

MaryEllen P. Osterndorf

Circuit Court
November 2018



APPLICATION FOR NOMINATION TO THE Circuit COURT

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

DATE: November 13, 2018 Florida Bar No.: 0880050

GENERAL: Social Security No.: [REDACTED]

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

Date Admitted to Practice in Florida: April 25, 1991

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

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

Osterndorf Law, P.A., Partner

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

City Daytona Beach County Volusia State FL ZIP 32115

Telephone (386) 255-9171 FAX () -

4. Residential address: [REDACTED]

City Daytona Beach County Volusia State FL ZIP [REDACTED]

Since [REDACTED] Telephone (386) [REDACTED]

5. Place of birth: [REDACTED]

Date of birth: [REDACTED] Age: 53

6a. Length of residence in State of Florida: 39 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Volusia

7. Marital status: Single

If married: Spouse's name _____

Date of marriage _____

Spouse's occupation _____

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

N/A

8. Children

Name(s) Age(s) Occupation(s) Residential address(es)

N/A

9. Military Service (including Reserves)

Service Branch Highest Rank Dates

N/A

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

HEALTH:

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

NO

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

Yes No

If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.]

Please describe such treatment or diagnosis.

11b. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner?

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite

- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

- 12a. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner?

Yes No

- 12b. If your answer to the question above is Yes, are the limitations or impairments caused by your physical or mental health impairment reduced or ameliorated because you receive ongoing treatment (with or without medication) or participate in a monitoring or counseling program?

Yes No

Describe such problem and any treatment or program of monitoring or counseling.

13. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? If yes, give full details as to court, date and circumstances.

NO

14. During the last ten years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal or State laws? If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)

NO

15. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

NO

16. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.

NO

17. In the past ten years, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

NO

EDUCATION:

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

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

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

NON-LEGAL EMPLOYMENT:

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

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

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

PROFESSIONAL ADMISSIONS:

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

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

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

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

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

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

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

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

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

I have been a certified Circuit Civil Mediator for more than ten (10) years. I am an Appellate Mediator and I mediate a variety of civil matters.

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

Court		Area of Practice	
Federal Appellate	_____ %	Civil	_____ 40 %
Federal Trial	_____ %	Criminal	_____ %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ %	Probate	_____ 50 %
State Trial	_____ 100 %	Other	_____ 10 %
State Administrative	_____ %		
State Other	_____ %		
	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

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

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

NO.

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

No. On occasion, clients in probate and guardianship matters may receive an Order to Show Cause for the failure to meet a court deadline. Counsel is also noticed on those orders. Applicable court rules require the attorney to attend the hearing.

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

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

(1) Estate of Tanya Galloway, case no: 2014-11427-PRDL, count I concluded in adversary hearing, February, 2017; David Burt, Esquire, 386-252-4499, Jerry Wells, Esquire 386-253-3676, Hon. Margaret Hudson, 386-822-5073.

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

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

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

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

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

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

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

(1) Hardai Roberson, d/b/a Dockside Marine vs. Wm Sturridge, case no: 2015-32640-COCI, main case concluded January, 2017, D. Michael Clower, Esquire (Plaintiff) (third party claim vs. Defendant Graves was scheduled for trial and resolved in Sept. 2018); 386-239-0100.

(2) Estate of Tanya Galloway, case no: 2014-11427-PRDL, count II concluded in mediation, August, 2016; David Burt, Esquire, 386-252-4499, Jerry Wells, Esquire 386-253-3676, Dennis Bayer, mediator, 386-439-2332.

(3) Steinman vs. Holland, case no: 2016-31771-FMCI, concluded July, 2016, Judge Karen Foxman, 386-257-6090.

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

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

(6) Wells Fargo Bank, N.A. vs. Marsico, case no. 2011-20450-CINS, concluded Dec., 2014; Saberin Jamshed, Esquire 954-926-4233 and Daria Kalac, Esquire, 904-998-9733.

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

- 27c. During the last five years, how frequently have you appeared at administrative hearings?
0 average times per month
- 27d. During the last five years, how frequently have you appeared in Court?
5 average times per month
- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? N/A% Defendants?
N/A%
28. If during any prior period you have appeared in court with greater frequency than during the last five years, indicate the period during which this was so and give for such prior periods a succinct statement of the part you played in the litigation, numbers of cases and whether jury or non-jury.
N/A

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

N/A

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

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

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

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

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

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

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

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

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

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

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

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

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE:

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

No.

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

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

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

No.

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

- (i) List the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance.
- (ii) Describe the approximate number and nature of the cases you have handled during your judicial or quasi-judicial tenure.
- (iii) List citations of any opinions which have been published.
- (iv) List citations or styles and describe the five most significant cases you have tried or heard. Identify the parties, describe the cases and tell why you believe them to be significant. Give dates tried and names of attorneys involved.
- (v) Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give date, describe complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.
- (vi) Have you ever held an attorney in contempt? If so, for each instance state name of attorney, approximate date and circumstances.
- (vii) If you are a quasi-judicial officer (ALJ, Magistrate, General Master), have you ever been disciplined or reprimanded by a sitting judge? If so, describe.

BUSINESS INVOLVEMENT:

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

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

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

In addition to my law practice, I am a certified Circuit Civil Mediator. I was certified August 10, 2007, and my current certification expires on August 10, 2019. I renewed my Appellate Mediator certification and it also expires on August 10, 2019.

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

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

POSSIBLE BIAS OR PREJUDICE:

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

I do not foresee any particular type or classification of cases or litigants in which I believe it would be difficult for me to sit as the presiding judge, other than in a matter of a former client of my firm.

MISCELLANEOUS:

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

NO

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

NO

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

NO

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

NO

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

NO

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

Yes.

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

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

C) Please see attached. I have served as the Petitioner in several probate and guardianship matters. I am currently the court appointed Personal Representative in two (2) open estate administrations.

#38.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Personal Representative. Estate of Betty Sue Wetzal, deceased.

Case No: 2017-12518-PRDL. Case is Open.

11. Personal Representative. Estate of Martha Curtis, deceased.

Case No: 2018-10137-PRDL. Case is Open.

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

No

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

No

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

No

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

No

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

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

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

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

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

HONORS AND PUBLICATIONS:

44. If you have published any books or articles, list them, giving citations and dates.
None.

45. List any honors, prizes or awards you have received. Give dates.
April, 2012: Volusia-Flagler United Way, Volunteer of Year, nominee
June, 2011: Florida Assn for Women Lawyers, Leaders in the Law Recipient
May, 2011: Halifax Habitat for Humanity, Inc., Volunteer of the Year Award
May, 2006: Volusia/Flagler Assn for Women Lawyers, Distinguished Service Award
1999, Volunteer Lawyers' Project, Distinguished Service Award
1999, Volunteer Lawyers' Project, Fundraising Award

46. List and describe any speeches or lectures you have given.
Instructor, Attorneys Title Insurance Fund, 16 week course, From Contracts to Closing 2007
Probate, Guardianship, Homestead & Quiet Title, The Fab Four of Real Estate Transaction Challenges, Women's Council of Realtors, January 15, 2014.
Estate Planning-Life Planning Seminar, The Catholic Foundation of Central Florida, April 2, 2014.
Common Construction Contract Phrases, Florida Society of Engineers-Daytona Beach, April 9, 2014.
Hanging Your Own Shingle and How to be Successful, Volusia County Bar Assn (YLD), 04/17/2014.
Best Practices for Attorney Trust Accounts, Volusia County Bar Assn, 04/24/2015
Mock Mediation & Arbitration, Daytona Beach Area Assn of Realtors, 11/04/2015
Basics of Probate, Flagler County Clerk, 04/26/2017
Mediation, Volusia County Bar Assn, 08/18/2017
I also routinely give a lecture or seminar to civic and profesional groups on estate planning, guardianships, real estate and title insurance.
I also have spoken during Law Week Celebrations.

47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No
B.V.

PROFESSIONAL AND OTHER ACTIVITIES:

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

The Florida Bar (1991-present)

The Georgia Bar (1993-present)

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

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

Flagler County Bar Assn (2014-present)

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

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

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

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

The Florida Bar, Probate Rules Committee, 2017-2020

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

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

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

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

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

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

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

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

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

Justice for All Campaign, (2008-2014)

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

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

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

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

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

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

St. Vincent DePaul Society (2007-present)

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

Adult Volunteer, High School Youth, Lighthouse (1998-2008)
Peace Jam, Adult Volunteer 2004, 2009
Daytona Beach Rotary Club (2009-2010)
Seminole Boosters (1990-2014)
Florida State University Alumni Assn (2007-2014)
Father Lopez High School Board of Directors (2013-present, Vice-Chairman)
Father Lopez High School Alumni Assn (2008-present)
Father Lopez High School Touchdown Club (2006-2014)
Tiger Bay Club of Volusia County, Inc. (2013-14)

48c. List your hobbies or other vocational interests.

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

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

No.

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

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

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

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

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

I am currently working with other members of the Volusia County Bar Assn in a committee project to review and revise (as necessary) the pro-se forms for Guardian Advocacy. I also routinely serve as a volunteer GAL for parents when they are petitioning for appointment as Guardian Advocate.

SUPPLEMENTAL INFORMATION:

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

Yes. I recently participated in the 2018 annual Dispute Resolution Conference and re-certification for Appellate Mediation, and CLE on cyber security. In 2017, I focused on technology, taking courses for the mobile lawyer. I also studied recent attorneys' fee cases and Construction Lien and Bond Issues. I participated in the 7th Circuit Professionalism Program. I took the state certified Guardian Education Course, ongoing Mediation training, including appellate mediation, assessment of dementia & attorney's obligations, annual Dispute Resolution Conference, criminal (Brady & Giglio Obligations), trust accounting best practices, trial advocacy, jury selection, Daubert Evidence standard, social media & the law, commercial real estate transactions, condominium law update, mortgage foreclosure, expert examination, electronic discovery, attorneys' fees, evidence.

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

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

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

I have participated in a number of community Boards and organizations, and I am a graduate of the Ormond Beach Chamber of Commerce Leadership XII Class. I believe that my participation and community involvement would be an advantage on the bench. Further, my certification and practice as a Mediator has enabled me to assist parties in the resolution of a variety of civil matters over the last eleven (11) years.

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

I have extensive experience as in diverse practice areas of the law. Having managed a small firm for a number of years I also have extensive business practice experience. I have extensive experience with pro se parties, as an attorney and as a mediator.

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

7th Circuit JNC, County Court position, 09-23-2011; 7th Circuit JNC, County Court position, 04-18-2012; 7th Circuit JNC, Circuit Court position, 07-10-2012; 7th Circuit JNC, Circuit Court position, 04-01-2014; 7th Circuit JNC, Circuit Court position, 09-22-2015; 7th Circuit JNC, Circuit Court position, 01-25-2016; 7th Circuit JNC, Circuit Court position, 06-10-2016, 7th Circuit JNC, Circuit Court position, 08-20-2017; 7th Circuit JNC, County Court position, 11-13-2017; 7th Circuit JNC, County Court position, 12-20-2017; 7th Circuit, Circuit Court position, 8-13-2018.

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

I have been privileged be selected on nine (9) occasions for consideration by the Governor for the bench in in the 7th Circuit. For the County Court in September 2011, in May 2012, in November, 2017 and again in December, 2017. I have been nominated for the Circuit Court in October, 2015, in February, 2016, in June, 2016, in October, 2017, and August, 2018. I believe that my past performance as an attorney and mediator in a variety of areas of law demonstrate my proven potential to be a successful judge for this circuit. I am prepared to adjudicate the matters that would come before me and render a fair and impartial decision.

REFERENCES:

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

(1) The Honorable Terrence R. Perkins, Circuit Judge, 1769 E. Moody Blvd., Bldg 1, Bunnell, FL 32110, 386-313-4510.

(2) The Honorable Richard B. Orfinger, 5th DCA Judge, 300 South Beach St., Daytona Beach, FL 32114, 386-947-1594.

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

(4) The Honorable Leah R. Case, Circuit Judge, 251 N. Ridgewood Ave., Daytona Beach, FL 32114, 386-239-7790

(5) Lori Gillooly, Executive Director of Habitat for Humanity of Greater Volusia County, 1030 W. Int'l Speedway Blvd. Daytona Beach, FL 32114, 386-257-9950 (w) and 386-295-9928 (c).

(6) Prof. Ann M. Phillips, ERAU, 600 S. Clyde Morris Blvd., SSIA Dept., Daytona Beach, FL 32114, 386-226-2966 (office) 386-316-0739 (cell).

(7) Philip Maroney, President, The Root Company, 275 Clyde Morris Boulevard, Ormond Beach, FL 32174, 386-671-4907 (office) 386-405-3341 (cell).

(8) Christene Ertl, Esquire, Ansbacher Law, 1100 S. Ponce de Leon Blvd., Ste. 3 A St. Augustine, Florida 32217-4605, (904) 429-4833 (office) (386) 679-3700 (cell).

(9) Michaela D. Scheihing, Esquire, 104 Lacoast Ln., Suite 140, Daytona Beach, FL 32114, 386-274-1700 (office) 386-290-5818 (cell).

(10) David Burt, Esquire, 501 S. Ridgewood Ave., Daytona Beach, FL 32114, 386-252-4499 (office).

CERTIFICATE

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

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

Dated this 13 day of November, 2018.

Mary Ellen P. Osterndorf
Printed Name

Mary Ellen P. Osterndorf
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	\$80,000+		
List Last 3 years	2017-150,000	2016-\$116,600	2015-\$125,000

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

Current year to date	\$45,000		
List Last 3 years	2017-76,655	2016-\$40,000	2015-\$40,000

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 Nov. 13, 2018 was \$475,336.00.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is \$ 28,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Homestead-290 Williams Ave., Daytona Beach, FL 32118	175,000.
Stocks	40,636.
Osterndorf Law, P.A.	160,000.
ORP Realty, L.L.C.	100,000.
Bank Accounts	13,000

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SunTrust Bank-PO Box 791274, Baltimore, MD 21279 (equity line)	23,000.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SunTrust Bank, PO Box 79079, Batimore, MD 21279 (office mortgage)	22,700.00.

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Osterndorf Law, P.A.	P.O. Box2352, Daytona Beach, FL 32115	45,000.00

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

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

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

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

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

OATH

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

MaryEllen P. Osterndorf
 SIGNATURE

STATE OF FLORIDA

COUNTY OF Volusia

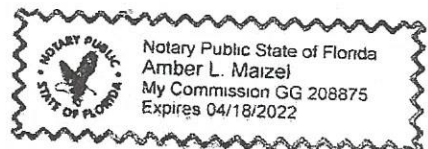
Sworn to (or affirmed) and subscribed before me this 15th day of Nov., 2018 by MaryEllen P. Osterndorf

(Signature of Notary Public—State of Florida)

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

Personally Known X OR Produced Identification _____

Type of Identification Produced N/A



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: Nov. 13, 2018

JNC Submitting To: Seventh Judicial Circuit

Name (please print): MaryEllen Patricia Osterndorf

Current Occupation: attorney

Telephone Number: 386-299-6883 Attorney No.: 0880050

Gender (check one): Male Female

Ethnic Origin (check one): White, non Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

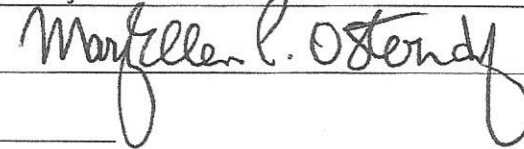
CONSUMER'S AUTHORIZATION FOR FDLE
TO OBTAIN CONSUMER REPORT(S)

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

Printed Name of
Applicant:

MaryEllen P. Osterndorf

Signature of Applicant:



Date: Nov.13, 2018

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

IN RE: ESTATE OF

TANYA MARIE GALLOWAY,
a/k/a TANYA MARIE KING GALLOWAY,

deceased.

File No.: 2014-11427-PRDL
Division: 10

George King,

Petitioner,

vs.

Chad Galloway, as next friend and Natural Guardian
of Summer Galloway and Ryleigh Galloway, minor
Daughters of the Decedent.

Respondents.

David A. Burt, as Curator of the Estate
of Tanya M. Galloway, deceased,

Plaintiff,

v.

George L. King, Jr., individually and as former
Personal Representative of the Estate
of Tanya M. Galloway, deceased,

Defendant.
_____ /

Guardian ad Litem's Reply to Defendant's Amended Petition for Attorney's Fees

The undersigned counsel, as Guardian ad Litem for the minor children of the decedent, Tanya M. Galloway, deceased, (hereinafter GAL) in accordance with the applicable rules, in and for her answer and response to the Amended Petition for Attorney's fees filed by the Defendant, George L. King, Jr., (hereinafter KING) alleges the following and moves this honorable Court for an Order Denying the Amended Petition for Attorney's Fees, and in support thereof would state:

1. GAL denies the allegations of paragraph 1 of the KING Amended Petition for Attorney's Fees. Further GAL would assert that on or about August 14, 2014, an

Order was entered by this Court, admitting the instrument purported to be the Last Will and Testament of the decedent dated May 1, 2014, as offered for probate by KING, and appointing KING the Personal Representative of the decedent's estate. See docket #9.

2. On or about October 27, 2014, KING filed a Renunciation and Resignation as Personal Representative of the Estate of Tanya M. Galloway. See docket #44. In conjunction with his resignation, KING filed a competing Petition for the Appointment of a Curator in the estate, see docket #46.

3. After a contested hearing in the matter, the Court appointed David A. Burt the Curator. GAL would request that this Court take judicial notice that Mr. Burt was not the party nominated to serve as Curator by KING.

4. GAL would admit the allegations of paragraphs 2 and 3 of the KING Amended Petition for Attorney's Fees.

5. GAL would admit that portion of the allegations of paragraph 4 of the KING Amended Petition for Attorney's Fees that the Curator made a demand for return of the funds, and would assert that the second count of the Curator's Complaint was relative to deposits made into the account post the death date of the decedent, and the expenditures KING made while he was the Personal Representative, that the Curator determined where not proper estate expenses.

6. GAL would admit that portion of the allegations of paragraph 5 of the KING Amended Petition for Attorney's Fees as to when the suit was instituted and when the trial was held, but would assert that KING and the Curator settled Count II via a written Settlement Agreement dated August 17, 2016, and an Order Approving Mediation Settlement Agreement dated August 24, 2016, see docket #136.

7. GAL would admit that portion of the allegations of paragraph 6 of the KING Amended Petition for Attorney's Fees that the evidentiary hearing involved live witnesses but would assert that the outcome of the hearing was as found in the Order on Curator's Complaint, dated February 21, 2017, docket #158. GAL would assert that the Order speaks for itself.

8. GAL denies the allegations of paragraph 7 of the KING Amended Petition for Attorney's Fees and therefore demands strict proof thereof. GAL specifically denies that the services rendered by the attorney benefited the estate, but rather contends that all the benefit inured to KING individually.

9. GAL denies the allegations of paragraph 8 of the KING Amended Petition for Attorney's Fees and therefore demands strict proof thereof.

The GAL asserts that there are two issues for the Court's consideration relative to the Amended Petition for Attorney's Fees filed by KING. Those Issues are:

I. Entitlement of KING to attorney's fees from the estate. KING has asserted an entitlement to recover attorney's fees from the estate pursuant to the provisions of §733.106 (3), Florida Statutes (2015), which provides in pertinent part,

§733.106 (3) Costs and attorney fees.—

Any attorney who has rendered services to an estate may be awarded reasonable compensation from the estate.

II. If KING is entitled to attorney's fees from the estate, then the amount of such fees must be judicially determined. If the court determines that KING is entitled to attorney's fees from the estate, then the inquiry shifts to the reasonableness of the amount of fees claimed. GAL asserts that the standard and test for reasonableness are as set forth under the *Rowe* factors analysis.

In her application and analysis of the law, the GAL would assert that the Rules of Civil Procedure, with certain specific exceptions, apply to all probate proceedings. Rule 1.170 (a), Florida Rules of Civil Procedure, provides that a Defendant is required to counter-claim for "any claim" against an opposing party arising out of the transaction or occurrence in question. KING never raised the issue of entitlement to attorney's fees until an oral motion at the conclusion of the evidentiary hearing on January 9, 2017.

Each party is responsible for its own attorneys' fees unless a contract or statute provides otherwise. The ability to collect attorney's fees from an opposing party, as well as the obligation to pay such fees, is substantive in nature. Substantive rights and obligations as to attorney's fees in particular types of litigation vest and accrue as of the time the underlying cause of action accrues. See *College v. Bourne*, 670 So.2d 1118 (Fla. App. 5th Dist., 1996).

The GAL asserts that KING did not render services to the estate, but rather individual services to a particular beneficiary, and thus any attorney's fees associated therewith are not compensable from estate assets. There was no benefit to the estate by that particular attorney's services; there was merely a direct individual benefit to the beneficiary of the bank account.

Assuming, arguendo, the merits of KING's proposition that KING was "effectuating the decedent's intent", the applicable case law provides that an attorney may be compensated from assets of the estate, for "...services that enhance the value of the estate, as well as services that successfully give effect to the testamentary intention set for in the will.", *Hampton vs. Estate of Clifford Allen*, quoting *Estate of Brock*, 198So.3d 954 (Fla. App. 5th Dist., 2016).

The primary concept is effectuating the decedent's intention as set forth in the will. Services that are necessary for or beneficial to the probate estate. The services rendered herein by counsel for KING were beneficial to KING, the individual beneficiary, not the estate, and were relative to a bank account which was pay on death and which KING asserted was not a probate asset. See, *Dew vs. Nerreter*, 664 So.2d 1179 (Fla. App. 5th Dist., 1995). Further, see *Estate of Brock*, 695 So.2d 714 (Fla.App. 1st Dist., 1996). "*The "benefit" to the estate may include services that enhance the value of the estate, as well as services that successfully give effect to the testamentary intention set forth in the will.*" and "*...permit attorneys fees when the attorney's services were necessary for or beneficial to the probate estate.*"

Finally, the GAL would assert that in the instant case, the circumstances that would render the application of the rule (imposition of the attorney's fees against estate assets) would be unjust and the impact of the assessment of the attorney's fees against estate assets would have on the minor children would be substantive.

The Complaint and defense of the Complaint which potentially gives rise to KING's entitlement to attorney's fees from the estate, was filed by the Curator, in good faith and pursuant to his Order of appointment, after he investigated the assets of the decedent, both probate and non-probate assets. After his investigation, the Curator, based upon review of the applicable law and the testimony of the witnesses, filed a two count Complaint relative to a bank account with a pay on death designation, which Curator believed there was evidence of both undue influence and evidence of a contrary intent of the decedent, which would make that account an estate asset and in count two, relative to direct deposits of investment income, post the death date of the decedent, into the non-probate bank account from the partial distribution in the marital dissolution case of the decedent.

The actions of the Curator were prudent and were brought in an effort to increase and enhance the assets available for distribution to the minor children of the decedent. Those assets should be conserved for their benefit and not expended on attorney's fees for KING's defense of a valid action initiated by the Curator.

II. Presuming that KING has met his burden of proof regarding his entitlement to attorney's fees from the estate, then the analysis shifts to a *Rowe* analysis.

Those standards and based upon the criteria established in Rule 4-1.5(b) of the Rules Regulating the Florida and *Florida Patient's Compensation Fund v. Rowe*, 471 So. 2d 1145 (Fla. 1985), which include:

- a) The time and labor required, the novelty, complexity, and difficulty of the questions involved and the skill required to perform the services properly on behalf of the Defendant;
- b) The fact that acceptance of this particular employment, while potentially time consuming, did not preclude other employment by counsel;
- c) The fees customarily charged in the Volusia County, Florida area for legal services of a comparable or similar nature;

- d) The significance of, or amount involved in, the subject matter of representation, the responsibility involved in representation, and the results obtained;
- e) The time limitations imposed by the client or circumstances and, as between the attorney and client, any additional or special time demands or requests of the attorney by the client;
- f) The results obtained by counsel;
- g) The nature and length of the relationship with the client;
- h) The experience, reputation, diligence, and ability of counsel in performing the services and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and
- i) Whether the fee is fixed or contingent, and if fixed, as to the amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

The applicable case law establishes that the trial court consider the nature of the services rendered and the necessity for their performance, together with the reasonableness of the charges. See *Estate of Brock*, 695 So.2d 714 (Fla.App. 1st Dist., 1996). The issue is then what would be the reasonable number of hours, and reasonable hourly rate for services rendered by the attorney for KING. Further, the time would need to be itemized, to delineate the services performed by various personnel at the law firm, the rates charged by the various personnel and to delineate for any time spent on count two of the Complaint, which KING conceded the merits of, by virtue of the Mediated Settlement Agreement of the parties.

The final consideration for the court would be a limitation of any proposed attorney fee award to the amount actually contracted to between the attorney and the party that is to recover fees. Any potential recovery by KING is limited to the maximum amount as set forth in any contract entered into for the attorney's services. See *Berger vs. Brooks*, 657 So.2d 1281 (Fla.App. 3d Dist., 1995). Also, absent an express fee agreement, an attorney is only entitled to a reasonable fee for his services. See *Brooks vs. Degler*, 712 So.2d 419 (Fla.App. 5th Dist., 1998). KING has failed to meet his burden of proof relative to a breakdown of services by personnel and a list of the description of services provided by particular personnel and which hours were spent defending a particular count of the Complaint.

In conclusion, the GAL would respectfully request that this honorable Court exercise its inherent discretion and deny the KING Amended Petition for Attorney's Fees from the estate, and in the event the Court determines that KING is entitled to payment of his attorney's fees from the estate, the Court require KING to provide a detailed record, which may be reviewed for a determination of reasonable number of hours and a reasonable hourly rate, including a breakdown of attorney versus assistant time.

WHEREFORE, GAL requests that an Order be entered denying KING's Amended Petition for Attorney's Fees and such other and further relief as this Court may deem just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Courts E-Filing Portal pursuant to and in compliance with Rule 2.516 Fla. R. Jud. Admin. on April 19, 2017 to: David A. Burt, Esquire, davidburt@hawkinsandburt.com; Corey A. Bundza, Esquire, cbundza@bwrlaw.com and efile@bwrlaw.com; Jerry B. Wells, Esquire, eservejerrywells@cfl.rr.com.

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