MaryEllen P. Osterndorf

Circuit Court

Seventh Circuit

May 15, 2016

APPLICATION FOR NOMINATION TO THE Circuit COURT

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

DATE: May 15, 2016 Florida Bar No.: 0880050

GENERAL: Social Security No.: [redacted]

1. Name MaryEllen Patricia Osterndorf E-mail: MaryEllen@OsterndorfLaw.com

   Date Admitted to Practice in Florida: April 25, 1991

   Date Admitted to Practice in other States: June 10, 1993

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

   Osterndorf Law, P.A., Partner

3. Business address: 327 So. Palmetto Ave., P.O. Box 2352

   City Daytona Beach County Volusia State FL ZIP 32115

   Telephone (386) 255-9171 FAX ( ) -

4. Residential address: 290 Williams Ave.

   City Daytona Beach County Volusia State FL ZIP 32118

   Since April 16, 1997 Telephone [redacted]

5. Place of birth: Jamacia, New York

   Date of birth: [redacted]1965 Age: 50

6a. Length of residence in State of Florida: 36 1/2 years

6b. Are you a registered voter? ☒ Yes ☐ No

   If so, in what county are you registered? Volusia

7. Marital status: Single

   If married: Spouse's name

   Date of marriage

   Spouse's occupation

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

N/A

8. Children

Name(s)	*Age(s)*	*Occupation(s)*	*Residential address(es)*
N/A			

9. Military Service (including Reserves)

Service	*Branch*	*Highest Rank*	*Dates*
N/A			

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.

Schools	*Class Standing*	*Dates of Attendance*	*Degree*
Father Lopez High School	28 of 77	1979-1983	diploma
Florida State University		1983-1987	Bachelor of Arts
Mercer University School of Law	58 of 148	1987-1990	Juris Doctor

18b. List and describe academic scholarships earned, honor societies or other awards.
Third Year Justice, Student Honor Court; American Jurisprudence Award for Taxation of Estates, Gifts & Trusts.

NON-LEGAL EMPLOYMENT:

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

Date	*Position*	*Employer*	*Address*
1985, 1988, 1989	buser/prep cook/waitress	Bennigan's	Ormond Beach, FL

1985-1987	waitress/admin asst	Bennigan's	Tallahassee, FL
1989	waitress	Bennigan's	Macon, GA

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.

Court or Administrative Body	*Date of Admission*
State of Florida	April 25, 1991
State of Georgia	June 30, 1993
U.S. District Court, Middle District of Florida	August 14, 1991

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:

Position	*Name of Firm*	*Address*	*Dates*
Associate	Richard J. Osterndorf	P.O. Box 2352 Daytona Beach, FL 32115	1991-92
Associate	Osterndorf & Associates, P.A.	P.O. Box 2352 Daytona Beach, FL 32115	1992-95
Partner	Osterndorf Law, P.A.* *firm name changed 3/1/2016	P.O. Box 2352 Daytona Beach, FL 32115	1995-present

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

My practice is a general civil practice, both as a transactional and civil litigation attorney. I handle real estate matters, including commercial and residential leasing, sales, title insurance and closings; real estate litigation, including foreclosures, homeowner and

condominium matters, construction litigation, and general real estate litigation; trusts, estate planning and probate, guardianship, probate litigation; contract law, and general business law.

The typical client in general civil litigation would be a landlord or tenant dispute, a mortgage foreclosure (defense or plaintiff), or lien (construction or condo) foreclosure (defense or plaintiff), or a contract dispute. I would be responsible for evaluation of their claim, preparation of all pleadings, attendance at court hearings, preparation of legal memoranda, trial preparation and trial presentation, etc. The typical real estate client is buying, selling or leasing property. Litigation in real estate might be a quiet title, partition, boundary dispute, construction dispute, or specific performance suit. Services could include contract drafting, preparation of closing documents, and title insurance. Estate planning clients generally involve preparation of documents such as a Last Will and Testament, Durable Power of Attorney, Health Care Proxy, or a Trust, and probate litigation would involve a Will or Trust contest, determination of beneficiaries, and either the defense of the documents prepared, or challenges to documents prepared by others. Guardianship litigation would involve challenges to necessity of a guardianship and the qualifications of a proposed Guardian.

I also am a certified Circuit Civil Mediator and I mediate a variety of civil matters.

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

Court			Area of Practice		
Federal Appellate		%	Civil	45	%
Federal Trial		%	Criminal		%
Federal Other		%	Family	5	%
State Appellate		%	Probate	50	%
State Trial	100	%	Other		%
State Administrative		%			
State Other		%			
		%			
TOTAL	100	%	TOTAL	100	%

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

Jury?	1 as first chair 3 as second chair	Non-jury?	55
Arbitration?	0	Administrative Bodies?	0

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. On occasion, clients in probate and guardianship matters may receive an Order to Show Cause for the failure to meet a court deadline. Counsel is also noticed on those orders. Applicable court rules require the attorney to attend the hearing.

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

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

(1) Estate of Melanson, claim litigation, case no: 2013-11739-PRDL, Sharon A. Logan, Esquire, 386-673-5787 and William A. Johnson, Esquire, 321-253-1667, concluded June, 2015.

(2) Diemicke vs. Riccio, case no. 2014-33556-COCI, David W. Glasser, Esquire, 386-252-0175, concluded Feb., 2015.

(3) In Re: Demers, case no. 2014-DR-001077, originally concluded Feb., 2015, no opposing counsel, Judge Denis Craig, 386-257-6071. A modification of the matter was heard by Judge David Beck in February 2016.

(4) Guardianship of Shirley Scarborough vs. Scarborough, case no: 2012-GA-750, Sara Caldwell, Esquire, 386-258-1950, concluded, August, 2014.

(5) Jollivette vs. Bethune Volusia Beach, Inc., case no: 2014-10588-CIDL, concluded Aug. 2014, no opposing counsel, Judge R. Zambrano, 386-943-7060.

(6) Deutsche Bank vs. LeSage, case no: 2012-32522-CICI, concluded Oct., 2013, Eric Silevitch, 727-446-4826 .

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

(1) Wells Fargo Bank, N.A. vs. Barton (Nielsen), case no. 2012-30818-CICI, concluded April, 2015, J. Bennett Kitterman, Esquire, 813-251-4766.

(2) Daniluk vs. Estate of Daniluk, case no. 2013-11325-PRDL, Adv. No. 1, concluded Dec. 2014; Lester A. Lewis, Esquire, 386-226-8817, Jerry B. Wells, Esquire, 386-253-3676, Steven J. Guardiano, Esquire, 386-257-7666, Brian R. Toung, Esquire, 386-255-3425, Vincent T. Lyon, Esquire, 386-445-8900.

(3) Wells Fargo Bank, N.A. vs. Marsico, case no. 2011-20450-CINS, concluded Dec., 2014; Saberin Jamshed, Esqurie 954-926-4233 and Daria Kalac, Esquire, 904-998-

9733.

(4) Wells Fargo Bank vs. Marilyn Fields, case no. 2007-32189-CICI, concluded Dec., 2013, Farzad Milani, Esquire, 813-880-8888.

(5) SunTrust Bank vs. Therrell, case no: 2012-31000-CICI, concluded Dec., 2013, Michael Tebbi, Esquire, 813-229-0900.

(6) State vs. Cubbedge, case no: 2013-306621 MMDB, concluded Oct., 2013, Eric Leb, Sequire, 386-239-7710.

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

27d. During the last five years, how frequently have you appeared in Court?
5 average times per month

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

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

N/A

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

N/A

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

A) Thomas R. Boutler vs. Elizabeth Huzar: case no: 1992-33277-COCI. I represented the Plaintiff, a physician who was suing for payment for medical services he provided. I was lead counsel and was solely responsible for all matters, including pleadings, discovery, voir dire, preparation of jury instructions, and the trial of the matter on the merits. This was my first solo jury trial. The Defendants were involved in a separate personal injury suit, and it was a number years before that matter was tried before a jury, and my client was able to recover under his Final Judgment. I also handled the post-trial garnishment and recovery matter.

B) Vivian C. Glionna vs. Dwight & Wilhelmenia Morris: case no: 1998-CA-003276. This was a mortgage foreclosure case in Circuit Court, Marion County where I represented the Plaintiff. The proceeding was protracted and a Final Judgment in favor of Plaintiff was entered. The Defendants filed a motion for rehearing and then a subsequent appeal of the Final Judgment. I handled the appeal of the matter, which was also my first solo appellate brief and first solo oral argument. A PCA opinion was issued, and thereafter the appellant then moved for rehearing en banc, which was denied. Appellate fees were granted to my client.

C) T & T Builders of Volusia County, Inc. vs. White: case no: 1997-31257-CICI. This was in Circuit Court, Volusia County. The Plaintiff brought suit on a promissory note and Defendants filed a counter claim for construction defects regarding the building of their home. I represented the Defendants/Counter-Plaintiffs, after the Defendants had terminated their prior counsel, and a number of issues had been decided adversely to them. The proceeding was protracted and went to a three day non-jury trial over a period of several months. The Court's trial calendar (and expert availability) was able to accommodate the parties at various times when there was an available time slot. There was a good deal of expert testimony and a site visit to the property by the court. While my clients were found to be liable under the note, I was successful on their counterclaim, which compensated them for their extensive damages at their residence.

D) Mason vs. Mason, case no: 2004-31390-CICI. I represented the Plaintiff, who was suing his brother and sister-in-law for specific performance of a real estate contract. The matter was in Circuit Court, Volusia County and went to trial in early 2007. I was successful in obtaining a judgment in my client's favor, and having a special master appointed to convey the property to my client. With post trial matters, it was concluded in late 2007.

E) Neubauer vs. Farmer and Lichtigman vs. Waves of America: case no: 1996-32483-CICI and case no: 1996-32482-CICI. These were two companion cases filed by affiliated parties, wherein I represented the Defendants in each matter. The cases were

in Circuit Court, Volusia County, and involved claims regarding a breach of lease, breach of personal guaranty, breach of contract, breach of a collateral agreement, disposition of the collateral and breach of a promissory note. The cases were complex, and the significant issue was regarding the disposition of the secured collateral by the creditor. I was solely responsible for the matter, including pleadings, hearings, discovery, trial preparation. On the eve of trial the Plaintiffs listed me as a witness for their case and over my objection the trial proceeded as scheduled, with me as a witness and without my participation as lead counsel.

F) Estate of Fay E. O'Brien, case no: 2002-12677-PRDL. Over a period of several years, six (6) separate matters and cases were filed by or against this estate. All the matters were in Circuit Court, Volusia County. The initial Estate administration, the Estate of Fay E. O'Brien, was with Judge C. McFerrin Smith, III. Judge Smith also presided over two (2) adversary proceedings, a Determination of Pretermitted Spouse Status and a Breach of Fiduciary Duty against the Personal Representative in the estate administration of the decedent's late wife, Beatrice O'Brien, which was case no: 2003-10216-PRDL. The spousal matter was resolved in 2006 and the breach of fiduciary duty matter in 2009.

Further the two estates sued one another, in case no: 2003-30964-CICI, with Judge John Watson, which was resolved successfully in favor of my client in 2005. The late wife's estate also brought an action against my client, in case no: 2003-30378-CICI, which based a multi count complaint alleging theft, conversion, and breach of fiduciary duty against my client and several financial institutions. The trial judge in that matter was Judge David Walsh.

The final matter was case no: 2006-31527-CICI, a matter which I successfully had dismissed. The attorney on the matter was David Glasser.

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

I was responsible for preparation of the writing that is attached.

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.

No.

32b. List any prior quasi-judicial service:

Dates	*Name of Agency*	*Position Held*

Types of issues heard:

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

No.

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

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

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

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

(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.

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

(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 am an officer in the limited liability company that owns the office building in which my law practice is located and in which several other firms lease space. There are no specific business duties associated with my ownership interest, other than annual corporate filings, income tax filings and leasing. If appointed, I would engage a property manager to manage the building on behalf of the limited liability company.

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.

In addition to my law practice, I am a certified Circuit Civil Mediator. I was certified August 10, 2007, and my current certification expires on August 10, 2017.

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.

In addition to the practice of law, I have received fees from services as a Mediator and as a Guardian for a Ward.

POSSIBLE BIAS OR PREJUDICE:

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

I do not foresee any particular type or classification of cases or litigants in which I believe it would be difficult for me to sit as the presiding judge.

MISCELLANEOUS:

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

Yes _____ No 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 x If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No x If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

NO

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

NO

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

NO

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

NO

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

NO

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

Yes.

A) As Personal Representative of an estate, I was the Plaintiff in a medical malpractice action in Volusia County, Florida. The matter, MaryEllen P. Osterndorf, as Personal Representative of the Estate of Sandria M. Miller vs. Halifax Hospital, Robert Mathis, MD, et al., case number 2004-30826-CICI. A confidential settlement was reached in mediation and a voluntary dismissal was filed 04/14/2008.

B) I was the Plaintiff in a breach of contract/unjust enrichment suit. The matter, MaryEllen P. Osterndorf vs. Pinnacle Roof Cleaning, Inc., case number 2004-35144-COCI, was in County Court in Volusia County, Florida. The matter was settled in informal mediation and closed on 01/18/2006.

C) Please see attached. I have served as the Petitioner in several probate and guardianship matters.

#38.

C. I have served as the Petitioner in the following probate or guardianship matters, all of which were in Volusia County, Florida.

1. Personal Representative in Estate of Matthew S. Stackler, deceased.

Case no: 2003-12441-PRDL. Estate closed 1/2005.

2. Guardian of the Property. Guardian Advocacy of Latrice Johnson.

Case no: 2007-11247-PRDL. Discharged on 6/2009.

3. Guardian ad Litem. Estate of Velma Bradley, deceased.

Case no: 1992-10430-PRDL. Discharged on 8/1998.

4. Guardian ad Litem. Estate of Kenward Bradley, deceased.

Case no: 1992-10432-PRDL. Discharged on 1/1999.

5. Successor Guardian of the Property. Duane Rawlins, a minor.

Case no: 1997-13150-PRDL. Discharged 12/2003.

6. Personal Representative. Estate of Lorene H. Pullen, deceased.

Case no: 1998-12586-PRDL. Discharged 3/2000.

7. Successor Personal Representative. Estate of Sandria M. Miller deceased.

Case No: 2004-11088-PRDL. Discharged 8/2008.

8. Attorney ad Litem. Estate of Willie Jones, deceased.

Case no: 2003-11828-PRDL. Discharged 6/2004.

9. Successor Guardian of the Property. Guardianship of Chad Washington.

Case no: 1982-00729-PRDL. Discharged 9/2012.

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

No

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

No

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

No

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

No

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

Yes ☒ No ☐ If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes ☒ No ☐ If yes, please explain what and why. See 43c.

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

Yes, a tax lien was filed against the professional association (my law firm) on or about 02/11/11 for 941 tax. The lien was filed by the IRS. I has previously been advised by the firm's CPA that the firm had overpaid 941 taxes during the calendar year 2010. The firm requested that the overpayment be applied to the next quarter's 941 taxes. On or about 02/10/11, I received written notice from the IRS that 941 taxes were due for the period 6/30/2010. I was required to tender payment to the IRS of the taxes, interest and penalties, in which the inclusive amount was less than $3,000, on or before 02/22/2011. I made immediate payment (of the tax, interest and penalties), which was negotiated by the IRS on 02/14/2011. On or about March 2, 2011, a Certificate of Release of Federal Tax Lien was filed and within several days a refund of the prior overpayment of tax was received.

HONORS AND PUBLICATIONS:

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

None.

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

April, 2012: Volusia-Flagler United Way, Volunteer of Year, nominee

June, 2011: Florida Assn for Women Lawyers, Leaders in the Law Recipient

May, 2011: Halifax Habitat for Humanity, Inc., Volunteer of the Year Award

May, 2006: Volusia/Flagler Assn for Women Lawyers, Distinguished Service Award

1999, Volunteer Lawyers' Project, Distinguished Service Award

1999, Volunteer Lawyers' Project, Fundraising Award

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

Instructor, Attorneys Title Insurance Fund, 16 week course, From Contracts to Closing 2007

Probate, Guardianship, Homestead & Quiet Title, The Fab Four of Real Estate Transaction Challenges, Women's Council of Realtors, January 15, 2014.

Estate Planning-Life Planning Seminar, The Catholic Foundation of Central Florida, April 2, 2014.

Common Construction Contract Phrases, Florida Society of Engineers-Daytona Beach, April 9, 2014.

Hanging Your Own Shingle and How to be Successful, Volusia County Bar Assn (YLD), 04/17/2014.

Best Practices for Attorney Trust Accounts, Volusia County Bar Assn, 04/24/2015

Mock Mediation & Arbitration, Daytona Beach Area Assn of Realtors, 11/04/2015

I also routinely (several times a year) give a lecture or seminar to civic and profesional groups on estate planning, real estate and title insurance.

I also have spoken during several Law Week Celebrations.

47. Do you have a Martindale-Hubbell rating? Yes ☒ If so, what is it?___No ☐

B.V.

PROFESSIONAL AND OTHER ACTIVITIES:

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

The Florida Bar (1991-present)

The Georgia Bar (1993-present)

Volusia County Bar Assn (1991-present, Director, 1998-2001

Volusia County Bar Assn Chair, Solo & Small Firm Section, 2014-16

Flagler County Bar Assn (2014-present)

Member and Agent, Attorneys Title Fund Services, L.L.C. (1996-present)

Real Property, Probate & Trust Law Section, The Florida Bar, (2003-present)

Alternate Dispute Resolution Section, The Florida Bar (2011-present)

General Practice, Solo & Small Firm Section, The Florida Bar (2014-present)

Dunn-Blount Inn of Court, (2001-present, Secretary 2006-2008, Counselor/Vice President 2010-2012, President 2012-2014)

Volusia Civil Trial Attorneys Association, (2009-present, Board 2012-13, Secretary 2014, President 2015)

Volusia-Flagler Association For Women Lawyers, 1995-1997; 2007-present, (Director, 2007-2011, Communications Chair, 2009-2010)

Volusia Real Property Council, (2000-present, Board, 2005-2014, Treasurer 2010-2014)

Board of Trustees, Volusia County Law Library, (Treasurer, 1994-1998)

Volusia County Young Lawyers Assn, (Director, 1993-1999, President, 1995-1997)

Unlicensed Practice of Law Committee, 7th Circuit, (2005-2011, Chair 2009-2011)

48b. List, in a fully identifiable fashion, all organizations, other than those identified in response to question No. 48(a), of which you have been a member since graduating from law school, including the titles and dates of any offices which you have held in each such organization.

Volusia County Affordable Housing Advisory Board, (2008-2012)

Justice for All Campaign, (2008-2014)

Community Legal Services of Mid-Florida, Inc. Board, (2010-2014)

Legal Advocacy Center of Central Florida, Inc., (Board, 2010-2014)

Volusia County Women's Network, (2009- 2013)

Daytona Beach Area Assn of Realtors, Affiliate member (2008-2012)

Halifax Habitat for Humanity, Inc., volunteer attorney (2001-present)

Halifax Habitat for Humanity, Inc., (Board of Directors, 2002-2013; President 2009-2011)

St. Vincent DePaul Society (2007-present)

Ormond Beach Chamber of Commerce (2014-present) Ormond Beach Leadership Class XII

Adult Volunteer, High School Youth, Lighthouse (1998-2008)

Peace Jam, Adult Volunteer 2004, 2009

Daytona Beach Rotary Club (2009-2010)

Seminole Boosters (1990-2014)

Florida State University Alumni Assn (2007-2014)

Father Lopez High School Board of Directors (2013-present, Vice-Chairman)

Father Lopez High School Alumni Assn (2008-present)

Father Lopez High School Touchdown Club (2006-2014)

Tiger Bay Club of Volusia County, Inc. (2013-14)

48c. List your hobbies or other vocational interests.

I am active at my church, and I enjoy reading, belong to a book club, I enjoy cooking, yoga, beach bike riding, and watching college sports. I am also an avid supporter of my niece and nephews various extracirricula activities.

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

No.

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

In the past, I provided legal services to the Board of Directors and the family partners of Halifax Habitat for Humanity, Inc. Those services to the families are generally real estate closings, contracts, and estate planning, I currently provide probate and estate planning for family partners. In regard to the civic Board service, my legal participation is with review of contracts and as general legal counsel.

In addition, my pastor at my church will occassionally request that I lend assistance to parishioners. Those services would include pro bono litigation defense, probate or estate planning, and general contract matters, and answering civil matter questions.

I have also provided corporate counsel services (contract and lease review, standards and practices) for a non-profit, religious affiliated school in Flagler County. My services are on an as-needed basis.

I have been since I was admitted to practice in 1991, and I remain a volunteer attorney with Community Legal Services of Mid-Florida. I work the evening advice clinics, accept referrals in particular areas, and service as a volunteer mediator. I also routinuely (5-8 cases per year) serve as a volunteer Attorney ad Litem for Developmentally Disabled Adults.

SUPPLEMENTAL INFORMATION:

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

Yes. I took the state certified Guardian Education Course, Mediation training, trust accounting best practices, trial advocacy, jury selection, Daubert Evidence standard, social media & the law, commercial real estate transactions, condominium law update, mortgage foreclosure, expert examination, electronic discovery, attorneys' fees,

evidence.

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. See answer to #46. Substantive area of the law was real estate contracts, closings, and title insurance; probate, guardianship, and estate planning.

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

I have participated in a number of community Boards and organizations, and I am a graduate of the Ormond Beach Chamber of Commerce Leadrship XII Class. I believe that my participation and community involvement would be an advantage on the bench. Further, my certification and practice as a Mediator has enabled me to assist parties in the resolution of a variety of civil matters over the last eight and a half (8 1/2) years.

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

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.

7th Circuit JNC, County Court position, 09-23-2011; 7th Circuit JNC, County Court position, 04-18-2012; 7th Circuit JNC, Circuit Court position, 07-10-2012, 7th Circuit JNC, Circuit Court position, 04-01-2014; 7th Circuit JNC, Circuit Court position, 09-22-2015; 7th Circuit JNC, Circuit Court position, 01-25-2016.

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

I have been privileged be selected on four occasions for consideration by the Governor for the bench in in the 7th Circuit, in September 2011, in May 2012, in October, 2015 and most recently in February, 2016. I have additional experience in other areas of the law, and I am prepared to adjudicate the matters that would come before me and render a fair and impartial decision. I believe that my past performance as an attorney and mediator demonstrate my proven potential to be a successful judge for this circuit.

REFERENCES:

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

(1) The Honorable David B. Beck (retired), [redacted], Ormond Beach, FL 32174, 386-[redacted].

(2) The Honorable Sandra C, Upchurch, Circuit Judge, 101 N. Alabama Avenue, DeLand, FL 32724, 386-626-6590.

(3) The Honorable Margaret W. Hudson, Circuit Judge, 101 N. Alabama Avenue, DeLand, FL 32724, 386-822-5073.

(4) Lori Gillooly, Executive Director of Halifax Habitate for Humanity, 40 Sycamore Cr.,

Ormond Beach, FL 32174, 386-257-9950 (w) and [redacted] (c).

(5) Prof. Ann M. Phillips, ERAU, 600 S. Clyde Morris Blvd., SSIA Dept., Daytona Beach, FL 32114, 386-226-2966 (office) [redacted] (cell).

(6) Gerard Keating, Esquire, 318 Silver Beach Ave., Daytona Beach, FL 32118, 386-252-2501.

(7) Philip Maroney, President, The Root Company, 275 Clyde Morris Boulevard, Ormond Beach, FL 32174, 386-671-4907 (office) [redacted] (cell).

(8) Christene Ertl, Esquire, Ansbacher Law, 1100 S. Ponce de Leon Blvd., Ste. 3 A

St. Augustine, Florida 32217-4605, (904) 429-4833 (office) [redacted] (cell).

(9) Michaela D. Scheihing, Esquire, 104 Lacoast Ln., Suite 140, Daytona Beach, FL 32114, 386-274-1700 (office) [redacted].

(10) Darrell Brock, Esquire, 400 N. Halifax Ave., Daytona Beach, FL 32118, 386-238-7273 (office).

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 15 day of May, 2016.

Mary Ellen P. Osterndorf
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	$14,000 +		
List Last 3 years	2014-$36,000	2013-$46,838	2012 $36,000

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			
List Last 3 years	2014-	2013-$29,468	2012- $29,600

3. State the gross amount of income or loses 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	N/A		
List Last 3 years	N/A	N/A	N/A

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	N/A		
List Last 3 years	N/A	N/A	N/A

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 April 30, 2016 was $406,045.00.

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 $ 28,000.00

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Homestead-290 Williams Ave., Daytona Beach, FL 32118	160,000.
Stocks, see attached list	40,636.
Osterndorf Law, P.A.	160,000.
ORP Realty, L.L.C.	86,666.
Bank Accounts	15,500

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4): NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SunTrust Bank-PO Box 305053, Nashville, TN 37230 (auto loan)	7,400.
Nationstar Mortgage, PO Box 619063, Dallas, TX 75261 (home mortgage)	18,585.
SunTrust Bank-PO Box 791274, Baltimore, MD 21279 (equity line)	21,000.

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE: NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SunTrust Bank, PO Box 79079, Batimore, MD 21279 (office mortgage)	37,772.

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Osterndorf Law, P.A.	P.O. Box2352, Daytona Beach, FL 32115	14,000.00

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

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

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

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

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

OATH

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

MaryEllen P. Osterndorf

SIGNATURE

STATE OF FLORIDA

COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 15 day of **May.**, 2016 by MaryEllen P. Osterndorf

Lucinda V Dodson

(Signature of Notary Public—State of Florida)

Lucinda V Dodson

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

Personally Known X *OR* Produced Identification _____

Type of Identification Produced _____

LUCINDA V. DODSON
Notary Public - State of Florida
My Comm. Expires Oct 18, 2018
Commission # FF 163573
Bonded through National Notary Assn.

MaryEllen P. Osterndorf
(04/30/16)

Assets

CASH:

SunTrust Bank Checking account -7761	$ 2,500
SunTrust Bank Savings Account -8278	$ 1,000
SunTrust Bank Money Market Account -7791	$12,000
Cash Surrender Value of Life Insurance	$ 3,500

Stocks:	$40,636
ATT	$ 316
Exxon/Mobil	$12,925
IBM	$25.480
Comcast	$ 1,660
Avago	$ 255

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: May 15, 2016

JNC Submitting To: Seventh Judicial Circuit

Name (please print): MaryEllen Patricia Osterndorf

Current Occupation: attorney

Telephone Number: [redacted] Attorney No.: 0880050

Gender (check one): ☐ Male ☒ Female

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

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of Applicant: MaryEllen P. Osterndorf

Signature of Applicant: MaryEllen P. Osterndorf

Date: May 15, 2016

Electronically Filed 08/15/2013 05:11:55 PM ET

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

CASE NO.: 2007-32189-CICI
DIVISION: 32

WELLS FARGO BANK, N.A.,

Plaintiff,

vs.

MARILYN G. FIELDS; ESTATE OF CATHERINE FIELDS, deceased; UNKNOWN HEIRS, DEVISEES, GRANTEES, ASSIGNEES, CREDITORS, LIENORS AND TRUSTEES OF CATHERINE FIELDS, DECEASED; and all Persons Claiming by, through, under or against the above named Defendant(s); JOSEPH JAMES FIELDS; RAY LEONARD FIELDS; EDWARD JAMES TUCKER; JOANNE MOORE; KATHY JONES; UNTIED STATES OF AMERICA, acting through Secretary of Housing and Urban Development,

Defendants.
_____/

DEFENDANT, MARILYN G. FIELDS's, MOTION FOR SUMMARY JUDGMENT

Defendant, Marilyn G. Fields, by and through her undersigned counsel, pursuant to Rule 1.510, Florida Rules of Civil Procedure (2011), move this Court to enter Summary Final Judgment in her favor as against the substituted Party Plaintiff, Wells Fargo Bank, N.A., and as grounds therefore would show:

UNDISPUTED MATERIAL FACTS

1. On or about August 26, 1981, Marilyn G. Fields and Catherine Fields executed a promissory note and mortgage in favor of Stockton, Whatley, Davin & Company, in the principal amount of $38,000.

2. On or about September 12, 2007 Plaintiff filed this foreclosure action, docket #2.

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3. On or about October 15, 2007, Defendant, Marilyn G. Fields, filed an Answer and Affirmative Defenses to Plaintiff's Complaint, docket #17.

4. On or about October 16, 2007, Plaintiff filed an Amended Complaint, docket #17. The Amended Complaint was strictly as to the Defendant, Catherine Fields, whom Plaintiff had ascertained had departed this life. The Amended Complaint was filed without leave of the Court or the written consent of the Defendant, Marilyn G. Fields. The Amended Complaint should be treated as a nullity, as it is not in compliance with Rule 1.190, Florida Rules of Civil Procedure.

5. On or about August 19, 2009, this Court entered an Order of Dismissal for Lack of Prosecution, docket #81. On or about December 9, 2009, this Court entered an Order on Plaintiff's Motion to Vacate Order of Dismissal, docket #89.

6. On or about July 10, 2013, this Court entered an Order, over the objection of the Defendant, Marilyn G. Fields, granting Plaintiff's Motion Substituting Party Plaintiff and Changing Case Style, docket #120.

ARGUMENT

Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, (Fla. 2000). Although a movant for summary judgment has the initial burden of demonstrating the nonexistence of any genuine issue of material fact, once the movant tender's competent evidence to support the motion, the opposing party must come forward with counter evidence sufficient to reveal a genuine issue; it is not enough to simply assert that an issue exists. *Dempsey v. Law Firm of Cauthen & Oldham, P.A.*, 781 So. 2d 1141 (Fla. 5th DCA 2001). *See also Publix Supermarkets, Inc. v. Austin*, 658 So. 2d 1064 (Fla. 5th DCA 1995), rev. denied, 666 So. 2d 146 (Fla. 1995); *Wolk v. Resolution Trust Corp.*, 608 So. 2d 859 (Fla. 5th DCA 1992).

Further, where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment. *Angell v. Don Jones Ins. Agency Inc.*, 620 So. 2d 1012, (Fla. 2d DCA 1993); *Palm Beach County v. Trinity Industries, Inc.*, 661 So. 2d 942, (Fla. 4th DCA 1995). Moreover, a summary judgment is appropriate where the material facts are not in dispute and the judgment is based on the legal construction of documents. *Ball v. Florida Podiatrist Trust*, 620 So. 2d 1018 (Fla. 1st DCA 1993); *Id.*

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7. The pleadings and other matters of record show that there is no genuine issue of any material fact and that Defendant, Marilyn G. Fields, is entitled to Summary Final Judgment as a matter of law. Plaintiff, Wells Fargo Bank, N.A., does not have standing to bring this action. Standing must exist at the time suit is filed, in this instance, on September 12, 2007. Any defect in a party's standing cannot be cured after the fact. See *Progressive Express Insurance Company vs. McGrath Community Chiropractic*, 913 So.2d 1281, (Fla. 2nd DCA 2005); *McLean vs. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170 (Fla. 4th DCA 2012); and *Rigby vs. Wells Fargo Bank, N.A.*, 84 So.3d 1195 (Fla. 4th DCA 2012).

8. Plaintiff was not the mortgagee on the mortgage instrument attached to the Complaint. The mortgagee and named holder of the promissory note attached to the Complaint is Stockton, Whatley, Davin & Company. Further, Plaintiff, despite its efforts, has failed to allege sufficient facts to reestablish a purportedly lost promissory note, pursuant to §673.3091, Florida Statutes, there are no allegations as to Plaintiff's right to enforce such instrument. See *Beaumont vs. Bank of New York Mellon*, 81 So. 3d 553 (Fla. 5th DCA 2012); and *Feltus vs. U.S. Bank, N.A.*, 80 So.3d 375 (Fla. 2d DCA 2012).

Plaintiff has not filed a valid Complaint based upon the Note.

9. As the promissory note does not name Plaintiff as payee, the note needs either a blank or specific endorsement. The promissory note at issue contains neither. Plaintiff did not and does not have standing. See *Gee vs. U.S. Bank Nat'l Ass'n*, 72 So.3rd 213 (Fla. 5th DCA 2011); *Riggs vs. Aurora Loan Servs., LLC*, 36 So.3d 932 (Fla. 4th DCA 2010); *McLean vs. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170 (Fla. 4th DCA 2012).

10. Plaintiff's allegation in paragraph 2 of the Verified Motion to Substitute Party Plaintiff, "*Specifically, **after** the filing of the complaint, a transfer of Plaintiff's right to enforce the subject loan was made to Wells Fargo Bank, N.A..*" provides **no specific date** in which the right to enforcement was purportedly transferred to Wells Fargo Bank, N.A. Plaintiff, despite the matter being in litigation for more than five (5) years, has provided no Assignment of Mortgage nor any endorsed promissory note.

Plaintiff also failed in both the Complaint and the Amended Complaint to allege any specific date in which its predecessor, Washington Mutual Bank, purportedly became entitled to enforce the instrument, which is payable to Stockton, Whatley, Davin & Company.

11. Plaintiff is unable to cure the defect in standing with Plaintiff's Lost Instrument Affidavit, Dkt #102, either. The Affidavit was executed on August

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4, 2010 by one Herman John Kennerty. The affidavit sets forth no facts or allegations as to establish how the promissory note went from Stockton, Whatley, Davin & Company, the named payee, to any other entity. The burden is on the Plaintiff to establish that it owns and holds the note and mortgage it seeks to foreclose. See *Saver vs. JP Morgan Chase Bank*, 4th DCA, January Term 2013 and *Richards vs. HSBC Bank USA as Trustee for PHH 2007-2*, 91 So.3d 233 (Fla. 5th DCA 2012).

Plaintiff did not have the original Note in its possession when suit was filed and the Note attached to the Complaint is absent an endorsement. See, *Henderson vs. Litton Loan Servicing, LP*, 92 So.3rd 301 (Fla. 4th DCA 2012).

12. Since September 12, 2007, the inception date of this instant action, Plaintiff, and Plaintiff's predecessor in interest, has purportedly assigned the right, title and interest of the mortgage and note, after the filing of the action. The First Assignment of Mortgage, which was prepared by counsel for the Plaintiff, was executed on November 11, 2008, and recorded on January 26, 2009, in Official Records Book 6316, Page 1217, of the Public Records of Volusia County, Florida. The Assignment was by a purported attorney-in-fact for Federal National Mortgage Association. No record evidence of the authority of the purported attorney-in-fact, Wells Fargo Bank, N.A., is a part of the record evidence of this cause. The Assignment is executed by a Wells Fargo Bank representative, as a purported attorney-in-fact for the Federal National Mortgage Association.

13. A Second Assignment of Mortgage, also identified as having been prepared by Wells Fargo Bank, N.A., as a purported attorney-in-fact, wherein the disclosed principal is Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, f/k/a Washington Mutual Bank, N.A.. The Second Assignment was executed on April 3, 2012, and recorded on April 5, 2012, in Official Records Book 6697, Page 4611, of the Public Records of Volusia County, Florida.

14. The two Assignments of Mortgage, in addition to contradicting one another, were executed after the filing of the Complaint and Amended Complaint, or after September 12, 2007. Any assignment of mortgage or the right to enforce the same must predate the filing of the foreclosure action. See *Jeff-Ray Corp. vs. Jacobson*, 566 So.2d 885 (Fla. 4th DCA 1990).

15. Defendant, Marilyn G. Fields, has incurred damages, including attorneys' fees and costs, for defending the claims of Plaintiff in this action. Defendant, Marilyn G. Fields has been obligated to retain the undersigned attorneys to defend her interest in this cause and has obligated herself to pay them a reasonable fee. Defendant, Marilyn G. Fields, requests that this Court

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determine reasonable attorneys' fees and costs for her for the defense of this action.

CONCLUSION

Based upon the foregoing, Defendant, Marilyn G. Fields, asserts that there are no genuine issues of material fact. Accordingly, Defendant, Marilyn G. Fields, respectfully requests that this Court enter Summary Final Judgment in her favor, dismissal of Plaintiff's Amended Complaint, award her reasonable attorneys' fees for the defense of this action, and such other and further relief as this Honorable Court deems proper and just.

I HEREBY CERTIFY that on the 15th day of August, 2013, a copy of the foregoing has been furnished by electronic delivery to: Plaintiff's attorney, Matthew J. Rodriguez, Esquire, at SFGTampaService@logs.com; David Veliz, Esquire, Guardian ad Litem, at DVelizpa@bellsouth.net; and John Rudy, Esquire at John.rudy@usdoj.gov.

OSTERNDORF & ASSOCIATES, P.A.

MaryEllen P. Osterndorf, Esquire
FL Bar #0880050
Post Office Box 2352
Daytona Beach, Florida 32115-2352
(386) 255-9171
Attorneys for Defendant, Marilyn G. Fields
Email: Osterndorflegal@yahoo.com

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