

Garry Wood

Attorney at Law

November 13, 2018

VIA EXPRESS MAIL, OVERNIGHT DELIVERY

Christopher J. Greene, Chair
Seventh Circuit Judicial Nominating Commission
238 Ponte Vedra Park Drive, Suite 104
Ponte Vedra Beach, FL 32082

Re: Application for Circuit Court Judge Vacancy

Dear Mr. Greene:

Please find enclosed the following:

1. A paper copy of the judicial application for the pending Circuit Court vacancy in the Seventh Judicial Circuit (due to the death of the Hon. Clyde Wolfe). I have enclosed a recent picture, and a handwriting example.
2. A CD of the same
3. A redacted CD of the same (omitting my social security number in the application).

Sincerely,



Garry Wood

Enclosures

www.putnamlawyer.net

415 St. Johns Ave. • Palatka, Florida • 32177

Phone: 386-326-3993 • Fax: 386-312-0221

E-mail: garrywood2011@hotmail.com

APPLICATION FOR NOMINATION TO THE CIRCUIT COURT

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

DATE: 11/12/2018 Florida Bar No.: 616796

GENERAL: Social Security No.: [REDACTED]

1. Name Garry Wood E-mail: garrywood2011@hotmail.com

Date Admitted to Practice in Florida: 1986

Date Admitted to Practice in other States: NA

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

Garry Wood, Attorney at Law

3. Business address: 415 St. Johns Ave.

City Palatka County Putnam State FL ZIP 32177

Telephone (386) 326-3993; 386-937-7836 (cell) FAX (386) 312-0221

4. Residential address: 421 N. 3rd St.

City Palatka County Putnam State FL ZIP 32177

Since 2004 Telephone (386) 937-7836 (cell); 386-328-3449 (home)

5. Place of birth: Marquette, Michigan

Date of birth: 08/26/1960 Age: 57

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

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Putnam

7. Marital status: married

If married: Spouse's name Patricia (Tricia) Wood

Date of marriage 12/18/1986

Spouse's occupation Retired---Putnam County Schools

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

NA

8. Children

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

9. Military Service (including Reserves)

Service Branch Highest Rank Dates

NA

Rank at time of discharge _____ Type of discharge _____

Awards or citations _____

Service Branch Highest Rank Dates

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).

NA

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.

NA

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.)

NA

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.

NA

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>
Fla. Community College of Jacksonville	unknown	1978-1980	A.A.
University of Florida	unknown	1980-1982	B.S.
U.F. Levin College of Law	unknown	1984-1986	J.D.

18b. List and describe academic scholarships earned, honor societies or other awards. Dean's lists—FCCJ and University of Florida (4-5 times). I was invited to tutor Constitutional Law and Contracts Law, because of grades received. Because of scheduling issues, however, I only tutored Constitutional Law.

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>
7/80-11/81	Movie Projectionist	AMC Theaters	Oaks Mall, Gainesville
12/81-3/82	Security Guard	Oaks Mall, Esc Security	Gainesville, FL
1/83-8/83	Movie Projectionist	UA Theaters	Orange Park, FL
8/83-12/83	Substitute Teacher	Clay and Duval County Schools	Green Cove Springs and Jacksonville, FL

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.

Florida Bar, 1986

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

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

<i>Position</i>	<i>Name of Firm</i>	<i>Address</i>	<i>Dates</i>
Attorney	Garry Wood, Attorney at Law	415 St. Johns Ave., Palatka, FL 32177	2002-present
Assistant State Attorney	State Attorneys Office	410 St. Johns Ave., Palatka, FL 32177	1994-2002
Assistant Public Defender	Public Defenders Office	510 St. Johns Ave., Palatka, FL 32177	1989-1994

see further
attached

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

I am a sole proprietor law firm. I practice mostly criminal defense law. Until recently, about 20% of my caseload used to be family law. However, because of a large criminal defense caseload, I am currently not taking any contested family law cases. In my last

job with the State Attorneys Office, I prosecuted felony and capital cases. I was the Deputy Division Chief (supervising the Palatka Office) for the last three years there.

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	_____ 1 %
Federal Trial	_____ %	Criminal	_____ 80 %
Federal Other	_____ %	Family	_____ 19 %
State Appellate	_____ 5 %	Probate	_____ %
State Trial	_____ 94 %	Other	_____ %
State Administrative	_____ %		
State Other	_____ 1 %		
	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

Jury? 300 est. Non-jury? 30 est.
 Arbitration? _____ Administrative Bodies? _____

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

no

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

no

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

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

State of Florida v. James Terry Colley, Jr.---Case No. 15-1248-CF (tried through penalty phase---7-25-2018)---sentencing pending

Prosecutors: Jenny Dunton and Mark Johnson

Phone: 904-209-1300 (for both)

Address: 2155 Old Moultrie Rd., St. Augustine, FL 32086

Co-counsel for defense: Terry Shoemaker

Mowrey Shoemaker Beardsley PL

2801 N 3rd St

Saint Augustine, FL 32084-1858

Office: 904-824-5711

State of Florida v. James McClung---17-868-CT (tried 2018)

Prosecutors: Robert Pickens and Mark Lewis

1769 E Moody Blvd Bldg 1 Fl 3

Bunnell, FL 32110-5991

Office: 386-313-4300

Note: Mark Lewis works primarily in the State Attorneys Office in Palatka:

410 St. Johns Ave.

Palatka, FL 32177

Phone: 386-329-0259

State of Florida v. Kevin Daniels---14-973-CF (tried 2018)

Prosecutor: Mark Johnson

Phone: 904-209-1300 (for both)

Address: 2155 Old Moultrie Rd., St. Augustine, FL 32086

Prosecutor: James Nealis

410 St. Johns Ave.

Palatka, FL 32177

Phone: 386-329-0259

State of Florida v. Nelson Mijangos---Case No. 16-594-CF (tried 2018)

Prosecutor: Cara Devlin

410 St. Johns Ave.

Palatka, FL 32177

Phone: 386-329-0259

State of Florida v. Erin Vickers---15-302-CF (tried 2017)

Prosecutors: Jason Lewis and Joseph Ledonne

1769 E Moody Blvd Bldg 1 Fl 3

Bunnell, FL 32110-5991

Office: 386-313-4300

Note: Joseph Ledonne is now at:

251 N Ridgewood Ave

Daytona Beach, FL 32114-3275

Office: 386-239-7710

Most recent trial: State v. Jonathan Canales----14-956-CFFA (Flagler County)

Tried: October, 2018

Prosecutor: Melissa Clark

1769 E. Moody Blvd., Bldg. 1, FL 3

Bunnell FL 32110

Office: 386-313-4300

- 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. Reynol Gonzalez, Jr.—Case No. 17-998CF-52. Prosecutor: Mitchell Bishop, 410 St. Johns Ave., Palatka, FL 32177. Phone: 386-329-0259. Note: as of the date of this application, Mr. Bishop is on family leave, due to the birth of his new baby, and then he will begin his new career as the newly appointed county court judge in Union County, FL.

State v. Crystal Smith—Case No. 18-226; 248; 788CF; Prosecutor: Jonathan Gless, 410 St. Johns Ave., Palatka, FL 32177. Phone: 386-329-0259. E-mail: glessj@sao7.org

State v. Daniel Rivera Mejias, Case No. 17-969CF. Prosecutor: Jonathan Gless, same as above

State v. Austin Triplett, Case No. 18-218CF. Prosecutor: Cara Devlin, 410 St. Johns Ave., Palatka, FL 32177. Phone: 386-329-0259. E-mail: devlinc@sao7.org

State v. Asa Hudson, Case No. 18-279CF. Prosecutor: Mitchell Bishop, same as above.

State v. Thomas Thornton, Case No. 17-1575CF. Prosecutor: Kenny Janesk, II, 410 St. Johns Ave., Palatka, FL 32177. Phone: 386-329-0259. E-mail: janeskk@sao7.org

- 27c. During the last five years, how frequently have you appeared at administrative hearings? 0.5 average times per month
- 27d. During the last five years, how frequently have you appeared in Court? 12 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? 0% Defendants? 0%
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.

Not really any more jury trials from year to year. They seem to average about 3-5 jury trials a year. 2018 looks to be a slightly higher year at its current pace, though.

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.

NA

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.

1. State of Florida vs. John Silva, Case No. 00-954CF, tried 2001. Defense Attorney, Douglas Withee (Assistant Public Defender). Judge: Art Nichols, III. I was lead counsel.

This case made national headlines, as was covered on Court TV. Silva was a 15 yr. old Defendant, who killed a 12 yr. old boy, by tying him up, strangling him with an ace bandage, and leaving him in an abandoned septic tank in Interlachen, Florida. Silva was indicted for first-degree murder, was convicted as charged, and was sentenced to life.

At the time, there were a number of controversial cases in Florida in which teenagers were being tried and convicted as adults of murder. There was great debate about someone so young should serve life without the possibility of parole for murder. In this case, however, Silva had planned the murder well in advance, and even wrote down in a list what he intended to do with the victim (he left the list next to the body). He gave all the indications of becoming a serial killer, and I made the decision to prosecute as an adult. It was a very emotional case, for all involved.

2. State of Florida v. Maurice Floyd, Case No. 98-1315CF, tried April 7, 1999. Defense Attorney: Douglas Withee (Public Defender). Judge Robert Perry. I prosecuted the guilt portion, and John Tanner, State Attorney, was co-counsel. We both prosecuted the penalty phase.

Floyd was charged with First Degree Murder, Armed Burglary, and Aggravated Assault. He was convicted as charged and received the death penalty.

Floyd ran from the police to elude arrest after he tried to ram his wife's car with his own. Hours later, he broke into his mother-in-law's house and forced the victim and her grandchildren into the street. There, he shot at, and ran down the grandmother in the street. He shot her at close range through the head, with the small grandchildren watching. Two of the grandchildren (ages six and eight) testified against Floyd.

This was the first case I prosecuted that resulted in the death penalty. The victim had been a social worker who had helped children from broken families for many years before her retirement. This case dealt with the long-term consequences that can occur with un-checked domestic violence. I spent a lot of time with the surviving family, including the grandchildren. Two of the grandchildren came into court and testified against the Defendant.

3. **State of Florida v. John Marquard**—tried: January, 1993 in St. Johns County, Florida. Patrick Canan, Assistant State Attorney. Judge: Richard Watson. I was co-counsel on this case as an Assistant Public Defender, along with Assistant Public Defender Howard Pearl (now deceased).

In the two years that I did homicide cases in St. Johns and Putnam Counties, this was my only death penalty case I took to trial (the rest pled) up until that time. By a vote of 12-0, the jury recommended death, and Judge Watson imposed the death sentence.

John Marquard, along with a friend he had met in prison, and Marquard's mentally retarded girlfriend, came to Florida from North Carolina. While in St. Augustine, they decided to get rid of her. They lured her into a wooded area and repeatedly stabbed her with various knives. Afterwards, they took her property and her car down to Clearwater, where they were eventually apprehended.

My responsibility on this was to defend the guilt phase of the case. But I also helped to prepare the sentencing phase of the trial. This included gathering information about the client's extensive juvenile history, and family life (his mother was schizophrenic).

The case was important for two reasons. One, although I was thoroughly trained in the legal strategies involved in defending a death-penalty case, including motion strategies, there is nothing like putting it to use in trial. At the same time, it exemplified the human element in defending a person for a heinous crime that I had come to know over many months that it took to prepare, try and sentence the case.

Reported on appeal at *Marquard v. State*, 641 So. 2d 54 (Fla. 1994).

4. **State of Florida v. Robert Ledford**, Case No. 93-1366CF-M, tried: January 10 and 11, 1995. David Glicken, Esq., defense counsel. Judge: Arthur Nichols. I took over the case for Olen Meredith, who had transferred to the St. Augustine State Attorney's Office. I was the sole prosecutor at trial.

Ledford was accused of raping his girlfriend's minor daughter several times in one episode. However, by the time I took over the case (after transferring from the Public Defender's Office), Mr. Ledford had accumulated other charges involving two separate rapes of that same girlfriend.

Eventually, Mr. Ledford was caught, and the case went to trial. The evidence mostly consisted of the minor-age victim. Believing this defendant to be a very dangerous sex offender, I could not offer him any deals. My strategy at trial was to use "similar fact" evidence of the other two rape incidents against Ledford's girlfriend, and certain admissions he had made during those rapes.

Unfortunately, the girlfriend apparently decided that her boyfriend, the Defendant, was more important than her own daughter's well-being, and she changed most of her testimony at trial. She was later convicted in her own trial of perjury. He was convicted of two of the seven charges and sentenced to 12 years prison. His other two rape cases had to be dropped.

Judgment and sentence affirmed per curiam at Ledford v. State, 661 So.2d 17 (Fla. 5th DCA, 1995).

5. State of Florida v. Owen Tucker, Case No. 95-2003CF-J, tried: June 4 and 5, 1996. Jill Brown, Assistant Public Defender, defense counsel. Judge Stephen Boyles. I was the sole prosecutor on this case.

This case was significant mostly because of the domestic violence aspect. Rosa Tucker had been divorced from Owen Tucker. However, he was constantly bothering her and harassing her since their divorce. He got an apartment nearby and was seen on occasions looking inside her house. One day he saw her in the house with her new boyfriend. He burst inside, shot the boyfriend twice, and shot her twice. Fortunately, he let her get away to a neighbor's house. He fled, but both victims survived to testify against him. Tucker made the mistake of running to his mother's house the night and admitted to the shooting.

The case was significant because, at the time, it paralleled so many aspects of the O.J. Simpson case as that case unfolded at trial in California.

6. State of Florida vs. Timothy Fletcher. Tried through penalty phase: July, 2012. Case No. 09-648-CF. Assistant State Attorney: Mark Johnson and Jason Lewis. Judge: Wendy Berger. I was sole counsel on behalf of the Defendant. Case reported at 168 So. 3d 186 (Fla. 2015)

In this case, Mr. Fletcher, along with his cellmate Doni Brown, escaped from the Putnam County Jail. They then stole a car nearby and went to Mr. Fletcher's grandmother house. They broke in, beat her up and killed her, then stole her car. The two then travelled throughout the southeast east until they reached Kentucky. Then the two decided then return to Putnam County for the sole purpose of obtaining crack cocaine. The two were then caught.

Mr. Fletcher received a jury death recommendation by a vote of 8-4. Judge Berger imposed death. The judgment and sentence was upheld on direct appeal. Subsequently, Mr. Fletcher has been granted a re-sentencing of the death sentence. That re-sentencing has not yet occurred.

The case is significant for a number of reasons. It received national attention until the two escapees were caught. Mr. Fletcher has a long criminal record, primarily with thefts and burglaries. It was all I could do to get his father, an alcoholic, and his estranged brother to testify at sentencing for him. None of the other family members would help him out, due to the fact that he killed his grandmother (he admitted his involvement in a taped confession). He had no real friends outside of incarceration. For me, this was significant not only as a death penalty case, but also in the real struggles that can

sometimes occur in being able to collect and present meaningful defense mitigation in this type of case.

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.

see attached---sentencing memorandum in the William Gregory death penalty case; initial brief in the Jim Bruce appeal. Both pleadings were written exclusively by myself.

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.

NA

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

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

Types of issues heard:

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

2002—Candidate for county court judge, Putnam County, Florida

- 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.

NA

(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.

John Key and myself are managers (the only two) in Wood & Key, LLC, a Florida Limited Liability Company. Yes, I would resign this position if appointed to judgeship.

- 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.

Yes. Myself and John Key formed Wood & Key, LLC in 2016 in order to purchase the building at 415 St. Johns Ave., Palatka, FL 32177

- 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.

Advantage Court Reporters rents an office space at 415 St. Johns Ave., Palatka, FL. They pay \$450.00 monthly rent, which is slightly less than the existing mortgage on the building. They pay the rent to Wood & Key, LLC.

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 would certainly need to recuse myself for cases in which I was the defense attorney, or for cases that involve former clients. Furthermore, by extension, I think that there would be a conflict of interest in a family law or dependency case that involved an opposing

party in a prior family law case (because I might have inside knowledge of that person's background stemming from my involvement in the prior family law case), Finally, any case where John Key was a party would be a conflict (although it should be noted that he does not do much litigation. He does mostly real estate law and some probate).

MISCELLANEOUS:

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

Yes _____ No If "Yes" what charges? _____

Where convicted? _____ Date of Conviction: _____

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

No

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

No

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

No

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

No

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

No

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

Yes—all collections cases, where I was the Plaintiff.

Garry Wood v. Sarah Alexander—Case No. 12-101-SC
Collections case against former client for non-payment
Voluntarily Dismissed

Garry Wood v. Tina Smith—Case No. 11-568-SC
Collections case against former client for non-payment
Voluntarily Dismissed

Garry Wood v. Angela King—Case No. 09-1261-SC
Collections case against former client for non-payment
Voluntarily Dismissed after settlement

Garry Wood v. Geraldine Hartshorn—Case No. 06-1825-SC
Collections case against former client for non-payment
Voluntarily Dismissed after settlement

Garry Wood v. Tom Ward—Case No. 05-1365-SC
Collections case against former client for non-payment
Voluntarily Dismissed after settlement

Garry Wood v. Daniel Holt—Case No. 05-1364-SC
Collections case against former client for non-payment
Voluntarily Dismissed

Garry Wood v. Jason Ortega—Case No. 05-135-SC
Collections case against former client for non-payment
Voluntarily Dismissed

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

No

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

No

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

No

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

No

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

Yes No If no, please explain. _____

43b. Have you ever paid a tax penalty?

Yes No If yes, please explain what and why. _____

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

No

HONORS AND PUBLICATIONS:

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

none

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

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

NA

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

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, since 1986

Jacksonville Bar Association, 1988---Ethics Committee

St. Johns County Bar Association

American Bar Association, 1986, 1988

Central Florida Legal Services Volunteer Law Project---1999-2002

Putnam County Bar Association, 1993 to present. President (2005, 2008-2017).

Florida Association of Criminal Defense Attorneys, 2004 to present

Chairman, Florida Bar Greivance Committee, Seventh Circuit, 2003 to 2006

- 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.

St. James Methodist Church, Palatka, Florida---Finance Chairman---2004 to 2010

Former President of the Northside Neighborhood Association, Palatka, Florida---2002-2003

School Readiness Committee, Palatka, Florida---2004

Putnam County Library Board (City of Palatka representative)---2004 to 2006

Putnam County Chamber of Commerce, member---2001 to present

Downtown Palatka (association of downtown Palatka merchants)---2003 to 2014

Azalea City Kiwanis, Palatka, Florida---2001 to 2005

Elks Club, Palatka, Florida---2002 to 2012

Sunrise Rotary Club, 2006-2007, Palatka

Member, Seawinds Condominium Board of Directors, St. Augustine, FL---1998-2000

Member, Stewart-Marchman Association Board of Directors--2014-2015

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

going to the movies, spending time with my wife and grandchildren (note: my wife and I have no children together; she has two grown children from her first marriage and each of her two children have two kids of their own).

- 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 was a volunteer lawyer for the VLP with Central Florida Legal Services, from 1995 to 2002. This was while I was a prosecutor in Palatka. The CFLS no longer runs the program. When it was active, I would volunteer 3-4 hours per month. I did receive three pro bono recognition awards from CFLS. Since I left the State Attorney's in 2002, I do pro bono work in my private practice. This would come in the form of doing occasional criminal cases or a divorce for relatives or certain people that I know could not afford an attorney. In 2016, Community Legal Services of Mid-Florida partnered with myself and the Putnam Bar Association to hold pro bono clinics. Unfortunately, the program did not last long. Also, for the last many years, I give \$500 a year to JALA, the Jacksonville Legal Aid program. They hold a fundraiser in St. Augustine every year that I go to. Last year, I gave \$750.00

SUPPLEMENTAL INFORMATION:

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

Yes. At least once a year, I attend a seminar for death penalty defense litigation, either through the Public Defenders Association, or the Florida Association of Criminal Defense Lawyers. This has occurred since I went into private practice in 2002. Prior to that, I would go to similar seminars as a prosecutor. Before that, when I was an assistant public defender, I would attend the annual Life of Death seminar by the Public Defenders Association.

- 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.

Because of my father's former career with the Air Force, I have travelled and lived in several countries. My wife and I continue to enjoy travelling. This has exposed to many cultures and ways of life. It also has helped me to understand and respect the perspectives of others.

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

I have been a lawyer since 1989. Almost of experience is in litigation, whether as a defense attorney, prosecutor, and in private litigation. I have seen everything. Even more so in private practice, where I have broadened my litigation practice to include family law cases. I know the stresses and strains of running a docket, dealing with

people from all walks of life, and the importance of hard work. Being in private practice these past 16 years has given me an appreciation for the time demands for private practitioners I enjoy working with people, and enjoyed my years of public service. I know how important it is to fair, honest, and balanced when dealing with the justice system and to all parties.

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.

1992—Putnam County Court, Seventh Judicial Circuit; 1997—Circuit Court, Seventh Judicial Circuit; 2000—Circuit Court, Seventh Judicial Circuit; 2010—Circuit Court, Seventh Judicial Circuit; 2012—Circuit Court, Seventh Judicial Circuit

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

I have tried many cases in all four counties in the Seventh Circuit. I was also Putnam Bar Association President for 10 years. I have made a strong effort to get to know the judges, both Circuit and County, and both professionally and socially (the Putnam Bar puts on the annual Shad Dinner each year where Circuit, County, and Appellate judges attend. I feel that this will help me further work with others in the Seventh Circuit for any assignment given to me.

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. Megan Wall, St. Johns County Legal Aid , 222 San Marco Ave, St. Augustine, Florida 32084. Phone: 904.827-9921. E-mail: megan.wall@jaxlegalaid.org

2. Kurt Teifke, 1 Hargrove Grade Bldg A Ste 2E, Palm Coast, FL 32137-5117. Office: 386-269-4551. E-mail: kurt@teifkelaw.com

3. John Tanner, John W. Tanner, PA., PO Box 1628, Flagler Beach, FL 32136-1628
Office: 386-214-2068. E-mail: bulleikt@aol.com

4. Michael Hines, Michael Hines, P.A., 4425 US Highway 1 S Ste 105, St. Augustine, FL 32086-31277. Office: 904-794-7898. E-mail: services@hineslaw.com

5. Steve Alexander, Esq., 19 Old Mission Ave., St Augustine, Florida 32084. Phone: 904.824-9788. E-mail: steve@thealexanderlawfirmllc.com

6. R.J. Larizza, State Attorney, 7th Judicial Circuit, 251 N Ridgewood Ave., Daytona Beach, Florida 32114. Phone: 386.257-6000. E-mail: larizzar@sao7.org

7. Hon. Edward Hedstrom, (Retired) Circuit Judge, Douglas & Hedstrom, P.A., 601 Saint Johns Ave., Palatka, FL 32177-4643. Office: 386-328-6000.

E-mail: eeh@dhclawyers.com

8. Terry Shoemaker, Mowrey Shoemaker Beardsley PL, 2801 N 3rd St., St. Augustine, FL 32084-1858. Office: 904-824-5711. E-mail: tshoemaker@ancientcitylaw.com

9. Tim Keyser, Esq., Keyser & Sharbaugh, PA., PO Box 92, Interlachen, FL 32148-0092
Office: 386-684-4673. E-mail: Info@ks.legal

10. Robert M. Perry, Attorney At Law, 601 Reid St., Palatka, FL 32177-3643
Office: 352-283-5369. E-mail: mperry@mperrylaw.com

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 ^{17th}~~12th~~ day of November, 2018.

Gary Wood

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	\$255,000.00		
List Last 3 years	\$324,387.00	\$351,121.00	\$402,902.00

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	\$215,669.00		
List Last 3 years	\$253,832.00	\$281,425.00	\$320,582.00

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.

	\$2250.00--rental		
	income through		
	Wood & Key, LLC-		
	--see attached		
Current year to date	explanation		
List Last 3 years	\$3006.50	\$1350.00	\$315.00

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

Current year to date	\$1150.74		
List Last 3 years	-\$5902.00	-\$5012.00	-\$8165.00

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

PART A – NET WORTH

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

My net worth as of November, 2018 was \$439,700.00.

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 \$ 150,000.00

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Home	\$313,000
T.D. Bank (checking)	\$146,000.00
T.D. Bank (savings)	\$86,000.00
Community First Credit Union (1/2 off checking account–joint with wife)	\$3,500.00
Wood & Key, LLC (1/2 interest based on value of 415 St. Johns Ave., Palatka, FL), 415 St. Johns Ave., Palatka, FL 32177	\$37,500.00

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Third Fifth Bank, P.O. Box 630412, Cincinnati, OH 45263-0412	\$163,000.00
Ameris Bank, 3299 Ross Clark Cir., Dothan, AL 36303-3039	\$35,000.00
Southeast Toyota, PO Box 70832, Charlotte, NC 28272-0832	\$33,000.00
Community First Credit Union, P.O. Box 2600, Jacksonville, FL 32232	\$32,000.00

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Jason and Kim Gullett, P.O. Box 1600, Interlachen, FL 32148-1600 (re: mortgage on 415 St. Johns Ave., Palatka to Wood & Key, LLC	\$33,000.00

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
Garry Wood, Attorney at Law	415 St. Johns Ave., Palatka, FL 32177	\$324,387.00

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
Wood & Key, LLC	Advantage Court Reporters	305 Northeast First Street Gainesville, Florida 32601	Rental Income

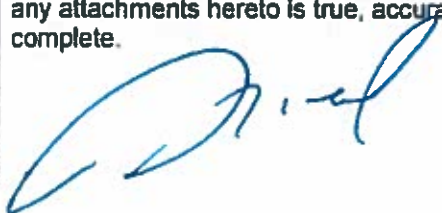
PART E - INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTITTY			
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.



STATE OF FLORIDA

COUNTY OF Putnam


Sworn to (or affirmed) and subscribed before me this 13th day of November, 2018 by Garry Wood

Patricia C. Holloway
 (Signature of Notary Public—State of Florida)

PATRICIA C. HOLLOWAY
 (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification



 SIGNATURE	Type of Identification Produced _____
---	---------------------------------------

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: 11-12-18

JNC Submitting To: Seventh Judicial Circuit

Name (please print): Garry Wood

Current Occupation: Attorney

Telephone Number: 386-326-3993 Attorney No.: 616796

Gender (check one): Male Female

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

County of Residence: Putnam

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:

Garry Wood

Signature of Applicant:



Date: ¹³ 11-~~12~~-18

Supplemental Answers for Judicial Application of Garry Wood:

Question 21:

Law Clerk,

Phil S. Witeka, Attorney at Law

PO Box 5596

Gainesville, FL 32627-5596

Office: 352-371-6437

1-85 to 5-85

Law Clerk

Zisser, Robison, Spohrer & Wilner, P.A.

624 Ocean St.

Jacksonville, FL

9-86 to 1-87

Note: law firm has since separated

Associate counsel

Guarantee Group, Inc. (no longer in business)

7800 Belfort Parkway, Jacksonville, FL

2-87 to 2-88

Associate

Kent, Ridge & Crawford, PA. (law firm since separated)

225 Water St., Suite 900, Jacksonville, FL 32202

2-88 to 8-88

Supplemental Explanation for Financial History Section, Questions 3 and 4

John Key and myself formed Wood & Key, LLC in 2014 when we purchased the office building of 415 St. Johns Ave., Palatka, FL, which was next to the building we were both renting previously (417 St. Johns Ave., Palatka, FL). When we bought the new building, we had built a new room inside the building so that Advantage Court Reporters could also move from 417 St. Johns Ave., Palatka, FL (they, too, were renting space there). Prior to this addition, our new building only had two main office rooms. Therefore, we incurred expenses related to this addition at the outset. We also have made other improvements to the building since then.

The rent that Advantage pays to Wood & Key is almost the same amount as our current mortgage payment on the building. And, for both John Key and myself, we have saved substantially compared to the rent we were each paying next door previously.

Wood and Key, LLC does not own any other property, or have any other source of income other than the rental income from Advantage Court Reporting.

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

STATE OF FLORIDA

CASE NO: 07-866CFFA

v.

WILLIAM GREGORY

DEFENDANT'S SENTENCING MEMORANDUM

The Defendant, by and through the undersigned attorney, files this sentencing memorandum herein. The Defendant was convicted at trial of two counts of first-degree murder, burglary with a battery or assault while armed, and possession of a firearm by convicted felon. A penalty phase proceeding was conducted, in which the State argued four aggravating circumstances: (1) that the murders were committed in a cold, calculated and premeditated manner (CCP), (2) that the murders were committed while the Defendant was on felony probation, (3) that the Defendant had previously been convicted of a violent crime, and (4) that the murders occurred during the commission of an enumerated felony (burglary). The Defendant argued two statutory mitigators, and six non-statutory mitigators. After a penalty phase proceeding was conducted, the jury recommended death on the murder counts by a vote of 7-5. On March 11, 2011, the Court entered an Order requesting a sentencing memorandum from both parties, concerning specific issues presented during the penalty phase.

The Court ordered that a *Spencer*¹ hearing be conducted on April 1, 2011.

¹ 615 So.2d 688 (Fla. 1993)

AGGRAVATING CIRCUMSTANCE: COLD, CALCULATED AND PREMEDITATED

Section 921.141(5)(i), Florida Statutes (2000) reads:

The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

The Supreme Court has stated that this is one of the most serious of the aggravating circumstances. *Larkins v. State*, 739 So.2d 90 (Fla. 1999). In *Jackson v. State*, 648 So.2d 85 (Fla. 1994) the Florida Supreme Court delineated four specific elements which must be proven beyond a reasonable doubt before the factor is established. The first is that "the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic or a fit of rage." *Jackson*[648 So.2d at 89]. Second, *Jackson* requires that the murder be the product of "a careful plan or prearranged design to commit murder before the fatal incident." *Jackson*,[648 So.2d at 89]. Third, *Jackson* requires "heightened premeditation," which is to say, premeditation over and above what is required for unaggravated first-degree murder. Finally, *Jackson* states that the murder must have "no pretense of moral or legal justification.""

Walls, 641 So.2d at 387-388.

1. Product of Calm, Cool Reflection

The state of mind of the perpetrator is critical to an analysis of the evidence for this aggravating circumstance. As noted in *Jackson*, an essential element is that "the killing was the product of cool and calm reflection and not an act prompted by emotional frenzy, panic or a fit of rage." 648 So.2d at 89. A killing in a fit of rage is inconsistent with the CCP factor. *Williams v. State*, 967 So. 2d 735, 764 (Fla. 2007); *Crump v. State*, 622 So.2d 963 (Fla. 1993);

Richardson v. State, 604 So.2d 1107 (Fla. 1992); *Mitchell v. State*, 527 So.2d 179 (Fla. 1992). Consequently, impulsive or panic killings during a felony do not qualify for CCP. See, e.g. *Hardy v. State*, 716 So.2d 765 (Fla. 1998)(Defendant and companions stopped by police officer who begins searches them for weapons. Defendant had a stolen pistol which he uses to shoot officer twice in the head on the “spur-of-the-moment” panic.); *Rogers v. State*, 511 So.2d 526 (Fla. 1987), (defendant shot robbery victim three times because he was “playing hero”); *Hamblen v. State*, 527 So.2d 800 (Fla. 1988)(defendant shot robbery victim in the back of the head after becoming angry with her for activating the silent alarm); *Thompson v. State*, 456 So.2d 444 (Fla. 1984) (defendant shot gas station attendant after being told there was no money on the premises); *Maxwell v. State*, 443 So.2d 967 (Fla. 1984)(defendant shot his robbery victim when he verbally protested handing over his gold ring); *White v. State*, 446 So.2d 1031 (Fla. 1984)(defendant shot two people and attempted to shoot two others during a robbery). Killings in other contexts, such as in the heat of passion during the course of domestic arguments, likewise do not qualify for the premeditation aggravating circumstance. *Maulden v. State*, 617 So.2d 298 (Fla. 1993); *Santos v. State*, 591 So.2d. 160 (Fla. 1991); *Garron v. State*, 528 So.2d 353 (Fla. 1988); *Wilson v. State*, 493 So.2d 1019 (Fla. 1986); *Herzog v. State*, 439 So.2d 1372 (Fla. 1983). The “coldness” or the “calm and cool reflection” element is simply missing in these cases. *Richardson v. State*, 604 So.2d.1107 (Fla. 1992).

2. Product of a Careful Plan or Prearranged Design to Murder

To support CCP the evidence must prove beyond a reasonable doubt that the murder was calculated – committed pursuant to “...a careful plan or prearranged design to kill....” *Rogers v. State, supra*. “This aggravating factor is reserved primarily for execution or contract murders

or witness elimination killings.” *Hansbrough v. State*, 509 So.2d 1081, 1086 (Fla. 1987); see, *Maharaj v. State*, 597 So.2d 786 (Fla. 1992); *Pardo v. State*, 563 So.2d 77 (Fla. 1990), or other carefully planned homicides. E.g., *Zakrzewski v. State*, 717 So.2d 492 (Fla. 1998)(defendant left work at lunch bought a machete and concealed it in his home, defendant then methodically kills his wife and two children later that evening with the machete)

An intentional killing during the commission of another felony does not necessarily qualify for the premeditation aggravating circumstance. *Maxwell, supra*. The fact that the underlying felony may have been fully planned ahead of time does not qualify the crime for the CCP factor if the plan did not also include the commission of the murder. *Guzman v. State*, 721 So.2d 1161 (Fla. 1998); *Pomeranz v State*, 703 So.2d 465 (Fla. 1997); *Barwick v. State*, 660 So.2d 696 (Fla. 1995); *Geralds v. State*, 601 So.2d 1157 (Fla. 1992); *Lawrence v. State*, 614 So.2d 1092 (Fla. 1993); *Rivera v. State*, 561 So.2d 536 (Fla. 1990); *Jackson v. State*, 498 So.2d 906 (Fla. 1986); *Hardwick v. State*, 461 So.2d 79 (Fla. 1984). However, if additional facts show greater planning prior to or during the killing, the homicide becomes “execution style.” E.g. *Donaldson v. State*, 722 So.2d 177 (Fla. 1998)(victims held at gunpoint for extended period before being shot execution style); *Brown v. State*, 721 So.2d 279 (Fla. 1998)(plan to rob included plan to kill); *Foster v. State*, 679 So.2d 747 (Fla. 1996)(plan to rob included plan to kill victims); *Walls, supra* (killed victim #1 during burglary when victim attacked defendant, victim # 2 killed to eliminate witness); *Rutherford v. State*, 545 So.2d 853 (Fla. 1989)(extensive plan included murder of robbery victim); *Hill v. State*, 422 So.2d 816 (Fla. 1982)(defendant made the decision to rape and murder the victim before he picked her up); *Routly v. State*, 440 So.2d 1257 (Fla. 1983)(burglary victim bound and transported to a remote area before he was killed with a gunshot)

A plan to kill cannot be inferred from a lack of evidence – a mere suspicion is insufficient. *Hoskins v. State*, 702 So.2d 210 (Fla. 1997); *Besaraba v. State*, 656 So.2d 441 (Fla. 1995); *Gore v. State*, 599 So.2d 978 (Fla. 1992); *Lloyd v. State*, 524 So.2d 396, 403 (Fla. 1988); *see, also, Gorham v. State*, 454 So.2d 556, 559 (Fla. 1984); *Drake v. State*, 441 So.2d 1079 (Fla. 1983); *King v. State*, 436 So.2d 50 (Fla. 1983); *Mann v. State*, 420 So.2d 578 (Fla. 1982). **If the evidence can be interpreted to support CCP, as well as a reasonable hypothesis other than a planned killing, the CCP factor has not been proven.** *Mahn v. State*, 714 So.2d 398 (Fla. 1998); *Geralds v. State*, 601 So.2d 1157 (Fla. 1992)(plan to commit burglary does not necessarily mean a plan to commit murder; alternative theories as to how the murder occurred negate the CCP aggravating factor).

3. Heightened Premeditation Required

Simply proving a premeditated murder for purposes of guilt is not enough to support the CCP aggravating circumstance – the Supreme Court has required greater deliberation and reflection. *See, Walls. Supra.* Court decisions are somewhat vague as to how much greater premeditation is required, but discussion of the element typically notes the existence of the “calculated” and “coldness” elements as demonstrating the greater premeditation. *Walls; Buckner v. State*, 714 So.2d 388 (Fla. 1998)(CCP not proved where defendant provoked and “tussled” with victim before shooting victim, defendant walked away and came back to victim who was pleading for help and shot him three more times);

Without more, the manner of death does not establish the greater premeditation needed for the CCP factor. Even a manner of death which requires a period of time to accomplish its end does not necessarily provide the perpetrator with the needed time for calm reflection. *See,*

Campbell v. State, 571 So.2d 415 (Fla. 1990). Smothering the victim with evidence that the process required several minutes did not, alone, qualify the crime for the aggravating factor in *Capelhart v. State*, 583 So.2d 1009 (Fla. 1991). Multiple wounds also do not prove the heightened premeditation required. The Court has rejected CCP even though the victim suffered several gunshot wounds. *E.g.*, *Hamilton v. State*, 547 So.2d 630 (Fla. 1989) (multiple wounds to two victims); *Caruthers v. State*, 465 So.2d 496 (Fla. 1985)(victim shot three times); *Blanco v. State*, 452 So.2d 520 (Fla. 1984)(victim shot seven times). A beating death with multiple wounds is also not necessarily CCP. *Penn v. State*, 574 So.2d 1079 (Fla. 1991); *King v. State*, 436 So.2d 50 (Fla. 1983); *Wilson v. State*, 436 So.2d 912 (Fla. 1983). Multiple stab wounds, alone, also do not prove the CCP factor

4. Without a Pretense of Moral or Legal Justification

Although this is an element of CCP which has to be proven beyond a reasonable doubt, this element was never an issue argued by either party in this case. It will not be further argued here.

In the instant case, there was never any evidence presented by the State to support this aggravating factor, nor were the three main elements ever proven beyond any reasonable doubt. The State did present testimony from Francis Bowling and Tyrone Graves to the effect that if he (the Defendant) ever caught his girlfriend cheating on him, he would kill them both. However, taken in a light most favorable to the State, this does not equate to a cold, calculated plan on the part of the Defendant to kill anyone. What it does connote is that the Defendant was jealous or suspicious of the possibility Skylar Meekins was cheating on him. It should be remembered

that the statement to Bowling was eight months before the murder while the two were on a roof. Bowling said he did not take the statement seriously at the time. The statement to Graves was about two months before the murders.

On the evening of August 20, 2007, as the evidence showed, the Defendant was picked up by his friend Amber Curnutt. The Defendant and his brother drove around with Amber during the afternoon. Eventually the three went over to Amber's place. During this period of time, there was no discussion of hurting or killing anyone. The Defendant did not display an anger towards anyone. Later, the Defendant and his brother Kory Gregory were picked up at Amber's place by another friend, Wayne Lantrip. Lantrip, Kory and the Defendant then rode around to various places to buy and consume cocaine. The three also took pills, drank beer and smoked pot. Again, according to both Kory and Lantrip's testimony, there was no discussion by the Defendant of killing anyone. The Defendant did not display any anger towards anyone. This was also true when the Defendant was dropped off at his own house around 9:30-10:00 p.m.

According to the testimony of Michael Green, Skylar Meekins called Dan Dyer around 10:15 p.m. that night to spend the night with her. She had a dentist appointment the next morning. Dan Dyer had never spent the night at her house before. According to Mike Green, Dyer was dropped off at Skylar's place around 11:00 p.m.

According to the phone records produced by the State, the Defendant was on the phone at his house when Dyer was dropped off at Skylar's house. He was making calls to other people. He talked with Lantrip and said that he (the Defendant) to go out to an area called the Mondex to buy more drugs. Lantrip declined because he had to work the next day. Again, there was never any discussion with Lantrip that the Defendant wanted to hurt or kill anyone, or

that he was angry at anyone. There were phone calls from the Defendant to the Meekins home, and one call from the Meekins home to the Defendant's home. However, there was no indication from the calls that there was ever any discussion between the two (the calls were only for a second or two).

Skylar Meekins and Dan Dyer started dating each other on July 4, 2007. According to testimony of Linda Probert and Leigh Furmanek, this relationship was known to the Defendant. There was never any testimony of any plan to kill Dan Dyer or harm him in any way during the period of time leading up to the murders. In fact, they testified as to other days and times, including within days of the murder, when the Defendant would spend the night at the house. Wayne Lantrip testified that about a week before the murder, he dropped off the Defendant at the Meekins residence.

The State did elicit from Michael Green a statement from Dan Dyer that reportedly came from the Defendant to the effect that "thanks for ruining my family" At best, this statement came days before the murders. The statement, taken in this context, does not indicate a cold, calculated plan to kill anyone. It again shows that the Defendant was jealous of anyone else becoming involved with Skylar, and, indirectly, involved in the life of their child, Kyla.

The State elicited testimony from Eric Goebel that included testimony that the Defendant was watching the house during the night prior to the murder. But this testimony has its own set of problems. The Defendant was on the phone until after 11:30 p.m. According to the testimony of Dr. Hobin, the medical examiner, the time of death for both murders was 1:15 a.m. on the 21st of August, 2007.² By this time, Dan Dyer is in the house. There is no indication, given the location of the bedroom windows, and the fact that both were shuttered,

² Dr. Hobin was told by investigators at the time of the autopsies that the live-in grandfather heard two loud slapping sounds at that time, which would be consistent with this opinions as to the time of death.

that the Defendant would have seen Mr. Dyer inside the bedroom. There was no proof as to how the Defendant would have arrived at the house---by car or on foot. According to Detective Steve Brandt of the Flagler County Sheriff's Office, the route on foot (even under daylight conditions) would have taken between 1:15 to 1:28 hours to traverse. The state called Keon Mahony, who lived ½ mile away from the crime scene to say that sometime between 12:30 to 2:30 a.m. he heard a car door slam and a person say "come on, let's go". But he could not say if the voice was male or female, the description of the person involved, the description of the car involved, or which way the car went after it took off. Theorizing that the Defendant got a ride to the Meekins residence is nothing more than mere suspicion, not proof beyond a reasonable doubt. *Hoskins, supra.*

What the State has presented at best shows that the Defendant left his house and went to the Meekins house. He went inside. The Defendant, after going inside, discovered the two victims in bed together, and, in a jealous rage, took a shotgun and shot both of them within a second apart from the other, while the two were still in bed. The evidence is completely devoid of any showing of a calm, cool and reflective planning to commit the crimes that would support a CCP aggravating circumstance beyond a reasonable doubt.

Note: Although the Court's March 11, 2011 Order requests a sentencing memorandum from both parties concerning certain specific issues, it is felt that the following aggravating circumstance submitted to the jury deserved additional commentary by the defense. With regard to the two remaining aggravating circumstances submitted to the jury, the Defendant continues to object to both their admissibility and application to this case.

AGGRAVATING CIRCUMSTANCE: UNDER SENTENCE OF IMPRISONMENT

Section 921.141(5)(a) Florida Statutes reads:

The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

The State has introduced into evidence that the Defendant was previously of the offense of attempted possession of cocaine, a third degree felony in Flagler Case No. 07-206CFFA. He was serving a 24-month probationary sentence at the time of the murders herein. The Defendant had argued against the application of this aggravating circumstance, and argued that the language of the statute for this aggravating circumstance was unconstitutionally overbroad and vague.

The Defendant would request if the Court is to consider this aggravating circumstance in this case, that it find that it has little or no weight. That is because the underlying felony is a non-violent, third degree felony. It is a Level Two offense under the Florida Criminal Punishment Code. Rule 3.704(d)(10), Fla. Rules of Criminal Procedure. Unfortunately, Section 921.141(5)(a) does not distinguish between violent crimes and non-violent crimes and says that anyone under felony supervision for any kind of felony can be executed if convicted of first-degree murder. Logic and rules of leniency would suggest otherwise.

Another problem with relying on this aggravating circumstance is the case is currently on appeal. The Defendant filed a motion to have his plea withdrawn, and sentence vacated, pursuant to Rule 3.850. The presiding trial court judge, Judge Hammond, denied the motion. The Defendant has appealed the matter to the Fifth District Court of Appeal.

If this Court were to rely on the attempted possession of cocaine case to support a death sentence, and that felony conviction was subsequently vacated on appeal, a death sentence imposed here would be subject to being overturned as well. *Thompson v. State*, 647 So.2d 824 (Fla. 1994); *Long v. State*, 529 So.2d 286 (Fla. 1988). *But see, Ragsdale v. State*, 720 So.2d 203, 209 (Fla. 1998)(it was the defendant's probationary status at the time of the murder that is important, even if the underlying conviction was later vacated or overturned). However, the Supreme Court may apply the harmless error analysis in such situations. *Owen v. State*, 596 So.2d 985 (Fla. 1992); *Preston v. State*, 564 So.2d 120 (Fla. 1990).

MITIGATING CIRCUMSTANCES

Section 921.141(6)(b) - The Capital Felony Was Committed While The Defendant Was Under The Influence Of Extreme Mental Or Emotional Disturbance.

This mitigating circumstance has been called "the mitigating factor of the most weighty order." *Rose v. State*, 675 So.2d 567, 573 (Fla. 1996). The mitigating circumstance of "under the influence of extreme mental or emotional disturbance" has been defined as "less than insanity, but more emotion than the average man, however, inflamed." *Foster v. State*, 679 So.2d 747, 756 (Fla. 1996).

The consideration of these mitigating circumstances is supposed to be entirely independent of a finding of sanity. *Ferguson v. State*, 417 So.2d 631 (Fla. 1982); *Mines v. State*, 390 So.2d 332, 337 (Fla. 1980). *See also Campbell v. State*, 571 So.2d 415 (Fla. 1990) (impaired capacity); *Eddings v. Oklahoma*, 455 U.S. 104 (1982) (error to consider as mitigating

evidence only that which would tend to excuse criminal liability); *Knowles v. State*, 632 So.2d 62 (Fla. 1993) (rejection of insanity and voluntary intoxication defenses does not preclude finding this mitigator);

The “extreme mental or emotional disturbance” must be shown to exist at the time of the murder and to have been a factor in the commission of the murder in order for it to be a statutory mental mitigating circumstance. *Geralds v. State*, 674 So.2d 96, 101 (Fla. 1996); *Williamson v. State*, 681 So.2d 688, 697-698 (Fla. 1996); *Bryant v. State*, 601 So.2d 529, at 532-33 (Fla.1992), *Stewart v. State*, 558 So.2d 416 (Fla.1990), and *Smith v. State*, 492 So.2d 1063 (Fla.1986), wherein *some* evidence was presented that the defendant was either under the influence of some drug around the time of the murder, or suffered from a pervasive mental condition that affected him every day.

The Defendant’s consumption of alcohol and/or drugs prior to the murder can support the finding of this mitigating circumstance. *Nibert v. State*, 574 So.2d 1059 (Fla. 1990) (death penalty disproportionate for killing of drinking buddy after expressing intent to rob him and defendant had history of alcoholism, was drinking heavily at time, and under influence of extreme mental or emotional disturbance) *Heath v. State*, 648 So.2d 660, 663 (Fla. 1994) (this mitigator present based upon a defendant’s consumption of alcohol and marijuana); *Spencer v. State*, 645 So.2d 377 (Fla. 1994)(alcohol and drug usage part of basis for mental mitigation); *Nibert v. State*, 574 So.2d 1059 (Fla. 1990) (drinking heavily at time of murder part of basis for substantial mental mitigation); *Kramer v. State*, 619 So.2d 274 (Fla. 1993) (suffered from alcoholism -- substantial). [Note: even where the defendant was not under the influence of drugs or alcohol when committing the offenses and was “cold sober,” the Court can find long-term substance abuse to be a significant nonstatutory mitigating factor]. *See, e.g. Mahn v. State, supra*; *Ross v. State*, 474 So.2d 1170, 1174 (Fla. 1985).

The wording of the statute requires that the mental or emotional disturbance be "extreme," and the Court has been very strict in the meaning of this adjective and has used this highly subjective adjective to approve death sentences (particularly where the jury has recommended death). *Wright v. State*, 688 So.2d 298 (Fla. 1996) (death penalty disproportionate where substantial mental mitigation including domestic confrontation and overwrought at thought of losing children); *Foster v. State*, 614 So.2d 455 (Fla. 1992) (defendant gets new penalty phase where trial court failed to resolve conflicts as to whether the statutory mental mitigators rose to the "extreme" or "substantial" level); *Kramer v. State*, 619 So.2d 274 (Fla. 1993) (death sentence disproportionate where suffered from alcoholism and under influence of mental or emotional stress); *Spencer v. State, supra* (FSC reverses trial court's rejection of the mental mitigation where trial court found the evidence "speculative"); *See also, Carter v. State*, 560 So.2d 1166 (Fla. 1990) (incurable organic brain damage, extensive drug abuse, and possibility of substantial intoxication at time of the offense); *Fead v. State*, 512 So.2d 176 (Fla. 1987) (intoxication and jealousy); *Irizarry v. State*, 496 So.2d 822 (Fla. 1986) (wife jilted defendant, "passionate obsession"); *Amazon v. State*, 487 So.2d 8 (Fla. 1986) (long history of drug abuse and drug use on night of crime; "emotional cripple," emotional maturity of 13-year old and in some aspects of a 1-year old).

The emotional impact of domestic quarrels has been utilized to find this factor as substantial and reduce the punishment. In the case of *Santos v. State*, 629 So.2d 838 (Fla. 1994), the defendant was involved in an ongoing, highly emotional domestic dispute with his estranged wife and her family. The unrebutted expert testimony indicated that this dispute severely deranged him. According to this testimony, he was under extreme emotional distress at the time of the murders, was involved in a denial phenomenon, had an impaired capacity to appreciate the criminality of his conduct, and had an impaired capacity to conform his conduct to the requirements of the law. *See also Wright v. State*, 688 So.2d 298 (Fla. 1996) (death

penalty disproportionate where substantial mental mitigation including domestic confrontation and overwrought at thought of losing children); *Maulden v. State*, 617 So.2d 298, 303 (Fla. 1993) (death sentence reversed where two aggravating circumstances were present, defendant had no prior violent crimes except those related to the present offenses, and defendant believed another man “was replacing him as ‘father figure’” to his children); *Blakely v. State*, 561 So.2d 560 (Fla. 1990) (death sentence disproportionate where two aggravating circumstances were present, but defendant had no prior significant criminal history and “had reached his breaking point” in dispute over children).

The opinion by the Florida Supreme Court demonstrates how strong this mitigator is, and how it parallels that facts of this case. In *Farinas v. State*, 569 So.2d 425, 431 (Fla. 1990) the FSC stated:

On review of the record, we conclude that there was evidence which tended to establish that the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. Sec. 921.141(6), Fla. Stat. (1985). During the two-month period after the victim moved out of Farinas' home, he continuously called or came to the home of the victim's parents where she was living and would become very upset when not allowed to speak with the victim. He was obsessed with the idea of having the victim return to live with him and was intensely jealous, suspecting that the victim was becoming romantically involved with another man. See *Kampff v. State*, 371 So.2d 1007 (Fla. 1979). We find it significant, also, that the record reflects that the murder was the result of a heated, domestic confrontation. *Wilson v. State*, 493 So.2d 1019 (Fla. 1986). Therefore, although we sustain the conviction for the first-degree murder of Elsidia Landin and recognize that the trial court properly found two aggravating circumstances to be applicable, we conclude that the death sentence is not proportionately warranted in this case. *Wilson; Ross v. State*, 474 So.2d 1170 (Fla. 1985).

Cf. Thompson v. State, 565 So.2d 1311 (Fla. 1990) (wherein the court vacated a death sentence because it struck the only aggravating factor and where the trial court found the emotional stress of the defendant as a reason for the killing; the defendant had been separated from his wife and considered suicide after killing his girlfriend).

This statutory mitigator was proven by the State during the course of the guilt phase. The State produced telephone calls from the St. Johns County Jail two months prior to the murder that showed that the Defendant was obsessed at finding out what Skylar Meekins was doing at all hours and who she was seeing. He made calls to Colton Meekins to get Colton, during this same period of time, to go into her e-mail accounts and find out who she was talking to. The Defendant would constantly come over to the Meekins house unannounced. He expressed jealousy to Francis Bowling and Tyrone Graves in that if he ever caught Skylar with anyone else, he would kill them both. He was constantly calling and coming by the Meekins house in the weeks and days leading up to the murders. As stated previously, the evidence shows that the Defendant ingested a large quantity of drugs and alcohol throughout the day before the murders. And the most likely scenario, in the light most favorable to the State, is that the Defendant discovered the two victims in the bed together, and shot them both in the heat of passion.

**Section 921.141(6)(f) - The Capacity of the Defendant to
Appreciate the Criminality of His Conduct or to
Conform His Conduct to the Requirements of Law was
Substantially Impaired.**

As in mental disturbance, sanity is not the test. *Campbell v. State, supra*. The cases for this factor deal primarily with three areas: intoxication, intelligence, and mental illness. Again, as in the area of emotional disturbance the cases go both ways on substantially the same evidence. For successful intoxication cases, *see Stewart v. State*, 558 So.2d 416 (Fla. 1990) (defendant drunk most of the time and used drugs; his control over his behavior was

reduced by alcohol abuse); *Heath v. State*, 648 So.2d 660 (Fla. 1994) (alcohol and marijuana consumption); *Morgan v. State*, 639 So.2d 6, 13-14 (Fla. 1994) (voluntary intoxication); *Carter v. State*, 560 So.2d 1166 (Fla. 1990) (extensive drug abuse and possibility of substantial intoxication at time of the murder); *Campbell v. State*, (chronic drug and alcohol abuse, among other things); *Songer v. State*, 544 So.2d 1010 (Fla. 1989); *Burch v. State*, 522 So.2d 810 (Fla. 1988) (PCP usage); *Amazon v. State*, 487 So.2d 8 (Fla. 1986) (long history of drug abuse and had taken drugs on night of offense). *See, Cheshire v. State*, below.

At the time of the murders herein, the Defendant was substantially impaired from the voluntary, sizeable, and prolonged ingestion of cocaine, pills, beer and marijuana during the many hours leading up to the time of the murders. After he arrived home few hours before the homicides, the Defendant called his friend Wayne Lantrip in an attempt to go out and look for more drugs to consume. This has all been proven, not through the Defendant's self-reporting, but through the testimony of two witnesses called by the State in the guilt phase: Wayne Lantrip and Kory Gregory. Expert testimony on this issue is not required. *See Cheshire*, below.

However, even if the Court were to conclude that the Defendant was not substantially impaired, any impairment must be considered by the Court as a non-statutory mitigator. *Cheshire*, below. The Court should give this mitigator great weight, whether as a statutory, or non-statutory mitigator.

Non-Statutory Mitigators

The Defendant has proven the following non-statutory mitigators in the sentencing phase:

- a. The Defendant has a long-standing drug problem.

- b. The Defendant grew up without his father and was raised by his mother.
- c. In his childhood, the Defendant was forced to witness sexual abuse that involved his sister.
- d. The Defendant had a dysfunctional childhood.
- e. The Defendant was impaired at the time of the homicides herein due to the ingestion of drugs and/or alcohol.
- f. The Defendant has substantial family support.

All of these mitigators should be given substantial weight, either alone, in their totality.

The Court, in its March 11, 2011 Order, asked for additional discussion by both parties as to the following non-statutory mitigators:

Drug History

The Defendant has a long history of substance and alcohol abuse. Linda Probert and Leigha Weber both testified that the Defendant has been doing drugs, including methamphetamines, since the Defendant was a child. In the pre-sentence report, the Defendant himself reports that he started drinking when he was age 11. He also started smoking pot at that age. When he was 14, he moved onto meth and mushrooms. At age 18, he started using crack cocaine.

Evidence of his drug and alcohol problem can be seen from other sources. In 2004, the Defendant was diagnosed with severe alcohol dependence and was ordered into residential treatment. After five months in the program, however, he was unsuccessfully terminated from that program (and, eventually, from his probation). It should be noted that

the underlying charge for which the Defendant was on probation in 2004 was for Battery on an Medical Care Provider. In that case, the Defendant showed up at the emergency room with for alcohol poisoning, and the Defendant became combative in the ER (copy of the police report in that case will be provided at the *Spencer* hearing).

As the Court is aware, the Defendant is currently on probation for attempted possession of cocaine in Case No. 07-206CFFA. In that case, there was cocaine found in the trunk of the Defendant's car (this was testified to previously during the hearing on the 3.850 motion in that case).

The Defendant continued to use cocaine, pills, and drink even up to the night before the murders. Wayne Lantrip said that he had seen the Defendant use drugs several times before August 20, 2007. Again, only a couple of hours before the murder, the Defendant wanted to Mr. Lantrip to pick him up and take him somewhere where he could get more drugs that night.

Dysfunctional Childhood

The Defendant's mother, Linda Probert, met the Defendant's father, Edward Ray Gregory, a short period of time before they moved from Florida to Las Vegas. The father was abusive with the mother, and left the family shortly after the Defendant was born. Kory, the older brother, would have been two years of age at the time. The father would not return to their lives until after the Defendant was incarcerated in this case, and even then it was only last year when the father reemerged. The father not only was not physically present during the Defendant's childhood, but never paid Ms. Probert any child support.

Linda Probert then moved to Montana, when she lived briefly with another man who would become the father of the younger sister, Leigha. He too soon after abandoned the family, and never paid any child support. A few years later, Ms. Probert then remarried to

Joe Probert, a man who is apparently an alcoholic. The two have been separated for about twelve years, when Linda moved from Montana, to New Jersey, to Virginia, and then to Florida. Thus, the Defendant has had seen men coming and going from his life, and witnessed his mother take up relationships with unstable men.

Family Support

In 2005, when Skylar became pregnant with Kyla, the Defendant and his family grew closer. The Defendant lived for about a year with Skylar at her residence. After the Defendant moved out from that residence, he moved in with his mother, his grandmother (Mary Wilson), and his mother's new boyfriend, Jon Schmucker. It was only through this set of circumstances, along with the birth of Kyla, that the family grew closer. Kory Gregory eventually moved from Miami to come to live with the Defendant as well.

There has been a great deal of testimony that after Kyla was born, Linda Probert has assisted in the shared visitation arrangements between the Defendant and Skylar. This arrangement continues to this day. The Defendant has been involved in Kyla's life and been involved in activities with her. About a month before the murders, the Defendant, Skylar, and the Defendant's family attended a birthday party together.

Several phone calls from the Defendant while he was in the St. Johns and Flagler County Jails shows that he shares a strong bond with his family. During the phone calls, the mother and grandmother expressed a great deal of love and support for the Defendant. Leigha Furmanek, the sister, has testified as to her love and support of her brother. The Defendant was quite explicit in these taped conversations that he wanted to see that Kyla was taken care of by his family, which they have been glad to do.

Prior Sexual Abuse Incident

Leigha Furmanek, the Defendant's sister, testified that when she was six, she was raped at knifepoint by the son of their landlord in Montana. The landlord lived upstairs from the family. The Defendant and his brother Kory were forced to watch. Leigha said that the matter was reported to authorities, and their family had to move away. However, the perpetrator was never prosecuted. At the time of the incident, the Defendant would have been 8 years of age, and Kory would have been 10 years of age. Leigha testified as to the trauma it caused the family, and that the Defendant became much more protective of her after the incident.

The Defendant Grew Up Without His Father

This family history has been given above. It is evident that the Defendant grew up without his father. His father left shortly after he was born, and never showed any love or support during the Defendant's childhood. The Defendant did have his grandfather while in Montana, but he did when the Defendant was 18.

Requested Jury Override

As the Court knows, the jury had made a recommendation to the Court that the Court impose a death sentence on both murder counts, by a slim 7-5 vote. If the jury had recommended life on both counts, which requires six or more jurors in voting for life, the Court would have sentenced the Defendant immediately to life in prison on both murder counts.

Florida law requires that the sentencing court give the jury's recommendation "great weight". However, should a 7-5 jury recommendation be given the same "great weight" as a

unanimous death recommendation? Unfortunately, the Florida Supreme Court has never defined "great weight". Since there are no interrogatories contained in the jury's recommendation, it will never be known what, if any, aggravating circumstance (or mitigating circumstance) they voted in favor of and by what vote. Florida does not require that the vote as to the finding of any aggravating circumstance be unanimous.

The sentencing court always has the ability to override a jury's death recommendation. Judge Eaton, in his 2010 Memorandum "Conducting A Penalty Phase in a Capital Case" points out that the "great weight" requirement generally precludes an override of a life recommendation, while the "great weight" requirement will not prevent a judge from overriding a death recommendation. See *Tomkins v. State*, 872 So.2d 230 (Fla. 2003).

Factually, although not procedurally, this case closely parallels the facts contained in *Cheshire v. State*, 568 So. 2d 908 (Fla. 1990). There, Cheshire was convicted of two counts of first-degree murder, burglary, and shooting into an occupied dwelling. Neither side presented any evidence at the penalty phase. The jury recommended life on the murder counts. However, the trial court overrode the jury's recommendation as to one of the murder counts, but not the other, and sentenced Cheshire to death. The Florida Supreme Court reversed.

Consider the following similarities from the *Cheshire* case and the instant case:

1. Cheshire was estranged from one of the victims, his wife,
2. Cheshire had threatened to kill his wife if she ever left him,
3. About six weeks before the murders, his wife moved in with another man,
4. Cheshire was accused of breaking inside the residence of the wife and her new boyfriend, and shooting both within seconds of each other,

5. Cheshire was reported jealous of the new boyfriend becoming part of the life of the minor child of Cheshire and his wife,
6. Cheshire denied committing the murder and said he was elsewhere at the time,
7. There was very little physical evidence against Cheshire,
8. Cheshire had been drinking the night of the murder,
9. The case involved both a double homicide and a burglary.

In *Cheshire*, the trial court, in overriding the jury's life recommendation, found three aggravating circumstances: the prior conviction of a capital felony (the contemporaneous killing of the boyfriend), felony murder (burglary) and heinous, atrocious and cruel (HAC). There was no finding in case of the aggravating circumstance of cold, calculating, and premeditated (CCP).

The *Cheshire* Court found that the trial court had ignored three critical mitigating circumstances:

First, based upon the state's case and the physical evidence, the murders at issue in this case reasonably could be characterized as the tragic result of a longstanding lovers' quarrel between Cheshire and his estranged wife. It is well established under Florida law that this type of situation constitutes valid mitigation. *Fead v. State*, 512 So.2d 176, 179 (Fla. 1987), *receded from on other grounds*, *Pentecost v. State*, 545 So.2d 861 (Fla. 1989); *Irizarry v. State*, 496 So.2d 822, 825 (Fla. 1986); *Ross v. State*, 474 So.2d 1170 (Fla. 1985); *Blair v. State*, 406 So.2d 1103 (Fla. 1981); *Kampff v. State*, 371 So.2d 1007 (Fla. 1979); *Chambers v. State*, 339 So.2d 204 (Fla. 1976).

Second, there was some evidence that Cheshire had been drinking at the time of the murder. Although the judge concluded that Cheshire was not sufficiently intoxicated, we nevertheless must acknowledge that a reasonable jury could have relied upon this evidence to conclude that Cheshire was not in control of his full faculties. There is no evidence whatsoever that Cheshire began drinking as a way of developing the "courage" to commit the murders. Thus, this is valid mitigation. *Robinson v. State*, 487 So.2d 1040, 1043 (Fla. 1986); *Amazon v. State*, 487 So.2d 8 (Fla.), *cert. denied*, 479 U.S. 914, 93 L. Ed. 2d 288, 107 S. Ct. 314(1986).

Finally, the defense argues that the evidence is entirely consistent with a theory that Cheshire's acts were a crime of passion prompted in part by emotional distress over his pending divorce and the belief that his wife was encouraging their son to call Durbin "daddy." ...

Thus, it necessarily follows that a reasonable juror could have relied upon this evidence to conclude that Cheshire lost control of himself because of intoxication, a perceived affront to his family status and the emotional distress that accompanies a [*912] failing marriage, and the fact that his spouse had left him for another person. Events that result in a person succumbing to the passions or frailties inherent in the human condition necessarily constitute valid mitigation under the Constitution and must be considered by the sentencing court. *See, Lockett v. Ohio, 438 U.S. 586, 57 L. Ed. 2d 973, 98 S. Ct. 2954(1978).*

Id. at 911-912.

The Court went onto to state that even the emotional disturbance does not qualify as an "extreme" emotional disturbance as a statutory mitigator, the trial court nevertheless had to consider as a non-statutory mitigator. It is also interesting to note that the Florida Supreme Court found these mitigators to exist, even though there was no expert testimony at the trial level as to the level of emotional disturbance, nor the level of intoxication that Cheshire was under at the time of the crimes.

Michael Radelet, Professor of Criminology at the University of Colorado, has catalogued at least 87 cases since 1974 in which a judge overrode a death recommendation. Of that number, in 19 cases, the jury had recommended death by a vote of 7-5. And that number appears to be growing over time. There were only six overrides on 7-5 death recommendations from 1974-1992. However, from 1992 to 2010, there were 13 such overrides. That also means that there were 68 overrides of death recommendations from

1974 in which more than 7 jurors voted for death!³ Professor Radelet's research makes clear that judges throughout the State of Florida have frequently overridden death recommendations based upon a wide variety of reasons and fact backgrounds.

Conclusion

The Defendant has been convicted now of two counts of first degree murder. The evidence introduced by the State shows that the Defendant killed the two victims after he discovered the two together in the bedroom. There was no evidence of a careful, planned event, but one that was done in a fit of rage and anger. Thus, the CCP aggravating factor has not been proven beyond a reasonable doubt. The evidence presented in the light most favorable to the State presents a picture in which the Defendant was jealous of anyone coming into Skyler's life. This strong mitigation, along with other mitigation, outweighs the remaining aggravating factors.

Moreover, the Defendant has been taking drugs and drinking throughout the day, and up until a couple of hours before the murders. Furthermore, The Defendant was on probation for a minor non-violent, third degree felony at the time of the murder. This Court has the authority to override the jury's 7-5 jury recommendation, and sentence the Defendant to two life sentences for the murder counts. Based on the totality of the circumstances, the Defendant would request that the Court impose life sentences for the two murder counts.

The Defendant reserves the right to present additional argument ore tenus at the *Spencer* hearing.

³ Michael L. Radelet & Michael Mello, *Death to Life Overrides: Saving the Resources of the Florida Supreme Court*, 20 FLORIDA STATE UNIVERSITY LAW REVIEW 195 (1992). Professor Radelet's provides an updated report on this article on his website at: <http://socsci.colorado.edu/SOC/People/faculty/radelet.html>

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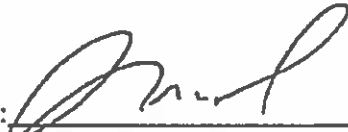
I certify that a copy hereof has been furnished to the State's Attorney by hand e-mail
on March 31, 2011 to:

Jacquelyn Roys

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Respectfully submitted,

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