

APPLICATION FOR NOMINATION TO THE
COURT

Redacted

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

DATE: November 15, 2017 Florida Bar No.: 0302831

GENERAL: Social Security No.: [REDACTED]

1. Name Eric A. Latinsky E-mail: elatinsky@latinskylaw.com

Date Admitted to Practice in Florida: 9/22/1980

Date Admitted to Practice in other States: N.A

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

Self employed attorney in private practice.

3. Business address: 1206 So. Ridgewood Ave

City Daytona Beach County Volusia State Fl. ZIP 32114

Telephone (386) 257-5555 FAX (386) 252-5713

4. Residential address: [REDACTED]

City Daytona Beach County Volusia State Fl. ZIP [REDACTED]

Since 1990 Telephone (386) [REDACTED] cell

5. Place of birth: New York, New York

Date of birth: December 30, 1956 Age: 61

6a. Length of residence in State of Florida: 46 years

6b. Are you a registered voter? Yes No

If so, in what county are you registered? Volusia

7. Marital status: married

If married: Spouse's name Doris Latinsky

Date of marriage 4/29/1989

Spouse's occupation Licensed Massage Therapist (retired)

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.

Peggy Pardue (deceased) Divorced Volusia County Florida; 1983; Case No: 83-2971 CA- Final Judgment 8/27/1984

8. Children

<i>Name(s)</i>	<i>Age(s)</i>	<i>Occupation(s)</i>	<i>Residential address(es)</i>
Andrew Latinsky	29	PHD program, FSU	5771 Whitehill Lane; Tallahassee, Fl.
Ethan Latinsky	27	CPA, Financial Advisor, New York Life	10710 Wingate Drive; Tampa, Fl
Joshua Pardue	35	Investments, commercial real estate,	101 S. 12 th Street #102; Tampa Fl

9. Military Service (including Reserves)

<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
N.A.			
Rank at time of discharge	_____	Type of discharge	_____
Awards or citations _____			
<i>Service</i>	<i>Branch</i>	<i>Highest Rank</i>	<i>Dates</i>
Rank at time of discharge	_____	Type of discharge	_____
Awards or citations _____			

HEALTH:

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

No

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

Yes No

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

Mental Health Counselor.]

Please describe such treatment or diagnosis.

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

- Experiencing periods of no sleep for 2 or 3 nights
- Experiencing periods of hyperactivity
- Spending money profusely with extremely poor judgment
- Suffered from extreme loss of appetite
- Issuing checks without sufficient funds
- Defaulting on a loan
- Experiencing frequent mood swings
- Uncontrollable tiredness
- Falling asleep without warning in the middle of an activity

Yes No

If yes, please explain.

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

Yes No

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

Yes No

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

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

No

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

No

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

No

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

No

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

No

EDUCATION:

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

<i>Schools</i>	<i>Class Standing</i>	<i>Dates of Attendance</i>	<i>Degree</i>
Lindsay Place High School; Pointe Claire, Quebec		1969-1970	N.A
South Plantation High School		1970-1973	H.S. Diploma
Univ. of Florida		1973-1976	B.S in Business Administration
Univ. of Florida; law school		1976-1979	Juris Doctor

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

Bachelor of Science in Accounting with honors; Beta Alpha Psi (accounting honor society), Phi Kappa Phi (honor society).

NON-LEGAL EMPLOYMENT:

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

<i>Date</i>	<i>Position</i>	<i>Employer</i>	<i>Address</i>
None			

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.

Fl. Bar 9/22/1980

Federal Middle District of Florida 5/15/1981

U.S Court of Appeals for the 11th Circuit 10/1/1981 (May be expired I haven't appeared in 11th Circuit for many years).

United States Supreme Court 12/9/1985

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>
Associate	Gary Smigiel P.A	533 Seabreeze, Daytona Beach	1980-1982
Associate	Richard L. Wilson, P.A	Orlando and Ormond Beach	1982-1985
Solo Practice	Eric A. Latinsky, Attorney	1206 So. Ridgewood, Daytona Beach	1985 -April 2013
Additional information	see 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 represent litigants in criminal, civil, appellate and administrative matters. The majority of my criminal cases are in County Court. I frequently represent people regarding various civil disputes. I have done a lot of DUI/traffic related cases including numerous drivers license reviews and Petitions for Certiorari. Due to the general nature of my practice I have also represented citizens at administrative proceedings such as code enforcement. I have represented people in appellate proceedings from Circuit Court to the Fl. Supreme Court.

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	_____ 46 %
Federal Trial	_____ %	Criminal	_____ 46 %
Federal Other	_____ %	Family	_____ 5 %
State Appellate	_____ 10 %	Probate	_____ 3 %
State Trial	_____ 70 %	Other	_____ %
State Administrative	_____ 20 %		
State Other	_____ %		
	_____ %		
TOTAL	_____ 100 %	TOTAL	_____ 100 %

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

Jury?	_____ 50+ _____	Non-jury?	_____ 50+ _____
Arbitration?	_____ 2 _____	Administrative Bodies?	_____ 50+ _____

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).

Merritt v. Florida Rock and Tank Lines ; civil jury trial 2003 3228CICI Francis Carroll, Esq. Current telephone number at Volusia County Legal 386-736-5950 ;

Dean v. Jackson 2006 30167 CICI; jury trial civil; Lester Lewis, Esq. 386-226-8817

Amdetech v. Heiser; circuit civil; non-jury trial 2010 20890 CINS , Benjamin Steinberg, Esq. and Mark Avera, Esq. for Plaintiffs,352-372-9999

Annatone v. Oddo 2011-33287 COCI; business eviction, non-jury trial; Michael Olshefski, Esq. 386- 253-0023

State v. Sharlow; 2005 032281 MMAES; Misdemeanor jury trial ; ASA Michael Willard, Esq. 386-239-7710

State v. Harrington ; 2013 312223 MMDB Misdemeanor jury trial; ASA Maria Indelicato, Esq. 386-239-7710

- 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).

Salmi v. Black 2016-30529 CICI 32 James Evans, Esq. 386-226-8036

Moran v. Port Orange 2015 30943 CICI , Scott Pendley Esq. 407-422-4310

Sharp v. McCoy 2014 1443 CIDL , George Pappas, Esq. 386 238-0350

Depart of Revenue and Hester v. Hester 2016 32400 FMCI, Charles Ruppel, Esq. for DOR 386-239-5161; Barry Hughes, Esq. for M. Hester 386-788-9667

State v. Bradford 2017 303205 MMDB; misdemeanor, resolved by Motion to Suppress, ASA Jeffrey Berman, Esq. 386-239-7710.

I also file Petitions for Certiorari; most recent was Bremer v. DHSMV 2016 31515 CICI Counsel for Dhmv until recently was Jason Helfant, Esq. current # 561-635-8772 .

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

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

- 27e. During the last five years, if your practice was substantially personal injury, what percentage of your work was in representation of plaintiffs? 90% Defendants? 10%
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.

Earlier in my career I did a lot more trials including criminal (jury trial), traffic citations and ordinance violations (mostly non-jury). As time progressed less cases proceeded to trial and most criminal cases were resolved by pleas and civil cases by settlements. When I went to work with Damore, Delgado the frequency of my court appearances decreased.

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.

None. I have done arbitrations prior to the last 5 years.

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.

Dep't of Highway Safety & Motor Vehicles v. Pelham, 979 So. 2d 304, 307 (Fla. 5th DCA 2008) rev. denied Florida Dep't of Highway Safety & Motor Vehicles v. Pelham, 984 So. 2d 519 (Fla. 2008) see attached;

Futch v. Florida Dep't of Highway Safety & Motor Vehicles, 189 So. 3d 131(Fla. 2016) see attached

Lindsey as Personal Representative of Jessica Lindsey, a minor vs. Wal-Mart Stores, Inc., d/b/a Sam's Club, Weslow, Inc. and Jump King Inc., 93-32748 CICI- trampoline case- see attached;

DelPercio and Moore v. City of Daytona Beach, 449 So.2d 323 (Fla. 5th DCA 1984) reversed, 476 So. 2d 197 (Fla. 1985) see attached;

State, Dep't of Highway Safety & Motor Vehicles v. Meck, 468 So. 2d 993, 994 (Fla. 5th DCA 1984) rev. denied 469 So. 2d 748 (Fla. 1985) see attached;

State v. Milo, 596 So. 2d 722 (Fla. 5th DCA 1992) see attached;

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

Attached is the Response to Petition for Writ of Certiorari in the Fifth District Court of Appeal in Pelham which I researched and wrote.

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.

I have not run for election. I have previously filed an application for Nomination to a Judicial Position.

32b. List any prior quasi-judicial service:

<i>Dates</i>	<i>Name of Agency</i>	<i>Position Held</i>
none		

Types of issues heard:

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

No

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

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

BUSINESS INVOLVEMENT:

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

Eric A. Latinsky, P.L. : I utilize this entity to operate my law practice. I would most likely close the entity if I was appointed.

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

No

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

Income from rental house; also we have rentals at our building at 1206 So. Ridgewood

I own the property in common with (2/3-1/3) with attorney Robert Robins

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.

No

MISCELLANEOUS:

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

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

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

Where convicted? _____ Date of Conviction: _____

- 36a. Have you ever been sued by a client? If so, give particulars including name of client, date suit filed, court, case number and disposition.
- No
- 36b. Has any lawsuit to your knowledge been filed alleging malpractice as a result of action or inaction on your part?
- No
- 36c. Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the amounts involved.
- No
- 37a. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you?
- 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, see attached.
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.
- Yes, once. See attached.
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. I have paid a late charge.
- 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.
No
45. List any honors, prizes or awards you have received. Give dates.
46. List and describe any speeches or lectures you have given.
Spoke at a seminar for public defenders about administrative drivers license suspensions; also did a presentation at Volusia branch of Fl. Association Criminal Defense lawyers on speeding citations.
47. Do you have a Martindale-Hubbell rating? Yes If so, what is it? ___ No
Not to my knowledge.

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.
Fl Bar, Federal Middle District of Florida; 11th Circuit Court of Appeal, United States Supreme Court (as previously listed), Member of Volusia Association of Criminal Defense Lawyers and Florida Association for Criminal Defense lawyers for over 10 years, Member Volusia Civil Trial Lawyers Association for 6 years.
- 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.
Previously Active in Cuong Nhu Karate Association and helped found Horizon School in Daytona Beach in the 1970's and 1980's. Served on board of directors; Port Orange Soccer Club President 2006-2007, Vice President 2003-2005; director 1999-2003.

Yoshukai Karate, Port Orange Ymca; 2008-2010.

Volusia County DUI Task Force (Facdl representative 2009-2010),

Serenity House (AA) volunteer director in 1980's; also related Club Yana.

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

Have an antique car (1963 Falcon Futura Convertible); like to golf, jog. Have coached youth soccer (multiple teams) last time was 2015; Former President Port Orange Soccer Club (also vice-president, director, team manager etc). Coached youth baseball in South Daytona. Assistant coach youth basketball.

- 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.

The most time consuming pro bono work I do is on appellate cases however I have always done pro bono work for citizens who cannot afford to pay and also for some organizations. For example, I did not charge Pelham, or Futch for their appeals, see question, 30. A time consuming case I recently did is Williams v. State, 167 So. 3d 483, 485 (Fla. 5th DCA 2015) ___ So. 3rd ___ (Fla. Nov. 9, 2016) on remand Williams v. State, 210 So. 3d 774 (Fla. 5th DCA 2017). In Williams I did the briefs and oral argument in the Fifth District (initial and on remand) and Attorney Delgado and I worked together on the Supreme Court pleadings. A more detailed list of pro bono is attached.

SUPPLEMENTAL INFORMATION:

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

Appellate law, Family law, Probate, Brady-Giglio, DUI -Blood Breath and Tears, Traveler cases and general survey of law.

- 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?

Talked at a seminar for local public defenders on administrative drivers license issues, also did an informal presentation to local criminal defense lawyers on issues pertaining to speeding tickets.

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

I was a coach, team manager, referee and director for the Port Orange Soccer Club (and other sports). We had to deal with a lot of issues and disputes. I learned to deal with the public and specifically there disputes and complaints in a proper manner. I

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

position.

I truly find the United States Constitution and how the framers set parameters which control how we address legal issues and disputed today fascinating. I have broad based experience in criminal and civil issues and also appellate issues. I have a lot of experience in traffic court and county court.

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.

My last submission was an application for the Volusia County Court in 2011 also applied in 2010.

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

I have done appellate work fairly recently which is not listed, see e.g State v. Clements, 2016 10014APCC- Circuit Court Volusia County (opposing counsel ASA David Cromartie, Esq; 386-239-7710. I have also represented clients in multiple injunction cases. I have represented banks at mediations. I feel like the fact that I have experience in many areas of law would be helpful. I also have experience in dealing with the public due to my role as director/president of the Port Orange Soccer Club and also as a referee. In addition to being a lawyer since 1980 I have successfully raised three children. I would like to be able to continue to assist our judiciary as a senior judge after I reach age 70.

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) Aaron Delgado, Esq., 227 Seabreeze Blvd; Daytona Beach; 255-1400
- 2) Gerard Keating, Esq., PO Box 1501, Daytona Beach; Cell 386-405-1911
- 3) Robert Robins, Esq., 1206 So. Ridgewood Ave, Daytona Beach 386-252-5212
- 4) Don Dempsey, Esq., 120 E. Rich Ave ; Deland, 386-738-1159
- 4) David Ege, Esq., 1314 Main St; #5 Cross Plains, Wisconsin; 386-566-2982
- 5) Bill Hathaway, Esq., 500 Canal St., New Smyrna Beach 386-423- 5504
- 6) ASA David Cromartie, Esq., 251 N. Ridgewood Ave; 386-239- 7710
- 7) Michael Lambert, Esq., 428 N. Halifax Ave, Daytona Beach, 386-255-0464
- 8) John Hosey c/o Caton Hosey insurance, 3732 S. Nova Road, Port Orange, 767-3161
- 9) Eric V. Gill, Esq., 4393 S. Ridgewood Ave #1; Port Orange, 386-788-1776
- 10) Jack Goldey D.D.S , 3943 Nova Road, Port Orange, 386- 761-9440

CERTIFICATE

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

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

Dated this 15 day of November, 2017.

Eric A. Letinsky 
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	70,000. approx		
List Last 3 years	<u>88,500.</u>	<u>85,995</u>	<u>105,787</u>

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	60,000. approx.		
List Last 3 years	<u>75,130.</u>	<u>72,692</u>	<u>87,605</u>

3. State the gross amount of income or losses incurred (before deducting expenses or taxes) you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

Current year to date	28,000. approx.		
List Last 3 years	<u>23,120. rents</u>	<u>18,685. rents</u>	<u>21,239. rents</u>

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

Current year to date	0 approx.		
List Last 3 years	<u>229.</u>	<u>-17,323</u>	<u>-607</u>

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

PART A – NET WORTH

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

My net worth as of Nov. 15, 2017 was \$1,707,000.

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 \$ 30,000

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
3116 So. Peninsula Drive, residence	600,000
1206 So. Ridgewood Ave (office) (own 2/3) including equipment	145,000
1245 Scottsdale (rental house)	100,000
Retirement Account-Keogh	702,000.
Sun trust- personal accounts (2)	130,000

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT

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

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

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

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.


 SIGNATURE

STATE OF FLORIDA

COUNTY OF Florida

Sworn to (or affirmed) and subscribed before me this 15th day of November 20 17 by Eric A. Latinsky


 (Signature of Notary Public—State of Florida)

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

Personally Known OR Produced Identification

Type of Identification Produced X


 Kathleen Mary Clayton
 NOTARY PUBLIC
 STATE OF FLORIDA
 Commission Expires 6/30/2020

INSTRUCTIONS FOR COMPLETING FORM 6:

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

PART A – NET WORTH

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

To total the value of your assets, add:

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

To total the amount of your liabilities, add:

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

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

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

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

How to Identify or Describe the Asset:

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

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

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

How to Value Assets:

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

PART C—LIABILITIES

LIABILITIES IN EXCESS OF \$1,000:

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

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

How to Determine the Amount of a Liability:

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

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

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

Examples:

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

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

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

PART D – INCOME

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

PRIMARY SOURCES OF INCOME:

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

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

Examples:

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

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

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

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

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

SECONDARY SOURCE OF INCOME:

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

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

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

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

Examples:

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

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

PART E – INTERESTS IN SPECIFIED BUSINESS

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

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

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

JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: November 15, 2017

JNC Submitting To: Seventh Judicial Circuit Nominating Commission

Name (please print): Eric A. Latinsky

Current Occupation: Lawyer

Telephone Number: 386-257-5555 Attorney No.: 302831

Gender (check one): Male Female

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

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of
Applicant:

Eric A. Latinsky

Signature of Applicant:



Date: 11/15/2017

Additional pages attached to respond fully to questions:

- 21. Law practice;
- 30. Significant cases;
- 31. Writing sample;
- 38. Party to any lawsuit;
- 39. Breach of Ethics;

Part D- Income- 2016 Tax Return is attached.

Question 21:

Associate, Damore, Delgado, Romanik & Rawlins: 227 Seabreeze Blvd,
Daytona Beach, April 2013-July 2017

Solo Practice, Eric A. Latinsky, P.L. 1206 So. Ridgewood Ave, Daytona
Beach,
July 2017- to date

Also interned at Public Defenders Office in West Palm Beach while in law
school.

Question 30:

The following are six cases I personally litigated and most were appealed. I tend to think the appellate rulings are more significant because they effect a wider number of citizens.

1) Pelham v. DHSMV:

Circuit Court Judge Rowe; 2007 30359 CICI ; Case proceeded to Fifth District. Heather Rose Cramer for Dhsmv. Current number per Fl. Bar: 561-714-3351

Dep't of Highway Safety & Motor Vehicles v. Pelham, 979 So. 2d 304, 307 (Fla. 5th DCA 2008) rev. denied *Florida Dep't of Highway Safety & Motor Vehicles v. Pelham*, 984 So. 2d 519 (Fla. 2008) the Fifth District issued a ruling which stated in part:

Section 322.2615 does not establish any obligation on the part of a driver to take a test upon the request of law enforcement; it only establishes consequences for refusal. Section 316.1932 is what creates and defines the scope of the obligation, and its mandate is certain: the test must be incident to a lawful arrest. These statutes cannot be construed in isolation, therefore, as Petitioner urges, because they are interdependent. Instead, we must consider them *in pari materia*. See *Ferguson v. State*, 377 So.2d 709, 710 (Fla.1979) (basic rule of statutory construction that statutes which relate to the same or to a closely related subject or object are regarded as *in pari materia* and should be construed together and compared with each other). When we do, the conclusion is inescapable that a suspension may not be predicated on refusal to take a test that is the product of a unlawful arrest.

Emphasis supplied;

This ruling required the DHSMV to provide a more meaningful hearing regarding a driver's license suspension/revocation which is very important to litigants. Pelham was eventually approved in *Florida Dep't of Highway Safety & Motor Vehicles v. Hernandez*, 74 So. 3d 1070, 1080 (Fla. 2011). Mr. Pelham was one of my soccer players and I did the appellate work pro bono because the issue was important. While not particularly significant to anyone but Colston Pelham the criminal charge was nolle prossed in case number 2006 053940 MMAES (Judge Schumann presiding) as the arrest was clearly unlawful.

2) *Futch v. Florida Dep't of Highway Safety & Motor Vehicles*, 189 So. 3d 131(Fla. 2016)

Circuit Court Judge William Parsons. Case proceeded through Fifth District and to Fl. Supreme Court;

Jason Helfant 561-635-8772 for Dhsmv:

In *Dep't of Highway Safety & Motor Vehicles v. Futch*, 142 So. 3d 910, 911 (Fla. 5th DCA

2014), decision quashed sub nom. 189 So. 3d 131 (Fla. 2016) circuit court Judge Parsons wrote an excellent decision, see *Futch v. State, DHSMV* 21 Fla. L. Wkly. Supp. 16b (7th Cir. Ct. 2013) that found that due process considerations should be respected regarding a driver's license revocation. This particular case involved a commercial driver license. The case was significant because the Fl. Supreme Court reinstated the circuit court ruling which discussed the due process issues and directed that Futch's cdl be reinstated without undue delay. Shortly thereafter in *Wiggins v. Florida Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1171 (Fla. 2017) the Fl. Supreme Court stated "However, this Court and others have voiced concerns with fairness and due process specifically in the context of hearings held before Department hearing officers under section 322.2615". I believe that litigating cases including *Pelham* and *Futch* helped contribute to the Fl. Supreme Court analysis in *Hernandez, supra*, and *Wiggins*. It should be noted that it took over two years to complete the litigation to have Futch's 12 month suspension set aside and that a stay pending appeal was and is not available.

3) *Lindsey as Personal Representative of Jessica Lindsey, a minor vs. Wal-Mart Stores, Inc., d/b/a Sam's Club, Weslow, Inc. and Jump King Inc.*, 93-32748 CICI (see attached letters from CNBC and Consumer Products Safety Commission) Judge Richard Orfinger; Opposing Attorney, Robert Broach.

My clients, Lisa and Ron Lindsey were the parents of the three year Jessica Lindsey who tragically died when she fell through the spring of a Jump-King trampoline sold by Sam's Club. Her Santa Clause necklace got caught in the spring. By coincidence, 14-year-old Chad Ege, son of my friend, attorney, David D. Ege, had seriously injured his arm on a backyard ASR trampoline. Representatives of ASR provided us information about meetings and documents submitted to the ASTM committee on trampolines which clarified that providing ladders for trampolines cause great danger to unsupervised small children, such as Jessica, who otherwise could not climb onto the trampoline. It is my belief that this claim, in combination with others, helped modify the trampolines sold for home use. While home trampolines are still unreasonably dangerous the sale of ladders is less common and most trampolines have netting and additional padding to decrease the dangers.

4) *DelPercio and Moore v. City of Daytona Beach*, 449 So.2d 323 (Fla. 5th DCA 1984) reversed, 476 So. 2d 197 (Fla. 1985).

Commenced in County Court, Judge W. Clayton (deceased); opposing counsel Reginald Moore (former city attorney for Daytona Beach) (386) 258-0305 and Frank Gummy, III (former city attorney for Daytona Beach), 210 Sans Avenue, New Smyrna Beach, Florida 32168 (386) 410-2620;

During the 1980's I was an associate of Richard L. Wilson, P. A.. Richard and I represented multiple bars which desired to sell alcohol and present "exotic" dancing. The main issue was how much exposure was entitled to protection under the United States and Florida Constitutions. Richard L. Wilson was lead counsel in the trial court and I was lead counsel in the Fifth District Court of Appeal as Richard was seriously injured in an airplane crash. In 1986 the Florida Supreme Court issued a significant ruling as it was a case of first impression by our Florida Supreme Court

as to the balance between First Amendment freedoms, which are also protected under Article I, section 4 of the Florida Constitution, and regulation of the sale and consumption of alcohol under the 21st Amendment. The Moore portion of the ruling is also significant as the Fl. Supreme Court found that any judicially imposed penalty which discourages the assertion of the right to plead not guilty and proceed to trial is "patently unconstitutional".

5) *State v. Milo*, 596 So. 2d 722 (Fla. 5th DCA 1992).

Judge Robert Miller in circuit court. Affirmed by Fifth District. Bonnie Jean Parrish, Assistant Attorney General.

In *Milo* the circuit court found that based upon the willful destruction of evidence a criminal charge should be dismissed (again on due process grounds). *Milo* is one of the only published cases District Court of Appeals decisions in Florida where dismissal of a criminal charge based upon destruction of evidence was approved as a sanction. This is significant as all parties must be encouraged to respect the law and concepts of fundamental fairness and not to merely attempt to further the position they prefer.

6) *State, Dep't of Highway Safety & Motor Vehicles v. Meck*, 468 So. 2d 993, 994 (Fla. 5th DCA 1984) rev. denied 469 So. 2d 748 (Fla. 1985). Judge Nelson in circuit court. Certiorari Denied by Fifth District. Suzanne Printy for Dhsnv.

In *State, Dep't of Highway Safety & Motor Vehicles v. Meck*, 468 So. 2d 993, 994 (Fla. 5th DCA 1984) rev. denied 469 So. 2d 748 (Fla. 1985) the Fifth District agreed that the Habitual Traffic Offender statute was ambiguous as applied to a non-moving, (non-pointable) violations and that the circuit court ruling should stand. This was significant as multiple motorists across Florida were being suspended even though they didn't have the "fifteen convictions for moving traffic offenses for which points may be assessed". This is important as due process considerations require that an ambiguous penal statute be strictly construed in an administrative setting.

 KeyCite Yellow Flag - Negative Treatment
Disagreed With by Department of Highway Safety and Motor Vehicles
v. Escobio, Fla.App. 2 Dist., February 20, 2009

979 So.2d 304
District Court of Appeal of Florida,
Fifth District.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR
VEHICLES, Petitioner,
v.
Jesse C. PELHAM, Respondent.

No. 5D07-2737.
|
March 14, 2008.

Synopsis

Background: Motorist whose drivers license was suspended based on his refusal to take a breath test following his arrest for driving under the influence (DUI) filed petition for writ of certiorari seeking review of an administrative hearing officer's conclusion that he could not consider the lawfulness of motorist's arrest in reviewing the license suspension. The Circuit Court, Volusia County, [Randell H. Rowe, III, J.](#), granted the petition and quashed the hearing officer's ruling. Department of Highway Safety and Motor Vehicles filed petition for certiorari review.

Holdings: The District Court of Appeal, [Torpj, J.](#), held that:

[1] license suspension could not be predicated on refusal to take a breath test following an unlawful arrest, and

[2] hearing officer had authority to consider the lawfulness of motorist's arrest.

Petition denied, questions certified.

West Headnotes (5)

[1] [Automobiles](#)

↳ [Judicial Remedies and Review in General](#)

Department of Highway Safety and Motor Vehicles, which appealed trial court's order quashing a hearing officer's ruling upholding the suspension of motorist's drivers license, failed to preserve for appellate review its argument that issue of lawfulness of motorist's arrest for driving under the influence (DUI) should be remanded to hearing officer, where Department did not timely assert such argument in the trial court.

3 Cases that cite this headnote

[2] [Automobiles](#)

↳ [Grounds or Cause;Necessity for Arrest](#)

Under Implied Consent Law, a lawful arrest must precede the administration of a breath test. [West's F.S.A. § 316.1932.](#)

1 Cases that cite this headnote

[3] **Automobiles**

↪ Refusal to Take Test

An individual does not violate the Implied Consent Law when he or she refuses to take a breath test that is not incidental to a lawful arrest. West's F.S.A. § 316.1932.

4 Cases that cite this headnote

[4] **Automobiles**

↪ Refusal to Take Test

Statute permitting a police officer to suspend a motorist's drivers license for refusal to submit to a lawful breath test did not allow suspension to be predicated on refusal to take a breath test following an unlawful arrest, even though statute was amended to omit mention of a motorist's arrest or its lawfulness; obligation to take the breath test arose from Implied Consent Law, which required a lawful arrest. West's F.S.A. §§ 316.1932, 322.2615.

6 Cases that cite this headnote

[5] **Automobiles**

↪ Administrative Procedure in General

Administrative hearing officer who reviewed the suspension of motorist's drivers license after motorist refused to take breath test following his arrest for driving under the influence (DUI)

had authority to consider the lawfulness of motorist's arrest, even though statute providing for such administrative review did not include lawfulness of arrest as one of the issues within the scope of review; hearing officer was specifically authorized to consider whether the motorist refused to submit to a lawful test which, under Implied Consent Law, was required to be based on a lawful arrest. West's F.S.A. §§ 316.1932, 322.2615(7).

8 Cases that cite this headnote

Attorneys and Law Firms

*305 Judson M. Chapman and Heather Rose Cramer, Lake Worth, for Petitioner.

Eric A. Latinsky, Daytona Beach, for Respondent.

Opinion

TORPY, J.

After Respondent's driver's license was suspended for refusal to take a breath test, he sought formal review before a Department of Highway Safety and Motor Vehicles (DHSMV) hearing officer. Respondent contended that the suspension should be invalidated because the detention preceding his arrest had been unlawful. The hearing officer refused to consider the lawfulness of Respondent's arrest, concluding that

recent amendments to the statutory review procedure precluded him from addressing those issues. Respondent thereafter sought certiorari review in the Circuit Court, which granted his petition and quashed the hearing officer's ruling. Petitioner now seeks review of the Circuit Court's order. We conclude that the lawfulness of Respondent's arrest was appropriately within the hearing officer's scope of review and that the Circuit Court properly quashed the order of the hearing officer. Accordingly, we deny the petition.

[1] A detailed exposition of the facts is unnecessary to the legal issue we confront. Suffice it to say that Respondent was in his car on private property when he was approached by police officers who ordered him to exit. When Respondent refused, police officers forcibly removed him from the car. The officers then became suspicious that Respondent was under the influence of alcohol and requested that he perform field sobriety tests. He refused, and was arrested for DUI. Later, he refused to take a breath test. Although the hearing officer declined to address the lawfulness of the police actions in entering upon private property and then forcibly removing Respondent from his car, the lower court concluded that this action constituted an unlawful seizure of his person. Petitioner does not contend otherwise but instead maintains that the lawfulness of the police action is not legally relevant in an administrative proceeding to suspend a driver's license.¹

[2] [3] The obligation to submit to testing for alcohol and chemical substance

impairment emanates from [section 316.1932, Florida Statutes \(2007\)](#). This statute, sometimes referred to as the Implied Consent Law, provides that any person who accepts the privilege of operating a motor vehicle in this state is deemed to consent to testing to determine the "alcoholic content of his or her blood or breath *if the person is lawfully arrested*" [§ 316.1932\(1\)\(a\)1.a., Fla. Stat. \(2007\)](#) (emphasis added). The statute further states that the test "must be incidental to a lawful arrest and administered at the request of a law enforcement officer...." *Id.* Thus, a lawful arrest must precede the [§306](#) administration of the breath test. *State, Dept of Highway Safety & Motor Vehicles v. Whitley*, [846 So.2d 1163, 1167 \(Fla. 5th DCA 2003\)](#). It necessarily follows that an individual does not violate the Implied Consent Law when he or she refuses to take a test that is not incidental to a lawful arrest.

Although our analysis might logically end here because this is a case where the refusal followed an unlawful arrest, Petitioner contends that the refusal may nevertheless form the basis for the suspension of Respondent's license because of the 2006 amendments to [section 322.2615, Florida Statutes \(2007\)](#). As a result of these amendments, Petitioner urges that the legislature "negated" lawfulness of the arrest as a precondition to the administrative suspension of one's license. Our resolution of this case thus requires us to consider the effect of [section 322.2615](#), as amended.

Among other things, [section 322.2615](#) authorizes a law enforcement officer on

behalf of DHSMV to suspend the driver's license of any person who refuses to submit to a "lawful" breath test. § 322.2615(1)(a) and (1)(b) 1.a., Fla. Stat. (2007)² (emphasis added). Upon such suspension, the statute entitles the driver to formal review of the validity of the suspension before a DHSMV hearing official. In pertinent part, the formal review portion of the statute provides:

In a formal review hearing ... the hearing officer shall determine ... whether sufficient cause exists to *sustain, amend or invalidate* the suspension. The scope of review *shall be limited to the following issues:*

....

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
2. Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
3. Whether the person whose license was suspended was told that if he or she

refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

§ 322.2615(7), Fla. Stat. (2007) (emphasis added).

[4] In the prior version of the statute, the hearing officer's scope of review included the additional issue of "whether the person was placed under lawful arrest for a violation of s. 316.193." § 322.2615(7)(b)2., Fla. Stat. (2005). Because the legislature deleted this statutory language and made other deletions in the amended statute, Petitioner contends that the lawfulness of the arrest is no longer an issue in the suspension process. Respondent counters that the text of the amended statute does not support this construction, especially when considered *in pari materia* with section 316.1932. Petitioner responds that sections 316.1932 and 322.2615 should be read in isolation because they are intended to address different issues. *307 Section 316.1932, Petitioner contends, is a criminal statute, while section 322.2615 is a statute that authorizes administrative sanctions.³ Petitioner also relies upon a house staff report which states that the amendment "negate[s] the need" for the DHSMV to show "that a lawful arrest for a violation of s. 316.193, F.S. occurred" in an administrative license suspension proceeding. Fla. H.R. Comm. on Transp., HB 7079 (2006) Staff Analysis 25 (Apr. 26, 2006). We agree with Respondent.

Section 322.2615 does not establish any obligation on the part of a driver to take a test upon the request of law enforcement; it only establishes consequences for refusal. Section 316.1932 is what creates and defines the scope of the obligation, and its mandate is certain: the test must be incident to a lawful arrest. These statutes cannot be construed in isolation, therefore, as Petitioner urges, because they are interdependent. Instead, we must consider them *in pari materia*. See *Ferguson v. State*, 377 So.2d 709, 710 (Fla.1979) (basic rule of statutory construction that statutes which relate to the same or to a closely related subject or object are regarded as *in pari materia* and should be construed together and compared with each other). When we do, the conclusion is inescapable that a suspension may not be predicated on refusal to take a test that is the product of an unlawful arrest.

This conclusion is supported by the fact that section 322.2615 only permits suspension “pursuant to” a “lawful” test, based on a statutory form of notice, which must state that the refusal involves a “lawful” test. § 322.2615(1)(a) and (1)(b)1.a., Fla. Stat. (2007). There is no definition of what constitutes a “lawful” test, so it is necessary to examine the entire statutory scheme for breath testing, and in particular section 316.1932, to determine what is lawful. Under this statutory scheme, clearly, a “lawful” test is, at a minimum, one that drivers are required to take pursuant to section 316.1932, which must be incident to a lawful arrest.

We have not overlooked the legislative staff report but are reluctant to accept this staff analysis as evidence of what the legislature intended by making deletions in the statute. The staff analysis itself contains a caveat that it should not be interpreted as an expression of the “intent or official position of the bill sponsor or House of Representatives.” Fla. H.R. Comm. on Transp., HB 7079 (2006) Staff Analysis 25 (Apr. 26, 2006). This is for good reason. The analysis is not written by legislators, nor is there any evidence that legislators voting on the bill read the analysis or agreed with its conclusions. See *Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So.2d 360, 375-76 (Fla.2005) (Cantero, J., concurring in part and dissenting in part) (discussing why staff analysis is not reliable evidence of legislative intent). Even were we to accept the analysis as evidence of legislative intent, however, it is not our function to rewrite the statutory scheme to do what the legislature failed to accomplish expressly.

[5] Nor have we overlooked the language of subsection 322.2615(7), which purports to “limit” the scope of review to three issues. The first issue, probable cause, is a concept that is often inextricably intertwined with the lawfulness of the detention as it is in this case. *Indialantic Police Dep’t v. Zimmerman*, 677 So.2d 1307, 1309 (Fla. 5th DCA 1996). The second issue directs the hearing officer to *308 address whether the driver “refused to submit to *any such test*.” (Emphasis added). § 322.2615(7)(b)2., Fla. Stat. We construe “any such test” to refer to the “lawful” test that the suspension must be “pursuant to.” The final issue, the

provision of notice, relates to the form of notice mandated by the same statute, which too refers to a “lawful” test. Therefore, we do not construe this so-called limitation on the hearing officer’s scope of review to nullify the statute’s directive that the hearing officer “determine ... whether sufficient cause exists to sustain, amend, or invalidate the suspension.” § 322.2615(7), Fla. Stat. (2007). Under the statutory scheme, the lawfulness of the suspension is central to any determination that there is “sufficient cause” to “sustain” it.

We remain mindful of our obligation to effectuate legislative intent when we are given clear indication of what is intended. If the legislature intends to authorize DHSMV to suspend a driver’s license for refusal to take a test, without regard to the validity of the police action preceding the request, then it should say so expressly.⁴

Because we deem this to be an issue of great public importance, we certify the following questions to our high court:

CAN THE DHSMV SUSPEND A DRIVER'S LICENSE FOR REFUSAL TO SUBMIT TO A BREATH TEST, IF THE REFUSAL IS NOT INCIDENT TO A LAWFUL ARREST? IF NOT, IS A DHSMV HEARING OFFICER REQUIRED TO ADDRESS THE LAWFULNESS OF THE ARREST AS PART OF THE REVIEW PROCESS?

PETITION DENIED; QUESTIONS CERTIFIED.

PALMER, C.J., and PLEUS, J., concur.

All Citations

979 So.2d 304, 33 Fla. L. Weekly D765

Footnotes

- 1 Petitioner does argue alternatively that we should at least grant the petition to require the remand of the lawfulness issue to the hearing officer. Because Petitioner did not timely assert this argument in the lower court, we conclude that it was not preserved.
- 2 The statute provides that the suspension “shall be pursuant to, and the notice of suspension shall inform the driver ... [that] ... [t]he driver refused to submit to a lawful ... test....”
- 3 Though not material to our analysis, Petitioner does not explain its characterization of section 322.2615 as a criminal statute.
- 4 In light of our holding, we find it unnecessary to consider Respondent’s constitutional arguments.

984 So.2d 519 (Table)
Unpublished Disposition
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is currently available.

NOTICE: THIS OPINION HAS NOT
BEEN RELEASED FOR PUBLICATION
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UNTIL RELEASED, IT IS SUBJECT
TO REVISION OR WITHDRAWAL.

Supreme Court of Florida.

FLORIDA DEPARTMENT
OF HIGHWAY SAFETY AND
MOTOR VEHICLES, Petitioner(s)
v.
Jesse C. PELHAM, Respondent(s).

No. SC08-614.

|
May 19, 2008.

Opinion

*1 This cause having heretofore been submitted to the Court on Certified Great Public Importance pursuant to Article V, Section 3(b), Florida Constitution (1980), and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(v), and the Court having determined that it should decline to exercise jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R.App. P. 9.330(d).

WELLS, ANSTEAD, PARIENTE, and
BELL, JJ., concur.

LEWIS, C.J., dissents.

All Citations

984 So.2d 519 (Table), 2008 WL 2264489



2200 Fletcher Avenue
Fort Lee, NJ 07024
201 585-2622

August 25, 1997

Mr. Eric Latinsky
Attorney at Law
1206 South Ridgewood Avenue
Daytona Beach, Florida 32114

Dear Eric:

Greetings from CNBC! As promised, here is the tape on trampoline safety that we promised you. We got a huge response from our viewers, and hopefully our series will keep kids and adults off of them.


The information that you provided was just great and added a great deal to our report.

I am also returning the research kit that you had given us. It was very useful and saved us a lot of time.

We have also sent Lisa Lindsey a copy of the tape.

Jim Donovan sends his best, and we both thank you for your time and consideration....we couldn't have done it without you.

Regards,


Michelle Treacy
CNBC "Steals & Deals"
201-585-6348

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, DC 20207

FOR IMMEDIATE RELEASE
September 20, 2000
Release # 00-183

CPSC Consumer Hotline: (800) 638-2772
CPSC Media Contact: Kim Düllic, (301) 504-7058

CPSC Reports Sharp Rise in Trampoline Injuries *Olympic Debut of Sport Underscores Rising Popularity*

WASHINGTON, D.C. - CPSC today released a showing that hospital emergency room-treated trampoline injuries almost tripled in the last decade - from an estimated 37,500 in 1991 to almost 100,000 in 1999. Nearly two-thirds of the victims were children 6 to 14 years of age. About 15 percent of injuries involved young children under 6 years old. Since 1990, CPSC has received reports of 11 deaths related to trampoline use.

Trampolines have become increasingly popular in recent years. For the first time, trampoline gymnastics will be a featured sport at the Olympic Games in Sydney, Australia later this week. In 1998, an estimated 640,000 backyard trampolines were sold in the United States.

Most trips to the emergency room are the result of jumpers colliding with one another, falling on the trampoline springs or frame, falling or jumping off the trampoline, or attempting somersaults and stunts.

To reduce injuries, CPSC has worked with the industry to develop a new standard for trampolines, which went into effect in 1999. Four new requirements were added to make trampolines safer and alert consumers to potential dangers:

Padding must completely cover the metal frame, hooks, and all springs.

There must be a label on the trampoline box stating, trampolines over 20 inches tall are not recommended for children under 6 years of age.

Ladders cannot be sold with trampolines to prevent access by young children.

Warning label on the trampoline bed must alert consumers not to allow more than one person to jump at a time and to warn against somersaults that can cause paralysis and death.

"The Olympics could give the popularity of trampolines another bounce," said CPSC Chairman Ann Brown. "Unfortunately, the injuries have already reached Olympic proportions. The new safety standard along with taking precautions could help prevent many of these injuries."

The CPSC recommends the following safety tips:

- Always supervise children who use a trampoline.
- Allow only one person on the trampoline at a time.
- Do not allow somersaults.
- Do not allow the trampoline to be used without padding that completely covers the springs, hooks, and the frame.
- Place the trampoline away from structures and other play areas.
- Do not use a ladder with the trampoline because it provides unsupervised access by small children.

- Trampoline net enclosures can prevent injuries from falling off the trampoline.

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at www.cpsc.gov. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov

Question 31 - Writing SAMPLE.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,

Petitioner,

vs.

CASE NO.: 5D07-2737

JESSE C. PELHAM,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

COMES NOW the Respondent, JESSE C. PELHAM (hereinafter referred to as PELHAM), by and through the undersigned legal counsel, and files this Response to Petition for Writ of Certiorari filed by Petitioner, STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES (hereinafter referred to as DEPARTMENT), and states:

I. STATEMENT OF THE CASE AND FACTS:

Facts: Respondent respectfully suggests that Petitioner's Statement of the Case and of Facts omits facts which are necessary for meaningful review. PELHAM properly filed a Petition for Writ of Certiorari (A-92-99) (with appendix A-1-64) and a transcript (A-65-91a) in the Circuit Court which argued that the hearing and ruling

violated his right to procedural due process of law and/or failed to comply with the essential requirements of law and/or was not supported by competent, substantial evidence. PELHAM'S petition included the following issues:

A) The hearing officer improperly denied a well founded Motion to Recuse (the Motion to Recuse is A-41-52);

B) The hearing officer refused to consider PELHAM'S written Motion to Suppress and oral argument(s) that the stop and arrest were unlawful (A-72-76) (A-84-86) (A-88-90) (the Motion to Suppress is A-12-22);

C) The hearing officer refused to consider PELHAM'S Motion to Invalidate (A-70) due to Unconstitutionality as Applied (the Motion to Invalidate is A-39-40).

D) PELHAM'S Petition for Writ of Certiorari argued that there was a lack of competent substantial evidence to sustain a finding that Petitioner unlawfully refused a breath test.

Factually, the transcript of hearing (A-65-91) contains the following testimony:

Q Had you been drinking alcohol, Coleston (sic.)?

A No, sir. I was there to pick up a friend.

Q Had your friend been drinking alcohol?

A Yes, sir.

Q Now, at any point did the officer tell you that he wanted you to take a breath test?

A No, sir, not even at the station when I got there.

Q Did you ever decline to take a breath test?

A No, sir, I was never asked.

Q Did the officer give you a citation on November 10th?

A No, sir, I had to wait a long time to get that. We had to get it physically from the clerks at the courthouse. (Emphasis supplied)

(A-80, 81)

During closing counsel argued that his experience was that the officer always relied upon the documents over the testimony of a citizen but asked the hearing officer to find that PELHAM had told the truth. The hearing officer specifically stated "I believe the young man told the truth."

MR. LATINSKY: You also have Mr. Pelham's testimony. And I think it would be wrong for me to ignore that. My experience has been that the police officer's documents always seem to control in this forum over the testimony of a citizen. But Mr. Pelham has explained quite clearly what happened. He was put on the ground, cuffed and taken off. And the record is total (sic.) confusing.

So certainly you're free to say you know what in this instance I'm going to believe Mr. Pelham and I'm going to go ahead and invalidate this one. The documents are insufficient and Mr. Pelham seemed creditable and seemed to be telling the truth about what happened. And it all follows the officer apparently for some reason thought he could pull this man out of the car and cuff him and take him off. So thank you.

HEARING OFFICER: I don't have any problem with Mr. Pelham's testimony. I believe the young man told the truth. However, I'm governed just as you are by certain things. There are certain things that I can rule on. I appreciate your argument. I understand your argument. And if there is nothing else this will conclude our formal review. (Emphasis supplied)

(A-90)

The driver, JESSE COLSTON PELHAM, testified that his vehicle was in a vacant lot which did not have any "no trespassing" signs and that he had never been told he couldn't be on the lot (A-79). PELHAM was leaving when the officer stopped him (A-80). PELHAM denied drinking alcohol and/or refusing a breath test (A-80). Andrew Cospito testified and provided pictures (A-53-55) to establish that the lot did not have any "no trespassing" signs (A-76-79).

The DMV decision (A-1-4) notes that JESSE PELHAM testified (A-2) (the decision overlooks the fact that Cospito testified) and makes the following findings of fact:

Sergeant Peck observed Mr. Pelham in the driver seat of a motor vehicle with the engine running, put the vehicle in drive, then in reverse, in attempt to free the vehicle from being stuck. This event was on November 10, 2006.

Mr. Pelham refused to comply with the orders of Sergeant Peck. Sergeant Peck pilled (sic.) Mr. Pelham from the vehicle. Sergeant Peck detected an odor of an alcoholic beverage coming from his breath, noticed his speech was slurred, his eyes were glassy and he was unsteady on his feet.

Mr. Pelham refused to submit to the field sobriety exercises.

Sergeant Peck placed Mr. Pelham in custody and read him the Implied Consent Warning. Mr. Pelham refused to submit to a breath test.

(A-3)

The findings never stated that PELHAM was "arrested" either lawfully or unlawfully. In the Motion to Invalidate Due to Unconstitutionality as Applied (A-39-40), paragraph F alleges:

F) As applied, hearing officers tend to provide undue credibility to a sworn police report and summarily reject the testimony of the driver and or non-police lay witnesses. The hearing officer, as an employee of DHSMV, tends to be biased in favor of the police. (Emphasis supplied.)

(A-40)

As predicted by counsel in the motion (A-40) and the argument (A-90), PELHAM'S testimony was ignored.

The Circuit Court Order states:

A formal review hearing was conducted on January 16, 2007. The documentary evidence consisted of the notice of suspension, the Petitioner's driver's license, a citation, the charging affidavit, Sergeant Peck's refusal affidavit, and three pages of pictures submitted by the Petitioner. (Petition at A-2). The hearing officer denied the Petitioner's motion to suppress, motion of unconstitutionality, and motion of recusal. The Petitioner testified that signs warning against trespassing were absent from the area surrounding the "vacant or wooded lot" where Sergeant Peck encountered him. (Dkt. 4 at 15). The Petitioner further testified that, before Sergeant Peck encountered him, he had not been ordered to leave or

notified that his presence on the property was objectionable. (Dkt. 4 at 15-16). According to the Petitioner, he did not refuse to take a breath test because no one ever asked him to take one. (Dkt. 4 at 16-17). At the close of the hearing, the hearing officer stated, "I don't have any problem with Mr. Pelham's testimony. I believe the young man told the truth." (Dkt. 4 at 26). (Emphasis supplied)

(A-118, 119)

The Circuit Court found that:

Based on the facts as reported by Sergeant Peck, the arrest is tainted by a lack of articulable suspicion to stop the Petitioner. Although the record does not clearly reflect the location of the Petitioner's nonconsensual encounter with Sergeant Peck, it is undisputed that the Petitioner was on the private property of another. The record does not reflect any actual notice to the Petitioner against entering or remaining on the property – whether from a law enforcement officer, a landowner, or a “no trespassing” sign – prior to the time Sergeant Peck ordered the Petitioner to exit the Jeep. Further, no one had asked or directed the Petitioner to leave the property when Sergeant Peck pulled him from the Jeep. At that point, the Petitioner was indisputably stopped and in custody. See Poppo v. State, 626 So.2d 185, 188 (Fla. 1993). (Emphasis supplied)

(A-122)

and granted PELHAM'S petition without discussing the additional issues raised (A-117-123). PELHAM'S suspension commenced November 10, 2006 (A-5) and his restricted license expired January 3, 2007 (A-64). The suspension was stayed on or about September 18, 2007, after PELHAM had served over 10 months.

II. ARGUMENT:

THE CIRCUIT COURT APPLIED THE CORRECT LAW.

A) THE STANDARD:

To clarify the standard, in *State, DHSMV v. Whitley*, 846 So.2d 1163 (Fla. 5th DCA 2003) this Court stated:

When an appellate court reviews a decision rendered by a circuit court sitting in its appellate capacity, the appellate court must determine whether the circuit court afforded procedural due process to the litigants and whether the essential requirements of law were observed. *Ivey v. Allstate Ins. Co.*, 774 So.2d 679 (Fla. 2000); *Florida Power & Light Co. v. City of Dania*, 761 So.2d 1089 (Fla. 2000); *Department of Highway Safety & Motor Vehicles v. Perry*, 751 So.2d 1277 (Fla. 5th DCA 2000). A finding that the circuit court departed from the essential requirements of law essentially means that the circuit court failed to apply the correct law and that the failure resulted in a miscarriage of justice. *Ivey*. (Emphasis supplied.)

Id. at 1165

PELHAM argues that as his suspension should have been reversed for multiple reasons, no miscarriage of justice could have occurred. In addition, the circuit court applied the correct law to the facts of this case.

B) Introduction:

The Circuit Court ruling states:

Section 322.2615(7)(b), as amended in 2006, is inconsistent with Section 316.1932(1)(a)1.a., which provides:

Any person who accepts the privilege extended by the law of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath **if the person is lawfully arrested** for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. **The chemical or physical breath test must be incidental to a lawful arrest** and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages.

§ 316.1932(1)(a)1.a., Fla. Stat. (2006) (emphasis added). Because Section 322.2615(7)(b) seemingly conflicts with the language of Section 316.1932(1)(a)1.a., the Court has a duty to harmonize the statutes, if possible, so that each statute may be given effect. **T.R. v. State**, 677 So.2d 270 (Fla. 1996).

A refusal to submit to a breath test is of no legal significance unless it occurs after a lawful arrest. The statutory language "incidental to a lawful arrest" means a lawful arrest must precede a request to submit to a breath test. **Department of Highway Safety and Motor Vehicles v. Whitley**, 846 So.2d 1163, 1167 (Fla. 5th DCA 2003). If a hearing officer is to conclude, as in this case, that a driver refused to submit to a breath test, then the hearing officer must necessarily find the driver was placed under lawful arrest. The lawfulness of the

arrest, therefore, remains within the scope of the hearing officer's review, notwithstanding the 2006 amendment to Section 322.2615. If a hearing officer is to uphold a license suspension, due process requires a finding that the refusal to submit to a breath was incidental to a lawful arrest. (Footnotes omitted) (Emphasis in the original) (Emphasis supplied.)

(A-120, 121)

The Department has not cited any controlling law which the Circuit Court failed to follow. PELHAM argues that 316.1932(1)(a)I, which requires that a request for a breath test be "incidental to a lawful arrest" (A-59) and the Florida Constitution both require that he be allowed to challenge the legality of the stop. In addition, Rule 15A-6.010 (A-107, 108) states that the driver can file motions. It serves little purpose to file motions if they are not ruled upon.

The Department overlooks the fact that the requirement that a person submit to a breath test is a search of a citizen which also entails a seizure. The Florida legislature has enacted a complicated and interrelated group of statutes, including 316.193, 316.1932, 316.1934, 316.1939, 322.2615, 322.2616, 322.26151, 322.28, 322.282, which set out when a driver may be required to submit to a breath test under threat of sanctions, and the sanctions, and also the rights of the driver. In general terms, after a purported refusal the police officer, as agent for the Department, seizes the driver license and commences the suspension procedure by providing a notice. The driver is then provided the option to request a formal

review which is supposed to be a quasi-judicial hearing. The Department has enacted some procedural rules for the hearing. Pelham maintains that the hearing was not meaningful and was simply rubber stamp approval of the police officer's actions. The hearing officer in this case was not fair and impartial and the Department exercised control over the hearing officer's decision which resulted in the driver's issues and testimony being ignored in this case. In this particular case the hearing officer specifically found PELHAM'S testimony, which established that he was not lawfully stopped or arrested and that he had not refused a breath test, "truthful", yet for reasons not established in the record still sustained his suspension. PELHAM'S suspension commenced November 10, 2006, and his restricted license expired January 3, 2007 (A-64). The suspension was stayed in September, 2007. It is PELHAM'S position that the Florida Constitution should be interpreted to require a meaningful hearing with prompt and meaningful appellate review and that the Circuit Court should be affirmed.

C) The United States Constitution:

Initially PELHAM argues that the United States Constitution recognizes the importance of a citizen's driver license. In *Bell v. Burson*, 403 U.S. 535 (1971) the United States Supreme Court stated:

Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses

thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. **Sniadach v. Family Finance Corp.** 395 U.S. 337, 23 L.Ed.2d 349, 89 S.Ct. 1820 (1969); **Goldberg v. Kelly**, 397 U.S. 254, 25 L.Ed.2d 287, 90 S.Ct. 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." (Emphasis supplied)

In *Bell v. Burson, supra*, the Court found that the hearing must be meaningful and appropriate to the nature of the case stating:

The hearing required by the Due Process Clause must be "meaningful," **Armstrong v. Manzo**, 380 U.S. 545, 552, 14 L.Ed.2d 62, 66, 85 S.Ct. 1187 (1965), and "appropriate to the nature of the case." **Mullane v. Central Hanover Bank & Trust Co., supra**, at 313, 94 L.Ed at 872, 873. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

It is PELHAM'S contention that his hearing was not meaningful or appropriate to the nature of the case as set out in detail herein.

D) The Florida Constitution:

Under the state constitution (or statutes) Florida may adopt higher, but not lower, standards than those required by the federal constitution, *see State v. Slaney*, 653 So.2d 422 (Fla. 3d DCA 1995), *Traylor v. State*, 596 So.2d 957 (Fla. 1992). In this instance it

is for the Florida courts to determine what is required by Article I, section 2 – Basic Rights; section 9 – Due Process; section 18 – Administrative Penalties; section 21 – Access to Courts; and/or the other provisions of the Florida Constitution. As set out herein, the Florida Constitution should be construed to allow PELHAM to argue that as he was not lawfully stopped or lawfully arrested he should not suffer the deprivation of his driving privileges. For example, in *Indialantic Police Dept. v. Zimmerman*, 677 So.2d 1307 (Fla. 5th DCA 1996), a civil forfeiture case, this Court stated:

However, the validity of the stop and search are inextricably bound up with the probable cause determination required by the Act. If no probable cause exists to stop a vehicle, or search it, which leads to discovery of the contraband, then that seized evidence should not be considered, and cannot form the basis for the probable cause determination required by the Act. Emphasis supplied.

Id. at 1309

While discussing the Florida forfeiture statutes the Florida Supreme Court has stated:

The basic due process guarantee of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. Substantive due process under the Florida Constitution protects the full panoply of individual rights from unwarranted encroachment by the government. To ascertain whether the encroachment can be justified, courts have considered the propriety of the state’s purpose; the nature of the party being subjected to state action; the substance of that individual’s right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether

individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights. Substantive due process may implicate, among other things, the definition of an offense, see **State v. Bussey**, 463 So.2d 1141 (Fla. 1985); **Baker v. State**, 377 So.2d 17 (Fla. 1979); the burden and standard of proof of elements and defenses, see, e.g., **State v. Cohen**, 568 So.2d 49, 51 (Fla. 1990); the presumption of innocence, see **State v. Rodriguez**, 575 So.2d 1262 (Fla. 1991); **State v. Harris**, 356 So.2d 315, 317 (1978); vagueness, see, e.g., **Perkins v. State**, 576 So.2d 1310 (Fla. 1991); **Bussey**; **State v. Barquet**, 262 So.2d 431, 436 (Fla. 1972); the conduct of law enforcement officials, see **Haliburton v. State**, 514 So.2d 1088 (Fla. 1987); **State v. Glosson**, 462 So.2d 1082 (Fla. 1985); the right to a fair trial, see **Kritzman v. State**, 520 So.2d 568 (Fla. 1988); and the availability or harshness of remedies,..... (Emphasis supplied)

F.D.L.E. v. Real Property
588 So.2d 957 (Fla. 1999) at 960

The Florida Supreme Court found that the Florida Constitution required a jury trial and "clear and convincing evidence" in a forfeiture case. The Florida Supreme Court also noted that due process of law required that a litigant be heard in a meaningful manner and at a meaningful time and that there is no single inflexible test to determine if the requirements of due process have been met. The forfeiture of a driver's license, like the forfeiture of property, involves important rights of Florida citizens and a fair meaningful system should be required.

PELHAM respectfully suggests the validity of the stop and lawfulness of the arrest in this instance are inextricably bound up with the probable cause determination in this

case. If probable cause does not mean lawfully obtained probable cause in compliance with applicable law then how does the hearing officer and/or court determine which sections of the Florida Constitution and Florida Statutes apply in these proceedings? There is no valid reason to ignore the requirements of the Florida Constitution when determining whether to authorize the suspension of a driver's license. In fact, as the cases cited in section F of this argument establish, this District Court of Appeal and the Florida Supreme Court have previously invalidated suspensions under 322.2615 based upon a lack of competent, substantial evidence in the record to establish the validity of the stop.

In construing the Florida Constitution guarantees, PELHAM argues that the opinion in *Pooler v. Motor Vehicles Division*, 755 P.2d 701 (Or. 1988) is well reasoned and should be found persuasive. In *Pooler, supra*, the court stated:

Without a valid arrest, there can be no request to take a breath test which may lead to a lawful suspension.

Other considerations bolster this view. Although *former* ORS 482.541 does not, on its face, address the issue, we conclude that the legislature must have intended a valid arrest when it used the term "under arrest" in that statute. Were that not so, police officers would be free to stop drivers at random, without probable cause or reasonable suspicion, hoping to identify the occasional DUII driver. Such random activities by the police would be unconstitutional. See *State v. Boyanovsky*, 304 OR. 131, 743 P.2d 711 (1987); *State v. Anderson*, 304 Or. 139, 743 P.2d 715 (1987). Because we do not attribute to the legislature the intent to sanction unconstitutional procedures,

see *Molodyh v. Truck Insurance Exchange*, 304 Or. 290, 299, 744 P.2d 992 (1987). We conclude that the terms "under arrest" in *former* ORS 482.541 meant a valid arrest.

If the arrest must be valid, it follows that the scope of the administrative hearing before the hearing officer included the question of the validity of the arrest. Upon respondent's request, the hearings officer was required under *former* ORS 482.541 to determine whether respondent validly was under arrest for DUII when asked to take the chemical breath test. In so concluding, we recognize the added burden placed upon the hearings officer. That burden, however, is not significantly more far-reaching than that already borne in these administrative proceedings. See *Leabo v. SER/Motor Vehicles Division*, 46 Or.App. 55, 610 P.2d 317 (1980) (whether police officer had reasonable grounds to believe driver was DUII included within scope of suspension hearing): (*Emphasis in the original.*) (*Emphasis supplied.*)

Id. at 703

In Florida if a lawful arrest is a prerequisite to a demand for a breath test then it follows that the scope of administrative hearings must include the validity of the arrest.

It would be fundamentally unfair to suspend PELHAM'S license for declining a test not required by law.

E) The Statutes:

Amended section 322.2615(1)(b)1.a, Fla. Stat., states:

(b) The suspension under paragraph (a) shall be pursuant to, and the notice of suspension shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months

if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or...

The term "lawful" indicates that the demand that a citizen submit to a breath test should be made in compliance with the mandates of the Florida Constitution and the applicable Florida statutes. In addition, Florida Statute 322.2615 requires a determination as to whether probable cause existed and whether the driver refused to submit. This statute should be construed to require a lawful request for a breath test and a probable cause determination made upon lawfully obtained evidence. Further, Florida Statute 322.2615 should be construed consistently with 316.1932 which contains the standards for multiple tests. Section 316.1932(1)(e) which states:

(e)1. By applying for a driver's license and by accepting and using a driver's license, the person holding the driver's license is deemed to have expressed his or her consent to the provisions of this section.

2. A nonresident or any other person driving in a status exempt from the requirements of the driver's license law, by his or her act of driving in such exempt status, is deemed to have expressed his or her consent to the provisions of this section.

3. A warning of the consent provision of this section shall be printed on each new or renewed driver's license. (Emphasis supplied.)

establishes that a driver such as PELHAM has only consented to specific tests under specific circumstances, to-wit:

1. Breath Test – incident to lawful arrest 316.1932(1)(a)1.a

2. Urine Test – incident to lawful arrest 316.1932(1)(a)1.b
3. Blood Test – no arrest 316.1932(1)(c)

As this case involves the purported refusal to submit to a breath test the relevant portion of 316.1932 states:

316.1932 Tests for alcohol; chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1.a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such a test or tests, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon

the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding. (Emphasis supplied).

It appears that the implied consent scheme is intended to apply to lawful actions, as opposed to unconstitutional police actions. The legislature's modification of the wording of 322.2615 serves the very logical purpose of authorizing the suspension of a license in a situation involving a non-arrest blood test pursuant to Florida law. It is illogical to assume that the legislature intended to require the suspension of the driving privilege of a person who was unlawfully stopped without any justification and declined to cooperate in unlawful searches and seizures. In fact, it is very likely that a person who believes they are subject to a deprivation of fundamental rights would decline to voluntarily submit to additional seizures.

F) Florida Court Decisions Construing 322.2615 and 322.1932:

Prior to the amendment to section 322.2615 numerous court decisions, including *Dobrin v. DHSMV*, 874 So.2d 1171 (Fla. 2004) stating at 1174 "On certiorari review, the circuit court was charged with the duty of determining whether competent, substantial evidence existed to support the traffic stop in this case." and *DHSMV v. Roberts*, 938 So.2d 513 (Fla. 5th DCA 2006) expressly consider the lawfulness of the stop. For example, in *Roberts, supra*, the Fifth District Court of Appeal stated:

The parties agree that the central issue below was whether Petitioner proved that the Florida Highway patrol trooper made a "legal" stop of Respondent's

vehicle. The stop by police of an occupied automobile for a traffic violation constitutes a "seizure" of "persons" within the Fourth Amendment. **Whren v. U.S.**, 547 U.S. 806, 809-10, 116 S.Ct. 1769; 135 L.Ed.2d 89 (1996). Therefore, to justify a warrantless seizure, the government must "point to *specific and articulable facts* which, taken together with rational inferences from those facts, reasonably warrant" the intrusion. **Terry v. Ohio**, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (emphasis added). Stated differently, to justify a warrantless stop an officer must have an articulable, reasonable suspicion that a violation of the law has occurred. **Brown v. State**, 719 So.2d 1243, 1245 (Fla. 5th DCA 1998).

To meet its burden of showing that the stop was legal, Petitioner chose to rely solely on the trooper's charging affidavit, which, in material part, stated:..... (Emphasis supplied)

and, in *Schwartz v. State DHSMV*, 920 So.2d 664 (Fla. 3d DCA 2005) the Court stated:

Section 322.2615(7)(b) of the Florida Statutes (2004) expressly states that during a formal review of a license suspension, the hearing officer must determine "whether the person was placed under lawful arrest for a violation of s. 316.193 [Florida's DUI statute]." This provision "contemplates that issues relating to the lawfulness of the stop... will be resolved under the issue concerning the lawfulness of the arrest." **State, Dept. of Highway Safety and Motor Vehicles v. DeShong**, 603 So.2d 1349, 1351 (Fla. 2d DCA 1992) (emphasis added); **Dobrin v. Florida Dept. of Highway Safety and Motor Vehicles**, 874 So.2d 1171, 1174 (Fla. 2004) (an administrative DUI license suspension proceeding in which the Court enunciated the test to be applied in determining whether probable cause exists to support a traffic stop). The Circuit Court's observation that the validity of a stop which ultimately leads to a DUI arrest cannot be challenged in a section 322.2615(7)(b) administrative license suspension proceeding, was therefore incorrect. (Emphasis

supplied.)

Id. at 665

In fact, the DHSMV has not cited any Fifth District Court of Appeal or Florida Supreme Court precedent to support its position that a driver should not be allowed to challenge the lawfulness of the stop at a formal review.

The Florida courts have clearly held that the Florida Implied Consent scheme requires that a lawful arrest is a predicate to a suspension under 322.2615. In *State, DHSMV v. Whitley*, 846 So.2d 1163 (Fla. 5th DCA 2003) the Court held that breath tests must be incidental to a lawful arrest. It should also be noted that in *Whitley* the Court stated:

The circuit court held, pursuant to section 316.1932(1)(a)1., that the administration of the breathtest must be incidental to a lawful arrest for DUI and that a person's license may not be suspended unless the person is first arrested for DUI and, thereafter, administered the breathtest. The circuit court held that because *Whitley* was not arrested for DUI until after the breathtest was administered, his license should not be suspended. In order to determine whether the trial court correctly stated and applied the law, we logically start with an analysis of section 316.1932(1)(a)1., which provides in pertinent part: (Emphasis supplied.)

Accordingly, this Court in *Whitley, supra*, harmonized the terms of 316.1932 and 322.2615. This lawful arrest predicate rationale was applied to a urine test in *State v. Serrago*, 875 So.2d 315 (Fla. 2d DCA 2004). The requirement to harmonize related

statutes is the same logic utilized by the Circuit Court in the PELHAM case. It is illogical to authorize a driver license suspension for declining to submit to a test which the officer had no legal right to request and/or which was not a test authorized by Florida's Implied Consent scheme. PELHAM respectfully suggests that the Circuit Court ruling in this case is consistent with numerous Florida decisions, including the rationale of *Dobrin, Roberts, Schwartz & Whitley, supra*. It appears that the Florida appellate courts have, to date, taken the position that determining whether the stop and arrest were lawful were "appropriate to the nature of the case" in deciding whether a driver's license should be suspended for unlawfully refusing to submit. It seems illogical to suspend a license for declining to take a test which was not authorized by Florida's Implied Consent scheme. If a lawful arrest is not the predicate for a request for a breath test, a difficult question is "What is the appropriate predicate?"

G) Statutory Construction:

The Circuit Court's position that Florida Statute 322.2615 and 316.1932 should be "harmonized" was correct and consistent with Florida law. As in *Whitley v. DHSMV, supra*, and *DHSMV v. Patrick*, 895 So.2d 1131 (Fla. 5th DCA 2005) the interrelated DUI statutes 316.193, 316.1932 and 322.2615 should be read in *pari materia*. In *Ferguson v. State*, 377 So.2d 709 (Fla. 1979) the Court stated:

At the outset we note the basic rule of statutory construction that statutes which relate to the same or to a closely related subject or object are regarded as in *pari*

materia and should be construed together and compared with each other. **Alachua County v. Powers**, 351 So.2d 32 (Fla. 1977). The court will view the entire statutory scheme to determine legislative intent. **State v. Rodriquez**, 365 So.2d 157 (Fla. 1978).

Id. at 710, 711.

In *DHSMV v. Patrick*, *supra*, the Court specifically found that as inter-related sections 322.2615 and 316.193 the statutes should be read in *pari materia*. In discussing *pari materia* the Fifth District Court of Appeal has stated:

We observe the basic rule of statutory construction that statutes, which relate to the same or closely related subjects or objects, are regarded as *in parimateria*, and must be construed together and compared with each other. **Ferguson v. State**, 377 So.2d 709, 711 (Fla. 1979); **Alachua County v. Powers**, 351 So.2d 32, 40 (Fla. 1977). The doctrine of *in parimateria* requires courts to construe related statutes together so that they will illuminate each other and are harmonized. **Singleton v. Larson**, 46 So.2d 186 (Fla. 1950). (Emphasis supplied.)

Grant v. State, 832 So.2d 770
(Fla. 5th DCA 2002)

Section 322.2615(7)(b) states:

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances. (Emphasis supplied)

and, as written, requires a proof that probable cause existed to believe that a person who was driving or perhaps sitting in a motor vehicle was under the influence of alcohol. If this section is not read in pari materia with 316.193 and 316.1932 it would clearly violate due process as the applicable standard to violate Florida criminal law requires probable cause to believe the driver was "under the influence of alcoholic beverages to the extent his normal faculties were impaired," not merely "under the influence of alcohol." Accordingly, the Circuit Court did apply the correct law.

The DEPARTMENT incorrectly argues administrative suspensions are not penal in nature. Whether an enactment furthers public safety or is penal is simply a matter of perspective. Certainly executing convicted murders is intended to further public safety, however from the accused's perspective his or her death appears to be penal. In *State, DHSMV v. Meck*, 468 So.2d 993 (Fla. 5th DCA 1985) in construing the habitual traffic offender statute this Court found the statute was penal in nature and therefore "must be strictly construed," see also *DHSMV v. Patrick, supra*, at 1136 stating "strict construction of penal statutes is generally proper."

Here, the logical, rational construction of 322.2615 is that it must be construed to require that the test in question, in this case a breath test, is a test to which the driver has given his implied consent under the existing circumstances set out 316.1932.

H) RULE 15A-6.010 "Motions":

Administrative rule 15A-6.010 (A-107, 108) authorized PELHAM to file motions and required that the hearing officer rule on the motions. Either the administrative rules should be changed to clarify which types of motions are authorized and which are unauthorized or the driver should be allowed to present motions as occurred in the past (see section F). The motions should actually be considered by an impartial decision maker. Here, the hearing officer took the position that PELHAM'S motions should not be actually ruled upon without justification which violated PELHAM'S right to due process of law.

I) The Specific Facts of this Case:

Here, the DHSMV did not provide a sufficient record with its petition for this Court to review the specific facts of the case. Apparently the DEPARTMENT concedes that the record was insufficient to establish that PELHAM was legally stopped, *see e.g., Roberts, supra*, but still maintains that the hearing officer lawfully sustained PELHAM'S driver license suspension.

In this case PELHAM'S testimony, if believed, established that he was not trespassing; not legally stopped; not legally arrested and not asked to take a breath test.

The hearing officer stated:

HEARING OFFICER: I don't have any problem with Mr. Pelham's testimony. **I believe the young man told the truth.** However, I'm governed just as you are

by certain things. There are certain things that I can rule on. I appreciate your argument. I understand your argument. And if there is nothing else this will conclude our formal review and a final order will be
(Emphasis supplied)

It is respectfully argued that this statement clarifies an inherent problem with the formal review procedure which is the DMV hearing officer was subjected to inappropriate control by his employer, the DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES which denied PELHAM a fair hearing.

J) The Motion to Recuse:

In *DHSMV v. Pitts*, 815 So.2d 738 (Fla. 1st DCA 2002) the Court stated:

It is without question that the "suspension of a driver's license for statutorily defined cause implicates a protectible property interest." *Mackey v. Montrym*, 443 U.S. 1, 10, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979). This is a substantial private interest and due process applies to its denial. *Id.* at 10-11, 99 S.Ct. 2612. While combining the fact-seeking and judicial functions in the same office does not per se violate due process, see *State v. Johnson*, 345 So.2d 1069 (Fla. 1977), "[a]n impartial decisionmaker is a basic constituent of minimum due process." *Ridgewood Props., Inv. v. Dep't of Cmtry. Affairs*, 562 So. 2d 322, 323 (Fla. 1990), quoting *Megill v. Board of Regents*, 541 F.2d 1073, 1079 (5th Cir. 1976); see generally, Charles Stampelos, *The Administrative Process and Constitutional Principles*, Florida Administrative Practice § 1.37 (The Florida Bar CLE 6th Ed.2001). Although the statutory driver's license suspension procedures "meet the requirements of due process and are facially valid," *Department of Highway Safety and Motor Vehicles v. Stewart*, 625 So.2d 123, 124 (Fla. 5th CA 1993), if, under the facts of a particular case, a suspensee's rights have not been respected, the suspensee may

be entitled to relief. *Id.*; see also **Withrow av. Larkin**, 421 U.S. 35, 58, 95 S.Ct. 1456, 43 L.Ed.2d, 712 (1975) (“That the combination of investigative and adjudicative functions does not, without more, constitute a due process violation, does not, of course, preclude a court from determining from the special facts and circumstances present in the case before it that the risk of unfairness is intolerably high.”).

Id. at 743, 744

In *DHSMV v. Griffin*, 909 So.2d 538 (Fla. 4th DCA 2005) the Court “strongly cautioned” that hearing officers take “extraordinary care to be as impartial and neutral as members of the judiciary are required to be.” As discussed in the recent decision in *State v. Tidey*, 946 So.2d 1223 (Fla. 4th DCA 2007) it is inappropriate for the DHSMV to exercise ex-parte control over the hearing officers’ ruling(s) of law. Here, the hearing officer improperly denied a well founded Motion to Recuse (A-41-52) supported by case citations and three affidavits.

A review of the current statutory scheme indicates that while the DHSMV is not actually supposed to be impartial in reviewing materials submitted by law enforcement, section 322.26151, Florida Statutes effective 2004 states:

322.26151 Review of materials submitted by law enforcement officer.—The Department of Highway Safety and Motor Vehicles shall review the materials submitted by the law enforcement officer to determine whether the materials comply with applicable statutes, rules, and policies, and the department shall inform the law enforcement officer when a deficiency exists so that the deficiency may be corrected prior to the hearing. (Emphasis supplied.)

This statute suggests that the DEPARTMENT is to (apparently ex-parte) advise law enforcement of "deficiencies" in complying with its "policies" prior to the hearing. It should be noted that no such duty exists to assist even a pro se driver in correcting any deficiencies with his pleadings or paperwork.

K) The Exclusionary Rule Argument:

In determining what rights to provide Florida citizens the Fifth District Court of Appeal has applied the exclusionary rule in forfeiture proceedings, see *Indialantic Police Department v. Zimmerman, supra*. It is not essential to the resolution of this case that this Court reach the constitutionality argument as section 316.1932 specifically requires that the breath test be incidental to a lawful arrest, see also Florida Statute 322.2615. Further, section 322.2615 requires proof of "probable cause." It is logical to construe this section to require lawfully obtained evidence as in the forfeiture cases. If lawfully obtained evidence is not required then the questions becomes "What if the officer is outside his jurisdiction?" Can privileged information be utilized? What if the officer tortures the citizen into stating he was driving?

L) The "Remand" Argument:

Here, as in *Griffin, supra*, and *Pitts, supra*, the DEPARTMENT failed to raise in its Response to Petition for Writ of Certiorari the argument that remand was the appropriate remedy. (The remand argument was first raised in the DEPARTMENT'S

Motion for Rehearing in the circuit court.). Accordingly, the issue was not timely raised. Further, *Lillyman v. DHSMV*, 645 So.2d 113 (Fla. 5th DCA 1994) stated "That when evidentiary error is made in an administrative hearing the remedy is to remand for further proceedings." This ruling is not applicable as this case does not involve an evidentiary ruling.

The concept of due process of law requires that the procedure be fair. Here, PELHAM was suspended as of November 10, 2006, but provided a restricted license. The restricted license expired on January 3, 2007, and PELHAM remained without a license until September, 2007. To remand this case simply allows the DEPARTMENT to litigate at the taxpayers' expense until the driver serves the entire suspension whether the Court's eventually overturn the suspension or not. If the driver will serve his suspension before he can obtain court review the procedure violates the Florida Constitution.

Finally, as the record at the formal review was facially insufficient to support the suspension there is no valid reason to provide the DEPARTMENT with a second bite at the apple. It is also respectfully pointed out that the hearing officer was not a typical, neutral, detached magistrate but was an employee of Petitioner and was apparently furthering Petitioner's established policies by refusing to consider what appeared to be valid issues. The suspension should be reversed, not remanded.

III. CONCLUSION:

In order to reach the result it prefers the DEPARTMENT urges this Court to find that in this instance the interrelated statutory sections which form Florida's Implied Consent scheme should not be read in harmony. The DEPARTMENT'S position is that a lawful arrest is no longer required in order for the Court's to uphold the suspension of a driver's license. The DEPARTMENT'S position is that even under circumstances where a person has not "deemed to have consented" to a test as set out in Florida Statute 316.1932 that person may still be sanctioned under 322.2615 for declining a breath test. This position is, at best, illogical. The Circuit Court ruling is consistent with preexisting Florida law and should be affirmed.

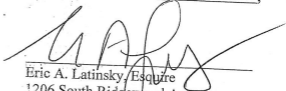
As PELHAM had been lawfully issued a driver license which has been recognized as "essential in the pursuit of a livelihood", the hearing adjudicated an important interest and was required to be meaningful and appropriate. PELHAM was entitled to a fair and impartial decision maker. PELHAM was entitled to have his testimony fairly considered in addition to the documents. PELHAM was entitled to file motions and therefore the motions should have been fairly addressed and counsel respectfully suggests that a finding other than "denied" should be required to facilitate court review (compare Chapter 120). If the

interrelated provisions of 316.193, 316.1932 and 322.2615 are not harmonized there is no manner in determining what issues are to be addressed. While due process is a flexible concept it is currently (in 2007) appropriate to require that motions be fairly and directly addressed in an administrative ruling to facilitate review.

While PELHAM'S main argument is simply that Florida law clearly requires a "lawful arrest" prior to his consent to a breath test being implied under Florida law and that he cannot lawfully be punished through a driver's license suspension unless the test he declined is statutorily authorized. The record in this case also establishes numerous other deficiencies. The Circuit Court applied the correct law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail/~~hand~~ to Heather Rose Cramer, Esquire, 6801 Lake Worth Road, #230, Lake Worth, Florida 33467 this ^{9th} day of Nov, 2007.



Eric A. Latinsky, Esquire
1206 South Ridgewood Avenue
Daytona Beach, Florida 32114
(386) 257-5555
Fla. Bar #302831

Questions #39: Ethics/Unprofessional Conduct

The Florida Bar records, attached, indicate I have no disciplinary files, however in 1986 I paid a \$500.00 rule 11 sanction in federal court based upon a memorandum I had written in *Jorgenson and TDJ, Inc. d/b/a Porky's v. Volusia County*. Shortly after the *Del Percio* decision, provided see question #30, a decision in *Leverett v. Pinellas Park*, 775 F.2d 1536 (11th Cir. 1985), was issued stating:

Such limited evidence of the need for the ordinance normally would not be sufficient to satisfy the "stricter standard typically used to review an infringement on a protected liberty interest justified solely under the government's police power." **Krueger v. City of Pensacola**, 759 F.2d 851 (11th Cir. 1985). It is under this "stricter standard" that § 16-112 must be struck down.^{FN2}

FN2. The parties spent much of their effort in this case arguing about the significance of the fact that alcohol is consumed at Strip Ahoy. Section 16-112, however, applies to nude or semi-nude entertainment in any "commercial establishment." The ordinance clearly does not regulate protected expression as an incident to the regulation of alcohol. That Florida may have delegated to municipalities its power under the Twenty-first Amendment, City of Daytona Beach v. Del Percio, 476 So.2d 197 (Fla. 1985), is therefore of no help to the City in this case. (Emphasis supplied.)

The basis for the sanction was that I had the duty to affirmatively cite *Del Percio*, *supra*, and/or *New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 101 S.Ct. 2599, 69 L.Ed.2d 357 (1981) even if I believed at the time that *Leverett*, *supra*, and *Krueger*, *supra*, controlled in the Eleventh Circuit based upon the specific facts of the pending case. Basically I thought that the County's definition of establishment dealing in alcoholic beverages was so broad that it included too many locations which did not sell alcohol and therefore the ordinance was unconstitutional and/or that the evidentiary record was insufficient under *Krueger*, *supra*. The Volusia County definition states:

Establishment dealing in alcoholic beverages means any business or commercial establishment (whether open to the public at large or where entrance is limited by cover charge or membership requirement), including those licensed by the state for sale and/or service of alcoholic beverages, and any bottle club; hotel; motel; restaurant; nightclub; country club; cabaret; meeting facility utilized by any religious, social, fraternal or similar organization; business or commercial establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that

the same will be or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises of said business or commercial establishment; or business or commercial establishment where the consumption of alcoholic beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcoholic beverages. (Emphasis supplied.)

I argued that, as written, the ordinance said "any business or commercial establishment including" but did not contain sufficient limitations to withstand First Amendment scrutiny under *Leverett*. After imposing the sanction Judge Sharp agreed with me in part and entered a preliminary injunction which allowed Porky's to operate as a bottle club (without selling alcohol) for a period of time. Eventually the "bottle club" argument was rejected, see *Lanier v. Newton, Alabama*, 842 So.2d 253 (Fla. 11th Cir. 1988). After requiring a hearing the rule 11 sanction was upheld in *Jorgenson v. Volusia County*, 846 F.2d 1350 (11th Cir. 1988)

In an evidentiary grievance proceeding held in Florida and I explained to the panel that when I drafted the memorandum I thought, in good faith, that *Leverett* was controlling and that the County was the proper party to cite *Del Percio* or *Bellanca* if they felt it was appropriate. The Florida panel seemed to agree and no discipline was imposed and no further proceedings held. I learned from that experience that the better procedure was and is to affirmatively cite and distinguish a negative case for multiple reasons. This situation occurred in 1986.



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①
February 26, 2010

Eric A. Latinsky
1206 S. Ridgewood Ave.
Daytona Beach, FL 32114-6128
Facsimile: (386) 252-5713

Re: Request for information concerning Eric Alan Latinsky, Bar # 302831

Dear Mr. Latinsky:

This letter is in response to your inquiry regarding your discipline history with The Florida Bar. You were admitted to practice in Florida on September 22, 1980 and are currently a member in good standing and therefore permitted to practice law in Florida.

The bar purges files that are closed by bar counsel or grievance committee without a finding of probable cause, one year after the date the files were closed. For this reason, no reference to such files will be made in this letter.

The following files about you resulted in a disciplinary sanction:

<u>File No.</u>	<u>Disposition</u>	<u>Court Order Date</u>
	NONE	

The following files were opened about you and did not result in discipline:

<u>File No.</u>	<u>Disposition</u>	<u>Close Date</u>
	NONE	

① NO Discipline by Bar after 2010: EAJ
11-14-17

Eric A. Latinsky
February 26, 2010
Page 2

The following files have been opened about you and action has not been concluded:

<u>File No.</u>	<u>Status</u>
	NONE

I trust this information will be of assistance to you. If you have any questions regarding this correspondence, please call (850) 561-5781.

Sincerely,

Melissa Mara
for
Shalonda Tillman
Program Assistant - Legal
Legal Division

ST/kh

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

For years I did work for the Volunteer Lawyers Project. In 1995 I received an award for outstanding contribution. ,

2011 State v Stagina (red light camera issues)

2011 Kitts (issue of DNA testing of a witness in a criminal matter)

2006-2010 Grant v. County (prevailed on an unlawful code enforcement; code modification case)

2006-2011 Tweed (criminal and administrative cases for a disabled individual)

2000-2009 In Re: M.E., a minor (juvenile cases for special need minors)

2004-2009 Magnant (guardianship- attorney for ward)

I was active with Serenity House; on the board of directors in the 1980s. I also helped form Club YANA, a program for recovering alcoholics.

In recent years I have done appellate cases, juvenile cases, a termination of parental rights case for a father (Martin-Case No.: 01-32157 CICI) in 2002-2005, represented a local attorney who was charged with misdemeanor and felony charges in 2002-2004, Litigated civil issues and traffic tickets for people who could not afford legal fees.

State v. Koon 2013 310623 MMDB and 2013 317048 MMDB

EXAMPLES OF JUVENILE PROCEEDINGS INCLUDE:

In the interest of A.L. (a special needs child) #05-30241 CJCI; #04-32738CJCI; #03-30650 CJCI #05-31739 CJCI; #04308005 CJCI; #04-32464 CJCI; #04-32463 CJCI and attended expulsion proceedings.

In the Interest of M. E. (a special needs child) #0232143 CJCI; #02-31841 CJCI; #02-33126 CJCI; #02-32192 CJCI; #06-32874 CJCI

GRANT AND CAT TAIL CORNER LITIGATIONS 2006-2010 INCLUDE: #2006-00073MMAWS (Failure to License) State v. Grant; #2006-08219 MMAWS (Animals Not Registered (DOG) State v Grant #2006-08616 MMAWS (Nuisance Animals) State v. Grant; #2007-00004 CAAP 9appeal of 06-00073 Grant v County #5D2007-3512 5th DCA(Pet. For Cert. #07-0004 CAAP) Grant v County w/ #11518, 2008-31049 CIDL, Grant v. County #2007-12454 CIDL County v. Grant consolidated w/#11518,2008-31049 CIDL, Grant v. County (CEB appeal-05-664), CEB 05-664-appeal 08-31049 Note: Order Granting Summary Judgment attached.

EXAMPLES OF A PETITION/APPEAL INCLUDE:

Whitley v. DHSMV, 2001-30996 CICI in the Circuit Court; State v. Whitley (5D02-3640): 846 So.2d 1163 (Fla. 5th DCA 2003), rev. denied 858 So. 2d333 (Fla. 2003);

From Fifth DCA Case List:

Dhsmv v. Fuller 5D 13-0572

Dhsmv v. Brady 5D 12-3479

Dhsmv v. Pelham 5D 07-2739

Dhsmv v. Futch 5D 13-3457 and petition for review and appeal to Fl. Supreme Court

Dhsmv v. Freeman 5D-14-3556

Dhsmv v. Wiggen 14-811 and petition for review (denied) to Fl. Supreme Court

J.C.P. a child v. State 5D 06-3888

State v. Whitley 5D 02-3640

Williams v. State 5D 14-3543 also petition to Fl. Supreme Court and on remand.

I also did Brady, Pelham, Futch, Wiggen and Whitley in the circuit court pro bono and others; see e.g. Gibson v. Dhsmv, attached, which was the predicate case to Futch.

20 Fla. L. Weekly Supp. 1034a

Online Reference: FLWSUPP 2011GIBS

**Licensing -- Driver's license -- Suspension -- Refusal to submit to breath test -- Hearing -- Expert witness -
- Refusal to allow licensee to proffer qualifications and testimony of expert witness is due process violation
-- Failure of police department to preserve and produce subpoenaed video of licensee in DUI room was
denial of due process -- Order sustaining license suspension is quashed**

ANN GIBSON, Petitioner, vs. STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent. Circuit Court, 7th Judicial Circuit (Appellate) in and for Volusia County. Case No. 2013-30420 CICI, Division 32. June 10, 2013.

ORDER GRANTING AMENDED

PETITION FOR WRIT OF CERTIORARI

(PARSONS, Judge.) The Petitioner's driver's license was suspended on October 18, 2012, for refusal to submit to a breath test. On January 11, 2013, DMV hearing officer Robert Mustain issued an order sustaining the 12 month suspension of Petitioner's driving privilege. A Petition for Writ of Certiorari was timely filed on February 11, 2013 and an Amended Petition for Writ of Certiorari And Complaint for Declaratory Relief was filed on March 19, 2013. Gibson scheduled a hearing on her Motion for Leave to Add Count for Declaratory Relief and to Consolidate on May 6, 2013. At the hearing on May 6, 2013, counsel for Respondent conceded that the Gibson suspension should be set aside due to the failure of the hearing officer Mustain to allow Gibson's expert witness Andrew Cospito to testify or in the alternative to at a minimum allow Cospito to be sworn and allow a proffer of Cospito's testimony in a proper manner or due to the failure of the Daytona Beach Police Department to produce the video tape made at the DUI booking room in accordance with department policy. Counsel for Gibson has requested a written order granting the Petition for Writ of Certiorari arguing that the due process violations encountered in this cause are repetitive at the Daytona Beach Bureau of Administrative Review. The Court makes the following findings:

On November 21, 2012, a formal review was commenced at the Daytona Beach Bureau of Administrative Review with Hearing Officer Robert Mustain presiding. The court notes transcripts of the formal review on November 21, 2012 and the continued hearing on January 7, 2013 are in the record. The hearing officer marked Exhibits DDL #1-8 and entered them into the record. Arresting Officer Beres was subpoenaed to the formal review by Petitioner with "any and all video or audio discs or evidence pertaining to this case" with a proof of service dated November 15, 2012. Beres appeared on November 21, 2012 and testified Gibson was taken to the DBPD DUI room and that everything that occurs at the DUI room is videotaped as a matter of course at all times. Beres did not bring the video as directed by the subpoena. Beres testified:

Q: Was it your intent to preserve the video of Ms. Gibson for evidence?

A: It's a department policy that we send a notification to the officer who's in charge of that camera that there was a DUI that took place in that room and to send him the case number, defendant's name, dates and times that it transpired.

Q: Okay. Is the officer in charge still Officer Nick Fiore?

A : I believe so, yes.

Q: And did you do that in this case?

A: I'm not sure if I did or not, but I believe I did.

Beres charging affidavit states that "Video of refusal to be tagged at a later date". Counsel for Petitioner moved the subpoena and proof of service into evidence.

Counsel for Gibson called Andrew Cospito as a witness. Mustain immediately announced "We don't recognize Mr. Cospito as an expert witness" and stated "No, Counsel. Counsel, Mr. Cospito will not testify." Mustain refused to swear in Cospito but, allowed him to state his credentials, including but not limited to, his experience as law enforcement officer for DBPD who was instrumental in forming the DUI unit including videotaping and audio taping procedures; as DUI instructor and as a breath test operator. Cospito stated he is a DUI instructor and has previously testified throughout Florida as an expert witness in Court and at Formal Reviews. Rather than allow Cospito to testify Mustain told Cospito to leave the room. The transcript states:

H. O. MUSTAIN: Mr. Cospito, you need to please leave the room.

MR. LATINSKY: No.

MR. COSPITO: This is a public hearing. I don't have --

H. O. MUSTAIN: You cannot testify. If you testify, you --

MR. COSPITO: Where is it in writing that I cannot testify?

H. O. MUSTAIN: You cannot testify because I have not put you under oath. Do you work for the department of the -- the police department?

MR. COSPITO: I'm a former officer for that police department.

H. O. MUSTAIN: Do you work for the department?

MR. COSPITO: No, I do not.

H. O. MUSTAIN: Okay. Counsel, he is not an expert witness. He does not work for the department.

Counsel moved to invalidate because Beres did not bring the video. Mustain refused to rule on the motion to invalidate and informed Counsel for Petitioner that he could subpoena Officer Fiore to bring the video to a continued hearing date. Counsel acquiesced.

The Formal re-commenced on January 7, 2013. Counsel gave Mustain a copy of § 90.702, Fla. Stat. (2012). Counsel again attempted to call Andrew Cospito as an expert witness. Mustain ruled consistent with his prior statements in November that Cospito could not testify because he doesn't work for DBPD. Officer Fiore confirmed that the video equipment is on 24 hours a day 7 days a week and there should be a video with audio available for Ms. Gibson. The video would show Gibson's ability to stand, walk, and talk. Fiore received the subpoena directing him to bring the video but, contacted evidence and there was no disc. The reason the video disc isn't available is that Beres neglected to email either Angela Bush or Officer Fiore consistent with the written Daytona Beach Police Department policy. Typically the video evidence is available to be recorded to a disc for up to 45 days. Fiore agreed that the videotape would be critical evidence because it was an objective recording of what occurred. Hearing Officer Mustain issued an order dated January 11, 2013, sustaining the suspension of Gibson's driving privilege.

In DHSMV v. Auster, 52 So.3d 802 (Fla. 5th DCA 2010) [36 Fla. L. Weekly D64a] the Court stated:

Furthermore, according to DHSMV's own rules, the procedural due process rights afforded a driver seeking formal review of a license suspension under section 322.2615 include "the right to present evidence relevant to the issues, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against the driver." See Fla. Admin., Code R. 15A-6.013(5).

Sec. 90.702 Fl. Statutes states:

§ 90.702. Testimony by experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

(Emphasis supplied.)

In her Petition, Gibson has provided multiple published rulings which have found Cospito is allowed to testify and provide an expert opinion based upon his knowledge, training and experience including *State vs. Osorio*, 19 Fla. L. Weekly Supp. 734a (Fla. Vol. Cty. Ct., 2012) stating:

The Defendant presented the testimony of Andrew Cospito who is a retired law enforcement officer with years of experience in DUI investigations, breath test operations and intoxilyzer inspections. He was recognized by the Court as an expert in these areas.

(Emphasis supplied.)

and *State v. Wright*, 17 Fla. L. Weekly Supp. 717a (Fla. Volusia Cty. Ct. 2010) finding Cospito could testify as an expert witness based on his training and experience in field sobriety exercises and also as a drug recognition evaluator. As Gibson had the due process right to present evidence the exclusion of Cospito's testimony and the failure to allow a proper proffer of Cospito's qualifications and/or testimony were a violation of due process and the essential requirements of law which require invalidation of the suspension in this cause.

The Court further finds that the failure to preserve and produce the video at the formal review as directed by the subpoena(s) was a denial of due process and the essential requirements of law requiring invalidation of the suspension in this cause.

ORDERED and ADJUDGED that:

1. The Petition for writ of Certiorari is GRANTED.
2. The order sustaining the suspension of Petitioner's driving privilege entered by Respondent is QUASHED.
3. Respondent shall forthwith reinstate Petitioner's driving privilege, if Petitioner is otherwise eligible.
4. Respondent shall forthwith remove from Petitioner's permanent driving record any entry which reflects the administrative suspension for her alleged refusal to submit on or about October 18, 2012.

* * *

15 Fla. L. Weekly Supp. 904a

Counties – Animals – Hobby breeder licensing – Where there are no existing county code restrictions with respect to hobby breeders of cats, county is not lawfully entitled to apply restrictions and requirements for canine hobby breeders to request for feline hobby breeder license

KRISTY GRANT, individually, and, CAT TAIL CORNER, INC., a Florida not-for-profit corporation, Plaintiffs, v. COUNTY OF VOLUSIA, a political subdivision of the State of Florida., Defendant. Circuit Court, 7th Judicial Circuit in and for Volusia County. Case No. 2006-11518 CIDL, Division 02. July 17, 2008. Robert K. Rouse, Jr., Judge. Counsel: Eric A. Latinsky. Luis Guzman.

ORDER GRANTING PARTIAL SUMMARY

JUDGMENT IN FAVOR OF PLAINTIFFS

THIS MATTER came on to be heard before the Court on April 23, 2008, upon the Plaintiffs' "Motion for Partial Summary Judgment." The Court having reviewed the motion and memorandum of law, the response, the court file, heard the argument of counsel, and being otherwise fully advised in the premises, finds as follows:

This cause arose when the Plaintiffs, Kristy Grant and Cat Tail Corner, Inc., applied to the Defendant, the County of Volusia, for a hobby breeder license to shelter numerous cats on her property. To prevail on a motion for summary judgment, the moving party must demonstrate "that there is no genuine issue as to any material fact and [it] is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c). The undisputed facts are: 1) the Plaintiff shelters numerous cats on her property; 2) the Plaintiff's property is zoned "FR. -- Forestry Resource;" 3) hobby breeder is a permitted use of property zoned FR; 4) the definition of "Hobby Breeder" under Volusia County Zoning Code Ordinance 92-6, § I, 6-4-92 is:

Hobby Breeder: A use allowing for the shelter, breeding or training of dogs or cats belonging to the resident of the premises and which has been licensed as a hobby breeder by the Volusia County Animal Control Board;

5) licensing for hobby breeders is controlled by Volusia County Code Ordinance Code Ch. 14 § 56 Canine Hobby Breeders, which does not address the breeding and sheltering of cats, but rather only provides regulations for canines, and 6) the Volusia County Code does not contain an ordinance for feline hobby breeders.

Although at first blush it may appear that the Plaintiff does not fit within the definition of "breeder" because the Plaintiff prevents the cats from breeding,¹ the Plaintiff does in fact shelter cats, and therefore fits within the definition of a "Hobby Breeder" as defined by the County itself in the Volusia County Code Ordinances. It is undisputed that the Plaintiff indeed shelters cats on her property.

As a Hobby Breeder of cats, the Plaintiff is subject to reasonable licensing restrictions and requirements of the County. The County submits that as the enforcing agency, it has broad discretion to interpret the relevant ordinances. The County contends that it has properly and appropriately applied the restrictions and requirements it has enacted with respect to dogs to the instant Plaintiff and the sheltering of cats.

The Court agrees that under Florida law, the County does have broad discretion to interpret its ordinance, but that discretion is not unbridled, and must be exercised reasonably. The Court has concluded that it is not reasonable to apply the restrictions for a dog breeder to a breeder of cats. Reason and common sense dictate that requirements and restrictions should be different for cats and dogs. "[W]hile an expansive definition of the perhaps ambiguous term 'cat' may include a lion, it cannot include a dog." *Simmons v. Provident Mut. Life Ins. Co. of Philadelphia, Pennsylvania*, 496 So.2d 243, 245 (Fla. 3rd DCA 1986) citing *Puente v. Arroyo*, 366 So.2d 857, 858 (Fla. 3rd DCA 1979). Here, the County impermissibly construes its ordinance restrictions referring to dogs so expansively as to include cats.

The Court finds and concludes that there are no existing restrictions with respect to a Hobby Breeder of cats. Therefore, the County is not lawfully entitled to apply its restrictions and requirements for dogs to the request for a hobby breeder license by the Plaintiff.

Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiffs' Motion for Summary Partial Judgment is GRANTED; Plaintiffs are entitled to the Hobby Breeder license.

¹The Plaintiff has the cats spayed or neutered, thus preventing actual breeding.

* * *

Form **1040** Department of the Treasury—Internal Revenue Service (99) **U.S. Individual Income Tax Return** **2016** OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 2016, or other tax year beginning 2016, ending 20		See separate instructions.
Your first name and initial ERIC A	Last name LATINSKY	Your social security number [REDACTED]
a joint return, spouse's first name and initial DORIS	Last name LATINSKY	Spouse's social security number [REDACTED]
Home address (number and street). If you have a P.O. box, see instructions.		Apt. no. ▲ Make sure the SSN(s) above and on line 8c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

DAYTONA BEACH FL 32118

Foreign country name Foreign provincial/state/country Foreign postal code

Presidential Election Campaign
Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.
 You Spouse

Filing Status 1 Single
 2 Married filing jointly (even if only one had income)
 3 Married filing separately. Enter spouse's SSN above and full name here. **4** Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. **5** Qualifying widow(er) with dependent child

Check only one box.

Exemptions 6a Yourself. If someone can claim you as a dependent, do not check box 6a
 b Spouse
 c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input type="checkbox"/> <input checked="" type="checkbox"/> Child under age 17 <input type="checkbox"/> <input checked="" type="checkbox"/> Qualifying child for credit (see instructions)

If more than four dependents, see instructions and check here

Boxes checked on 6a and 6b **2**
 No. of children on 6c who:
 • lived with you
 • did not live with you due to divorce or separation (see instructions)
 Dependents on 6c not entered above

d Total number of exemptions claimed **2**

Income	7	Wages, salaries, tips, etc. Attach Form(s) W-2	7,800
8a Taxable interest. Attach Schedule B if required	8a		78
b Tax-exempt interest. Do not include on line 8a	8b		
9a Ordinary dividends. Attach Schedule B if required	9a		
b Qualified dividends	9b		
10 Taxable refunds, credits, or offsets of state and local income taxes	10		
11 Alimony received	11		
12 Business income or (loss). Attach Schedule C or C-EZ	12		79,805
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	13		
14 Other gains or (losses). Attach Form 4797	14		
15a IRA distributions	15a		
b Taxable amount	15b		
16a Pensions and annuities	16a		
b Taxable amount	16b		
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17		-607
18 Farm income or (loss). Attach Schedule F	18		
19 Unemployment compensation	19		
20a Social security benefits	20a		
b Taxable amount	20b		
21 Other income. List type and amount	21		
22 Combine the amounts in the far right column for lines 7 through 21. This is your total income	22		87,076
Adjusted Gross Income	23	23 Educator expenses	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24		
25 Health savings account deduction. Attach Form 8889	25		
26 Moving expenses. Attach Form 3903	26		
27 Deductible part of self-employment tax. Attach Schedule SE	27		5,638
28 Self-employed SEP, SIMPLE, and qualified plans	28		14,833
29 Self-employed health insurance deduction	29		18,363
30 Penalty on early withdrawal of savings	30		
31a Alimony paid b Recipient's SSN ▶	31a		
32 IRA deduction	32		6,500
33 Student loan interest deduction	33		
34 Tuition and fees. Attach Form 8917	34		
35 Domestic production activities deduction. Attach Form 8903	35		
36 Add lines 23 through 35	36		45,354
37 Subtract line 36 from line 22. This is your adjusted gross income	37		41,722

38	Amount from line 37 (adjusted gross income)	38	41,722
39a	Check <input type="checkbox"/> You were born before January 2, 1952, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1952, <input type="checkbox"/> Blind. Total boxes checked ▶ 39a		
b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	12,600
41	Subtract line 40 from line 38	41	29,122
42	Exemptions. If line 38 is \$155,650 or less, multiply \$4,050 by the number on line 41. Otherwise, see instructions	42	8,100
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	21,022
44	Tax (see inst.). Check if any from: <input type="checkbox"/> Form(s) 8814 <input type="checkbox"/> Form 4072 <input type="checkbox"/> 44	44	2,226
45	Alternative minimum tax (see instructions). Attach Form 6251	45	
46	Excess advance premium tax credit repayment. Attach Form 8862	46	
47	Add lines 44, 45, and 46	47	2,226
48	Foreign tax credit. Attach Form 1118 if required	48	
49	Credit for child and dependent care expenses. Attach Form 2441	49	
50	Education credits from Form 8863, line 19	50	
51	Retirement savings contributions credit. Attach Form 8860	51	200
52	Child tax credit. Attach Schedule 8812, if required	52	
53	Residential energy credits. Attach Form 5695	53	
54	Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 8801 c <input type="checkbox"/>	54	
55	Add lines 48 through 54. These are your total credits	55	200
56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	2,026
57	Self-employment tax. Attach Schedule SE	57	11,276
58	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	58	
59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
60a	Household employment taxes from Schedule H	60a	
b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
61	Health care: individual responsibility (see instructions) Full-year coverage <input checked="" type="checkbox"/>	61	
62	Taxes from: a <input type="checkbox"/> Form 8959 b <input type="checkbox"/> Form 8960 c <input type="checkbox"/> Instructions; enter code(s)	62	
63	Add lines 56 through 62. This is your total tax	63	13,302
64	Federal income tax withheld from Forms W-2 and 1099	64	
65	2016 estimated tax payments and amount applied from 2015 return	65	
66a	Earned income credit (EIC)	66a	
b	Nontaxable combat pay election 66b		
67	Additional child tax credit. Attach Schedule 8812	67	
68	American opportunity credit from Form 8863, line 8	68	
69	Net premium tax credit. Attach Form 8962	69	
70	Amount paid with request for extension to file	70	14,910
71	Excess social security and tier 1 RRTA tax withheld	71	
72	Credit for federal tax on fuels. Attach Form 4136	72	
73	Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> Reserved c <input type="checkbox"/> 6885 d <input type="checkbox"/>	73	
74	Add lines 64, 65, 66a, and 67 through 73. These are your total payments	74	14,910
75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	1,608
76a	Amount of line 75 you want refunded to you. If Form 8878 is attached, check here <input type="checkbox"/>	76a	
b	Routing number <input type="text"/> c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
d	Account number <input type="text"/>		
77	Amount of line 75 you want applied to your 2017 estimated tax ▶ 77	77	1,343
78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions ▶ 78	78	
79	Estimated tax penalty (see instructions) ▶ 79	79	265

Other Taxes

Payments

Refund

Amount You Owe

Third Party Designee

Sign Here

Preparer

Use Only

COPY

SCHEDULE C
(Form 1040)
Profit or Loss From Business

(Sole Proprietorship)

OMB No. 1545-0074

2016
Attachment Sequence No. **09**Department of the Treasury
Internal Revenue Service (90)
 ▶ Information about Schedule C and its separate instructions is at www.irs.gov/schedule/c.
 ▶ Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

Name of proprietor

ERIC A LATINSKY

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)

B Enter code from instructions

▶ **541100**

C Business name. If no separate business name, leave blank.

D Employer ID number (EIN), (see instr.)

46-3086164**ERIC A. LATINSKY, P.L.**E Business address (including suite or room no.) ▶ **227 SEABREEZE BLVD.**
City, town or post office, state, and ZIP code **DAYTONA BEACH FL 32118**F Accounting method: (1) Cash (2) Accrual (3) Other (specify) ▶

G Did you "materially participate" in the operation of this business during 2016? If "No," see instructions for limit on losses

 Yes No

H If you started or acquired this business during 2016, check here

I Did you make any payments in 2016 that would require you to file Form(s) 1099? (see instructions)

 Yes No

J If "Yes," did you or will you file required Forms 1099?

 Yes No**Part I Income**

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked	1	97,987
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	97,987
4	Cost of goods sold (from line 42)	4	
5	Gross profit. Subtract line 4 from line 3	5	97,987
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	97,987

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8		18	Office expense (see instructions)	18	
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):	20a	
1	Contract labor (see instructions)	11			a Vehicles, machinery, and equipment	20b	
		12		21	b Other business property	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		22	Repairs and maintenance	22	2,439
14	Employee benefit programs (other than on line 19)	14		23	Supplies (not included in Part III)	23	
15	Insurance (other than health)	15		24	Taxes and licenses	24	
16	Interest:				Travel, meals, and entertainment:	24a	4,699
a	Mortgage (paid to banks, etc.)	16a			a Travel		
b	Other	16b			b Deductible meals and entertainment (see instructions)	24b	2,858
				25	Utilities	25	
17	Legal and professional services	17	1,360	26	Wages (less employment credits)	26	
				27a	Other expenses (from line 46)	27a	6,826
28	Total expenses before expenses for business use of home. Add lines 8 through 27a			27b	Reserved for future use	27b	
29	Tentative profit or (loss). Subtract line 28 from line 7			28		28	18,182
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30			29		29	79,805
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32.			30			
				31		31	79,805
32	If you have a loss, check the box that describes your investment in this activity (see instructions). • If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you must attach Form 6198. Your loss may be limited.			32a	<input type="checkbox"/> All investment is at risk	32b	<input type="checkbox"/> Some investment is not at risk

For Paperwork Reduction Act Notice, see the separate instructions.

Schedule C (Form 1040) 2016

ERIC A LATINSKY

Schedule C (Form 1040) 2016

ATTORNEY**Part III Cost of Goods Sold** (see instructions)

33	Method(s) used to value closing inventory:	a <input type="checkbox"/> Cost	b <input type="checkbox"/> Lower of cost or market	c <input type="checkbox"/> Other (attach explanation)		
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation					<input type="checkbox"/> Yes <input type="checkbox"/> No
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation					35
36	Purchases less cost of items withdrawn for personal use					36
37	Cost of labor. Do not include any amounts paid to yourself					37
38	Materials and supplies					38
39	Other costs					39
40	Add lines 35 through 39					40
41	Inventory at end of year					41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4					42

Part IV Information on Your Vehicle. Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

4 Of the total number of miles you drove your vehicle during 2016, enter the number of miles you used your vehicle for:

a Business b Commuting (see instructions) c Other

45 Was your vehicle available for personal use during off-duty hours? Yes No

46 Do you (or your spouse) have another vehicle available for personal use? Yes No

47a Do you have evidence to support your deduction? Yes No

b If "Yes," is the evidence written? Yes No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

BOOKS & PUBLICATIONS	83
CLIENT COSTS/FEES	1,076
COMPUTER EXPENSES	1,740
DUES	999
TELEPHONE	2,928

48 Total other expenses. Enter here and on line 27a

48 6,826

SCHEDULE E
(Form 1040)
Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041.

OMB No. 1545-0074

2016
Attachment
Sequence No

13

Department of the Treasury
Internal Revenue Service

(99)

▶ Information about Schedule E and its separate instructions is at www.irs.gov/schedulee.

eme(s) shown on return

Your social security number

ERIC A & DORIS LATINSKY
Part I **Income or Loss From Rental Real Estate and Royalties** Note: If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2016 that would require you to file Form(s) 1099? (see instructions)

B If "Yes," did you or will you file all required Forms 1099?

Yes	No
	<input checked="" type="checkbox"/>

1a Physical address of each property (street, city, state, ZIP code)

A 1202-1206 SOUTH RIDGEWOOD AVENUE, DAYTONA BEACH, FL 32114

B 1245 SCOTTSDALE DR., ORMOND BEACH, FL 32174

C

1b	Type of Property (from list below)	2	Fair Rental Days	Personal Use Days	QJV
A	4	For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.	A	366	
B	1		B	366	
C			C		

Type of Property:

- 1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
 2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

Income:	Properties:	A	B	C
3 Rents received	3	8,364	12,875	
4 Royalties received	4			
Expenses:				
5 Advertising	5			
6 Auto and travel (see instructions)	6			
7 Cleaning and maintenance	7			
8 Commissions	8			
9 Insurance	9	2,226	1,030	
10 Legal and other professional fees	10			
11 Management fees	11		1,318	
12 Mortgage interest paid to banks, etc. (see instructions)	12			
13 Other interest	13			
14 Repairs	14	1,237	4,509	
15 Supplies	15		15	
16 Taxes	16	4,374	1,669	
17 Utilities	17		174	
18 Depreciation expense or depletion	18	4,048	2,288	
19 Other (list) ▶ See Statement 1	19		132	
20 Total expenses. Add lines 5 through 19	20	11,885	11,135	
21 Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	x 66.66 -2,347	1,740	
22 Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	2,347	0	
23a Total of all amounts reported on line 3 for all rental properties	23a		21,239	
b Total of all amounts reported on line 4 for all royalty properties	23b			
c Total of all amounts reported on line 12 for all properties	23c			
d Total of all amounts reported on line 18 for all properties	23d		6,336	
e Total of all amounts reported on line 20 for all properties	23e		23,020	
24 Income. Add positive amounts shown on line 21. Do not include any losses	24		1,740	
25 Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here	25		2,347	
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26			

For Paperwork Reduction Act Notice, see the separate instructions.

Schedule E (Form 1040) 2016

-607

SCHEDULE SE
(Form 1040)

 Department of the Treasury
 Internal Revenue Service (99)

Self-Employment Tax

 ▶ Information about Schedule SE and its separate instructions is at www.irs.gov/schedulose.

▶ Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0047

2016

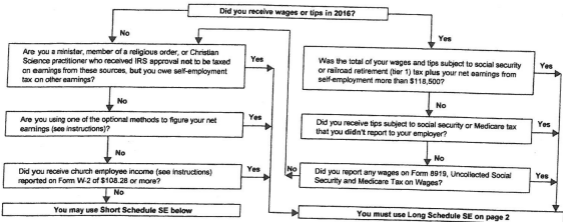
 Attachment
 Sequence No. 17

Name of person with self-employment income (as shown on Form 1040 or Form 1040NR)

ERIC A LATINSKY

 Social security number of person
 with self-employment income ▶

Before you begin: To determine if you must file Schedule SE, see the instructions.

May I Use Short Schedule SE or Must I Use Long Schedule SE?
Note. Use this flowchart only if you must file Schedule SE. If unsure, see *Who Must File Schedule SE* in the instructions.

Section A — Short Schedule SE. Caution. Read above to see if you can use Short Schedule SE.

1a	Net farm profit or (loss) from Schedule F, line 34, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A	1a	
b	If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 4b, or listed on Schedule K-1 (Form 1065), box 20, code Z	1b	
2	Net profit or (loss) from Schedule C, line 31; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B), box 9, code J1. Ministers and members of religious orders, see instructions for types of income to report on this line. See instructions for other income to report	2	79,805
3	Combine lines 1a, 1b, and 2	3	79,805
4	Multiply line 3 by 92.35% (0.9235). If less than \$400, you don't owe self-employment tax; don't file this schedule unless you have an amount on line 1b Note. If line 4 is less than \$400 due to Conservation Reserve Program payments on line 1b, see instructions.	4	73,700
5	Self-employment tax. If the amount on line 4 is: • \$118,500 or less, multiply line 4 by 15.3% (0.153). Enter the result here and on Form 1040, line 57, or Form 1040NR, line 55 • More than \$118,500, multiply line 4 by 2.9% (0.029). Then, add \$14,894 to the result. Enter the total here and on Form 1040, line 57, or Form 1040NR, line 55	5	11,276
6	Deduction for one-half of self-employment tax. Multiply line 5 by 50% (0.50). Enter the result here and on Form 1040, line 27, or Form 1040NR, line 27	6	5,638

For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule SE (Form 1040) 2016

Form **8880****Credit for Qualified Retirement Savings Contributions**

OMB No. 1545-0074

Department of the Treasury
Internal Revenue Service
amount shown on return

▶ Attach to Form 1040, Form 1040A, or Form 1040NR.

▶ Information about Form 8880 and its instructions is at www.irs.gov/Form8880.**2016**Attachment
Sequence No. **54****ERIC A & DORIS LATINSKY**

Your social security number

You cannot take this credit if either of the following applies.

- The amount on Form 1040, line 38; Form 1040A, line 22; or Form 1040NR, line 37 is more than \$30,750 (\$46,125 if head of household; \$61,500 if married filing jointly).
- The person(s) who made the qualified contribution or elective deferral (a) was born after January 1, 1999, (b) is claimed as a dependent on someone else's 2016 tax return, or (c) was a student (see instructions).

CAUTION

- Traditional and Roth IRA (including *myRA*) contributions for 2016. Do not include rollover contributions
- Elective deferrals to a 401(k) or other qualified employer plan, voluntary employee contributions, and 501(c)(18)(D) plan contributions for 2016 (see instructions)
- Add lines 1 and 2
- Certain distributions received after 2013 and before the due date (including extensions) of your 2016 tax return (see instructions). If married filing jointly, include both spouses' amounts in both columns. See instructions for an exception
- Subtract line 4 from line 3. If zero or less, enter -0-
- In each column, enter the smaller of line 5 or \$2,000
- Add the amounts on line 6. If zero, stop; you cannot take this credit
- Enter the amount from Form 1040, line 38^{*}; Form 1040A, line 22; or Form 1040NR, line 37
- Enter the applicable decimal amount shown below:

	(a) You	(b) Your spouse
1		6,500
2	0	0
3		6,500
4	0	0
5	0	6,500
6	0	2,000
7		2,000
8	41,722	

If line 8 is—		And your filing status is—		
Over—	But not over—	Married filing jointly	Head of household	Single, Married filing separately, or Qualifying widow(er)
Enter on line 9—				
—	\$18,500	.5	.5	.5
\$18,500	\$20,000	.5	.5	.2
\$20,000	\$27,750	.5	.5	.1
\$27,750	\$30,000	.5	.2	.1
\$30,000	\$30,750	.5	.1	.1
\$30,750	\$37,000	.5	.1	.0
\$37,000	\$40,000	.2	.1	.0
\$40,000	\$46,125	.1	.1	.0
\$46,125	\$61,500	.1	.0	.0
\$61,500	—	.0	.0	.0

Note: If line 9 is zero, stop; you cannot take this credit.

- Multiply line 7 by line 9
- Limitation based on tax liability. Enter the amount from the Credit Limit Worksheet in the instructions
- Credit for qualified retirement savings contributions. Enter the smaller of line 10 or line 11 here and on Form 1040, line 51; Form 1040A, line 34; or Form 1040NR, line 48

9	X .1
10	200
11	2,226
12	200

^{*}See Pub. 590-A for the amount to enter if you are filing Form 2555, 2555-EZ, or 4563 or you are excluding income from Puerto Rico.

For Paperwork Reduction Act Notice, see your tax return instructions.

Form **8880** (2016)

Federal Statements

SINGLE FAMILY RESIDENTIAL

Statement 1 - Schedule E, Line 19 - Other Expenses

<u>Description</u>	<u>Gross Amount</u>	<u>Business Use Percentage</u>	<u>Net Amount</u>
FEES	\$ <u>132</u>		\$ <u>132</u>
Total	\$ <u>132</u>		\$ <u>132</u>

Year Ending: December 31, 2016

~~40-10-1009~~

FRICA & DORIS LATINSKY

SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT

Section 1.263(a)-1(f) De Minimis Safe Harbor Election

Under IRC Regulation 1.263(a)-1(f), the taxpayer hereby elects to apply the de minimis safe harbor election to all qualifying property placed in service during the tax year.