of the collision was handled by troopers with the Florida Highway Patrol. First to arrive at approximately 10:02 p.m., was Corporal Kight who, upon arrival, spoke with the two witnesses to the accident identified to him. Kight's stated purpose for speaking to the witnesses was "to find out what they actually observed prior to the collision and during the collision." Cross-examination identified the State's first witness to testify (at the hearing), Steve Fanning, to be one of the witnesses interviewed by Kight at the scene. The other witness interviewed by Kight, but not called to testify, was Fanning's younger brother who was also in the truck with him as he drove behind the motorcycle. Kight confirmed that the witnesses told him about "the driving pattern" of the Defendant and what they observed. The statements were recorded by Kight.

7. After the witness interviews, Kight "photographed the scene, photographed some of the truck and inside the truck." Kight states that while photographing the truck he "observed the bottle of liquor," indicating that he photographed the bottle "behind the seat." Kight stated he did not search the vehicle. No pictures from the scene were offered as evidence, or shown to the Court. No description of the method by which the pictures were taken was offered in evidence. (From which, for instance, the Court might be able to ascertain whether pictures were taken from inside the vehicle, as opposed to being taken of the vehicle's inside.) Therefore, the Court has no ability to discern the actual vantage point from which Trooper Kight's picture(s) were taken in order to ascertain whether the vodka bottle was, for instance, in 'plain,' or even 'open' view from "behind the seat" of the Defendant's truck.²

8. Kight observed the Defendant entering the bushes "to relieve himself"

¹ Fanning's statement of providing "all [he] just said," to the highway patrol elicited to indicate that he had conveyed the information contained in paragraphs 3-5 *supra* to the investigating highway patrol officers on scene October 17, 2009.

² See *Ensor v. State*, 403 So.2d 349, 351-2 (Fla. 1981), for explanation of the distinction between "plain" versus "open" view.

several times, which he considered to be "more than normal." Kight also acknowledged that witness Fanning had advised him that the Defendant had some type of emotional reaction when the Defendant found out that the victim was dead.

9. The foregoing information accumulated by Corporal Kight (i.e. that presented in paragraphs 6-8 *supra*) was shared with the other highway patrol officers helping to investigate the scene. Specifically, Troopers Helms and Ratliff who arrived on scene after Kight, and also testified. The foregoing information (i.e. that contained in paragraphs 6-8 *supra*) was all obtained by Kight prior to his interview with the Defendant that occurred at approximately 11:48 p.m., and after Miranda warning had been given immediately prior to the start of that interview.

10. Trooper Ratliff, given information about the Defendant's driving pattern after he arrived on scene, also directly observed the Defendant to have bloodshot eyes and to smell of alcohol. Believing he had probable cause, Trooper Ratliff nevertheless requested Defendant's consent to obtain a blood test, which consent was voluntarily given by the Defendant. (The Defendant is an attorney licensed to practice law in the State of Florida and specifically has practiced as a criminal defense attorney.) The blood test occurred in the form of having "EMS" withdraw a sample of Defendant's blood while at the scene of the collision. The Defendant's blood sample was drawn prior to his interview with Corporal Kight.

11. The State's final witness, Corporal Helms, arrived after the Defendant's "blood draw" commenced. Upon Corporal Helms arrival, it was determined that he would be "handling [the] case" since the victim had "passed away at the hospital." Helms confirmed that: he arrived approximately six (6) minutes after Defendant's blood draw commenced; the vehicles partially blocked the right-of-way; and that the Defendant's blood sample subsequently yielded a result of .16 for alcohol.

12. The remainder of Corporal Helms testimony dealt largely with general discussions of Florida Highway Patrol policies 1.01 and 11.04, copies of which were entered in evidence. Other than Helm's conclusory testimony that the investigating Troopers "adhered to policies," there is a dearth of testimony indicating how the officers on scene complied with those policies.

13. It is an undisputed fact that no warrant was obtained to authorize the seizure of any item(s) from within the Defendant's vehicle. It is also undisputed fact that no "Inventory and Vehicle Storage Receipt (form HSMV 61801)" was completed as required by Florida Highway Patrol policy number 11.04, sections 11.04.04C6, and F.

14. Thus, while it is clear that the one-half ($\frac{1}{2}$) empty vodka bottle has been seized, or "taken in evidence," as stated by Trooper Helms, it is not established that the vodka bottle was taken by the State pursuant to an "inventory search" that was conducted on scene, or even at any time subsequent to the vehicle's impoundment.

15. The evidence presented is also clear in indicating that the towing and impounding of Defendant's vehicle, and even placement of a "hold" on Defendant's vehicle, was appropriate. The vehicle was inoperable, blocking public right-of-way, and itself constituted evidence of the very instrument that caused the victim's traffic fatality.

16. In addition to the vodka bottle, the Defendant's truck, the victim's motorcycle, and the Defendant's blood sample were all taken into evidence by the investigating agency, the Florida Highway Patrol, upon the direction of Corporal Helms. No objection was raised to the investigating officers having seized the Defendant's truck, itself, as evidence.

17. In light of all the facts presented, the Court finds that the investigating highway patrol officers, including Corporal Kight, did have probable cause to enter the Defendant's truck in order to conduct an investigation of the crash that occurred October 17, 2009. Upon conclusion of Kight's interview with witness Fanning, the investigating agency had a description identifying the Defendant as the driver of the crashed white Nissan truck, and description of that truck having been driven in a manner that provided probable cause to suspect that the driver was impaired. At the moment officers arrived they could see the damaged vehicles and note that the driver of the motorcycle had to be removed from the scene for serious bodily injuries – injuries which, indeed, proved fatal.

Rulings on Defendant's Motions to Suppress Evidence:

A. Defendant's Blood Alcohol Results

Because Trooper Ratliff had both, probable cause and the Defendant's consent to obtain a blood sample (or "draw"), the Defendant's motion to suppress the result of his blood alcohol content test obtained from the sample of blood drawn at the scene of the collision on October 17, 2009, is denied. Trooper Ratliff had: 1) a description of the Defendant's driving pattern that indicated the Defendant had repeatedly swerved off road to the right, crossed over the center-line into the path of oncoming traffic, drove "all over the place," and, finally, directly broadside into the path of a plainly visible oncoming motorcycle; 2) a description of the Defendant rambling, stumbling and having slurred speech immediately after the collision; and 3) his own observations of the damaged vehicles, and the Defendant's blood shot eyes and odor of alcohol to establish probable cause for a blood test. Fla. Stat. Sec. 316.1933 (2009). Moreover, Trooper Ratliff obtained the Defendant's consent to obtain Defendant's blood sample, or "draw."

Defendant's Motion to Suppress Blood Alcohol Result, is DENIED.

B. Evidence Seized from within Defendant's vehicle on October 17, 2009.

The second motion that the Court must rule upon concerns the admissibility of the one-half (½) empty vodka bottle, and any pictures thereof, taken from inside the Defendant's truck on October 17, 2009. Corporal Helms' testimony established that the vodka "bottle, truck, motorcycle, and blood" were taken into evidence at his direction as lead investigator on the night of October 17, 2009. Therefore, only the vodka bottle, and perhaps picture(s) thereof, are challenged as items "seized from the interior of the Defendant's Nissan Titan truck" on October 17, 2009, through Defendant's motion.³

There having been no warrant issued to authorize a search of Defendant's vehicle,

³ To be clear, nothing in this Order constitutes a ruling on the admissibility of any picture(s) that may have been taken on October 17, 2009, from any position that was outside, i.e. not from within, the Defendant's truck.

it is the State's burden to demonstrate that the investigating Florida Highway Patrol troopers acted through a valid exception to (or consistent with) the United States Constitution's Fourth Amendment protection against unreasonable search and seizure when they entered the Defendant's truck and seized a vodka bottle, and possibly pictures thereof, on October 17, 2009 – the night the alleged criminal act occurred. Hilton v. State, 961 So.2d 284, 296 (Fla. 2007). The State's evidence and arguments presented to rebut the Defendant's remaining motion to exclude evidence do not promote as succinct an analysis of applicable law to relevant facts as was possible to rule upon the admissibility of Defendant's blood test. While a substantial, perhaps majority of, time in terms of evidence and argument put forward by the State appears to have been dedicated to satisfying the "inventory search" exception to a valid search warrant, the Court finds that the State has not met its burden to demonstrate that a valid inventory search occurred.

1. "Inventory" search

To be considered a valid inventory search the State must establish the existence of standardized criteria for such a search and that law enforcement's actions were performed in conformance with those procedures. Colorado v. Bertine, 479 U.S. 367 (1987); State v. Wells, 539 So.2d 464, 468 (Fla. 1989); Leary v. State, 880 So.2d 776, 778 (Fla. 5th DCA 2004). Here, there were no facts presented to demonstrate compliance by any investigating trooper with standardized criteria of the Florida Highway Patrol. No inventory receipt, which would have listed the items contained in Defendant's truck, exists to demonstrate compliance with Florida Highway Patrol Policy 11.04. None of the three (3) investigating officers testified to having performed an inventory search. While Corporal Helms said an inventory search would have been Trooper Ratliff's responsibility, Helms acknowledged that he himself performed no such search, and there is no evidence to suggest that he witnessed, much less supervised, an inventory search by Ratliff. Trooper Ratliff never stated he performed a search of any type. There is no evidence of Ratliff performing any tasks consistent with a search of Defendant's truck. Finally, Corporal Kight expressly denied that he searched Defendant's truck, although he did state that he "photographed" the "inside" of the Defendant's truck. There is no more specific description of Kight's activities with regard to an examination, inspection or "search" of Defendant's truck beyond his statement of having "photographed", and observing the vodka bottle "behind the seat."

Corporal Helms' conclusory statement that the troopers that preceded him to the scene had "adhered to policies" is insufficient to overcome the lack of evidence to support such a conclusion. Conclusory statement(s) or argument that an "inventory search occurred" is insufficient to meet the State's burden in this case. Regardless the label given (or in this case, not given) by the investigators to describe their activities conducted on scene, it is the nature of what the troopers actually did that is dispositive of what type of "search" occurred. State v. Townsend, 40 So.3rd 103, 105 (Fla.2d DCA 2010); Jaimes v. State, 862 So.2d 833, 838 (Fla. 2d DCA 2003). No one inventoried the vehicle at all. No inventory receipt required by highway patrol policy is in evidence. Only the vague statement of having "photographed the inside" of Defendant's truck has been offered to describe the troopers' conduct concerning the interior of Defendant's truck. There is simply insufficient evidence to support a finding that the investigating troopers conducted themselves according to the standardized criteria for inventory search that were admitted in evidence.

The Court finds that the State has not demonstrated that a valid inventory search occurred in order to justify its seizure of the one-half (½) empty vodka bottle or any photography thereof, from Defendant's truck.

2. Search "incident to arrest."

The State makes no argument that the bottle was seized incident to arrest, as there was no arrest made on the night in question, October 17, 2009. Accordingly, the Court cannot rule that the bottle was seized incident to Defendant's arrest.

3. "Open view"

Likewise, the State appropriately did not argue for admission of the vodka bottle pursuant to the "open view" exception as there was no evidence presented to support a finding that the bottle had been observed from outside the truck on the night in question, i.e., the night of the collision— October 17, 2009.

4. "Inevitable" (or "independent") discovery

Having established the inoperability of Defendant's truck within public road right-of-way, the propriety of impounding the truck and subsequent duty to "inventory" the impounded vehicle, the State also suggests the bottle is admissible because its discovery was inevitable during the course of a legitimate investigation. See Moody v. State, 842 So. 2d. 754, 759 (Fla. 2003). No doubt an investigation of Defendant's collision with the victim's motorcycle was underway. An "inventory search" of the truck would be an "independent" procedure through which to have obtained the bottle, it would not be an "independent" source. Law enforcement intrusion into the truck would remain the source for the bottle's discovery. While an inventory search is called for by agency procedure, the existence of a procedure does not mean that it is inevitably followed. Speculation that a procedure would be followed in order to ultimately obtain the bottle is insufficient to authorize admitting the bottle's entry into evidence. *Id.*

Neither the doctrine of "inevitable," nor "independent source" for, discovery applies to authorize the admission of the bottle, or photographs thereof, in evidence.

5. Reasonable search of a vehicle involved in a crash upon a public roadway that resulted in serious bodily injury or death

As an alternative argument to "inventory search," the State has presented the legal precedents of M.C.J. v. State, 444 So.2d 1001 (Fla. 1st DCA 1984), and State v. Jacoby, 907 So.2d 676 (Fla. 2nd DCA 2005). These two cases stand for the proposition that where a motor vehicle is involved in a traffic accident that occurred on a public roadway and serious damage, bodily injury or death results, then it is reasonable for law enforcement to conduct a search of the damaged vehicle(s) as the vehicle(s), themselves, constitute essential evidence necessary to complete law enforcement's duty to investigate the accident. Stated another way, where law enforcement has probable cause to believe that a vehicle involved in an accident may contain evidence that might explain the cause of the accident that caused serious damage, bodily injury or death, a warrantless search of said vehicle is reasonable and does not offend the unreasonable search and seizure clause of the Fourth Amendment.

The Court concedes that it may not be correctly "labeling" the most concise, or accepted, name for the motor vehicle exception espoused by the State to justify admission of the vodka bottle, and any pictures thereof, obtained by the troopers during their investigation of October 17, 2009. However, applicability of the precedent stated in the cases cited by the State to the facts occurring here is clear.

M.C.J., 444 So.2d 1001, is highly persuasive due to the similarity of its facts and state actions to those occurring here. M.C.J. challenged the admission into evidence of brake shoes that were removed from her car without a warrant authorizing such removal. M.C.J. had operated her car in such a manner that it collided with the victims' vehicle and caused the death of that vehicle's two (2) occupants. Upon arrival on scene, the investigating officer saw the cars and observed "scrub marks" indicating, in his opinion, that M.C.J.'s vehicle slid as a result of defective brakes, rather than skidded as a result of locked brakes. The officer's visual inspection of the vehicle's interior revealed several cans of beer on the floor board. 444 So.2d at 1003. The First District held that the investigator's warrantless seizure of the defective brake liners was neither unreasonable, nor unjustified in affirming the trial court's denial of M.C.J.'s motion to suppress them from evidence. The trial court found that at the time M.C.J.'s car was impounded, the investigating officer had probable cause to believe that M.C.J. had committed vehicular homicide. *Id.* Here, Corporal Kight similarly had probable cause to believe that the crime of driving under the influence had occurred. Upon learning from witness Fanning that the Defendant had an emotional reaction to learning of the victim's death, Kight also had probable cause to believe that the Defendant committed vehicular homicide.

Corporal Kight observed that Defendant's truck was inoperable for having just collided with the victim's motorcycle. Knowledge of serious and fatal bodily injury to the motorcycle driver was also obtained by Kight through eyewitness statements. Corporal Kight had a duty to file a report detailing his findings regarding the circumstances that resulted in the death and damage to the vehicles. Jacoby, 907 So.2d at 680. Kight's taking full possession of Defendant's truck was essential for him to conduct the full examination necessary to determine the cause of the collision. *Id.*

Those precedents for obtaining admissible evidence cited by the State are consistent with well founded principles put forward by the highest authorities binding upon this Court's application of the law to the facts now before it. Florida's Supreme Court has held that warrantless search of an automobile is appropriate when there is probable cause to believe an offense has been committed therein. State v. Betz, 815 So.2d 627, 633 (Fla. 2002) *citing* U.S. v. Ross, 456 U.S. 798 (1982). Furthermore, because the line of authority governing warrantless motor vehicle searches makes it clear that the "totality of the circumstances" known to the investigating officers is dispositive of the appropriate extent of any such search, whether the bottle was within a cooler, or had fallen out upon the truck's floor board is irrelevant to the bottle's admissibility here. Under the "totality of circumstances" known to exist here (all described *supra*). Officer Kight had probable cause to search the cab of the truck, and any containers therein. Betz 815 So.2d at 634; U.S. v. Ross, 456 U.S. at 824; State v. Jarrett, 530 So.2d 1089, 1090 (Fla. 5th DCA 1988). For the benefit of the parties, and any appellate review(s) that may follow, this Court finds the one-half (½) empty vodka bottle to have been found on the floor board of the truck, and not taken from a cooler. Even if Defendant were found to have had complete, accurate recall of having once placed the bottle into a cooler (which he testified to doing) without, himself, removing it, the Defendant cannot, and did not (in response to cross-examination), deny

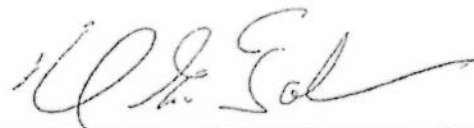
that the collision's impact was sufficient to dislodge the bottle from any container into which it may have been previously placed .⁴

The logic, and reasonableness, of allowing the highway patrol troopers to enter Defendant's truck at the scene of the collision is sound for a variety of reasons, too numerous to list here. Rather, the Court refers to the concurring opinion of Judge Casanueva, contained in Jacoby, 907 So.2d. at 68, which cites to U.S. v. Janis, 428 U.S. 433, 454 (1976), for the legal precedent that it is inappropriate to apply the exclusionary rule to prohibit evidence where the exclusion of evidence would not result in appreciable deterrence. Here, the officers had probable cause to enter Defendant's truck and were therefore, entitled to a duly issued warrant had they asked. Instead, they undertook investigation activities that, under the circumstances described here, on October 17, 2009, were not such that they should be deterred in the future for having been unreasonable.

The Fourth Amendment prohibits unreasonable searches and seizures. It was not unreasonable for Officer Kight to photograph, or even inspect, the inside of Defendant's truck after receiving the account provided to him by the eyewitness. Therefore, there is no reason to employ the "exclusionary" rule as requested by Defendant in order to deter such conduct by an investigating officer in the future.

Defendant's Motion to Suppress Evidence Seized from Interior of Nissan Titan Truck is DENIED.

DONE AND ORDERED in Chambers at Tavares, Lake County, Florida on this 18th day of April, 2011.



MICHAEL G. TAKAC
Circuit Judge

Copies furnished to:

State Attorney's Office
Michael Graves, Esq.
John Spivey, Esq.

⁴The Defendant voluntarily took the stand to testify at the suppression hearing.

IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT IN AND FOR
LAKE COUNTY, FLORIDA

SKYTOP ENTERPRISES, LLC
a Florida limited liability company

CASE NO: 11 CA 769

Plaintiff,

v.

CITRUS TOWER BOULEVARD
IMAGING CENTER, LLC, a Georgia
limited liability company,

Defendant.

2012 FEB 10 AM 11:23
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAMPA FLORIDA

**ORDER DETERMINING
AMOUNT OF PRE-PETITION RENT OWING**

THIS EVIDENTIARY hearing commenced Thursday, February 2, 2012, and concluded Friday, February 3, 2012, pursuant to the September 19, 2011, Order of U.S. Bankruptcy Court Judge Mary Grace Diehl, that modified the automatic stay afforded Debtor, Citrus Tower Blvd. Imaging Center, LLC., (hereafter "Citrus") for the limited purpose of determining the amount of pre-petition rent owed by Citrus to Sky Top Enterprises, LLC., (hereafter "Sky Top"). Present were representatives for both Citrus and Sky Top, as well as, all parties' respective counsel. The Court having considered the evidence and arguments presented by the parties, and being duly advised in the premises, hereby finds as follows:

1. On July 12, 2011, this Court, through the preceding Judge T. Michael Johnson, entered an interlocutory ORDER ON DEFENDANT'S VERIFIED MOTION TO DETERMINE RENT, that required Citrus to deposit \$512,948.24, into the Court's registry



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for "rent, late charges, and interest for 2010 and 2011 (thru July 2011)," and to pay into the Court registry \$40,229.16, on the first day of each month (commencing August 1, 2011) that the instant case remains pending.

2. Also on July 12, 2011, Citrus filed a Chapter 11 Bankruptcy petition that stayed this proceeding. This proceeding recommenced for the limited purpose of "determining the amount of pre-petition rents owed," after the Order of the Honorable Mary Grace Diehl, U.S. Bankruptcy Court Judge of the United States Bankruptcy Court, Northern District of Georgia, Atlanta Division, that Granted in part, Sky Top's motion for relief from the automatic stay.

3. The September 19, 2011, Order of the U.S. Bankruptcy Court, lifting the automatic stay for the purpose of allowing the limited proceeding here, also establishes that Citrus' lease with its landlord, Sky Top, was not terminated pre-petition, and states that the amount of pre-petition rents owing is critical to the Chapter 11 proceedings because, "according to statements by Debtor's [Citrus] Counsel, [Citrus] will seek to assume the lease..."

4. At the commencement of the proceedings giving rise to this Order, Sky Top and Citrus presented their stipulation, entered in evidence as Exhibit 1, setting the pre-petition rent owed by Citrus to Sky Top, inclusive of interest and late fees, at \$941,878.07, for the years 2009 thru 2011. In other words, \$941,878.07, represents the entire amount of rent, interest and late fees Citrus owed to Sky Top pursuant to the parties' lease agreement, entered in evidence as exhibits 2 and 3 (the latter exhibit represents a modification of the lease's "commencement date") from commencement of the lease through the date of Citrus' Chapter 11 Petition.

5. This Court finds the status of the parties to this case to be that of landlord, Sky Top, and tenant, Citrus, pursuant to their lease agreement entered in evidence as exhibit 2, as modified by the modification entered in evidence as exhibit 3. Pursuant to the lease Sky Top is to have received from Citrus an additional \$941,878.07, beyond that which it was paid, for all rent, interest and late fees owed as of July 12, 2011, in order for Citrus to be considered "current," in its lease obligation to Sky Top. Stated another way, payment of \$941,878.07, is required to cure Citrus' default pursuant to the terms of the parties' lease.

6. Here, Citrus contends entitlement to an offset against the \$941,878.07, on two separate theories:

A. First, Citrus maintains that payment of all 2009 rents owed to Sky Top was satisfied in full upon the "delivery" of certain furniture, fixtures, and equipment (hereafter FF&E) to the doctor office occupying the 2nd floor of the leased premises. That doctor office is not occupied by Sky Top; however, its principal, Dr. Ray, is one and the same principal with whom Citrus negotiated when dealing with Sky Top.

B. Second, Citrus maintains that application of the mathematical computations afforded within §20 of the parties' lease effectively cancels any claim for past due rents. The parties agreed that the "mathematical computation" provided for by §20, to calculate "the tenant construction allowance" was 19,310 (the square footage of space rented) x \$50.00, for a total of \$965,500.00, "tenant construction allowance." It is this sum, \$965,500.00, that Citrus seeks to have credited against the \$941,878.07 pre-

petition rent debt.

7. Citrus has failed to provide competent, substantial evidence that it did, in fact, "deliver" FF&E to the 2nd floor medical office occupant. (That entity being referred to by the parties as "NTC"). Instead, the more credible evidence proves that the FF&E made available to NTC's second floor office by Citrus remains subject to UCC lien filings and eventual disposition by the Bankruptcy Court in Citrus' Chapter 11, proceedings. Citrus concedes, through the testimony of its first witness, member Franklin Trell, that the intent of providing FF&E needed for the 2nd floor medical office (in lieu of rent money) contemplated giving ownership of the necessary FF&E to the appropriate entity. Neither Sky Top, nor NTC owns the FF&E in question. Under these circumstances, this Court cannot rule that rent has been "paid" by Citrus' delivery of FF&E to Sky Top in lieu of cash (or its equivalent) for the year 2009.

8. The second ground Citrus contends constitutes an appropriate set-off against the \$941,878.07, pre-petition rent owed to Sky Top is the "tenant construction allowance" provided by §20 of the parties' lease, i.e. the \$965,500.00, calculation that the parties agree is derived therefrom. Both Citrus and Sky Top claim that §20 of the lease is clear and unambiguous. Never the less, Citrus and Sky Top each read the "clear, unambiguous" language of §20 to operate in a manner that dictates two (2) diametrically opposed outcomes. Citrus advocates applying the "allowance" now, toward its past due rent. Sky Top claims the \$965,500.00 sum derived from §20 is wholly inapplicable since Sky Top did not, itself, obtain "financing for the completion of the construction of the Tenant improvements" as expressly stated in §20 of the lease.

9. The Court finds the language of §20 of the lease, entered as exhibit 2, to be

ambiguous. For instance, the term "allowance" is not defined, and no where does the document provide essential terms such as "how", or "when" the "allowance" is made. Likewise, the precise type of "financing" being sought leaves room for interpretation – e.g. what party could be responsible to what lender? Due to the ambiguity of §20, this Court finds that resort to parol evidence is appropriate in order to determine the meaning and intent of §20 of the parties' lease.

10. Based upon the parol evidence submitted by the parties, the court finds no competent substantial evidence to support permitting Citrus to take a "tenant construction allowance" credit to reduce its rent arrearage of \$941,878.07. In order to assume its lease with Sky Top, Citrus must make arrangement to pay the \$941,878.07. If it does so, the parties' *status quo*, as if no breach had occurred, would be restored.

Analysis

Given Citrus' present status in bankruptcy, specifically that court's order granting limited relief from the stay that has returned this case to this court, the court here endeavors to determine only the narrow issue authorized by Judge Diehl's order. Essentially, it appears that the "rent due" determination to be made by this Court will be used by the Bankruptcy Court as establishing the amount Citrus must pay to "promptly cure" its default should Citrus decide it wishes to assume its lease with Sky Top. The parties have stipulated that \$941,878.07, is the precise amount, i.e. the sum certain, owed by Citrus to Sky Top to cure Citrus' default under the lease. Any other finding by the Court, upon the facts unique to these parties, at this time, would go beyond the assignment succinctly stated in the Bankruptcy Court's Order granting "limited" relief from the automatic stay, to determine "the amount of pre-petition rents owed."

This Court cannot find that Citrus has met its burden to prove that FF& E was given to Sky Top's designee, in lieu of rent money due to Sky Top, precisely because this Court has no evidence that the FF& E will remain with Sky Top, or its designee, NTC. (*Arguendo* via assignment authorized by Dr. Ray, a principal of both Sky Top and NTC.) U.C.C. liens are in place, and a portion of the FF& E is from a vendor never paid for delivery of the FF& E to the building in the first place. All FF & E at issue as potential "set-off" against the rent monies owed to Sky Top by Citrus remains subject to disposition in the bankruptcy proceedings. The testimony of Citrus owner, Franklin Trell, confirmed that ownership of the FF & E was to have transferred to the [correct] recipient in order for the 2009 rent to have been satisfied. As of July 12, 2011, ownership was not transferred. Therefore, no payment was made pre-petition to reduce the \$941,878.07 owed by Citrus to Sky Top.

To the extent that Citrus argues that "delivery" of the FF & E did not require an actual transfer of ownership to either Sky Top, or its designee, Citrus' argument is too specious to be considered credible. Moreover, the testimony of Citrus' principle, Franklin Trell, completely belies such argument.

The remaining "set-off" issue is resolved by correctly applying §20 of the parties lease. Unfortunately, §20 is ambiguous. There is no indication how the "allowance" is satisfied, let alone a clear definition of what it is, or when it becomes operative. The possibilities are too numerous to list. This Court declines any invitation by the parties to re-write their contract, or alter the benefit of their bargain. Therefore, the Court has relied upon parol evidence, to make a determination as to how §20 is to be applied for the purpose of determining "the amount of pre-petition rents owed." In so doing, the court has

found there to be no "interim allowance" to permit substituting the "tenant construction allowance" for rent payments that are now past due under the parties' lease.

Documents exchanged by the parties clearly demonstrate that Citrus, through Trell and its authorized representative, Cindy Vinson, repeatedly represented that the tenant "allowance" is satisfied in full at the end of the initial ten (10) year term. A clear example of this interpretation is provided by Exhibit 12, in which it is stated that Sky Top would have to pay to Citrus no money provided that Citrus is permitted to occupy the leased premises for ten (10) years and Sky Top neither sells, nor refinances the property during that initial ten (10) year term.

The evidence established that the parties were considering, at Citrus' insistence, a "unique business model." Trell, himself, testified that part of the "uniqueness" Citrus offered was, "We pay for the MRI and build-out... We only receive money from the [fixed] rental fee [of the MRI facility]." Citrus' interest in the building was contingent upon Citrus being able to locate two (2) MRI machines in the building. The end result of the Citrus "business model" being that, upon completing the building and installing the necessary MRI equipment, Citrus would generate \$250,000.00 a month leasing its facility - i.e. the leased premises - to "doctors," whether they used the facility or not. Those agreements are not a part of this proceeding, but the testimony about them to explain the "unique business model," contemplated by Citrus as the impetus to this lease, is clear and un-rebutted.

Thus, the evidence shows that for its investment of \$2.6million dollars, plus monthly rental fees, Citrus could expect to receive more than \$22.5 million dollars above and beyond that which it would spend to improve the leased premises and make its approximately \$40,000.00 per month lease payments. Citrus' expectation of future income

does not make the representations clearly expressed in Exhibit 12, for instance, patently unfair or illogical.

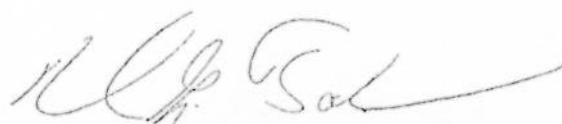
Under protection of the bankruptcy stay Citrus can pause, analyze and decide whether it wishes to assume the lease it has with Sky Top and make arrangement to promptly pay the \$941,878.07, for unpaid rent due under the terms of its lease. Citrus can assume the lease, try to renegotiate its terms, or abandon the lease, at which point damages may be moot, or otherwise not worth litigating. However, at this point in time, based upon all of the evidence and law applicable to this proceeding, the "pre-petition rent owed" is \$941.878.07, and nothing under the lease or through the parties' activities or negotiations prior to Citrus filing Bankruptcy on July 12, 2011, alters the mathematical calculation stipulated to by the parties. Citrus' "pre-petition rent owed" to Sky Top is \$941,878.07.

To the extent that the prior interlocutory order of July 12, 2011, entered by the Honorable T. Michael Johnson is inconsistent, or is read by anyone to require any pre-petition rent owed other than that which is specifically set out in this Order, then the prior Order of Judge Johnson dated July 12, 2011, is hereby rescinded pursuant to this Court's inherent authority to control its own interlocutory orders..

WHEREFORE, it is hereby ORDERED and ADJUDGED that,

The pre-petition rent owed by Citrus to Sky Top is hereby determined to be \$941,878.07.

DONE and ORDERED in Chambers in Lake County, Tavares, Florida, on this the eighth day of February, 2012.



MICHAEL G. TAKAC
Circuit Court Judge

Copies to:

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Marks Gray, P.A.
Post Office Box 447
Jacksonville, Florida 32201-0447

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA**

_____,
Petitioner (Law Enforcement
Officer/Agency)

v.

Case No.: _____

Division: _____

_____,
Respondent

PETITION FOR RISK PROTECTION ORDER

The more particularly identified below Petitioner seeks a risk protection order from the Fifth Circuit Court in and for Lake County, Florida, against the Respondent more specifically identified below, and in support thereof alleges:

1. Petitioner's full legal name or name of petitioning agency is: _____
2. Petitioner's law enforcement office/agency is located at *{street address, city, state and zip code}*: _____
3. Respondent poses a significant danger of causing personal injury to himself/herself or others by having a firearm or any ammunition in his/her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition.
4. The quantity, type and location of all firearms and ammunition Petitioner believes to be owned or within the Respondent's possession, custody or control are:

Type:	Number:	Location:
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. There is an existing protection order governing Respondent under the following Florida Statutes (indicated by "X"): No [___]; Yes [___] under F.S. 741.30 [___]; 784.0485 [___]; other (indicate statute or order) _____.

6. Circle the appropriate letter (A or B) of the paragraph below that applies:
- A. Petitioner has provided the statutory required notice to respondent's family; household members; and the following individuals known to be at risk from Respondent, of the filing of this action with referrals to appropriate resources. Those notified for being at risk are:

- B. Petitioner has not provided notice as indicated in paragraph 6A above, but will take the following steps to provide such required notice:

7. Attached is Petitioner's affidavit made under oath advising the Court of the **specific: statements, actions, or facts** of which Petitioner has personal knowledge that give rise to a reasonable fear of significant dangerous acts by Respondent causing personal injury to Respondent's self, or other(s), by having a firearm or any ammunition in Respondent's custody or control, or by purchasing, possessing or receiving a firearm or ammunition. See attached exhibit "A."

8. Petitioner requests that the Court issue a temporary *ex parte* risk protection order.
Yes [] No [] (check appropriate box).

IF YES, THEN PETITIONER AGREES to make him/herself available to testify and provide evidence to the Court at an *ex parte* hearing to be conducted by the Court whether on the day this petition is filed or the following business day after the petition is filed.

9. Petitioner believes the following to be true of the Respondent against whom the Petition is filed:

- a. Respondent's full legal name:

- b. Respondent's current address: {street address, city, state, and zip code}

c. Physical description of Respondent:

Race: _____ Sex: Male _____ Female _____ Date of Birth: _____

Height: _____ Weight: _____ Eye Color: _____ Hair Color: _____

d. Distinguishing marks or scars: _____

e. Vehicle(s): *{make/model}* _____ Color: _____ Tag Number: _____

f. Other names Respondent goes by: *{aliases or nicknames}* _____

g. Respondent's email address: *{if known}* _____

h. Respondent's Driver's License number: *{if known}* _____

i. Respondent's attorney's name, address, and telephone number: *{if known}* _____

Respectfully submitted, **with attached affidavit as exhibit "A,"** this _____ day of

_____, _____.

Signature of Petitioner

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

Case No.:

Petitioner,

v

Respondent.

TEMPORARY EX PARTE RISK PROTECTION ORDER AGAINST RESPONDENT AND
NOTICE OF HEARING

This matter was brought before the Court by the Petition of _____ dated, _____ seeking a Risk Protection Order against the Respondent, _____. The petition and hearing for *ex parte* relief were considered on _____, with Petitioner, _____; counsel for the Petitioner, _____; and _____ present. The Court having considered all the evidence and arguments presented, reviewed the file and affidavit and being otherwise duly advised hereby finds as follows:

1. Petitioner has demonstrated reasonable cause that the Respondent poses a significant danger of causing personal injury to Respondent's self or others by having possession, custody, or control of any firearm or ammunition.
2. While this order is in effect the Respondent is absolutely prohibited from using, possessing, or acquiring or even attempting to use, possess, or acquire any firearm, ammunition, or gun permit of any type or nature, including concealed weapons permit, for Respondent or any third party or entity.
3. To the subject of this protection order: This order is valid until _____. You are required to surrender all firearms and ammunition that you own in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must surrender immediately to the _____ all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s.790.06, Florida Statutes. A hearing will be held on the date and at the time noted below to determine if a risk protection order should be issued. Failure to appear at this hearing may result in a court issuing an order against you which is valid for one (1) year. You may seek the advice of an attorney as to any matter connected with this order.

4. Responsive pleadings to the Petition may be filed with the Clerk of the Court at 550 West Main Street, Tavares, Florida and with copies thereof provided to Petitioner at _____.
5. The particular ground(s) found to exist by the Court that support(s) entry of this order are as follows: (cite paragraph(s) from Petitioner's Affidavit and/or identify the witness and testimony given to you at hearing).

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

- A. The Petition for an *Ex Parte* Temporary Risk Protection Order is GRANTED.
- B. Respondent is hereby prohibited from, in any manner or for any purpose, using, possessing, acquiring, or attempting to use possess or acquire a firearm, ammunition, or firearm/weapon permit of any type or nature until _____.
- C. This order shall remain in effect against Respondent until _____, 201_, at _____ a.m./p.m., **at which time there will be an evidentiary hearing to determine whether a risk protection order should be entered** against the Respondent for any period of time up to one (1) year. The hearing will occur at the Lake County Courthouse, 550 West Main Street, Tavares, FL, Courtroom 3A.
- D. Respondent is to immediately surrender all firearms, ammunition and weapon permits of every kind to the Petitioner, and to cooperate and facilitate surrender of said items to Petitioner. The Petitioner is hereby authorized to designate to Respondent particular individual and location to complete surrender in the event that the complete surrender of all items now prohibited by this order (i.e. firearms, ammunition and gun permits) cannot be handed over to Petitioner at the time of service of this order due to sheer volume, or remote location, of such items. In no event may Respondent take more than three (3) days to effect complete surrender.
- E. Within three (3) business days of this Order, i.e. on _____ at _____ a.m./p.m., in Courtroom _____ of the Lake County Courthouse, 550 West Main Street, Tavares, FL, the Respondent is required to appear and prove that any firearms or ammunition owned, in the custody, control or possession of Respondent have been surrendered in compliance with this Order.

DONE and **ORDERED** on this _____ day of _____, _____.

Judge Name
Circuit Judge

Addendum III of III

Question 32(d)(iv)

The following is a list of attorneys that have appeared for termination of parental rights cases:

Department of Children and Families:

Address: 1300 Duncan Drive, Building C., Tavares, Florida 32778

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Kathleen Loftus, Esq. 352-330-5617

Address: 550 W. Main Street, Tavares, FL 32778

John Papajik, Esq. 352-742-2736, ext. 7612

Guardian Ad Litem attorneys:

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Private and appointed counsel:

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Robyn Hudson, Esq., 224 H. Rockingham Ave., Tavares, Florida 352-742-3333

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