SEVENTH JUDICIAL CIRCUIT
COURT VACANCY APPLICATION OF

ALICIA R. WASHINGTON, ESQ.


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APPLICATION FOR NOMINATION TO THE SEVENTH JUDICIAL CIRCUIT COURT

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

DATE: 07/ 29 /2019 **Florida Bar No.:** 141615

GENERAL: **Social Security No.:** XXXXXXXXX

1. **Name:** Alicia R. Washington **E-mail:** awashingtonlaw@gmail.com

   Date Admitted to Practice in Florida: 06/06/1998

   Date Admitted to Practice in other States: Texas Bar 11/07/97

2. **State current employer and title, including professional position and any public or judicial office:** President/Owner of Alicia R. Washington, P.A.

3. **Business address:** 100 South Street, Suite B

   City: Bunnell **County:** Flagler **State:** FL. **ZIP:** 32110

   Telephone: (386)437-4341 **FAX:** (386)437-6872

4. **Residential address:** XXXXXXXXXXXXX

   City: Palm Coast **County:** Flagler **State:** FL **ZIP:** 32164

   Since: November 2006 **Telephone:** (386)437-2263

5. **Place of birth:** Opelousas, Louisiana

   Date of Birth: 04/20/1970 **Age:** 49

6a. **Length of residence in State of Florida:** 21 years

6b. **Are you a registered voter:** Yes

   If so, what county are you registered? Flagler

7. **Marital Status:** Married

   If married: **Spouse's name:** XXXXXXXXXXXXXXXXX

   Date of marriage: 06/06/1998

   Spouse's occupation: Attorney

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)
XXXXXXXXXXXXXXXX	14	N/A	XXXXXXXXXXXXXX, Palm Coast, FL 32164
XXXXXXXXXXXXXXXX	11	N/A	XXXXXXXXXXXXXX, Palm Coast, FL 32164

9. **Military Service (including Reserves):**

Service	Branch	Highest Rank	Dates
Louisiana Army National Guard	Army	Spec 4	1989-1994

Rank at time of discharge: Spec 4 **Type of Discharge:** Honorable

Awards or citations: N/A

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?** NO

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson 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 any activity**

NO

If yes 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?** 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?** N/A

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 tears, 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*
Thurgood Marshall School of Law	Top 1/3	08/94-05/97	Juris Doctorate
Louisiana State University	Top ½	09/89-05/94	Bachelor Degree in Political Science

18b. **List and describe academic scholarships earned, honor societies or other awards.**
Law School Dean's List Fall and Spring 1996 and 1997; NAACP Legal Intern; Environmental Law Clinic, Volunteer Tax Assistance Program; Houston Bar Association Mock Trial Program; Prestige Woods Women's Legal Society.

NON-LEGAL EMPLOYMENT:

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

Dates	*Position*	*Employer*	*Address*
12/90-08/94	Assistant Manager of retail store	You & I Fashions	2834 Highland Rd. Baton Rouge, LA 70802
10/97-01/98	Investigator Interviewing inmates and investigating crime scenes	Public Defender 4th Judicial Circuit	25 Market Street Jacksonville, FL 32202

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*
Florida Bar Association	06/01/1998
Federal Bar Middle District	10/15/2003
Texas Bar Association	11/07/1997

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 haven been employed, periods you have practiced as a sole practitioner, law clerkships and other prior employment.**

Position	*Name of Firm*	*Address*	*Dates*
President/Owner	Alicia R. Washington, P.A.	P.O. Box 100 Bunnell, FL 32110	07/2008 to present
Attorney	Florida Guardian ad Litem Program	250 N. Beach St. Daytona Beach, FL	09/2011 to present
Of Counsel	Central Florida Community Development Corp.	211 N. Ridgewood Ave., Suite 114 Daytona Beach, FL	2004 to present
Part time attorney	Community Legal Services of Mid FL	128 E. Orange Ave. Daytona Beach, FL	07/2008 to 07/2011
Juvenile Division Chief	Public Defender 7th Judicial Circuit	251 N. Ridgewood Daytona Beach, FL	07/2006 to 07/2008
President/Owner	Law Office of Alicia R. Washington	248 S. Ridgewood Daytona Beach, FL	04/2003 to 11/2006
Associate	Smith, Hood, et al.	P.O. Box 15200 Daytona Beach, FL	04/2002 to 04/2003
Assistant State Attorney	State Attorney 7th Judicial Circuit	251 N. Ridgewood Daytona Beach, FL	10/2000 to 04/2003
Assistant Public Defender	Public Defender 7th Judicial Circuit	251 N. Ridgewood Daytona Beach, FL	10/1998 to 10/2000
Assistant Public Defender	Public Defender 4th Judicial Circuit	25 Market Street Jacksonville, FL	01/1998 to 10/1998

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 current practice consists primarily of criminal, family, and dependency cases. I am very fortunate to represent a diverse clientele that crosses all racial, cultural and socioeconomic lines. I assist everyone from the struggling parent trying to help his or her "adult" child survive a criminal prosecution to an infant born addicted to illicit substances. I provide criminal defense services for cases ranging from misdemeanor trespass to first degree felonies punishable by life. I handle family law cases that range from simplified dissolutions with no property or dependents to complex dissolutions involving equitable distribution of business assets, retirement accounts, and alimony.

In the past, I have represented parents at risk of losing their children in dependency proceedings. I currently protect the interests of dependent children as a best interest attorney for the Florida Guardian ad Litem program in Flagler County. It has been challenging, especially in light of my demanding private practice, but the rewards in protecting vulnerable children are great. Additionally, I have been of counsel for Central Florida Community Development Corporation since 2004. In that capacity, I have litigated contract disputes and real estate actions. I have represented Second Avenue Merchants Association since 2010 and have litigated corporate actions seeking declaratory and injunctive relief for its merchants.

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		**Areas of Practice**	
Federal Appellate	0%	Civil	25%
Federal Trial	0%	Criminal	25%
Court		**Areas of Practice**	
Federal Other	0%	Family	35%
State Appellate	0%	Probate	0%
State Trial	100%	Other	15%
State Administrative	0%		
State Other	0%		
TOTAL	100%	TOTAL	100%

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

Jury? 50 Non-jury? 109

Arbitration? 1 Administrative Bodies? 5

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 pane 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).**

In the Interest of A.J. 2017DP000054
Wesley Flagler, Esq., Counsel for Department of Children & Families, 386.313.7038
Kimberly Lambros, Esq., Counsel for Father, 904.797.8111
Marc E. Dwyer, Esq., Counsel for Mother, 386.445.8900

In the Interest of J.J. and A.A. 2017DP000031
Cynthia Lane, Esq., Counsel for Department of Children & Families, 386.679.5861
Kurt F. Teifke, Esq., Counsel for Father, 386.627.0002

In the Interest of J.S. and J.S. 2013DP000009
Bruce Johns, Esq., Counsel for Father, 386.256.2586
Wesley Flagler, Esq., Counsel for DCF, 386.313.7038

Jayroe v. Lopez, 2012DR000767
Armistead Ellis, Jr., Esq., Counsel for Respondent, 386.255.2433

Old King's Highway Associates, Ltd. V. Bella's Tomato Pies, Inc., et al
2014CC366
LeAnn B. Wagner, Esq., 954.474.8000

In the Interest of A.W. 2015DP000016
Kurt F. Teifke, Esq., Counsel for Mother, 386.269.4551
Richard A. Price, Esq., Counsel for Father, 386.597.7749
Wesley Flagler, Esq. Counsel for DCF, 386.313.7038

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).**

State v. Zeenan Cobb, 2019CF000101
Jason Lewis, Esq., Assistant State Attorney, 386.313.4300

Gardiner v. Dorff, 2018DR000768
Theresa Carli Pontieri, Esq., 904.304.8212

State v. Ralph Conner, 2018CF000767
Michael Stover, Esq., Former Assistant State Attorney, 904.495.6703

Holiday Travel Park, Inc., 2018SC001202
Robert Robins, Esq., Attorney for Plaintiff, 386.252.5212

Bullock v. Bullock, 2017DR000570
Marc E. Dwyer, Esq., attorney for Petitioner, 386-445-8900

Zapata v. Zapata, 2014DR000222
Donald Appignani, Esq., attorney for Petitioner, 386-206-9170

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?**
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?** 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.**

During my prior employment with the State Attorney and Public Defender offices, I was in court on average a minimum of 15 days a month. During those periods is when I accumulated the majority of my trial experience. In that capacity, I tried over 40 jury criminal jury trials and over 60 juvenile adjudicatory trials.

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.**

State v. Wajira Dayaratne, 1999-34634-CFAES

This was my very first felony trial. I do not know if you ever forget your first felony trial. I was the Assistant Public Defender assigned to represent Mr. Dayaratne, a somewhat difficult gentleman of Middle Eastern descent. He was charged with Battery on a Law Enforcement Officer. It was alleged that he spat on two police officers in retaliation for being arrested for passing out promotional flyers in violation of the no solicitation local laws. Judge Briese presided and the Assistant State Attorney was Kevin Sullivan. I had only recently been promoted to the felony division two weeks prior to the trial, yet I had two jury trials that week.

To make things even more frightening, there was a significant language barrier. Mr. Dayaratne was of Middle Eastern descent; understood minimal English; and spoke with a heavy dialect. I was not sure if he understood the trial process and the possible ramifications of a guilty verdict. To make matters more difficult, he was very angry. He objected to any further continuances in the case due to his continued incarceration pending trial. He felt very strongly that he was the one who had been mistreated.

Trial was held on November 19, 1999. I remember vividly the fear I felt. I remember the burden of realizing that my inexperience could cause this man to go to prison. I remember not sleeping for days as the trial approached and sleeping far less once the battle began. The jury returned a guilty verdict, and Mr. Dayaratne was sentenced to prison. I accepted that the jury verdict was fair given the evidence. But it took me months to feel comfortable that I had done the best I could for my client.

It is one thing to have a client go to prison for something he or she has done. It is quite another to feel that your own inadequacies caused your client to be convicted. That trial taught me that I have to do better than my best. People trust their attorneys. We have an obligation to not only live up to, but to exceed their expectations. I feel blessed to still feel as much excitement for the process today, and my role within it, as I did 21 years ago.

State v. Emma Jean, 2000-31332-CFAES

The lead counsel on this case was actually the quite capable, and now blissfully retired, Assistant State Attorney Celeste Gagne. Defense counsel was Grady Irvin, Jr., Esquire, a prominent attorney from the Tampa area. There was a media circus surrounding the case. The child victim had been found wandering the streets with his hands and legs duct taped and visible bruising to his body. The State charged aggravated child abuse. Ms. Jean was a pastor's wife and well-respected in her community. There were accusations from her supporters that she was being overcharged because she was African American.

I was asked whether I would be interested in being co-counsel. I reviewed the case file, and while I understood why I was likely being asked to co-chair, it did not matter to me. No child- Caucasian, African American or otherwise- deserved to be abused. So I accepted the task. Trial commenced on December 14, 2001. The jury returned a guilty verdict. There were those in the African American community that were upset I was a part of a prosecutorial process they viewed as racist. They saw me as no more than a racial pawn used by the State to neutralize the racial overtones of the case. But I did what I felt was right. I believe that if you get buried in trying to decipher everyone else's agenda before making your own decision, chances are you will never make a decision. I never addressed the allegations. I let my work and my reputation speak for itself.

In the Interests of V.W., et al, 2003-31087-FMDL

I was court appointed to represent the Mother in dependency proceedings that were initiated after her infant died in her care. Garrick Fox, Esquire represented the Father. Celine Cannon, Esquire represented the Department of Children & Families in their petition seeking to terminate parental rights. In the discovery process, I learned a lot about the family's history. Violence and drugs were seemingly a part of their everyday culture. It was a reality that I knew nothing about.

Trial was conducted on February 18th and 19th of 2004. Judge Shawn Briese presided. The Department's petition was granted. I gained so much respect for the dependency court, and the role it can play in hopefully breaking the cycle of violence and addiction that is common place to far too many. This case truly taught me the importance of having empathy for people, even if you have no connection to their experience or their walk in life. People are not created in vacuums. They are a product of their upbringing, and whether you relate with their reality or not, they deserve to be adequately represented.

My experience representing parents in dependency proceedings is what fueled my passion to protect dependent children through the Guardian ad Litem program. The vicious cycle

has to stop somewhere. If I can help protect these children, maybe they can go on to lead stable and productive lives. It is an honor and privilege to be able to use my legal skills to advance their cause.

George v. George, 2006DR002189

I had just opened my practice in Bunnell. Ms. George was employed by the City of Bunnell. So I had this seemingly great idea to take her case for a nominal retainer in order to get referrals from her for other prospective clients. I had no idea that opposing counsel was a board certified family law guru named Dorothy J. McMichen, Esquire from Orange County. The case had been pending for two years before I came aboard, and my client had gone through two prior attorneys.

The delays in the case were caused largely by Mr. George's refusal to comply with mandatory disclosures. Mr. George was self-employed and owned a concrete business. Immediately after the divorce was filed, he dissolved the marital corporation and formed a new corporation with his new girlfriend serving as president. He would not supply any financial information regarding the new entity, or its predecessor. I was truly taken aback that he was not complying with mandatory disclosures. In criminal law, there are rules addressing discovery and the mutual duty to disclose pertinent information. In civil cases, especially family law cases, the rules are often disregarded. Initially, I felt that his attorney was not properly advising him of his obligations. But I reluctantly came to understand it was not her job to help me locate items that would hurt her client's case.

My client could not afford an investigator or a business valuation expert. So I had to become both, in a sense. I used a series of non-party subpoenas to get invoices from his suppliers. Then I used those invoices to identify his contracts as the supplies were delivered to the job sites. I used Facebook to learn more information about the girlfriend, who was a 19 year old part-time hair dresser with no business experience. I had my tax accountant review the business tax records and assist me in placing a value on the business and business assets. I used Kelly Blue Book, Auto Trader, and Boat Trader to assist me in placing a value on the vehicles and vessels. In short, I had to step out of my role as an attorney, and be all of the things my client needed me to be to adequately present her case.

Ms. McMichen abruptly withdrew from representing Mr. George. I would like to think I wore her down, but it is probably more likely that her client ran out of money. James Riecks, Esquire then became his new counsel. We went to trial on October 19th and 20th of 2009 before Judge Zambrano. I called Mr. George as my first witness and methodically went to great lengths to demonstrate the fraud he had perpetuated upon the Court. In

the end, I was able to get my client, and her children, a fair and just distribution of marital property, alimony, child support and attorney fees. But more importantly, I gained a level of knowledge that has proven invaluable to my family law practice.

Woolridge, et al. v. Hernandez, et al., 2009CA002206

This was an action for specific performance of a real estate contract. Plaintiffs were represented by James Evans, Esquire. Lupe Hernandez had filed bankruptcy in Texas due to a business partly owned by her going bankrupt. Her husband, Edward Hernandez, did not file bankruptcy on the advice of Mrs. Hernandez's bankruptcy attorney. Said attorney then advised them that they had to sell their Florida home. Dutifully, the Hernandez's entered a contract to sell their Florida home to Plaintiffs. It was later determined that the Hernandez's had the option of selling their Georgia home instead. They returned the $1000.00 earnest money to Plaintiffs and sought to void the contract.

What made this case very interesting was that I had to understand Chapter 7 bankruptcy laws to properly advise my client, although I had been retained for a contract issue. I reached out to the trustee and the primary creditor, both in Texas, to negotiate a settlement in the bankruptcy proceedings that would estop Plaintiffs from proceeding with their action for specific performance. Finally, I was presented with an opportunity to use my Texas bar license. Plaintiffs then hired private counsel in Texas to file an objection to the proposed settlement. The federal judge ultimately set aside the settlement I reached with the trustee on my clients' behalf. Shortly thereafter, we proceeded to trial before Judge Zambrano on December 2, 2010 on the specific performance issue. The Plaintiffs prevailed. But my clients were very appreciative of my diligent efforts and said I had restored their faith in attorneys.

State v. Donnie Hendrix, 2009CF000633

Donnie Hendrix, also known as, Donna Hendrix, was charged with two counts of felony unlawful practice of medicine and two counts of unlawful practice of a healthcare profession. Jacksonville Sheriff Office had contacted Flagler County Sheriff Office to report that Ms. Hendrix was illegally injecting commercial grade silicone into "patients" buttocks. There was video in evidence of the prepared syringes and Ms. Donna explaining the procedure to the customer (an undercover JSO officer).

Ms. Donna lived her life as a transgendered woman. She had previously served a prison sentence after being convicted as an accessory to unlawful practice of medicine in South Florida. Her paramour was serving ten years in prison for unlawfully injecting a victim

who died immediately thereafter. The State was aware of this and sought a minimum of ten years of incarceration for this offense. Ms. Donna, despite the evidence, refused to accept a plea that required incarceration. She spoke in horrific detail of what life in prison had been like for her. There she was a transgender woman with breasts placed in general population in a male facility. She was repeatedly abused.

I knew the odds were against me, but I felt compelled to do everything I could to help her. Trial was conducted on May 18, 2010. Steve Gosney, Esquire prosecuted the case. The Honorable Kim Hammond presided. I prevailed in some pretrial motions requiring the State to elect whether to charge unlawful practice of medicine or unlawful practice of healthcare profession. I also succeeded in excluding most of evidence retrieved from the home. Still, the video and the prepared syringes were introduced into evidence.

I argued to the jury that the State must prove that the crime **the State charged** occurred, not just any crime. I presented the definition of medicine and argued the cosmetic procedures were not medical. Florida Statute §458.305 defines the practice of medicine as the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition. Florida Statute §456.001 enumerates the professions that fall under health care practitioners. Cosmetic surgery is not specifically listed in the statute.

I reminded the jury of the oath they took to follow the law despite their personal convictions. The jury acquitted. That jury gave my client, someone they likely felt no connection with, a fair trial. It restored my faith in the jury system, because often defense attorneys are fighting a presumption of guilt, versus a presumption of innocence. I am a firm believer that the system has to work for the worst of us to work for the best of us.

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 personally drafted all of the writing samples attached. I have elected to provide six legal writing samples to illustrate the diversity of my practice and legal knowledge base. This, I believe, will make me a great asset to the judiciary.

Exhibit 1: *In the Interest of MBT, et. al.* , 2016DP000054, Guardian ad Litem Closing Argument in Support of Terminating Parental Rights

Exhibit 2: *In the Interest of N.S.*, 213DP7, Notice of GAL Objection to Petition to Intervene

Exhibit 3: *State v. Richard L. Ashby*, 2014-303673-CFDB, Motion to Suppress Evidence

Exhibit 4: *Tyler, et. Al. v. Hernandez, et. al.,* 2009CA2206, Motion for Summary Judgment

Exhibit 5: *Old Kings Highway Associates. Ltd. v. Bella Tomato Pies, Inc., et. al.,* 2014CC366, Motion to Dismiss

Exhibit 6: Biss v. Biss, 5D19-1112, Appellee Answer Brief

PRIOR JUDICIAL EXPERIENCE OR PUBLICE 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: N/A

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.** N/A

(i) List the names, phone numbers and addressed 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 ere 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 own and operate my law practice, Alicia R. Washington, P.A., and intend to dissolve that entity upon appointment. I am also a full-time best interest attorney with the Florida Guardian ad Litem Program. I would resign from that position, as well.

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.**

No

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.

Yes. My spouse XXXXXXXXXXXXX is employed with Rue & Ziffra. I should not preside over any cases involving Rue & Ziffra.

MISCELLANEOUS:

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

Yes_____ No ___X___ If "Yes" what charges?_____

Where convicted?_____ Date of Conviction:_____

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

Yes_____ No ___X___ If "Yes" what charges?_____

Where convicted?_____ Date of Conviction:_____

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

Yes_____ No ___X___ If "Yes" what charges?_____

Where convicted?_____ Date of Conviction:_____

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

No

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

No

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

No

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

Yes

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. Washington et al. v. Efrain Ubiles, et. al., case number 2008-10746-CODL, County Court, Volusia County. I was a landlord seeking eviction. A final judgment of eviction granted.

National City v. Washington et. al., case number 2009-31125-CICI, Circuit Court, Volusia County. I was the foreclosure defendant. A judicial sale was held in July 2010.

In re: Washington et. al., case number 6:09-BK-09519-KSJ, United States Bankruptcy Court, Middle District of Florida. I was the debtor. The discharge was granted in October 2009.

39. **Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a reach 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 X No _____ If no, please explain:_____

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

Yes_____ No X If yes, please explain:_____

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.**

N/A

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

Volusia Flagler Association of Women Lawyers 2011 Distinguished Service to the Profession Award; 2012 Bunnell Chamber Business Person of the Year Award.

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

Guest Speaker on Thursday Night with Tony and Trish on two occasions to speak about the Juvenile Justice System and the Bunnell Potato Festival; Mount Cavalry Women's Day Guest Speaker in February 2012; NAACP Summer Internship Program Guest Speaker in July 2012; Bethune Cookman University Criminal Justice Department Guest Speaker in February 2013; Keynote Speaker for Bunnell MLK event in January 2016; Keynote Speaker August 2017 for Linda Vestal Giving Hands Foundation, Inc.

47. **Do you have a Martindale-Hubbell rating?** Yes____ If so, what is it?_____ No X

PROFESSIONAL AND OTHER ACTIVITIES:

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

Florida Bar Association; Texas Bar Association; Flagler Bar Association; Hatchett Bar Association; Volusia County Bar Association Board Member 2001-2004; Dunn Blount Inns of Court 2001-2003 and 2014; Daytona Beach Kiwanis 2003-2005; Current Board Member Flagler 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.**

Juvenile Justice Continuum from 2006 to 2008. This was a collaboration between Daytona Beach Police Department, Volusia County Sheriff Office, Department of Juvenile Justice, Office of State Attorney, Office of Public Defender; and Volusia County Schools to help identify collaborative solutions to decrease juvenile delinquency.

Juvenile Drug Court Steering Committee from 2006 to 2008. This was a collaboration between Drug Court, Stewart Marchman, Department of Juvenile Justice, Office of State Attorney, Office of Public Defender, and Judge John Watson to help devise a juvenile drug court program.

Seventh Judicial Circuit Juvenile Justice Committee from 2006 to 2008. This was a collaboration between various law enforcement agencies, the Department of Juvenile Justice, the Office of State Attorney, and the Office of Public Defender to address delinquency issues in the Seventh Judicial Circuit.

Flagler Victims of Sexual Violence Task Force from 2010 to 2011. This was a collaboration between the various law enforcement agencies of Flagler County, the Office of State Attorney, and myself to primarily devise ways to assist victims of sexual violence. One of the most rewarding activities we organized was to go into the middle schools and have students draw pictures about what sexual violence meant to them. Some of the illustrations were heart wrenching, and we talked about ways that we all can help victims heal. Of equal significance, I also devised a pamphlet that explained the elements of the lewd and lascivious crimes that was distributed to the students. I felt strongly that if children were going to be charged with sex offenses that had lifelong implications on their futures, they should be adequately educated.

Bunnell Chamber of Commerce from 2008 to 2012. I served on the Board of Directors from 2008-2012. Our goal was to revitalize local businesses in Bunnell and to form a

connection between the local community and local business owners. Our greatest achievement is the formation of the Annual Bunnell Potato Festival which is a huge success bringing local business owners, local farmers, and the community together in celebration of Bunnell's rich agricultural history.

Flagler Teen Court Mock Trial Coach from 2010 to 2017. I help train middle school and high school students to compete in Mock Trial Competitions. In 2017 we won the competition. Watching those children grow right before my eyes has been amazing. They all have very bright futures, and I am immensely proud to have been a small part of their lives. We hosted the competition in Flagler County for the first time in 2016. We were very excited and hoped to continue that tradition. Teen Court is currently under a new director. We are hoping to revive Teen Court in short order.

Flagler Teen Court from 2010 to present. I have presided as the Teen Court Judge on several occasions. The common misconception is that Teen Court is for the "bad" kids. Quite to the contrary, these are first time offenders that simply used bad judgment. It is great that there is a forum where their own peers can be utilized to help them see the error of their choices.

48c. **List your hobbies or other vocational interests.**

I am afraid having a full time practice, two children, a husband, and all the activities listed herein does not allow much time for other hobbies or vocational interests. I enjoy doing things with my family while it is still cool to have mom around. I know those days are numbered, so I am soaking it all in.

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

No

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

I have provided free consultations in a variety of legal areas to members of New Found Favor Ministries from 2010 to present. I have represented a few of those church members in criminal and family law matters at no cost due to their inability to afford legal assistance. I have also provided pro bono services to Central Florida Community Development Corporation by reviewing and/or drafting residential and commercial leases, land development contracts, and joint venture agreements and provided pro bono legal services to volunteer guardian ad litems.

SUPPLEMENTAL INFORMATION:

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

Yes. Basic Family Law and Dependency Summit and Best Interest Attorney: Effective Trial Advocacy for Dependent Children.

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?** No.

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

As I reflect back on my legal career, I realize that every Judge I have appeared before, every attorney I have litigated with or against, and every client or victim I have ever represented helped to shape me into the attorney I am today. In 1998, when I was a juvenile assistant public defender before Judge John Watson we were often in Court from 8:30 a.m. until 7:00 p.m. You can believe that there was a lot of complaints from my colleagues. But I have worked hard all my life. It was second nature to me, notwithstanding the recurring dreams I would have where I would hear Judge Watson's famous catchphrases repeatedly in a completely dark room. What Judge Watson taught me is that you have to do what it takes to get the job done. Our children are worth it.

In 1999, when I was promoted to the felony division, Judge Shawn Briese presided. He taught me that inexperience was no excuse for ineffective assistance of counsel. When there is a job to be done, you simply have to rise to the occasion. Even where there is a fire alarm sounding due to a fire on the roof, you simply take the court reporter, clerk and interested party into the parking lot to convene the hearing.

Later, I was transferred to Judge Richard Orfinger. He taught me about client and docket management. Cases cannot be continued into perpetuity. People need closure in order to heal. This is also where I first met former Judge McGlashan and Judge Feigenbaum who were then prosecutors in Judge Orfinger's courtroom. They taught me that it is completely legal to stalk your prosecutors to get a case resolved. If they did not get back to me on a case as quickly as I liked, I surveyed the parking lot from my office window to see when they returned from lunch. Then I would be waiting with file in hand as the elevator doors opened. I do not think they quite enjoyed that as much as I did though. I

suspect they begged State Attorney John Tanner to hire me just so I would stop stalking them.

In 2000, when I was hired by the Honorable John Tanner as an assistant state attorney, I was assigned to the misdemeanor division. I remember that at the same time I was hired it was explained to me that I could not be officially sworn in until Mr. Tanner returned from an African safari. That meant I had to shadow now Judge David Cromartie until Mr. Tanner returned. Now I like Judge Cromartie, but I am just not the shadowing type. I asked David Smith if Mr. Tanner was already gone, and was told he was flying out that next morning from Daytona Beach International Airport at 6:00 a.m. I, along with Investigator Robert Wheeler, met Mr. Tanner at the airport at 4:30 a.m. so he could swear me in before he left. Mr. Tanner was in his safari gear, and Mr. Wheeler took photos. This is a memory I will always hold dear to my heart.

Soon thereafter, I was elevated to lead misdemeanor attorney. I supervised seven other misdemeanor attorneys. While I was tasked with molding them into good attorneys, they in turn taught me how to lead with respect and deference. By 2001, I had been elevated to the Sex Crimes Division where I served with the Honorable Dawn Fields. During my tenure in this division, it was an honor to be the voice for victims of sexual violence.

I left the State Attorney's Office in 2002 to join what was then Smith, Hood & Perkins. I was an insurance defense associate working for Judge Terrence Perkins and Jeffrey Bigman. On my last day as an Assistant State Attorney I was scheduled to proceed to trial on a kidnapping case. Judge Zambrano was my supervisor then. The Defendant had taken some pills at the jail and was visibly impaired. The late Judge Richard Watson was presiding and continued the case until the end of the week. Much to Judge Zambrano's surprise, I promptly rescinded my resignation and extended it to the trial date so I could finish what I started. There was no way I was going to let the victim wait a day longer for justice.

When I arrived at Smith, Hood, Perkins I was full of anxiety and excitement. Up until then, I had no real experience in civil law. But I certainly learned the perks of being a partner. Judge Perkins and Mr. Bigman handled the depositions conducted in England, Ireland, and Spain. But I got the privilege of going to Brooksville and Wewahitchka for my depositions. I had the opportunity to appear before judges and work with other attorneys in Jacksonville, Tampa, Orlando and so many other areas throughout Florida. It was truly an invaluable experience that helped me grow immensely as an attorney. I left the firm to strike out on my own largely because Judge Perkins and Mr. Bigman gave me the confidence to do it.

Operating a private practice is rewarding but challenging. It gave me my first opportunity to practice "door" law. If it came through the door, and the check cleared, I tried it. But I quickly came to appreciate that you cannot competently practice every area of the law. You have to limit your practice area so that you can become adequately proficient and properly serve your client. I chose to primarily practice criminal, family, and dependency law. Then in 2004, I met Gerald Chester, President of Central Florida Community Development Corporation. The corporation had three primary goals – increasing minority home ownership; increasing minority business ownership; and revitalizing economically challenged communities. Through him I began to nurture my desire to give back to the community. He taught me about land and business development. In exchange I provided pro bono services by reviewing and drafting contracts. It is a relationship I still maintain, because I see the need for this organization and others like it. It is an honor to help in any way I can to improve lives.

In 2006, the Honorable James Purdy gave me an opportunity to supervise the juvenile division of the Public Defender's Office. Helping children has always been a passion for me. Mr. Purdy pushed me to go beyond just the day to day work and to actually be a part of the different organizations geared toward saving our youth. Mr. Purdy believed that it was very important to not only have a voice, but also to be a part of the working solution. This was an exciting time for me. So when I left in 2008, it was a difficult decision. But my personal life had drastically changed. I was now a mother of a three year old and an infant. There was a small part of me that just wanted to stay home and look at my babies. My desire to be a great attorney was not equaled by my desire to be a great mother. It was a confusing time for me. But a good friend told me something I will never forget. She said you can have everything you want. You just cannot have it all at the same time. So I went back into private practice mainly for the flexibility. I often said I was a part time attorney and a full time wife and mother. But my children are older now, and Alfred and I have given them a strong foundation. It is time now for me to once again serve my community.

I have increased my commitment to the Florida Guardian ad Litem Program. I am the sole guardian ad litem attorney responsible for all Flagler County dependency cases. I simultaneously maintain my private practice as well. This dual commitment has been challenging. But dependent children need strong advocates. Being able to help them is its own reward. Due to my strong work ethic, I have been able to competently fulfill the needs of my private practice clients while maintaining my commitment to strongly advocate for these children.

Now twenty one years after receiving the privilege of practicing in Florida, I have now appeared before judges throughout the Seventh, Fourth and Ninth Judicial Circuits. I have also forged positive relationships with my fellow peers across the Seventh Judicial Circuit

and throughout Florida. These relationships have developed me into a well-rounded, balanced attorney. These are the very characteristics that will aid me in becoming an effective jurist. I am thankful to the legal community and my clients for nurturing me over the last twenty one years. I humbly look forward to an opportunity to further serve them as a Flagler County Court Judge.

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

I would be honored to further serve Flagler County as its new county court judge. I love this community that I have adopted as my own for the last twelve years. Flagler County would also greatly benefit from gaining a second judge who is also knowledgeable in many diverse areas of the law. Judge D. Melissa Distler and I followed a similar career track into public service. I have the utmost respect for her work ethic, her drive, and her ability to understand very diverse areas of law.

While Criminal and Family Law have been my primary areas of practice throughout my legal career, I have demonstrated that I am a perpetual student of the law. I enjoy learning many different areas of the law as I believed continued learning strengthens me as a legal advocate. I do not desire to be complacent. I intend to continue to challenge myself because the ability to work your way through discomfort assures continued strengthening and growth.

A judge must be a knowledgeable student of the law. As a public servant, a judge must also be humble, patient, kind and fair. You cannot be predisposed before all the facts have been presented. I believe I embody all of these characteristics. Litigants are also very diverse. The common trait is they want to feel heard and understood, even if they do not prevail. It would be my responsibility to know the law and to apply the law in a fair and impartial matter. In life it is often not what you say, but how you say it that matters. Litigants, attorneys, court staff, and bailiffs all deserve to be respected. A calm, caring and knowledgeable judge can neutralize an otherwise volatile situation in any court proceeding. I truly believe my whole life has led me to this point, to this calling. I am at my core a public servant.

Moreover, it has always been second nature to me to work hard. It is simply how I was raised. I have always welcomed life's challenges and have also been open and accepting of people from all walks of life. I attribute that at least partially to the fact that I am biracial. My Mother is Korean. My Father is African American. My extended family includes people from many different races, cultures and experiences. So I believe in the basic goodness and worth of all people. Our similarities far exceed our differences. You can learn a lot in life by just being open to the possibility that the world extends beyond you. I believe no

one, especially me, is too old to grow and to learn from all people that enter your life and every moment you experience. This humility will serve me well should I be selected to serve the Seventh Judicial Circuit as a Flagler County Judge.

52. **If you 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.**

Seventh Judicial Circuit Nominating Commission in November 2013; March 2014; August 2014; September 2015; January 2016; May 2016; August 2017; August 2018; and November 2018.

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

I encourage the Nominating Committee to reach out to members of the Bar, the Judiciary and the community for their input on whether I am the right person for this position. I feel very confident that I have done the work and am deserving of this honor. I feel very confident that I am qualified and capable. I continue to grow throughout this process and have learned from each opportunity I was afforded. I have continued to be a dedicated student of the law with an understanding that there is always room for improving my advocacy skills. I fully understand and accept that this position is one of the public service and should I have the honor of being selected I will humbly and dutifully serve the citizens of Flagler County. There will never be a moment when any one of you will ever regret giving me yet another opportunity.

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.**

Honorable Richard B. Orfinger, Fifth District Court of Appeals, 300 South Beach St., Daytona Beach, FL 32114; 386-947-1510

Honorable James S. Purdy, Public Defender, 7th Judicial Circuit, 251 N. Ridgewood Ave., Daytona Beach, FL 32114; 386-239-7730

Suzanne Johnston, Flagler County Tax Collector, 1769 E. Moody Blvd., Bldg. 2, Bunnell, FL 32110; 386-313-4160

Shirley Holland, Circuit Director Florida Guardian ad Litem Program Seventh Judicial Circuit, 250 N. Beach St., Daytona Beach, Fl. 32114; 386-239-7803

Mayor Catherine Robinson, City of Bunnell, 201 W. Moody Blvd., Bunnell, Fl. 32110; 386-437-7500

Tom Bexley, Flagler County Clerk of Court, Kim C. Hammond Justice Center, 1769 East Moody Blvd., Bunnell, Fl. 32110; 386.313.4400

Rick Blaine, Flagler County Director of Courts, Kim C. Hammond Justice Center, 1769 East Moody Blvd., Bunnell, Fl. 32110; 386.313.4378

Michael H. Lambert, Esq., Michael H. Lambert, P.A., 428 N. Halifax Ave., Daytona Beach, FL 32118; 386-255-0464

Gerald Chester, President of Central Florida Community Development Corp., 847 Orange Ave., Daytona Beach, FL 32114; 386-258-7520

Leslie F. Giscombe, MBA, President of African American Entrepreneurs Assoc., Inc., 4883 Palm Coast Parkway, Unit 1, Palm Coast, Fl. 32137; 386-234-2014

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 29th day of July, 2019.

Alicia R. Washington
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	$ 94,227.12		
List Last 3 years	$178, 981.00	$173,900.00	$156,406.00

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	$ 79, 958.00		
List Last 3 years	$112,677.00	$138,334.00	$107,484.00

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	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 July 29, 2019 was **$ 188,281.00**

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 $1,000.00. 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 **$75,000.00.**

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

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

	VALUE OF ASSET
Residence at 17 Kathryn Place, Palm Coast, Florida	$ 385,000.00
Bank accounts at Wells Fargo Banks	$ 34,761.00
Alicia R. Washington, P.A. furnishing, equipment, accounts	$ 45,000.00
Florida Prepaid College Accounts	$ 26,000.00
John Hancock Life Insurance cash surrender value	$ 5,500.00

PART C – LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Suntrust Mortgage, P.O. Box 79041, Baltimore, MD 21279-0041	$ 219,000.00
ACS Student Loans, P.O. Box 7051, Utica, NY 13504-7051	$ 147,000.00
Fidelity Bank, P.O. Box 105690, Atlanta, GA 30348-5690	$ 3,500.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D – INCOME

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

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

PRIMARY SOURCE OF INCOME (See instructions on page 5)

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Alicia R. Washington, P.A.	P.O. Box 100 Bunnell, FL 32110	$ 69,703.93
Florida Guardian Ad Litem	250 N. Beach St. Daytona Beach, Fl. 32114	$ 24, 523.19

SECONDARY SOURCES IF 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 BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITY	Alicia R. Washington, P.A.		
ADDRESS OF BUSINESS ENTITY	P.O. Box 100, Bunnell, FL		
PRINCIPAL BUSINESS ACTIVITY	Legal Services		
POSITION HELD WITH ENTITY	President		
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	Yes 100%		
NATURE OF MY OWNERSHIP INTEREST	Owner		

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.

Alicia R. Washington

STATE OF FLORIDA
COUNTY OF FLAGLER

Sworn to (or affirmed) and subscribed before me this 29th day of July, 2019 by Alicia R. Washington.

Teresa Elizabeth Blaha

(Signature of Notary Public-State of Florida)

TERESA ELIZABETH BLAHA
MY COMMISSION # FF 235766
EXPIRES: September 29, 2019

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

Personally Known ✓ *OR* Produced Identification

Type of Identification Produced _____

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 your assets and subtract the amount of your liabilities. 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:

The aggregate value of household goods and personal effects, as reported in Part B of this form

(1) The value of all assets worth over $1,000, as reported in Part B; and
(2) 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 "jointand 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 (owned by John or 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 belisted.

- 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 entirely 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 ingross 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: July 29, 2019

JNC Submitting To: Seventh Judicial Circuit Nominating Committee

Name (please print): Alicia R. Washington, Esq.

Current Occupation: Attorney

Telephone Number: 386-212-0481

Gender (check one): Male Female XX

Ethnic Origin (check one):

White non Hispanic

Hispanic

Black XX

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Flagler

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 report on me, for employment purposes, as described in the above Disclosure.

Printed Name of Applicant: Alicia R. Washington, Esquire

Signature of Applicant: _____

Date: July 29, 2019

EXHIBIT 1

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

CASE NO: 2016-DP-54
JUVENILE DIVISION

IN THE INTEREST OF:

M.T. DOB: 02/08/2010
M.T. DOB: 05/05/2007

_____/

GUARDIAN AD LITEM CLOSING ARGUMENT IN SUPPORT OF AN ORDER TERMINATING PARENTAL RIGHTS

COMES NOW, the Guardian ad Litem Program, by and through the undersigned attorney, pursuant to Florida Statutes §39.802 (2018); §39.806(1)(c); §39.806(1)(e)(1); §39.806(1)(e)(2); and §39.806(1)(e)(3) and files its closing argument in support of an order terminating the parental rights of Mother and Father.

The Department of Children and Families filed an Amended Petition Seeking Involuntary Termination of Parental Rights. The Guardian ad Litem adopted the petition. The amended petition alleges the following grounds:

1. Florida Statute §39.806(1)(c) alleges that irrespective of services Mother and Father engaged in conduct toward the children that demonstrates that the continuing involvement of the parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the children;
2. Florida Statute §39.806(1)(e) alleges that although the children had been removed from the parents on October 25, 2016 and had been adjudicated dependent on December 6, 2016, both Mother and Father have failed to substantially comply with the Court ordered case plan after nearly two years despite the Department making those services available;
3. Florida Statute §39.806(1)(e)(3) alleges the children have been in care for 12 of the last 22 months and the parents have still not substantially complied with the case plan so as to permit reunification.

The child MT is eight years of age. The child MBT is ten years of age. At the time of their removal in October of 2016, the children were six and eight years of age respectively. The family originated from Oregon. They moved from Oregon to New Jersey to now Florida. Per the testimony adduced at trial from Mother and the self- authenticating business records from Stewart Marchman regarding Mother's substance abuse treatment records, Mother is thirty-one years of age. Per Mother's testimony, and as corroborated by her March 8, 2017 substance abuse evaluation (Court docket # 96), at the age of fifteen Mother began using alcohol. Both of her parents were alcoholics. Mother reported that she had already used marijuana by the age of 14. By the age of 18, Mother also experimented with Oxycodone and Methadone. She testified the latter was to help wean her off the Oxycodone.

Mother was twenty-nine years of age at the time of removal. Per her testimony she had struggled with both alcohol and opiate addiction over the course of the last seven years. Mother testified that anxiety was a trigger for her re-use. Mother further testified that during this period, she was involved, and remains involved, with her paramour. Mother admitted that her paramour is himself a recovering opiate addict though she testified that he had now maintained his sobriety since being in Florida. The testimony was that both MT and MBT resided with Mother and her paramour prior to the 2016 shelter and for most of their lives.

Child protective investigator Sherry Abel testified that her first encounter with the family was in May of 2016. The Department of Children & Families were notified that MT and MBT, then six and eight years of age, awoke to get ready for school. They found Mother Bray still unconscious from drinking the night before. No other adults were in the home at that time. MBT called 911. Paramedics responded to the home. Testimony adduced at trial reflected that Mother was already engaged in substance abuse services through Azalea Health; however, despite said treatment she reported still consuming a pint of vodka daily. Investigator Abell testified the children were not removed at this time based on paramour being in the home as a protective adult and Mother engaging in treatment.

Child protective investigator Tiffany Robinson then testified that her first encounter with the family was in October of 2016. The Department of Children & Families were notified that MT and MBT were home alone with Mother. Mother was again unconscious and the oven had been left on all day. MT and MBT were reported to have only been provided breakfast that day despite it being 4:00 p.m. The investigation revealed that paramour's employment requires him to work from morning to 7:30 p.m. Based on Mother's continued substance abuse and the inability of paramour to provide adequate supervision due to his employment, the children were removed from Mother's care and sheltered with the paramour's sister and husband and their three children.

On the first day of trial conducted on September 14, 2018, Paternal Grandmother testified that she relocated from California to Florida solely for the purpose of providing care to her grandchildren. Paternal Grandmother testified that Father had agreed to relocate as well and help care for his children. He had not had contact with the children for the five years prior. He established a relationship with the children, but that after a few months he deserted them all again. Grandmother testified that her only source of income was disability. She testified that despite having the children in her care from February 10, 2017 through January 16, 2018, she did not receive any financial assistance from Mother to offset the costs to care for and provide for the children. Paternal Grandmother testified that Father contributed for the few months he was in the household, but after that he also failed to contribute to the care of the children. Paternal Grandmother testified that she did not receive any financial assistance for the care of the children from Mother's paramour or his family.

Paternal Grandmother testified that when she initially took custody of the children, MT displayed a "very bad temperament". She described instances in which MT would throw temper tantrums and throw furniture. She described MBT as very quiet, withdrawn, and shy. She testified that MBT would often tell lies. Paternal Grandmother also testified that both children's dental needs had been neglected. Both children required anesthesia and hospitalization for dental

surgery for removal of decayed teeth. She testified the children complained of pain prior to the removal of these teeth. Paternal Grandmother testified that the girls were unable to properly use silverware and that MT would often hoard food. Both girls were also struggling academically.

Paternal Grandmother testified that she was initially willing to supervise Mother's visitation with the children. She would often provide transportation for these visitations. But she requested Mother visit at the visitation center after in May of 2017, Mother appeared to be under the influence during a visitation.

Paternal Grandfather also testified in day one of the trial. He testified that he has had custody of MT and MBT since June of 2018. Prior to that he had been visiting the children on intermittent weekends when Paternal Grandmother had the children in her custody, and for part of spring break. He described their temperaments in the same manner as described by Paternal Grandmother. He testified to additional concerns based on observing MBT, the now ten year old, make reference to drugs and pornographic images. He testified that MT and MBT were reluctant to have even phone contact with Mother and that some of their earlier behaviors had resurfaced since resuming contact with Mother. He testified that they were in need for further counseling.

Paternal Grandfather testified that he would continue to care for the children as long as needed but that it was his hope that their Paternal Aunt and her husband be allowed to adopt the children. The Paternal Aunt resides in California but traveled to Florida during spring break to meet the children. Paternal Grandfather testified that Paternal Aunt has no other children. He testified that she is forming a bond with the children using Facetime. He testified she calls them often and converses, often reading to them at night.

On day two of the trial which commenced on October 17, 2018, Mother called her paramour's sister as a witness. Paramour's sister testified she had known Mother Bray for seven years through her relationship with Paramour. She testified that Mother's only addiction was to alcohol. She testified that she and her family were a support system for Mother and that she considered herself the children's aunt. On direct examination she stated that she requested the change of custody to the Paternal Grandparents, because the "State" mislead her by saying the Paternal Grandparents would adopt the children. She testified under oath that she and her husband were not going to pursue adopting the children.

On cross examination, Paramour's sister admitted that she requested the change of custody to the Paternal Grandparents partly out of frustration at how long the case was taking and because she discovered in May of 2018 that Mother had lied to her about receiving the Vivitrol shots for the purpose of curbing her appetite for alcohol. Apparently, she was also unaware that Mother was taking Suboxin for her opiate addiction. Per her testimony, she is of the belief that it is the Department of Children & Families' fault that Mother relapsed at least four times to her knowledge over the last two years. She testified that she would always be there for Mother. While that is great for Mother, this case is about the best interests of MT and MBT. Paramour's sister and her family do not have that same commitment to their care and safety. They relinquished those children at a time when the girls were deeply saddened and hurt by their Mother's relapse. Instead of comforting and nurturing them, they threw them away because they

were frustrated with Mother. Where are the children's support systems?

Based on the testimony of case manager Sheriefe Williams and Mother herself, that seems to be the pattern with the paramour's support system, i.e. when Mother disappoints them by relapsing they throw her away. Mr. Williams testified Mother and her paramour routinely had "blowups" after which he would receive reports that law enforcement removed Mother from the home. The Department entered self-authenticating business records from Stewart Marchman of Mother reporting to detox that Paramour had thrown her out of the home. Those records show that Mother admitted to Detox staff that her paramour was controlling and that their relationship was "toxic". During her testimony, Mother admitted to making those statements but claimed that she was impaired at the time. One of Mother's case plan tasks is maintaining stable housing. To the contrary, her cohabitation with Paramour is quite unstable as was most recently demonstrated in the records Mother introduced from Best Care Residential in Oregon. Mother expressed to the treatment provider that she had no intent in June of 2018 to return to Florida. Instead she was going to reside with Maternal Grandmother who also has a history of alcoholism.

The Court approved case plan also requires Mother to maintain stable employment to demonstrate that she can adequately support the children. Mother testified at trial that she has been employed for the last two months. Yet, she has failed to produce any documentation to case management or this Court. Thus, she has not complied with her case plan task of providing proof of verifiable, stable income. It is important to note that Mother has intermittingly been employed for brief periods during the two year course of this case. She has failed to demonstrate that she can maintain stable employment.

The Department was tasked with providing Mother with the appropriate referrals to engage in substance abuse treatment. Per Case Manager Williams' unrebutted testimony, all referrals for services were provided. The Court approved case plan required Mother to successfully complete substance abuse treatment and submit to random urinalysis testing. Although the case plan was accepted and ordered on December 15, 2016, Mother chose to not submit to a substance abuse evaluation until March of 2017. During that time she admitted that her addiction was severe. She admitted to previously experiencing blackouts, seizures, and suffering physical injuries due to her addiction. She admitted to previously having the children in her vehicle when she went to buy drugs.

A review of the Stewart Marchman treatment records reflect a woman struggling to maintain sobriety for any significant period both before and after the initiation of this case.

Mother presented to detox in Putnam County in November 2016. She reported that she lived alone. In December 2017 she was in residential detox for two weeks at Epic Recovery. Despite engaging in outpatient services thereafter, she had relapsed by May of 2017 as witnessed by Paternal Grandmother during a visit with the children. Paternal Grandmother recalled how quiet and withdrawn MBT appeared during the visit. By June 2017, Mother again presented at detox in Putnam County. By November 2017, she was referred for Medically Assisted Treatment after failing to remain sober and admitting that she was purchasing Buprenorphine off the street for her opiate addiction. Stewart Marchman recommended Mother be administered Vivitrol to suppress her urges for alcohol. Mother, by her own admission, told her Paramour, the

Paramour's family, and case management that she was, in fact, being administered the Vivitrol injection.

By May of 2018 at a staffing to consider unsupervised visits, case management discovered by review of treatment records that Mother had been untruthful. Those records reveal that Mother was unable to remain free of the opiates long enough to begin Vivitrol injections. Testimony provided by Mother, Paramour's sister, and Case Manager Williams revealed that Mother relapsed in May of 2018. The Stewart Marchman records reflect that Mother was discharged from Medically Assisted Treatment on June 8, 2018 due to lack of contact and several missed appointments throughout her treatment. The discharge summary recommended continued treatment if she chose to return to Stewart Marchman.

Mother apparently left her "support system" here in Florida and returned to Oregon. Based on the documentation filed by Mother's attorney (document #182), by June 18, 2018, Mother had been hospitalized once again, this time in Oregon, from June 13-18 for her continued addiction. She then completed a thirty seven day residential drug treatment program. Mother would have this Court believe that after a mere thirty-seven day stay at a residential facility, she is now cured of her chronic addiction that has plagued her, by her own admissions, for at least the last seven years. Mother argues that this was the first time she has completed residential treatment and she feels the change. Mother also testified that she is on prescribed medications for her anxiety. A review of the Stewart Marchman records evidences that Mother has previously been prescribed medications for her depression. Still she remained addicted.

Mother could have requested residential drug treatment here in Florida. The minimum stay at either Project Warm, Salvation Army, or a comparable residential facility would have been four to six months followed by aftercare. A thirty-seven day residential drug treatment program does not adequately address Mother's chronic addiction issues. Mother is not in substantial compliance with this case plan task. Additionally per Mr. Williams testimony, throughout the two years, Mother was not consistent in timely providing urine samples for testing. Mother missed several screenings and was late to several others over the course of nearly two years. Mother is not in substantial compliance with attending urinalysis testing. Based on Mother's failure to comply with her case plan tasks, this Court should enter an order terminating her parental rights.

Father has already been defaulted. The evidence shows that he has essentially abandoned the children. Both parents have failed to demonstrate a change in the behaviors that caused the children to be brought into care. MT and MBT have both been in care since October of 2016. It is in their best interests to attain permanency, stability, and normalcy. There is no less other less restrictive means to attain this goal other than termination of Mother and Father's parental rights. The Department has met the least restrictive means test as outlined by the Florida Supreme Court in *In re T.M., 641 So. 2d 410 (Fla. 1994)*. The least restrictive means analysis requires only that the State prove good faith effort to rehabilitate the parent and reunify the family by providing a case plan and related services. Mother was provided with a case plan; the Court approved the case plan and ordered Mother to substantially comply with those tasks; and Case Manager Williams provided all the needed referrals for Mother to engage in said services. Despite all of these efforts and resources, Mother chose to continue to put her need for alcohol

and drugs in front of the needs of her dependent children.

Mother's decision to try inpatient for the first time in the seven years she's admitted to having substance abuses and nineteen months after the Department removed her children is not tantamount to substantial compliance. The Department presented to the Court case law in support of this position. In K.E. v. Dep't of Children and Families, 816 So. 2d 838 (Fla. 5th DCA 2002), the Mother had chronic substance abuse issues. By the time of the TPR trial, Mother argued that she deserved *another* chance because she had successfully completed drug treatment, held down a job, and was close to the children. The Court opined:

> "We agree with the DCF. *See M.B. v. Dep't of Children and Families*, 739 So. 2d 716, 717 (Fla. 5th DCA 1999) ("her good intentions for the future do not overcome her past neglect of her children . . ."); *see also Williams v. Dept. of Health and Rehabilitative Services*, 648 So. 2d 841 (Fla. 5th DCA 1995) ("a parent's drug addiction is evidence of prospective neglect"); *In the Interest of J.L.P.*, 416 So. 2d 1250, 1253 (Fla. 4th DCA 1982) ("[o]ur sympathy for the mother cannot blind us to the overriding concern for the welfare of the child"). "

Likewise, in the instant case it is certainly a positive step in Mother's recovery that she sought inpatient treatment. It is hopeful that Mother is able to stay clean. But if prior actions are any indication of future behaviors, Mother's sobriety is likely short lived much like the Father whose rights were terminated in W.N. v. Dep't. of Children & Families, 919 So. 2d 589 (3rd DCA, 2006). In that case, the appellate court upheld the termination of Father's rights citing that Father had continued to relapse even after completing substance abuse treatment and that he continued to live in the same home the children were removed from despite there being evidence that the home was not stable. Similarly, in M.B. v Dep't. of Children & Families, 739 So. 2d 716 (5th DCA, 1999), the Court affirmed the termination of Mother's parental rights stating:

> "The only factor weighing in her favor was her enrollment in a drug program one month after the petition for termination was filed, and her pronouncement that she plans to complete it and remain drug free. Unfortunately, her good intentions for the future do not overcome her past neglect of her children, nor her past failure to complete treatment at four different drug treatment centers."

Florida Statute §39.001(1)(a) cites that the primary purpose of Florida Statutes Chapter 39 Proceedings Relating to Children is to " provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development." Additionally, Florida Statute §39.001(1)(h) states it is the Legislature's intent to ensure that permanency for dependent children is achieved as soon as possible for every child in foster care, and that no child remains in foster care for longer than one year. Further, Florida statute §39.001(3) provides that children have a *right* to a permanent and stable home. Mother's best interests are not paramount in this case. It is the children's need for permanency, stability, and normalcy.

Despite being provided with ample services and being given nearly two years, Mother has simply not met the criteria of Florida Statute §39.522(2) (2018) to be safely reunified with

her children. The circumstances that caused the out-of-home placement – Mother's continued substance abuse- have not been remedied. Allowing Mother any additional time to prove a behavior change is detrimental to the children's safety, well-being, and physical, mental, and emotional health.

It is also the position of the Guardian ad Litem that it is in the manifest best interests of the children for the Court to terminate Mother and Father's parental rights. The children's therapist, Keisha Evans, a licensed mental health counselor, testified that MBT has adjustment issues and MT exhibits tantrums due to the Mother's failure to provide a safe and stable environment. Ms. Evans testified that she witnessed the children flourish in the care of paternal Paternal Grandmother, only to see them regress when returned to the paramour's family. Ms. Evans testified that the children appeared sad at learning of Mother's relapse, but were happy to be placed with Paternal Grandfather.

Ms. Evans testified that she had begun family counseling with the children and Mother prior to her relapse. Ms. Evans expressed to Mother that the children were not happy at the paramour sister's home and encouraged Mother to work hard on reunification. Ms. Evans testified that Mother acknowledged that her relationship with Paramour was not healthy. Ms. Evans offered to assist Mother in any way she could to work toward stability and sobriety- to be a support system. Ms. Evans testified that while she knows Mother loves her children, she believed it was in the children's manifest best interests to achieve permanency and stability through adoption.

Lastly, the Guardian ad Litem volunteer Bronna Cacciatore testified on day two of the trial. Her testimony mirrored the paternal grandparents' as to the children's initial outward signs of abuse and neglect. She testified that it was clear that the parents were not adequately providing for the children's educational and dental needs prior to shelter. She testified that she has witnessed a transformation in MBT when she was with her Paternal Grandmother, a confidence she did not have before. She witnessed it diminish when the children were returned to the Paramour's family. Ms. Cacciatore testified that she observed a bond between the children and their Mother, but that any harm in terminating that parental bond was substantially outweighed by the children's need for permanency, stability and normalcy. She testified that the Paternal Aunt and her husband were forming a relationship with the children and that she supported that pre-adoptive placement. Lastly, she testified that it was clearly in the manifest best interests of the children to terminate the parental rights of the biological parents to allow them to achieve permanency.

Father had not had a relationship with his children for in excess of five years prior to shelter. He returned to their lives for a few short months and abandoned them again. He has been defaulted on the petition and his parental rights should be terminated.

The Guardian ad Litem urges this Court to terminate the rights of Mother, as well. While I have no doubt that Mother loves her children, she has simply not reached the point where she loves them more than she loves alcohol and drugs. The last seven years of these children's lives have been unstable due to Mother's substance abuse- the last seven. These children are eight and ten years of age. So for basically most of their little lives they have lived through their Mother's

addiction. On at least two occasions that we know of they have seen her unconscious due to intoxication. They have not been fed on at least one occasion we know of. But arguably it had to occur on more than one occasion for MT to start hoarding food. Both girls could not use eating utensils. Both girls failed first grade. Both girls were neglected medically and educationally.

After shelter, MT exhibited outbursts of anger. What has happened to an eight year old to make her so angry…living seven of her eight years in chaos due to Mother's addiction. MBT was described as quiet and withdrawn, constantly lying when she did speak. Paternal Grandfather testified he was alarmed to see her viewing pornographic materials electronically and drawing drug paraphernalia. What makes a ten year old do these things…living seven of her ten years in chaos due to her Mother's addiction. Two years later we are in the same place, with Mother lying about receiving the Vivitrol injections, avoiding the intensive substance abuse services she so needs and opting for a thirty-seven day stay in Oregon. Today the children are entitled to permanency, stability, and normalcy. They deserve to be carefree little girls. Today, still nearly two years after removal, Mother has not met the conditions for return.

WHEREFORE, for the reasons stated herein, the Guardian urges this Court to enter an order terminating the parental rights of Mother and Father. These children deserve to live the next half of their minority in a stable and loving home.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service delivery this 19th day of October, 2018 to: Department of Children & Families at C07_CLS_Eservice@myflfamilies.com; Kim Lambros, Esq., attorney for mother, at klambros@rc5state.com and gschute@rc5state.com, and Scott Meyer, Esq, attorney for father, at wscottmeyer@yahoo.com.

Respectfully submitted by:

/s/ Alicia R. Washington, Esq.

Alicia R. Washington, Esq.
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EXHIBIT 2

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

JUVENILE DIVISION
CASE NO: 2013-DP-7

IN THE INTEREST OF:

N.S.

MINOR CHILD _____/

NOTICE OF GUARDIAN AD LITEM PROGRAM'S OBJECTIONS TO PETITION TO INTERVENE AND ANTICIPATED MOTION FOR CHANGE OF CUSTODY BY FLORIDA HOMESTUDY LLC AND MEMORANDUM OF LAW IN SUPPPORT THEREOF

COMES NOW, Program Attorney for the Seventh Judicial Circuit Guardian ad Litem Program, and notifies the Court and all Parties of GUARDIAN AD LITEM'S position on the pending and anticipated motions filed or to be filed by Florida Homestudy LLC:

1. The Guardian ad Litem Program **objects** to the Petition to Intervene filed by Florida Homestudy LLC.

2. The Guardian ad Litem Program **objects** to the anticipated Motion for Change of Custody to be filed by Florida Homestudy LLC.

3. The Guardian ad Litem Program would request that the required hearing be set on the Petition to Intervene and anticipated Motion for Change of Custody, at which time the Court may make the requisite determinations on the parent's choice of placement as well as the child's best interests, pursuant to 63.082(6)(c), (d), and (e) and Florida Statute §39.001.

4. The Guardian ad Litem Program moves this Court to proceed with disposition pursuant to Florida Statute §39.811 and enter an order terminating parental rights based on the parents' validly executed surrenders.

5. The undisputed, pertinent facts are as follows:

   a. The child N.S. was sheltered on March 30, 2013. He was approximately ten months old at the time of shelter.
   b. The allegations in the shelter petition alleged substance abuse and domestic violence issues with both Mother and Father identified as perpetrators.

c. A dependency petition based on these allegations was filed against both Mother and Father on April 22, 2013.
d. On July 8, 2013, Mother, entered a written consent without admissions to dependency.
e. On July 12, 2013, Father, entered a written consent without admissions to dependency.
f. On July 17, 2013 the child was adjudicated dependent and a Reunification case plan with a target date of March 30, 2014 was approved.
g. Based on the parents' failure to substantially comply with the case plan after repeated extensions, the Department filed a Petition for Involuntary Termination of Parental Rights on January 8, 2015.
h. On April 6, 2015 Mother entered her written voluntary surrender of her parental rights.
i. On May 15, 2015 Father entered his written voluntary surrender of his parental rights.
j. A disposition was scheduled for May 27, 2015.
k. On May 26, 2015, Florida Homestudy LLC filed its Petition to Intervene Relinquish Jurisdiction with a homestudy attached for the proposed adoptive placement the Hornes.
l. The child is now three years of age and has been in his current prospective adoptive placement since July of 2013.

MEMORANDUM OF LAW

I. ARGUMENTS AGAINST PETITION TO INTERVENE RELINQUISH JURISDICTION

Pursuant to Florida Statute 39.811(5) an order of termination of parental rights permanently deprives a parent of any rights to a child. Florida Statute 39.802(4)(d) requires that parents must be informed of the *availability* of private placement of the child with an adoption entity as defined in 63.032. Florida Homestudy LLC relies on Florida Statute 63.082(6) for its position that it has a *right* to intervene in the dependency action based on the consent to adoption signed by Father. Florida Homestudy LLC has filed a Petition to Intervene seeking an order of relinquishment of jurisdiction by the dependency court. The Guardian ad Litem Program objects as there is no authority for Florida Homestudy LLC's position that a petition to intervene by a private adoption agency under Chapter 63 automatically necessitates dismissal of a pending Chapter 39 dependency action.

Statutes should be read *para materia* giving full effect to each statute's legislative intent. Construing statutes in *para materia* requires that the court construe the statutes together " so that they illuminate each other and are harmonized". *McGhee v. Volusia County*, 679 So. 2d 729,730 (Fla. 1996). Where possible, Courts must "give full effect to all statutory provisions and construe related statutory provisions in harmony with one another". *Forsyth v. Longboat Key Beach Erosion Control Dist.*, 604 So 2d 452, 455 (Fla. 1992).

Florida Statute §39.001(1)(a) cites that the primary purpose of Florida Statutes Chapter 39 Proceedings Relating to Children is to " provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development." Additionally, Florida Statute §39.001(1)(h) states it is the Legislature's intent to ensure that permanency for dependent children is achieved as soon as possible for every child in foster care, and that no child remains in foster care for longer than one year. Further, Florida statute §39.001(3) provides that children have a *right* to a permanent and stable home.

Florida Statutes Chapter 63 governs private adoptions. The legislative intent under Florida Statute §63.022(1)(a) cites that the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner. Florida Statute §63.022(2) further states that it is the intent of the Legislature that in every adoption, *the best interest of the child should govern and be of foremost concern in the Court's determination.* The Court is tasked with making specific findings as to the best interests of the child which would support an action pursuant to Chapter 63.

Reading the provisions of both Chapters 39 and 63 in *para materia*, it is clear that the legislative intent is that only after the dependency court is satisfied that the parent's chosen adoptive placement is in the child's best interests and suitable should the dependency proceedings be stayed or dismissed. In applying either Chapter 39 or 63 to the instant case, it is clear that it is not in the best interests of the minor child to allow Florida Homestudy LLC to intervene in this matter. It is further not in the best interests of the minor child to dismiss the dependency action or to relinquish jurisdiction. Dependent parents are classified as such based on their failure to adequately provide for and protect their children. It would be repugnant to then allow those unfit parents to have the sole power to make decisions regarding their children. To the extent that the child's best interests are inconsistent with the unfit parent's choice, the child's best interests prevails. *Padgett v. The Department of Health and Rehabilitative Services*, 577 So. 2d 565, 570 (Fla. 1991).

Florida Homestudy LLC has filed its Petition to Intervene and attached Father's Consent to Adoption and a homestudy for Father's proposed adoptive placement the Hornes. Florida Statute §63.082(6) states that the adoption entity shall be permitted to intervene *if it files a validly executed consent to adoption AND a copy of a homestudy for a suitable placement.* The Hornes are a hearing impaired couple who have no relationship to Nathan. Nathan does not have the ability to effectively communicate with the Hornes. There are currently no services in place to make that placement safe and stable for Nathan. More importantly, their homestudy states that Mr. Horne would only commit to caring for Nathan for one year. This prospective adoptive placement does not provide permanency for Nathan and is not suitable under Florida Statute §63.082(6). As such, Florida Homestudy LLC should not be permitted to intervene in this matter.

In the instant case, both Father and Mother were given nearly two years to complete their case plans and be reunified with their son. Now two and a half years later, Father should not be allowed to delay the *child's right* to permanency by seeking what amounts to a trial adoption under Chapter 63. In applying Florida Statute §63.022(2) to the instant case, it is abundantly clear that a Chapter 63 Adoption is not in the minor child's best interest. Thus, assertions in this

case that Father has the unfettered right to select the child's adoptive placement and that this Court must dismiss or transfer the dependency case to a Chapter 63 family proceeding are patently incorrect and should be rejected.

II. ARGUMENTS AGAINST ANTICIPATED MOTION FOR CHANGE OF CUSTODY

Notwithstanding the arguments above, should the Court rule that Florida Homestudy LLC has a right to intervene in these proceedings, Florida Statute §63.082(6)(e) governs any modifications of placements under Chapter 63. It states that in determining the best interest of the child, the Court shall consider:

1. The rights of the parent to determine appropriate placement;
2. Whether permanency is offered by the prospective placement;
3. The child's bonding with any potential adoptive home that the child has been residing in; and
4. The importance of maintaining sibling relationships (which is inapplicable in this case as the child has no siblings).

Florida Homestudy LLC has in previous cases advanced the proposition that parents have a fundamental right to determine the placement of their children. The Fifth District Court in *P.K. v. Florida Department of Children and Families* has opined that "although parents have the God given right to the care, custody and companionship of their children, the right is *not absolute*. Rather, it is subject to the overriding principle that is the ultimate welfare or best interests of the children which must prevail." *P.K. v. Florida Department of Children and Families*, 927 So. 2d 131, 134 (Fla. 5th DCA, 2006). Where a parent has been found to be unfit, that parent abdicates his or her sole right to determine the best interests of the child. *Hausmann ex rel Doe v. L.M.*, 806 So. 2d 511,515 (Fla. 4th DCA, 2001). The Fifth District Court of Appeal has applied this same analysis in *Guardian ad Litem v. R.A.*, 995 So. 2d 1083, 1084 (Fla. 5th DCA, 2008). In that case the Father sought to change the placement of the minor child from foster care to the paternal grandmother. The trial court gave deference to the Father's choice of placement. However, the appellate Court reversed finding that the Court needed to apply a best interests standard when ruling on motions regarding placement.

In proceedings related to children in the custody of the State, the courts are charged with the duty of ensuring that the best interests of the children are advanced and are of the foremost concern. This duty exists during dependency proceedings and continues through adoption proceedings. Father's proposed adoptive placement is the Hornes. At the request of Father, a placement homestudy was completed by the Department of Children and Families. A copy of the homestudy is attached to Florida Homestudy LLC's Petition to Intervene. A review of the homestudy reveals that the Hornes are hearing impaired. This creates significant communication issues between themselves and Nathan who does not know sign language. Noted in the homestudy was that there would be the following services needed to make the placement safe and appropriate:

1. an American sign language interpreter;
2. activation of the ADT alarm system; and
3. addition of baby cry and flashing lights to the ADT alarm system

These services were not provided to the Hornes by Community Partnership for Children as they were not proposing a change of custody. **As such, the placement is currently not suitable for N.S.**

More importantly, N.S. has no relationship and/or bond with the Hornes. Mrs. Horne is a work acquaintance of the paternal grandmother. At the time of the homestudy, she had not seen N.S. in seven months. He has never been in her care. Mr. Horne has never even met N.S.. In Part IV Section 6 of the homestudy it is noted that while Mrs. Horne has expressed a willingness to adopt N.S., **Mr. Horne has stated he would only be willing to care for N.S. for one year.** Mrs. Horne is a self-employed house cleaner. She reported $100.00 net monthly income. She also receives social security benefits of $1596.00 per month. Her husband Mr. Horne works at Purple Communications, Inc. and is the family's primary source of support. He reports $3000.00 net monthly income. They report their monthly expenses as $4060.00 a month leaving a surplus of $836.00 per month. As noted in the homestudy, they would need the adoption subsidy to adequately care for N.S. If Mrs. Horne were allowed to complete a single parent adoption while living in a married household, this would not provide safety, security and permanency for N.S.

In the homestudy Mr. Horne stated that after a year, he might reconsider adopting N.S. But Florida Statute §39.621 (1) states that time is of the essence for permanency for children. N.S. has been in the dependency system since he was 10 months of age. He is now three years of age and has spent the majority of his life in his current prospective adoptive placement. It is presumptively in the best interests of the child to remain in the home where he or she has spent the majority of his or her life. *Florida Department of Children and Families v. Interest of J.C.*, 847 So. 2d 487, 491 (Fla. 3d DCA, 2002); see also *Rumph v. Interest of V.D.*, 667 So. 2d 998 (Fla. 3d DCA, 1996). The Court in J.C. noted that "it is a matter of human knowledge that every day in the life of a small child is important to his physical, mental, and emotional development." N.S. is in a placement that offers him permanency. His foster parent has submitted an application seeking to adopt him. N.S. is bonded with his foster parent and views her as his mother. Using the guidelines set forth in Florida Statute §63.022, it is clearly not in his best interests to have N.S.'s right to permanency delayed for what amounts to no more than a trial run with the Hornes. He has no connections to the Hornes and is deserving of permanency now.

III. ARGUMENTS IN SUPPORT OF DISPOSITION PURSUANT TO FLORIDA STATUTE §39.811

On May 15, 2015 Father was set for a trial on the Department's Petition for Involuntary Termination of Parental Rights. On that date, Father entered a written Affidavit and Acknowledgment of Surrender, Consent and Waiver of Notice. Said surrender was unconditional and is binding. The surrender acknowledges Father's desire that N.S. be placed with the Hornes. However, it specifically states the surrender is not conditioned upon that

actually occurring. The surrender was duly executed and accepted by the Court. The case was then sent for a disposition. Prior to disposition occurring, Florida Homestudy LLC filed its Petition to Intervene. Irrespective of whether this Court allows Florida Homestudy LLC's to intervene in the instant action, based on the arguments previously recited herein, the Court should proceed in entering an order terminating Father's parental rights pursuant to Florida Statute §39.811 based on his voluntary surrender.

A voluntary surrender of parental rights is binding. It cannot be set aside unless there is a motion to set aside the surrender based on fraud, duress, or undue influence pursuant to Florida Statute §39.806. Father would have the burden of proving the alleged fraud, duress, undue influence by clear and convincing evidence. *R.B. v. Florida Department of Children and Families*, 997 S0 2d 1216 (Fla. 5th DCA, 2008). In the instant case, there is no motion before the Court to set aside Father's valid surrender. There is no authority upon which either Father or Florida Homestudy LLC can rely on for its proposition that a Petition to Intervene by Florida Homestudy LLC invalidates Father's surrender, or that it terminates the jurisdiction of the dependency court. The dependency court should maintain jurisdiction as it is clearly in N.S.'s manifest best interests. As such, the Court should proceed with disposition giving full legal effect to Father's validly executed surrender and enter an order terminating both parents' parental rights by virtue of their valid surrenders.

WHEREFORE, based on the foregoing, the Guardian ad Litem respectfully requests the Court enter an order denying Florida Homestudy LLC's Petition to Intervene and proceed with disposition pursuant to Florida Statute §39.811.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service delivery this 13th day of July 2015 to: Department of Children & Families at C07_CLS_Eservice@myflfamilies.com and Wesley.flagler@myflfamiles.com; Sharon Feliciano, Esq., attorney for Mother at shrnfeliciano@yahoo.com; Scott Meyer, Esq., attorney for Father, at wscottmeyer@yahoo.com; and Jonathan Glugover, Esq., attorney for Florida Homestudy LLC, at jglug@aol.com.

Respectfully submitted by:

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TABLE OF CITATIONS

EXHIBIT 3

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

STATE OF FLORIDA

CASE NO.: 2014-303673-CFDB
JUDGE: PERKINS

vs.

RICHARD L. ASHBY,
Defendant.
_____/

MOTION TO SUPPRESS EVIDENCE

The Defendant, **RICHARD L. ASHBY**, through his undersigned counsel, and pursuant to Rule 3.190(h), Fla. R. Crim. P., hereby moves this Honorable Court for an order suppressing certain evidence illegally seized without warrant in any criminal proceeding of the above-styled cause. In support thereof, Defendant alleges as follows:

1. On or about Wednesday, June 28, 2014, at approximately 10:53 a.m., Defendant, was illegally detained and arrested by several officers acting under the color of authority of the Port Orange police department.

2. According to the 707 charging affidavit drafted by Officer Darren Starling, the officers responded to an anonymous 911 call reporting that Defendant was making delusional statements.

3. At the time of the officers' response to Defendant's residence, he was observed to be peacefully seated on a sofa within the apartment.

4. Officers Darren Starling and Officer Jonathan Nolan proceeded to make a warrantless entry into Defendant's home. The entire entry was audio recorded on the officer's recording devices. The officers neither sought permission to enter Defendant's home, nor explained the reason for their unlawful entry.

5. Per the recordings and the officers' deposition testimony, Officer Starling then proceeded to order Defendant's daughter to exit the residence to speak with him.

6. Still unaware of why the officers were present, Defendant defended his daughter by verbally advising her that she did not have to comply with the officers' unlawful order.

7. Officer Starling then attempted to place Defendant under arrest for a purported resisting officer without violence.

8. An essential element of the offense of resisting a law enforcement officer without violence is that the arrest must be legal. Norton v. State, 691 So. 2d 616 (Fla. 5th DCA, 1997); Benjamin v. State, 462 So. 2d 110 (Fla 5th DCA, 1985).

9. A warrantless non-emergency arrest of a suspect at his or her home is presumed illegal. Welsh v. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984) (before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries); Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) (police must have an arrest warrant to effect a non-emergency arrest of an individual in his or her home); Engle v. State, 391 So.2d 245 (Fla. 5th DCA 1980) (warrantless arrest in suspect's home is an unreasonable seizure absent exigent circumstances).

10. An important factor to be considered when determining whether any exigency exists for making a warrantless arrest is the gravity of the underlying offense for which the arrest is being made. *Welsh* at 753. The *Welsh* court further opined, "[A]lthough no exigency is created simply because there is probable cause to believe that a serious crime has been committed, ... application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense ... has been committed." *Id.* at 753.

11. Defendant has been charged by information with one count of Resisting an Officer With Violence. Conviction for this offense requires proof that the officer was engaged in the performance of a lawful duty. Warrantless entry into a defendant's home absent probable cause to enter the home to make an arrest is not the performance of a lawful duty. Taylor v. State, 740 So.2d 89 (Fla. 1st DCA, 1999).

12. Officers must act within the limits of the law contained in constitutional and statutory law in order to trigger the public interests in protecting law enforcement officer against use of force by illegally seized detainees. Tillman v. State, 934 So. 2d 1263 (Fla. 2006)

13. All of the evidence was seized pursuant to an unlawful warrantless entry into Defendant's home, without probable cause to make an arrest prior to entry into Defendant's home in violation of the Fourth and Fourteenth Amendments of the United States Constitution and the Florida Constitution.

14. The unlawful entry, unlawful detention, and unlawful arrest all of which were executed by the Port Orange Police Department under color of authority unlawfully intruded on the Defendant's personal security in violation of his rights guaranteed by the Fourth Amendment to the Constitution of the United States and Article I, Section 12 of the Florida Constitution.

WHEREFORE, based on all of the foregoing grounds, Defendant respectfully seeks to suppress the use of all illegally obtained evidence in this matter. More specifically, Defendant seeks to suppress:

A. All information relating to any statements actions and/or inaction made or done by Defendant at the time of the unlawful entry;
B. All information relating to Defendant's statements, actions and/or inaction at the time of the unlawful arrest for resisting an officer without violence;
C. All information relating to Defendant's statements, actions and/or inaction once he was placed under unlawful arrest;
D. All testimony from any witnesses regarding anything that occurred after the unlawful entry into Defendant's residence

.

I HEREBY CERTIFY that a copy hereof has been e-served to the Office of State Attorney, ASA Megan Upchurch, at eservicevolusia@sao7.org this 29th day of November, 2018.

.

ALICIA R. WASHINGTON, P.A.

BY: _____

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Attorney for Defendant

EXHIBIT 4

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

THELMA TYLER, et. al.

Plaintiffs,

Vs.

EDWARD B. HERNANDEZ,
et. al.

Defendants.
_____/

CASE NO: 2009-CA-002206
DIV.:

MOTION FOR SUMMARY JUDGEMENT

COMES NOW, the Defendant, EDWARD B. HERNANDEZ, by and through the undersigned attorney, and pursuant to Fl. Rules of Civil Pro. 1.510 (2010), and files this Motion for Summary Judgment, and as grounds in support thereof, states as follows:

1. Plaintiffs, THELMA TYLER and JOSEPH JAY WOOLBRIDGE, have filed an action seeking specific performance of a contract to convey real property;
2. The subject property is jointly owned by Defendant, EDWARD B. HERNANDEZ, and his wife/co-Defendant, LUPE S. HERNANDEZ, as tenants by the entireties. Attached hereto as **Exhibit A** is a copy of the warranty deed;
3. On December 12, 2009, LUPE S. HERNANDEZ received a Chapter 7 discharge with regards any debts owed under the subject contract in bankruptcy case number #09-70145-CAG. A certified copy of said order is attached hereto as **Exhibit B**;
4. Plaintiffs were served by the bankruptcy clerk with a Notice to Creditors on or about September 21, 2009. A certified copy is attached hereto as **Exhibit C**;
5. In depositions conducted on January 14, 2010, both Plaintiffs admitted to receiving said notice and failing to file any objections to discharge thereto with the bankruptcy court. Attached are copies of the deposition transcripts of Plaintiffs hereto as **Exhibit D** (See page 13) and **Exhibit E** (See page 15) ;

6. Federal Rules of Bankruptcy Rule of Procedure 4004 requires that creditors objecting to a discharge must file an objection with the Court no later than 60 days after the first set date for the meeting of creditors;
7. In co-Defendant's bankruptcy case, the meeting of creditors was conducted on November 19, 2009. To date, Plaintiffs have not timely filed for any relief from the discharge. A certified copy of docket sheet showing the date of said meeting is attached hereto as **Exhibit F**;
8. On December 21, 2009, co-Defendant/Joint Tenant, Lupe S. Hernandez received a Discharge of Debtor;
9. Pursuant to 11 U.S.C.A. § 524 (3) said discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor, Lupe S. Hernandez;
10. The instant action is an action for specific property to enforce a sale contract for Debtor's property. This cause of action was discharged in the bankruptcy proceedings;
11. Attached are affidavits filed by both Defendants in support of this motion for summary judgment attached hereto as **Exhibit G** and **Exhibit H**;
12. Further, pursuant to 11 U.S.C.A. §101(5)(b), the legislative history and the Supreme Court's analysis in *Ohio v. Kovacs,* 469 U.S. 274 (1985) an equitable remedy will "give rise to a right to payment" and therefore be a "claim" under § 101(5)(B) if the payment of monetary damages is an alternative to the equitable remedy. *In re Ben Franklin Hotel Associates,* 186 F.3d 301, 305 (3rd Cir.1999); *In re Nickels Midway Pier, LLC,* 341 B.R. 486, 499 (D.N.J.2006);
13. Under Florida law, a vendor's breach of a real estate **contract** gives rise to alternative remedies: the purchaser may (1) elect to sue in an action at law for damages suffered as a result of the breach; or (2) the purchaser may elect to sue in equity to compel **specific performance** of the terms of the **contract**. Said actions are properly discharged under 11 U.S.C.A. §101(5)(b). *In re Rabin*, 361 B.R. 282 (S.D. Fla., 2007);

14. As such, this instant action to recover property jointly owned by Debtor/Co-Defendant on a discharged debt is barred by 11 U.S.C.A. § 524 (3) and should be dismissed;

15. Moreover, any actions seeking to set aside the discharge or enforce a claim should have been brought before the Bankruptcy Court pursuant to the procedures outlined in the Order Fixing Last Date for Filing Proofs of Claim, Combined with Notice Thereof of which client received a copy. The order is attached hereto as **Exhibit I** and the Certificate of Notice is attached as **Exhibit J**;

WHEREFORE, Defendant, EDWARD B. HERNANDEZ, for the foregoing reasons, respectfully requests the Court grant Defendant's Motion for Summary Judgment in the instant case.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to James R. Evans, attorney for Plaintiffs by mail at 322 Silver Beach Avenue, Daytona Beach, Fl. 32118, this ____ day of June, 2010.

ALICIA R. WASHINGTON, P.A.

BY: _____

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Fla. Bar No. 0141615
Attorney for Defendant

EXHIBIT 5

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT,
IN AND FOR FLAGLER COUNTY, FLORIDA

OLD KINGS HIGHWAY ASSOCIATES LTD.,

Plaintiff

v.

Case No.:2014-CC-366
Division:

BELLA'S TOMATO PIE, INC., RICHARD ROSER and ANTOINETTE LAURIA,

Defendants.
_____/

MOTION TO DISMISS

COMES NOW, the Defendant, **RICHARD ROSER**, by and through his undersigned counsel, and pursuant to the Florida Rules of Civil Procedure 1.130, 1.140 and 1.420, and Florida Statute §725.01, and hereby move this Honorable Court for an Order dismissing Plaintiff's Complaint to the extent that it raises any claims against Defendant, **RICHARD ROSER**, without any leave to amend and to further award Defendant, **RICHARD ROSER**, costs including reasonable attorneys' fees from Plaintiff, **OLD KINGS HIGHWAY ASSOCIATES LTD**. As grounds in support thereof, Defendant states as follows:

1. On or about July 30, 2014, Plaintiff, Old Kings Highway Associates, LTD. (hereafter referred to as Plaintiff) , filed a three count complaint against the above-named Defendants.
2. Count one of said complaint purports to be an action for possession of real property against Tenant/Defendant, Bella's Tomato Pie, Inc. for failure to pay rent.
3. Count two of said complaint purports to be an action against Tenant/Defendant, Bella's Tomato Pie, Inc., for a money judgment for rents owed.

4. Count three of said complaint purports to be an action against Defendants Richard Roser and Antoinette Lauria as purported guarantors of a guaranty agreement for a debt owed by Tenant/Defendant Bella Tomato Pies, Inc.

5. Attached to said complaint, Plaintiff provided three exhibits- (a) a copy of the lease agreement executed on August 22, 2011; (b) a copy of the lease assignment executed on September 28, 2012 by Plaintiff and Defendant Antoinette Lauria; and (c) a copy of a June 26, 2014 three day notice to Defendant/Tenant Bella's Tomato Pie, Inc. and Defendant Antoinette Lauria regarding nonpayment of rent.

6. Plaintiff failed to attach copies any contracts and/or documents upon which they can legitimately claim that the Defendant Richard Roser executed a binding guaranty agreement legally obligating him to pay the amounts demanded and owed by Defendants Bella's Tomato Pie, Inc. and Antoinette Lauria.

7. Florida Rule of Civil Procedure 1.130 (a) provides in relevant part that all bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading.

8. Additionally, Fla.R.Civ.P. 1.130 (a) states that when a party brings an action based upon a contract and fails to attach a necessary exhibit under Rule 1.130 (a), the opposing party may attack the failure to attach a necessary exhibit through a motion to dismiss. *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So.2d 489, 500 (Fla. 4th DCA 2001); *See also Walters v. Ocean Gate Phase I Condominium*, 925 So.2d 440, 443-44 (Fla. 5th DCA 2006); *See also Contractors Unlimited v. Nortrax Equip. Co. Southeast*, 833 So.2d 286, 288 (Fla. 5th DCA 2002).

9. The subject lease attached to the complaint was executed on August 22, 2011. The parties to said lease were Carmine Celery's Corporation and Plaintiff Old King's Highway Associates, LTD.

10. Per the terms of said lease, the lease interest expired on February 28, 2011.

11. At the time of the execution of the lease, Defendant Richard Roser was vice president of Carmine Celery's Corporation. In his capacity as vice president, he executed the lease. The 2012 For Profit Corporation Annual Report for Carmine Celery's Corporation filed on June 24, 2012 is attached hereto as Exhibit A.

12. Defendant Richard Roser also executed a Guaranty of Lease as to the August 2011 lease attached to Plaintiff's complaint as a guarantor of Carmine Celery's Corporation.

13. Any obligations Defendant Richard Roser had under this Guaranty of Lease expired at the lease's expiration on February 28, 2014 and would only relate to any amounts due by Carmine Celery's Corporation.

14. Additionally, on August 2, 2012 Defendant Richard Roser sold his interest in Carmine Celery's Corporation to his then business partner Defendant Antoinette Lauria. The 2012 For Profit Corporation Amended Annual Report for Carmine Celery's Corporation filed on August 3, 2012 is attached hereto as Exhibit B.

15. Subsequently, on August 20, 2012, Defendant Antoinette Lauria formed the business Bella's Tomato Pie, Inc. The Articles of Incorporation for Bella's Tomato Pie, Inc. are attached hereto as Exhibit C.

16. Defendant Richard Roser has never held any interest in Bella's Tomato Pie, Inc.

17. On September 28, 2012, Plaintiff and Defendants Bella's Tomato Pie, Inc. and

Antoinette Lauria entered into an Assignment of the 2011 lease agreement.

18. Antoinette Lauria executed the lease in her capacity as President of Carmine Celery's Corporation and as a personal guarantor for Defendant Bella's Tomato Pie, Inc.

19. Defendant Richard Roser was not a party to this Assignment of Lease and did not sign as a guarantor on this contract.

20. Florida Statute §725.01 states in pertinent part that no action shall be brought whereby to charge the defendant upon any special promise to answer for the debt of another person unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by her or him thereunto lawfully authorized.

21. Defendant Richard Roser was not a party to the subject Assignment of Lease in favor of Defendant Bella's Tomato Pie, Inc.

22. Defendant Richard Roser did not sign as a guarantor for the subject assignment as is evidenced by the unsigned assignment filed by Plaintiff as Exhibit 2 of its complaint.

23. Plaintiff's claim against Defendant Richard Roser is based upon an unenforceable, unsigned written instrument which cannot form the basis of a valid contract.

24. As such Plaintiff fails to state a cause of action against Defendant Richard Roser.

25. Additionally, the August 2011 lease under which Defendant Richard Roser signed as guarantor for Carmine Celery's Corporation expired on February 28, 2014.

26. On June 26, 2014. Plaintiff forwarded correspondence to Defendants Bella's Tomato Pie, Inc. and Antoinette Lauria demanding $7844.34 in unpaid rent. At the time of the 2012 assignment, the monthly rent under the August 2011 lease was $2220.75 per month.

27. Hence, Plaintiff now seeks rent payments that accrued after the February 28, 2014 expiration of the 2011 lease.

28. Plaintiff in effect created a month to month tenancy with Bella's Tomato Pie, Inc. at the expiration of the August 2011 lease to which Defendant Richard Roser was not a party.

29. Plaintiff has failed to state a valid cause of action against Defendant Richard Roser.

30. To defend this meritless action, Defendant Richard Roser, has retained the undersigned attorney.

31. Defendant requests an award of attorney's fees as a taxable item of costs against Plaintiff for all fees and costs associated with defending this action as required by Florida Rules of Civil Procedure 1.420(d).

32. Additionally, by the terms of the August 2011 lease paragraph 10.1, Defendant Richard Roser is entitled to prevailing party fees in this action should the Court dismiss Plaintiff's complaint.

WHEREFORE, the Defendant, **RICHARD ROSER**, respectfully request an Order of this Honorable Court dismissing Plaintiff's Complaint to the extent that it raises any claims against Defendant, **RICHARD ROSER**, without any leave to amend and to further award Defendant, **RICHARD ROSER**, costs including reasonable attorneys' fees from Plaintiff, **OLD KINGS HIGHWAY ASSOCIATES LTD.** , and such other relief this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss has been furnished by e-service to Frank, Weinberg & Black, P.I.. c/o David W. Black, Esq., attorneys for Plaintiff, at dblack@fwblaw.net and bchapman@fwblaw.net on this 17th day of September, 2014.

Respectfully submitted by:

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BY: _____

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EXHIBIT 6

IN THE FIFTH DISTRICT COURT OF APPEALS,

ADAM BISS,

Appellant,

v.

DEVONA CODY BISS,

Appellee.

_____/

5D19-1112

LC CASE NO. 2009-DR-1430

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Appellant and Appellee were married on March 6, 1999. Appellee filed her Petition for Dissolution of Marriage on September 23, 2009. For a year or so after the initial dissolution petition was filed, the parties' agreed to delay the dissolution proceedings and work toward possible reconciliation for the benefit of the parties' minor children. After a year or so elapsed, the parties ceased reconciliation efforts and elected to proceed with dissolution. The parties continued- even after the entry of the Final Judgment of Dissolution- to reside together and share household and childcare duties in the same manner that they had throughout the marriage.

On August 24, 2011, the parties, both with their respective counsels present, entered into a Marital Settlement Agreement. The lower court then entered a Final Judgment of Dissolution of Marriage on September 13, 2011 incorporating and ratifying the Parties' Marital Settlement Agreement (Appellate Record Page 141). Section VII of the Marital Agreement signed by the parties on August 14, 2011 states as follows "all retirement accounts shall be split via Qualified Domestic Relations Order."

On June 17, 2014, Appellant filed a Supplemental Petition Seeking Modification of the Parenting Plan. On February 11, 2016 the parties were able to reach a stipulated agreement which was ratified in a Final Judgment entered on February 29, 2016. Said agreement terminated Appellant's monthly child support

obligation to Appellee based on the agreement to increase Appellant's timesharing by ten percent. Section VI of the parties' initial Marital Settlement Agreement, which was not altered by the subsequent agreement, stated that Appellant would be entitled to claim the older child and Appellee would be entitled to claim the younger child as their respective tax dependents. It further read that "when only one child is *eligible to be claimed*, they shall rotate claiming the remaining child yearly."

On April 22, 2016, Appellee filed her Motion for Entry of Qualified Domestic Relations Order as agreed to in the parties' August 24, 2011 Marital Settlement Agreement. Counsel for Appellant who had represented Appellant during the initial dissolution proceedings and the subsequent modification proceedings provided the preferred qualified domestic relations order form; agreed to the calculations contained therein; and had no objection to the entry of the subject domestic relations order. Appellee and Appellant agreed to the form used and entered by the lower court on April 27, 2016 (Appellate Record Page 308). The order referenced by Appellant of Appellate Record Page 312 was set aside by party agreement per the order entered in Appellate Record Page 315. Subsequently on June 7, 2016 (forty two days later), Appellant filed his Motion to Set Aside the Qualified Domestic Relations Order and argued, for the first time, that the valuation date for Appellant's retirement plan should have been the date of the

filing of the Petition for Dissolution, not the date the Marital Settlement Agreement was entered (Appellate Record Page 324). Appellant did not cause that matter to be heard by the lower court until January 15, 2019, nearly three years after the entry of the subject Qualified Domestic Relations Order.

Meanwhile, on October 18, 2018, Appellee filed her Motion for Civil Contempt due to Appellant claiming both children of the marriage as tax dependents on his 2017 taxes. The oldest child was still eligible to be claimed as a tax dependent by Appellant on his 2017 taxes. Appellant in violation of the Final Judgment claimed both children, not only the youngest child as Appellant claimed in his initial brief, as tax dependents for the 2017 tax year and refused to reimburse Appellee for the damages she incurred based on her inability to claim the younger child as a tax dependent per the terms of the Marital Settlement Agreement.

Appellant and Appellee set their respective motions for hearing on January 15, 2019. Both parties testified as to both motions before the trial court. Appellant files the instant appeal seeking to reverse the lower court's order denying his Motion to Set Aside the Qualified Domestic Relations Order and granting Appellee's Motion for Contempt.

SUMMARY OF ARGUMENT

I. THE APPELLATE COURT'S REVIEW IS LIMITED TO ERRORS ON THE FACE OF THE TRIAL COURT'S ORDER. BASED ON THE FOUR CORNERS OF THE TRIAL COURT'S ORDER, THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO VACATE THE QUALIFIED DOMESTIC RELATIONS ORDER AND IN GRANTING APPELLEE'S MOTION FOR CONTEMPT

On appeal, the trial court's decision is presumed correct. The burden is on Appellant to demonstrate reversible error. *Ketchem v. Adler*, 826 So. 2d. 375 (Fla. 2d DCA 2002). Where an appellant fails to place before the appellate court a complete transcript, and thus a complete record of the trial court's proceeding, the appellate court is required to affirm the trial court's decision. *Ketchem*, 826 So. 2d at 375; *Belfield*, 162 So. 2d 668, 669 (Fla. 2d DCA 1964).

In the absence of a hearing transcript, the judgment entered by the lower court should be affirmed unless the appellate court finds that it is fundamentally erroneous. Since Appellant herein has failed to produce a hearing transcript of the January 15, 2019 hearing on these matters, the appellate court must affirm the trial court's order, or at minimum, limit its review to addressing errors that appear on

the face of the appealed order. *Arnold v. Whitley*, 97 So. 3d 339 (Fla. 5th DCA 2012) (citing *Engesser v. Engesser*, 42 So 3d 249, 250 (Fla. 5th DCA 2010).

The lower court heard the testimony from the parties regarding their understanding of the intended valuation dates at the time they entered the agreement on August 24, 2011. The Court further received testimony regarding the parties' understanding of the tax dependent designation contained in their Marital Settlement Agreement. The trial court found Appellee's testimony to be both credible and reasonable and correctly ruled in her favor. There is no fundamental error on the face of the trial court order and as such it should be affirmed.

II. THE TRIAL COURT PROPERLY APPLIED FLORIDA STATUTE §61.075 IN DETERMINING THAT THE MARITAL SETTLEMENT AGREEMENT INTENDED THE VALUATION DATE OF THE PARTIES' RETIREMENT ACCOUNT WAS THE DATE OF THE EXECUTED AGREEMENT AND THAT FINDING AS SUCH WAS JUST AND EQUITABLE

Appellant's entire premise regarding his appeal of the order denying his motion to vacate the qualified domestic relations order is that 5 Florida Statute

§61.075 (2019) requires the trial court determine that the date of the filing of the Petition for Dissolution is the date to be used for valuating marital assets. But the issue before the trial court was interpreting the Marital Settlement Agreement entered into by the Parties on August 24, 2011 as parties are free to agree as to the appropriate valuation dates. The trial court heard testimony from the Parties regarding their intent at the time the agreement was entered. The Court weighed that evidence and correctly determined the parties intended to use the value of their respective retirement accounts as of the date of entering the agreement. The Court heard the Parties' testimony and correctly interpreted the Parties' contractual intentions.

III. THE TRIAL COURT PROPERLY HELD APPELLANT IN CONTEMPT FOR CLAIMING BOTH CHILDREN AS TAX DEPENDENTS IN 2017 AND PROPERLY AWARDED RELIEF

The assignment of tax dependency exemptions falls under child support, not equitable distribution as erroneously argued by Appellant. Appellant's failure to perform as required under the agreement, which was then ratified by the Court Final Judgment, is a sufficient basis for which to seek civil contempt sanctions.

STANDARD OF REVIEW

A decision in a nonjury case based on findings of fact from disputed evidence is subject to the competent, substantial evidence standard of review. *In re Estate of Sterile*, 902 So. 2d 915, 922 (Fla. 2d DCA 2005). To the extent that the Final Judgment relies on the interpretation of a statute or pure issues of law, the standard of review is *de novo*. See *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2006); *Rittman v. Allstate Ins. Co.*, 727 So. 2d 391, 393 (Fla. 1st DCA 1999) (*citing Walter v. Walter*, 464 So. 2d 538 (Fla. 1985)).

ARGUMENT

I. THE APPELLATE COURT'S REVIEW IS LIMITED TO ERRORS ON THE FACE OF THE TRIAL COURT'S ORDER. BASED ON THE FOUR CORNERS OF THE TRIAL COURT'S ORDER THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO VACATE THE QUALIFIED DOMESTIC RELATIONS ORDER AND IN GRANTING APPELLEE'S MOTION FOR CONTEMPT

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In bringing an appeal, the appellant is "encumbered with the obligation to make errors complained of clearly to appear through furnishing the court with a proper record of the facts and circumstances appertaining to and connected with the claimed errors." *Belfield*. 162 So. 2d at 669. Pursuant to that obligation, Appellant has a duty to provide this appellate court with a complete hearing transcript upon which to adequately review this case and to identify under what

facts the trial court arrived at its decision. As required by Fla.R.App.P. 9.200(c), Appellant filed a designation to court reporter to transcribe the hearing. However, Appellant's selected court reporter did not transcribe the hearing and file it with the appellate clerk for review by the appellate court.

In the absence of a hearing transcript, the judgment entered by the trial court should be affirmed unless the appellate court finds that it is fundamentally erroneous. Appellee disagrees with Appellant's recollection of the hearing testimony further illustrating the importance of a hearing transcript in appellate proceedings. Since Appellant herein has failed to produce a hearing transcript of the January 15, 2019 hearing on these matters, the appellate court must affirm the trial court's order, or at minimum, limit its review to addressing errors that appear on the face of the appealed order. *Arnold v. Whitley*, 97 So. 3d 339 (Fla. 5th DCA 2012) (citing *Engesser v. Engesser*, 42 So 3d 249, 250 (Fla. 5th DCA 2010). There is no fundamental error on the face of the trial court order and as such it should be affirmed.

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EXECUTED AGREEMENT AND THAT FINDING AS SUCH WAS JUST AND EQUITABLE

To accept Appellant's argument is to hold that pursuant to 5 Florida Statute §61.075 (2019) parties cannot agree to different valuation dates and trial courts cannot use different valuation dates as the judge determines is just and equitable under the circumstances. To the contrary, 5 Florida Statute §61.075 (2019) specifically allows those possible scenarios. Appellant relies on the *Rivero* case to support his position when in fact it supports Appellee's position. In *Rivero* the Wife was not allowed to claim an entitlement of one half of the increase in value of Husband's retirement account that had accrued from the date the parties signed the marital settlement agreement in 2002 through 2004. The valuation date used to determine wife's interest was not the date of the filing of the initial petition for dissolution, but *the date of the marital settlement agreement as agreed to by the parties*. *Rivero v. Rivero*, 963 So. 2d 934, 936 (Fla. 3d DCA 2007).

The primary issue during the hearing on Appellant's Motion to Vacate the Qualified Domestic Relations Order was determining the parties' intent when they entered the August 24, 2011 Marital Settlement Agreement. The lower court heard the testimony from the parties regarding their understanding of the intended valuation dates of marital assets at the time they entered the agreement. The Court further received testimony regarding the parties' understanding of the tax

dependent designation contained in their Marital Settlement Agreement. Appellee disagrees with Appellant's recitation of the testimony presented. The trial court found Appellee's testimony to be reasonable and credible and correctly ruled in her favor as to both matters.

The qualified domestic relations order (QDRO) entered in this cause is valid and comports with the parties' Marital Settlement Agreement executed on August 24, 2011. Pursuant to that agreement, the parties agreed that Appellee would be entitled to one-half of the value of Appellant's retirement benefits. At the January 15, 2019 hearing on Appellant's motion to vacate the qualified domestic relations order, Appellee testified that during the marriage the parties agreed that Appellee would stall her nursing career and be a stay at home mother to the parties' two minor children. Once the two minor children reached school age, the parties agreed that Appellee would only work part time so as to accommodate the children's needs due to Appellant's work obligations. Appellee further testified that the parties specifically discussed that this family plan would impede Appellee from accruing full time retirement benefits. However, the parties had planned to survive on Appellant's retirement when they reached that point in their lives.

Appellant and Appellee were married on March 6, 1999. Appellee filed her Petition for Dissolution of Marriage on September 23, 2009. For a year or so after

the initial dissolution petition was filed, the parties agreed to delay the dissolution proceedings and work toward reconciliation for the benefit of the minor children. After a year or so elapsed, the parties ceased reconciliation efforts and elected to proceed with dissolution. However, the parties continued even after the entry of the Final Judgment of Dissolution to reside together and share household and childcare duties in the same manner that they had throughout the marriage. Appellant was able to continue furthering his career as Appellee was not as she continued her care of the home and the two minor children of the marriage. This limited her ability to seek full time employment to accrue full-time retirement benefits.

The parties continued to reside in the marital home which was built on Appellee's nonmarital real estate lot. The parties continued to share household and childcare expenses, responsibilities, and contributions until after the Final Judgment of Dissolution of Marriage was entered on September 13, 2011. In fact, Appellant did not vacate the marital home until October of 2011as is referenced in the Final Judgment of Dissolution (Appellate Record Page 141).

Appellee further testified that the marital home was built on land given to her by her grandfather. Pursuant to the marital settlement agreement, she agreed to waive her claim regarding her right to the value of this nonmarital asset, i.e. the unimproved property, in exchange for one half of Appellant's retirement account.

Appellee testified that she had offered to waive all claims to Appellant's retirement account if she were allowed to keep the marital home due to her connection to her family's property. Appellant declined that offer. The marital home was sold and Appellant received one half of the net proceeds, to include proceeds received for the nonmarital lot on which the home was built.

The subject marital settlement agreement contemplated the value of all assets and liabilities at the time the agreement was entered on August 24, 2011. Where the parties intended to use the date of filing, it was specifically stated as such in the agreement. Appellant reliance on *Graham* is misplaced as the Court's ruling support Appellee's position in that the starting point for interpreting any contract is the plain language of the agreement. *Graham v. Graham*, 123 So. 3d 625 (Fla. 1d DCA 2013). Parole evidence is not admissible to show an intention or understanding different from that expressed in the agreement. *Johnson v. Johnson*, 403 So. 2d 1388 (Fla. 2d 1981). The Marital Settlement Agreement at issue specifically states that the effective date of the terms contained therein is the date the agreement was entered, unless otherwise specified. Appellee testified that had the parties discussed using a value from two years prior, she would not have agreed to give Appellant fifty percent of the net proceeds from the sale of the marital home which was built on her nonmarital lot.

Appellant and his original counsel who represented him during both the dissolution and the modification proceedings consented to the order being entered; provided the form to be utilized; and reviewed and approved the same prior to it being forwarded to the trial court. This evidences Appellant's acknowledgement that the correct valuation dates were being utilized in the subject qualified domestic relations order. Appellant did not file a motion to set aside the Qualified Domestic Relations Order until forty-two days after its entry and did not cause the matter to be heard until nearly three years later. The trial court heard the testimony of the Parties, which this Court does not have the benefit of reviewing due to Appellant's failure to produce a hearing transcript. The trial court heard the evidence and correctly ruled that the Marital Settlement Agreement effective date as to all terms, unless expressly stated otherwise, was the date the agreement was entered and that the parties were free to agree to these terms.

III. THE TRIAL COURT PROPERLY HELD APPELLANT IN CONTEMPT FOR CLAIMING BOTH CHILDREN AS TAX DEPENDENTS IN 2017 AND PROPERLY AWARDED RELIEF

Appellant argues that the child dependency exemption is equitable distribution and not subject to enforcement via contempt. Appellee disagrees with

this contention. 5A Florida Statute 61.30 (2019) governs child support calculations. Pursuant to 5A Florida Statute 61.30(11)(a) the Court, or the parties may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon certain deviation factors. 5A Florida Statute 61.30(11)(a)(8) states that impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and *dependency exemption and waiver of that exemption is a deviation factor that can be utilized to adjust child support obligations.*

The purpose of the tax dependency exemption is to provide tax relief to persons providing support to a dependent. There are two children born of this marriage. The Parties' oldest child attained eighteen years of age on August 17, 2017, eight months into the 2017 tax year. Neither parent paid child support to the other for the benefit of this child. Both parents directly contributed to her care during the 2017 tax year. She remained eligible to be claimed as a dependent for the 2017 tax year as was evidenced by Appellant claiming both children, as well as the three children from his current marriage, as tax dependents for the 2017 tax year, in knowing violation of the parties' settlement agreement. Appellant's actions caused Appellee to suffer harm for which she requested both monetary and injunctive relief. The trial court correctly granted both.

Additionally, under Appellee's theory that only contempt actions based on support- child support or alimony- are enforceable by contempt is contrary to the law and misapplies the premise of the Court's ruling in *Lynch v. Lockyer* upon which Appellant relies. *Lynch v. Lockyer,* 180 So. 3d 1120 (Fla. 5th DCA 2015). In *Lynch*, the trial court awarded Wife Lockyer one half of Husband Lockyer's retirement benefits. Subsequently, Husband Lockyer was injured and began receiving permanent disability benefits and was thus ineligible for his retirement benefits. The trial court ordered Husband to pay Wife a portion of his disability benefits. The appellate court reversed and indicated that contempt was not the proper enforcement as the permanent disability benefits were not marital and Husband did not intentionally divest himself of his retirement benefits. Those facts are inapplicable to the instant case as Appellant willfully and intentionally violated the court's order as to the tax dependent designation.

Further, under opposing counsel's theory, no portions of a Final Judgment would be enforceable by contempt other than for failure to pay support or alimony. So for example, if a party refused to vacate the marital home, the aggrieved party would not have the ability to seek contempt sanctions and an order to vacate the marital home. Or if a party failed to comply with a timesharing plan, the aggrieved party would not have the ability to seek contempt sanctions. Appellant willfully and knowingly committed an act in direct violation of the Settlement Agreement

and Final Judgment. Contempt is the proper sanction and the relief awarded by this Court is equitable in that it compensates Appellee for her damages incurred as a result of Appellant's violation. Appellee's motion specifically requested injunctive relief. The youngest child will attain eighteen years of age on January 28, 2021. To enjoin Appellant from the ability to claim the oldest child whom Appellant argued was ineligible to be claimed, as well as youngest child as a tax dependent for at most the next two years, i.e. his rotating year is an appropriate and equitable sanction for Appellant's willful violation of the Court's order.

CONCLUSION

The trial court order denying Appellant's Motion to Vacate the Qualified Domestic Relations Order is valid. There are no fundamental errors on the face of the judgment, thus the order must be affirmed. The trial court awarded Appellee prevailing party attorney's fees and costs in the underlying action. Pursuant to Fl. R. App. P. 9.400, Appellee requests this Court award Appellee prevailing party attorney's fees and costs in the instant appeal as Appellant's appeal is both frivolous and contrary to law.

Respectfully submitted by:
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BY: */s/ Alicia R. Washington, Esq.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via e-service to Appellant's attorney, John J. Spence, Esq., at service@naplesandspencelaw.com this 24th day of July, 2019.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font in this Answer Brief is Times New Roman 14-point and complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a)(2).

BY: */s/ Alicia R. Washington, Esq.*

ALICIA R. WASHINGTON, ESQ.