

APPLICATION FOR NOMINATION TO THE SUPREME COURT OF FLORIDA



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Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Michael Thomas McHugh Social Security No.:

Florida Bar No.: 968978 Date Admitted to Practice in Florida: 12/27/1992

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

State of Florida – Chief Judge Twentieth Judicial Circuit
1700 Monroe Street, Fort Myers, FL 33901
(239)533-2775

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number), and your preferred email address.

– 21 years at this address

I have lived in Florida for 48 years
(239)

3. State your birthdate and place of birth.

May 26, 1967
Shelby, Ohio

4. Are you a registered voter in Florida (Y/N)? Yes

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

Florida Bar – 1992 to present

Middle District of Florida- 1993

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias. No

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

University of Florida College of Law – 1989-1992 – Juris Doctorate – May 16, 1992. GPA- 2.97. Class Rank 83 out of 195.

University of Florida – 1985-1988 – Bachelor of Science in Accounting – December 17, 1988. GPA 3.20

I requested my class rank from the University of Florida Registrar and received the below response. I have contacted the Fisher School of Accounting and will provide the information upon receipt.

Good morning Michael,

Thank you for contacting the Office of the University Registrar. Our office does not use a class rank system due to the number of students that attend our university every semester. We recommend reaching out to the department that oversees your program to find out if they are able to provide this information.

If you have any further inquiries, feel free to reach out to our office by replying to this email or calling the OneStop at (352) 392 - 2244.

Have a great day!

Best,
Dante Maldonado
Office of the University Registrar
Division of Enrollment Management

--

222 Criser Hall, Gainesville FL, 32611-4000
P:(352) 392 2244 F:(352) 846 1126

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

I participated in Cross Country and Track for the University of Florida while in Undergrad. I was a member of Sigma Chi Fraternity and served as treasurer. I was the Accounting School Representative for Honor Court while in Undergrad. I was responsible for rewriting the University of Florida Honor Code.

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

20th Judicial Circuit Court Judge, 1700 Monroe Street, Fort Myers, FL 33901 May 2006 – Present

Attorney and Managing Attorney Allstate Staff Counsel, 200 Main Street, Fort Myers, FL 33901, January 1995 – April 2006

Assistant State Attorney 20th Judicial Circuit, 2000 Main Street, Fort Myers, FL 33901, December 1992 – January 1995

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

I am currently the Chief Judge of the Twentieth Judicial Circuit. This position includes overseeing all of the administrative details of our five county circuit. I am the first Chief Judge in the history of the Circuit to be elected to four terms. In this position I have implemented Unified Family Court throughout the Circuit. I worked with law enforcement and the State Attorney's office to install an electronic warrant system that allowed judges to sign warrants remotely and save law enforcement from having to go to the courthouse or judge's home to get a warrant signed. I have worked with Court Administration's IT department, the clerk's office, and an outside vendor to implement a judicial viewer circuit wide that allows all judges to receive orders from the Florida Bar Portal. This allows judges the ability to review, modify, sign, and distribute orders from their computer. All judges are required to do so in our circuit. I

headed up our circuit’s COVID-19 response and worked to transition our judges to remote court events and making sure our citizens were still able to access our court systems and due process was being maintained. I worked with our justice stakeholders, county court judges, and members of the bar to divisionalize Lee and Collier County Court dockets to bring specialization to the dockets and save resources of our stakeholders. I managed the closings and openings of the Collier, Lee, and Hendry courthouses during and after Hurricane Irma.

While serving as Chief Judge I have maintained a full docket. Since 2018 I have presided over exclusively first party property Hurricane Irma cases. This has included trying over 40 jury trials dealing with these cases. Prior to taking on the Hurricane Irma Assignment I took on a general civil docket from a judge who resigned immediately and unexpectedly. I covered this docket while the appointment process for the retired judge ensued. I have also handled Probate and Foreclosure dockets circuit wide while serving as Chief Judge.

Prior to being elected Chief Judge I had served in every division in the circuit. I have been on the Felony, Juvenile, Family, and Civil dockets during my time as a Circuit Judge. This included being Administrative Judge of both the Family and Civil Divisions.

Before becoming a Judge I was a staff attorney for Allstate Insurance Company. This involved handling litigation for primarily auto and homeowners suits. I represented both insured’s and Allstate during this time. This practice was an extremely busy trial practice that provided the opportunity for constant courtroom practice. I started my time at Allstate as an attorney in the Fort Myers office. Before I left I had been promoted to managing attorney and was responsible for merging the Sarasota office into the Fort Myers and Tampa offices and then managing both the Tampa and Fort Myers offices.

My first legal experience out of law school was at the Twentieth Judicial Circuit State Attorney’s Office. I began in the Misdemeanor Division and progressed to the Juvenile and Felony Divisions. Once again this experience gave me the ability to manage a high volume practice and an opportunity for frequent court time and a large number of trials. When I left I was in the Felony Division and had tried all levels of offenses including murder.

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

	Court		Area of Practice	
Federal Appellate	_____	%	Civil	<u>100</u> %
Federal Trial	_____	%	Criminal	_____ %
Federal Other	_____	%	Family	_____ %

State Appellate	_____ %	Probate	_____ %
State Trial	<u>100</u> %	Other	_____ %
State Administrative	_____ %		
State Other	_____ %		
TOTAL	<u>100</u> %	TOTAL	<u>100</u> %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation:

As stated above I have handled all areas of practice as a judge and have both Civil and Criminal experience as an attorney.

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury?	<u>100+</u>	Non-jury?	<u>100+</u>
Arbitration?	<u>25</u>	Administrative Bodies?	<u>0</u>
Appellate?	<u>0</u>		

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument, and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

None

14. 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.

None

15. 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 full.

None

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

17. For your last six cases, which were either 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). *This question is optional for sitting judges who have served five years or more.*

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

Approximately 15 - 20 days per month

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel.

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants?

When I was in private practice all of my personal injury work was on behalf of the defense.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, 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.

a) Clark v. Allstate Indemnity Company – Lee Circuit Civil – 94CA3700. Allstate Indemnity Co. v. Clark, 736 So.2d 1 (Fla. 2nd DCA 1998). This was one of my first civil trials. This case dealt with a tractor-trailer running a red light and running over the front of the plaintiff's

vehicle. The truck fled the scene and was never identified. The plaintiff brought an uninsured motorist claim against Allstate Indemnity Company. At trial, the Jury awarded the plaintiff money for past medical expenses, but no other damages. Since there was no evidence that the tortfeasor had Personal Injury Protection Insurance (PIP), we did not receive the benefit of the “threshold” or “permanency” defense. The plaintiff argued at a Motion for a New Trial that a new trial was warranted because a jury could not award past medical expenses without also awarding past pain and suffering. The Court agreed and Allstate appealed. The Second District Court of Appeals overturned and stated no award for pain and suffering is required and the verdict was reinstated. This case was significant to me because it established new law in an uncertain area. I was the sole attorney representing the defendant in this case at trial. Mark Steinbeck was the plaintiff attorney on this case, his email is mas2424@aol.com and his phone number is (239)691-5060. The case was presided over by the Honorable Lynn Gerald who is deceased.

- b) Reilly v. Simon Property Group, Lee Circuit Civil – 05CA624. This was a class action filed against Simon Property Group for fees associated with the gift cards they issued for use at their retail malls. I was co-counsel on this matter with Brian Blair, who is currently at Baker & Hostetler in Orlando. We represented Simon Property Group. This case was significant due to the nature of the action. It was in a different area of law than I was used to practicing in. This gave me the opportunity to broaden my practice area and research and argue new areas of law. The case ended with a favorable result with an early dismissal of the action. Mr. Blair’s email address is bblair@bakerlaw.com and his phone number is (407)649-4050. The plaintiff attorney in this matter was David Harris, his email is david@harris.lawyer, and his phone number is (941)499-1400. This was presided over by the Honorable John S. Carlin, his phone number is (239)533-2871 and his email address is jcarlin@ca.cjis20.org
- c) State of Florida v. Richard Purdy, Lee County Felony. I tried this case with Andrew Swett, who is now a Lee County Judge. This was a murder case that we tried in 1994. This was significant because it was the first murder case I tried. The victim in the case was HIV positive. The defendant was his boyfriend. In 1994 we were uncertain how a jury would view the facts and how that might affect the way they looked at this case. The jury came back with a guilty verdict for 2nd degree murder, which was a lesser included offense. Ultimately I believe this was the right verdict in this case. The Judge was the Honorable Isaac Anderson who is deceased. Co-Counsel was the Honorable Andrew Swett. His phone number is (239)533-9157 and his email is aswett@ca.cjis20.org. I don’t have the additional information asked for in this case due to its age and inability to search for more details.
- d) State of Florida v. numerous juvenile defendants. This case was tried in Circuit Court in Lee County. This case was significant because the victim was the Honorable Edward Volz and was tried in front of a retired Circuit Judge from the 12th Judicial Circuit. Judge Volz home was burglarized right before Christmas. The thieves took all of the Christmas presents from under his tree and loaded them in his truck. His truck was later found in flames. Four out of the five defendants were found guilty. The case was significant based being familiar with the

victim and the fact I was chosen by my office to handle the case. The familiarity with the victim made me appreciate even more the way people are affected by the cases we handle as both judges and attorneys. Once again I don't have all the information about this case based on the age of the case and an inability to search for information about. Judge Volz is now retired. His email address is edvolz@comcast.net and his phone number is 239-850-4918. A out of circuit judge was assigned the case.

- e) Durkee v. Fichter and Nolan, Lee County Civil, 96CA6850. This case was tried in front of the Honorable Lynn Gerald, who is deceased. The Plaintiff attorney was Randall Spivey. His phone number is (239) 337-7483 and his email address is randall@spiveylaw.com. The plaintiff were insured by Allstate Insurance Company. I was retained to represent the defendants by Allstate. At his deposition the driving insured admitted to having drunk before the accident. There was never any request to amend to add a punitive damages count. We admitted liability for the accident and did not allege any comparative negligence. At trial the plaintiff pulled out a beer bottle from his brief case and argued about intoxication over objection. This case was important because it illustrated the tripartite relationship between counsel, insured, and insurance company. This emphasized the complex ethical questions you have to be cognizant of in the legal profession and be prepared to navigate through at any time.

- 22.** Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

The first writing sample I have included is a judgment and order I wrote in connection with Kalra v. Kalra, Lee County Circuit Case 06DR2469. This was a family law case I presided over. There are two documents related to this case attached. The first is the "Final Judgment of Dissolution of Marriage" and the second is "'Order on Husband and Wife's Motion for Fees and Costs". I drafted these documents in their entirety. I used this sample because family law is one area I never practiced in before taking the bench. I felt this was a standard judgment I prepared in this arena. What made this case a bit out of the ordinary however was the attorney fees issue that included dueling requests for fees pursuant to Florida Statute 57.105. The second document is the order dealing with the fee issue and granting 57.105 fees.

The second writing sample is from US Home Corp v. D&D Investments of Lee County mentioned below in number 26. This was the Final Judgment I drafted after the non-jury trial. This was a long trial with hundreds of exhibits. There were many parties, and multiple other lawsuits dealing with business deal. I think it is an example of one of the orders I have prepared in a more complicated commercial civil case.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

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

I have been a Circuit Judge in the Twentieth Judicial Circuit since May of 2006. I was appointed by Governor Jeb Bush and have not been opposed since my appointment.

- 24.** If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

I submitted to the Twentieth Judicial Circuit Judicial Nominating Commission in early 2006 for the position I was appointed to by Governor Bush. I submitted an application to the same Judicial nominating Commission for a Lee County Judgeship in 2004, my name was certified to the Governor's office for this position, but I was not selected. In approximately 2001 I applied for a Circuit court position, but my name was not submitted to the Governor.

Last year I applied for the newly created Sixth District Court of Appeal, I made the list that was submitted to the Governor, but obviously was not selected.

- 25.** List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard.

None.

- 26.** If you have prior judicial or quasi-judicial experience, please list the following information:

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

1. Edward K. Cheffy
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2. Shannon Doolity
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3. Bud Kirk
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4. Honorable Kathleen Smith
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5. Michael Corso
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6. Honorable Donald Mason
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dmason@ca.cjis20.org

(ii) the approximate number and nature of the cases you handled during your tenure; I began on the Felony, Juvenile, and Specialty Court Dockets in Charlotte County, I then moved to Lee County and handled a Family Law Docket, followed by a Civil Docket. In my 16 years as a judge I have been assigned to every division and handled thousands of cases.

(iii) the citations of any published opinions; and

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

1. *Brock v. Board of County Commissioners of Collier County*, 21 So.3d 844 (Fla. 2d DCA 2009). Collier Circuit Case Number 04CA941. This was a meaningful case for me in a number of reasons. I was on a family law docket in Lee County when I received this assignment. All Collier County Judges had recused based on the parties involved. So this was the first civil case I handled as a member of the judiciary.

The broad issue was the ability of the clerk to audit funds. The Board of County Commissioners moved for Final Summary Judgment on all issues. They believed that the case was purely a legal question. The Clerk moved for a partial Summary Judgment arguing that a three week jury trial was needed based on significant issues of fact.

I granted the Board's Motion for Summary Judgment finding the auditing was not a specific or implied right of the Clerk. I also found all the issues were legal questions and therefore no jury trial was needed. The cite is to the 2nd DCA's opinion on the case. Of the three issues I ruled on they affirmed the first 3-0, and reversed the other two 2-1. They also agreed that the issues were issues of law. The Florida Supreme Court accepted jurisdiction of the case. By the time this occurred Justice Canady had moved from the 2nd DCA to the Florida Supreme Court. He wrote the majority opinion for the 2nd DCA. Ultimately the Florida Supreme Court relinquished jurisdiction.

This case is significant to me for a number of reasons. It was the first civil case I handled as a jurist. It involved a very public conflict that interested the press and had participants who were very familiar with the judicial process. It also was the first time one of my decisions was reversed. It also was the first case of mine that the Florida Supreme Court accepted jurisdiction over, albeit later relinquished. Lastly, Justice Canady wrote the opinion in this case. In later years I have worked closely with Justice Canady on a number of issues and have an incredible amount of respect for him.

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2. In Re Jane Doe, 14MH165, Lee County Circuit Court Case. Cape Coral Hospital petitioned under Florida Statute 765.105 and Florida Statute 765.401 for expedited judicial intervention to withdrawal life prolonging procedures. This case dealt with an elderly woman who the hospital had deemed “brain dead” who was being kept alive at the request of the patient’s medical surrogate. This was significant because the case dealt with medical prognosis, religious beliefs, family member’s wishes, financial obligations, and ultimately was a life or death decision.

This case was one that required me to keep out of my decision any personal beliefs and emotion. There was an extreme amount of emotion involved by a number of the participants. The law set out a fairly straight forward standard of review, but implementation of that standard was not easy. The condensed timeframe and media interest of the proceedings also made the case unique.

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3. *Dial v. Calusa Palms Master Assoc., Inc.*, 22 FLW SCO 115b (FLA. 2022). The citation is to the recent Florida Supreme Court case affirming the Second DCA’s affirmance of my decision. The issue was whether the Florida Supreme Court case of *Joerg v. State Farm Mutual Automobile Insurance Co.*, 176 So.3d 1247 (Fla. 2015) which prohibited the introduction of evidence of Medicare benefits in a personal injury case for purposes of a jury’s consideration of future medical expenses also applied to past medical expenses. I ruled that the prohibition did not apply and that the plaintiff could only black board the amount of the Medicare Lien and not the total amount of the bills.

This was significant not only because the case went to the Supreme Court and established precedent for all trial courts in Florida, but also because of the way I ended up with the case. The case was being handled by another circuit judge who unexpectedly and immediately resigned. Being Chief Judge I had to find coverage for his docket until a replacement was chosen by the Governor. I ended up taking over this docket and this was one of the first trials I handled. The issue came up in a Motion in Limine that I ruled on before the trial started. This situation showed me once again how you never know when an important decision might crop up during even the most routine hearings.

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4. *D&D Investments of Lee County Inc., v. U.S. Home Corp.*, 75 So.3d 1264 (Fla. 2nd DCA 2011). Lee County Circuit Case number 06CA3092. The citation is simply a per curium affirmed. The reason that I put these cases in this list is they were both multi week non-jury trials dealing with land deals that fell apart after the 2007 recession. I was on the civil docket soon after the real estate market's bottom fell out. As a result of this our docket's exploded. At the height of the foreclosure crisis we had over 32,000 pending foreclosure cases in Lee County, but that wasn't the only issue. Also being filed were complex corporate land transaction lawsuits that required extended hearing and trial time.

Dealing with these issues as not only a trial judge but the Administrative Judge for the Civil Division allowed me to get a better understanding of these issues and the problems they created.

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Meritage Homes of Florida v. Mood Development, Lee County Case Number 07CA8197. Another multi-week non-jury trial. This dealt with a land banking deal that was used to transfer title to a property for tax purposes with the ability to buy the property back. I literally had hundreds of pages of notes on this case and it was one of the more complex legal issues I've had to deal with. Once again this exemplifies the various cases that come in front of you as a judge and how you can move from the simple to the complex in moments. This case was ultimately per curium affirmed by the Second DCA.

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5. *Office of the Attorney General v. Bonita Bay Group*, Lee County Case number 10CA1113. The Office of the Attorney General brought a FDUTPA action against Bonita Bay Group alleging their unilateral modification of their golf course deposit refund policy was actionable. This case was unique and intellectually stimulating. I enjoyed the high end legal argument and analysis. It was also important to many people in the community and had significant media attention. This is one of the cases that made me realize I would want to attempt to be an appellate judge in the future. The argument by counsel was well thought out and I enjoyed the nuances of issues.

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27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

- A) *Brock v. Board of County Commissioners of Collier County*, 21 So.3d 844 (Fla. 2d DCA 2009). Discussed this case in Number 26 above
- B) *Peacock v. Ace*, 24 So.3d 750 (Fla. 2d DCA 2009). The Defendant in this case was Pro Se. No transcript of the proceedings was maintained. The award included accelerated rent which was inappropriate. The Second DCA certified a question about factual findings in the order when no transcript is presented. This question was not taken up by the Florida Supreme Court.
- C) *CTX Mortgage Co., v. Advantage Builders of America, Inc.*, 47 So.3d 844 (Fla 2d DCA 2010). The Second DCA disagreed with my determination that an equitable lien existed in favor of a builder of a completed project on undispersed construction funds.
- D) *Jackson-Jester v. Aziz*, 48 So.3d 88 (Fla. 2d DCA 2010). The Second DCA determined that there were issues of material fact that disallowed partial summary judgment.
- E) *Smith v. R.J. Reynolds Tobacco Co., et al*, 103 So.3d 955 (Fla. 2d DCA 2012). This dealt with a procedural issue of whether a complaint could be amended to change it from a

personal injury claim to a wrongful death action. The 3d DCA had previously ruled that the personal injury claim was extinguished with the death of the plaintiff and a new suit had to be filed. I accordingly followed the 3d DCA's opinion as it was the only DCA to have ruled on this issue. The Second DCA disagreed with the Third DCA and certified conflict. Judge Black dissented, agreeing with the Third DCA's position. The Florida Supreme Court recently agreed with my position on this issue in *Sheffield v. R.J. Reynolds Tobacco Co.*, 329 So.3d 114 (Fla. 2021).

- F) *Fiore v. Hilliker*, 170 So.3d 147 (Fla. 2d DCA 2015). The Second DCA determined that there were issues of material fact that disallowed summary judgment.
- G) *Verandah Development, LLC v. Gualtieri*, 201 So.3d 654 (Fla. 2d DCA 2016). The Second DCA affirmed my granting of summary judgment on liability, but reversed my summary judgment finding there was a material issue of fact about the timing of when the damages were payable.
- H) *Williams v. Victim Justice, P.C., et al*, 198 So.3d 822 (Fla. 2d DCA 2016). This deals with an attorney fee dispute. In the initial case the plaintiff sued Johan Santana, pitcher for New York Mets, for sexual assault. During the course of the litigation both of plaintiff's attorneys withdrew. This included counsel from Colorado who had previously represented Kobe Bryant's sexual assault accuser. The prior counsel filed a separate action to collect their attorney fees. A magistrate issued a report and recommendation granting a "Motion to Preserve Assets". I signed an "Order Adopting the Report and Recommendation of the Magistrate". The Second DCA determined there were not sufficient facts outlined in either the "Report and Recommendation" or the order adopting it.
- I) *Winchel v. Pennymac Corp.*, 222 So.3d 639 (Fla 2d DCA 2017). A magistrate issued a "Report and Recommendation" of foreclosure. I signed an order approving the "report and recommendation". The Second DCA determined that the plaintiff had not proven standing at inception and that the defendant did not have to raise that issue during the trial.
- J) *Maki v. Green Tree Servicing, LLC*, 257 So.3d 1237 (Fla. 2d DCA 2018). The Second DCA determined that the chain of ownership was not established and therefore standing was not established.
- K) *Samad v. Pla.*, 267 So.3d 476 (Fla. 2d DCA 2019). The Second DCA ruled that my granting of an extension of time to file a statutory election to take an undivided interest in the decedent's homestead as a tenant in common was in error.
- L) *Mace v. M&T Bank*, 292 So.3d 1215 (Fla. 2d DCA 2020). The Second DCA majority ruled that there was insufficient evidence by the bank that the default notice was mailed to the borrowers, a condition precedent to foreclosure. The dissent obviously disagreed and would have affirmed my judgment of foreclosure.

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

None other than above.

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution.

None

30. Have you ever held an attorney in contempt? If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances.

None

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

None

NON-LEGAL BUSINESS INVOLVEMENT

32. 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.

None

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, explain and provide dates. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received.

I have taught legal classes at both Florida Gulf Coast University and Florida Southwestern University since becoming an attorney. These were all part time adjunct teaching positions that I held while maintaining my full time employment listed above.

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.

None

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. Attach a copy of each listed or provide a URL at which a copy can be accessed.

None.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. Provide the name of the entity, the date published, and a summary of the document. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed.

Workgroup on Improved Resolution of Civil Cases. I am a member of this Judicial Management Council Workgroup and I have attached the final report we submitted to the Supreme Court recommending changes to various rules.

[Judicial Management Council Workgroup on Improved Resolution of Civil Cases \(flcourts.org\)](https://www.flcourts.org/judicial-management-council-workgroup-on-improved-resolution-of-civil-cases)

Workgroup on the Continuity of Court Operations During and After COVID-19. I chaired the civil subgroup of this committee. During the course of the pandemic we authored many recommendation to Chief Justice Canady in regards to how we would continue to conduct proceedings during the pandemic. As a result of these recommendations numerous Supreme Court Administrative Orders were implemented. Attached is the final rules petition we made to permanently change the rules based on what we learned as a result of the temporary rule changes implemented during the pandemic.

[2021-990_petition_78342_petition2dmisc20amendments20to20rules2fcodes.pdf \(flcourts.org\)](https://www.flcourts.org/2021-990_petition_78342_petition2dmisc20amendments20to20rules2fcodes.pdf)

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

[Bar's COVID-19 Pandemic Recovery Task Force turns its sights to the future – The Florida Bar Virtual Town Halls set for the 10th, 20th and Third circuits – The Florida Bar](#)

Florida Bar's Recovery Task Force October 2020 meeting

[Lee County chief judge Mike McHugh rules first Boston Marathon \(news-press.com\)](#)

Interview after first Boston Marathon

[Court backlog - Fort Myers Florida Weekly](#)

Florida Weekly Interview concerning COVID-19 protocols

[Remote hearings for civil cases may be the norm going forward – The Florida Bar](#)

Florida Bar’s Recovery Task Force meeting presentation and Q&A

[Courts ask for \\$16 million to clear pandemic backlog – The Florida Bar](#)

COVID-19 Legislative needs Florida Bar presentation

[The judge rules | Business Observer | Business Observer \(businessobserverfl.com\)](#)

Interview about running

I have participated in a great number of interviews, lectures, panel discussions, conferences, and question and answer sessions. Many of these dealt with practices and procedures within the 20th Judicial Circuit. In the last few years most have been centered on COVID-19 protocols based on my appointment to the Florida Supreme Court COVID Workgroup, or the pending civil rule changes based on my appointment to the Judicial Management Council’s Workgroup on the Improved Resolution of Civil Cases. I have never given a political speech. I have included some of the links to some of my interviews or presentations that came up with a google search.

Looking back at my calendar for the last six months shows I have spoken at the following events recently. These events are consistent with the number and type I have historically spoken at, especially since I became Chief Judge.

March 16th, 2023 – Florida Bar Construction Law Institute Seminar– Panelist in discussion about the effects of new rule changes on complex construction litigation.

September 16th, 2022 – Southwest Florida Federal Bar Association Constitution and Naturalization Day – Read a portion of the Constitution and spoke to group.

September 7th, 2022 – Collier County Bar Association – Panelist with Laird Lile, Esq. and Katy Esquivel, Esq at continuing legal education seminar about inventory attorneys.

August 19, 2022 – Lee County Bar Association presentation on Mental Health Resources for attorneys in area. Moderated panel that included Dr. Steve Cohen (psychologist specializes in professionals), John Lesko, JD – Florida Lawyers Outreach for Florida Bar, Lisa Terwilliger – Executive Director of Collier county Bar Association.

[LCBA General Membership Meeting - Lee County Bar Association | Lee County, FL \(leebar.org\)](#)

August 2nd, 2022 – Taught at Circuit Judges Education Conference on the proposed changes to the rules regarding civil proceedings in Florida.

June 3rd, 2022 – Opening remarks and presided over the Honorable Erik Leontiev’s investiture.

June 3rd, 2022 – Collier County Young Lawyers Annual Ethics Seminar – Presented on local rules and ethical obligations in the 20th Judicial Circuit. This was a CLE program for all lawyers.

May 5th, 2022 – Presented Lee County Women Lawyers Association Jurist of the Year Award to the Honorable Josephine Gagliardi. I made remarks about her career and presented award.

April 29th, 2022 – Opening remarks and presided over the Honorable Nicole Mirra’s investiture.

April 26th, 2022 – Opening remarks at the dedication ceremony of the Courthouse Tower to the late Honorable Isaac Anderson.

[Lee County Justice Center dedicated to Judge Isaac Anderson Jr. | WGCU PBS & NPR for Southwest Florida](#)

- 38.** Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

I have taught numerous courses at Florida Gulf Coast University and Florida Southwestern State College. These courses have included Litigation, Torts, Criminal Procedure, Criminal Law, Constitutional Law, Introduction to Paralegal Studies, Legal Research, Business Law, and Writing, Will, Trusts, and Probate. I taught from the late 1990’s until 2018. I have included syllabi from a number of these courses.

- 39.** List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

Phi Eta Sigma Honor Society, University of Florida
Outstanding Florida Staff Attorney Allstate – Florida Division – 1997, 2000, 2002, 2005
“Forty Under Forty” – Southwest Florida – 2006
American Board of Trial Advocates Southwest Florida Chapter – 2011 Jurist of the Year
The Brunson Foundation Corporation – “Men in Action” honoree - 2021

- 40.** Do you have a Martindale-Hubbell rating? If so, what is it and when was it earned?

None

- 41.** List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

Lee County Bar Association – 1993-Present
Collier Bar Association – 2016-Present
Calusa Inn of Court – 1995-1998, 2017-Present
Middle District of Florida – 1993-Present
Florida Bar Association – 1992-Present

- 42.** List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Judicial Management Council – 2020-Present

Judicial Management Workgroup Trial Court Technology Strategies – 2021-Present. Chair 2021-Present

Judicial Management Council Workgroup on the Improved Resolution of Civil Cases – 2020-2023

Florida Supreme Court Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 – 2020-Present. Chair Civil Workgroup – 2020 – 2022

Florida Supreme Court Local Rules Advisory Committee – 2020 – Present

20th Judicial Circuit Professionalism Committee – 2016-Present – Chair 2016-Present

American Cancer Society – 2000-2012. Chairman of Board 2008-2010. Chair Relay for Life 2004-2006 – raised over \$1,000,000 each year I was chair.

Uncommon Friends Foundation – 1998-2006

Florida Bar Small Claims Rules Committee – 2004-2007

- 43.** Do you now or have you ever belonged to a 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 (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state 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.

None

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

None

45. Please describe any hobbies or other vocational interests.

I am an avid runner. I have run the Boston Marathon twice, New York City Marathon, Eugene Marathon, as well as numerous other marathons and races. I also frequent the gym. I enjoy reading and working in my yard.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

None

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram.

None

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

I am married to Liane Dean McHugh, educator, Florida Virtual School, July 15, 1996.

49. If you have children, please list their names and ages. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number.

Michael Gareth McHugh, 24, currently at Emory Law School, (239). Interned summer 2022 at the law firm of Bradley Arandt in Nashville. He has accepted an internship next summer with Sullivan and Cromwell in New York City.

Dylan Thomas McHugh, 21, currently enrolled at University of Florida, (239)

Elizabeth Ann McHugh, 16

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

None

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms.

None

52. Have you ever been arrested, regardless of whether charges were filed? If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction.

None.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

I have been the defendant in two related civil matters. The first was *Bevan v. Lee County Property Appraiser*, Lee County Case 10CA1677. I was the successive judge on this case after the Pro Se plaintiff had moved to have previous judges disqualified. They filed a Motion to Disqualify me in this case and based on it being a successive Motion for Disqualification I was able to decide the motion on its merits and deny the motion. After denying the motion the plaintiff filed an Amended Complaint and added me as a defendant in the case. They then filed another motion to disqualify me based on me being a party in the lawsuit. I struck the Amended Complaint and continued to preside over the matter. The plaintiff then filed *Bevan v. McHugh*, Lee County Case 10CA3836. I was represented by the Attorney General's office in this matter and the case was summarily dismissed. As soon as it was filed however, the plaintiff once again filed a Motion for Disqualification in the original action asserting that I could not preside over his case while I had an active lawsuit with him. I denied his motion.

Those are the only matters I have been a party in.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part?

No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved.

No.

56. 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, provide the particulars of each finding or investigation.

No.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition.

No.

58. 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.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? If so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy.

No.

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

No.

- 61.** Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have complied with all legally required tax return filings and I have never paid a penalty or had a lien filed against me.

HEALTH

- 62.** Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol?

No.

- 63.** 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? 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.

No.

- 64.** 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 two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering 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. If yes, please explain.

No.

- 65.** 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? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No.

- 66.** 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, provide full details as to court, date, and circumstances.

No.

- 67.** 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 or State law provisions.)

No.

- 68.** 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 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.

- 69.** 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.

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

No.

SUPPLEMENTAL INFORMATION

- 71.** Describe any additional education or experiences you have which could assist you in holding judicial office.
- 72.** Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I have practiced extensively in both the Criminal and Civil arenas, likewise I have presided in every division in Circuit Court. I have a great understanding of all types of actions that would appear before me at a District Court of Appeal Judge. I have also served as Chief Judge for the last 7 years. This position requires me to work with other judges and come to consensus in

regards to issues if possible, but also be willing to make final decisions on issues presented. I believe there is some similarity with that function and serving on an appellate panel.

I enjoy reading opinions and legal articles. I often go to the DCA websites and watch the oral arguments from cases that I read in “The Florida Law Weekly”. I am excited about the chance to deal with complex legal questions and analysis them at a deeper level. On the Circuit Bench I am often pressed for time which reduces my opportunity to spend the time I would like writing orders. I was awarded the highest grade in my Legal Research and Writing course when I was a 1L.

I have a strong belief in the role of the judiciary and separation of powers. I am always cognizant of judicial branch’s obligation to look at the law in front of them and interpret that law by giving the words their clear meaning. I feel strongly that without the three branches of government staying within their lanes and exercising the checks and balances outlined in the constitution our system of government does not work in the way it was envisioned. I think this belief has benefitted the litigants and attorneys whose cases have appeared in front of me and would be even more beneficial on the appellate bench. I would be extremely excited to be a part of the Court that decides the many important issues that are about to be heard by the Florida Supreme Court.

REFERENCES

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

- a) Chief Justice Charles T. Canady
500 South Duval Street
Tallahassee, FL 32399
canadyc@flcourts.org
(850)

- b) Honorable Amira Fox
State Attorney – 20th Judicial Circuit
Lee County Justice Center Complex
2000 Main Street
Fort Myers, FL 33901
afox@sao20.org
(239)

- c) Tom Grady
720 5th Avenue South
Suite 200
Naples, FL 34102
(239)777-6555
mac@gradylaw.com

- d) Mark Boyle, Esquire
9111 W. College Pointe Drive
Fort Myers, FL 33919
(239)337-1303
mboyle@insurance-counsel.com

- e) Bud Kirk, Esquire
Rumberger, Kirk, and Caldwell
300 South Orange Avenue Suite 1400
Orlando, FL 32801
bkirk@rumberger.com
(407)619-1000

- f) Sheriff Carmine Marceno
cmarceno@sheriffleefl.org
14750 Six Mile Cypress Parkway
Fort Myers, FL 33912
(239)

- g) Chief Judge Robert Morris
P.O. Box 327
Lakeland, FL 33802
(727)
morrisr@flcourts.org

- h) Honorable Margaret Steinbeck
2000 Main Street
Fort Myers, FL 33901
(239)
msteinbeck@ca.cjis.org

- i) Laird Lile, Esquire
3033 Riviera Dr. Unit 104
Naples, FL 34103
(239)649-7778
llile@lairdalile.com

j) Scott Wilsker
Trial Court Administrator, 20th Judicial Circuit
Lee County Justice Center
1700 Monroe Street
Fort Myers, FL 33901
(239)633-5782
scottw@ca.cjis20.org

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(1), 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 15th day of April, 2023.

Michael Thomas McHugh
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: \$113,097.86

Last Three Years:	\$182,060	\$165,509.04	\$161,893.29
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2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

Current Year-To-Date: \$45,515

Last Three Years:	\$182,060	\$165,509.04	\$161,893.29
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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: none

Last Three Years:	none	none	none
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4. State the amount 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: none

Last Three Years:	none	none	none
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5. 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: none

Last Three Years:	none	none	none
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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: April 15, 2023

JNC Submitting To: Florida Supreme Court

Name (please print): Michael Thomas McHugh

Current Occupation: Circuit Judge

Telephone Number: -

Attorney No.: 968978

Gender (check one): Male Female

Ethnic Origin (check one): White, non-Hispanic

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Lee

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.

Michael Thomas McHugh
Printed Name of Applicant

[Signature]
Signature of Applicant

Date: 4/15/2023

General Information

Name: Hon Michael Thomas McHugh
Address: Lee County Justice Center 1700 Monroe Street, Fort Myers, FL 33901
County:

AGENCY INFORMATION

Organization	Suborganization	Title
Judicial Circuit (20Th)	Elected Constitutional Officer	Circuit Judge

Net Worth

My Net Worth as of April 26, 2022 was \$1,650,000.00.

Assets

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, whether owned or leased.

The aggregate value of my household goods and personal effect is \$ 250,000.00.

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

Description of Asset	Value of Asset
Residence	\$ 700,000.00
Dupont	\$ 6,691.00
Merck	\$16,824.00
Microsoft	\$ 114,212.00
Johnson and Johnson	\$18,429.00
Tapestry	\$6,548.00
Dow	\$ 2,234.00
Corteva	\$ 2,218.00
Nationwide Stock Fund	\$176,550.27
Wells Fargo Savings	\$ 33,804.71
Truist Checking	\$ 22,169.41
Allstate Stock Fund	\$323,553.20
Allstate Universal Life Policy Cash Value	\$ 40,223.42
Suncoast Credit Union Savings	\$3,965.63

Liabilities

LIABILITIES IN EXCESS OF \$1,000:

Name of Creditor	Address of Creditor	Amount of Liability
Suncoast Credit Union	1533 Matthew Drive, Fort Myers Florida 33907	\$ 39,881.77

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

Name of Creditor	Address of Creditor	Amount of Liability
N/A		

Income

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income.

PRIMARY SOURCES OF INCOME:

Name of Source of Income Exceeding \$1,000	Address of Source of Income	Amount
State of Florida	200 E Gaines Street, Tallahassee, Florida	\$ 160,688.00

SECONDARY SOURCES OF INCOME (Major customers, clients, etc. of businesses owned by reporting person):

Business Entity	Major Sources of Business Income	Address	Principal Business Activity of Source
N/A			

Interests in Specified Businesses

Business Entity # 1
N/A

Training

Based on the office or position you hold, the certification of training required under Section 112.3142, F.S., is not applicable to you for this form year.

Signature of Reporting Official or Candidate

Under the penalties of perjury, I declare that I have read the foregoing filing and that the facts stated in it are true.

Michael T. McHugh

Digitally signed: 5/3/2022

Filed with COE: 05/03/2022

Form 6A. Disclosure of Gifts, Expense Reimbursements or Payments, and Waivers of Fees and Charges

All judicial officers must file with the Florida Commission on Ethics a list of all reportable gifts accepted, and reimbursements or direct payments of expenses, and waivers of fees or charges accepted from sources other than the state or a judicial branch entity as defined in Florida Rule of Judicial Administration 2.420(b)(2), during the preceding calendar year as provided in Canons 5D(5)(a) and 5D(5)(h), Canon 6A(3), and Canon 6B(2) of the Code of Judicial Conduct, by date received, description (including dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid, or waived), source's name, and amount for gifts only.

Name: Michael T. McHugh Work Telephone: 239-533-2775
 Work Address: 1700 Monroe Street, Fort Myers Judicial Office Held: Circuit Judge

1. Please identify all reportable gifts, bequests, favors, or loans you received during the preceding calendar year, as required by Canons 5D(5)(a), 5D(5)(h), and 6B(2) of the Code of Judicial Conduct.

DATE	DESCRIPTION	SOURCE	AMOUNT
	None		\$
			\$
			\$
			\$

Check here if continued on separate sheet

2. Please identify all reportable reimbursements or direct payments of expenses, and waivers of fees or charges you received during the preceding calendar year, as required by Canons 6A(3) and 6B(2) of the Code of Judicial Conduct.

DATE	DESCRIPTION (Include dates, location, and purpose of event or activity for which expenses, fees, or charges were reimbursed, paid or waived)	SOURCE
	None	

Check here if continued on separate sheet

CONTINUE TO PAGE 2 FOR OATH

OATH

State of Florida

County of Lee

I, Michael T. McHugh, the public official filing this disclosure statement, being first duly sworn, do depose on oath and say that the facts set forth in the above statement are true, correct, and complete to the best of my knowledge and belief.

[Signature]

(Signature of Reporting Official)

[Signature]

(Signature of Officer Authorized to Administer Oaths)

My Commission expires 12/1/25



KATHLEEN A. SCHNEIDER
Commission #HH 197919
Expires December 1, 2025
Bonded Thru Budget Notary Services

Sworn to and subscribed before me this

3 day of May, 2022

Form 6B. Report of Business Interests

Instructions: List the names of any corporations or business entities, not otherwise identified on Form 6, in which you had a financial interest as of December 31 of the preceding year. If no business interests, or the interests are already identified on Form 6, then indicate "None," or "N/A." Attach additional pages as necessary. This form is filed only with the JOC.

Name of Judge: Michael T. McHugh Telephone: 239-533-2775
Address: 1700 Monroe Street, Fort Myers, FL 33901 Position: Circuit Judge

<u>Name of Business Entity</u>	<u>Address of Business Entity</u>
<u>None</u>	

I certify that the foregoing information is complete, true, and correct.

[Signature]
JUDGE'S SIGNATURE

OATH

State of Florida,
County of Lee

Sworn to (or affirmed) and subscribed before me by means of

physical presence or online notarization, this 3 day of May,

2022, by Michael T. McHugh (Name of Judge).

[Signature]
(Signature of Notary)

Notary Seal



KATHLEEN A. SCHNEIDER
Commission # HH 197919
Expires December 1, 2025
Bonded Thru Budget Notary Services

Personally Known or Produced Identification

Identification Produced: _____

12/7/2010 11:50 AM Filed Lee County Clerk of Court

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

U.S. HOME CORPORATION, a foreign
corporation,

Plaintiff,

v.

D&D INVESTMENTS OF LEE COUNTY,
INC. and GARY L. TASMAN,

Defendants.

Case No. 06-CA-003092

Judge Michael T. McHugh

Consolidated with above case:

Case No. 07-CA-001947-SW

D&D INVESTMENTS OF LEE COUNTY,
INC., a Florida corporation,

Plaintiff,

v.

U.S. HOME CORPORATION, a foreign
corporation,

Defendant.

FINAL JUDGMENT ORDERING SPECIFIC PERFORMANCE

This case was tried to the Court from October 12, 2010 through October 20, 2010, and based on the evidence admitted at trial, the Court finds as follows:

The Contract and the Property

1. The parties – U.S. Home Corporation (“U.S. Home”) and D&D Investments of Lee County, Inc. (“D&D”) – entered into a contract on May 19, 2005 (“the Contract”) whereby U.S. Home agreed to purchase approximately four acres of vacant land in Cape Coral, Florida (“the Property”) from D&D for \$10,880,000 with the closing to be held within seventy-five days from the Effective Date of the Contract. (Tab 1)

2. The Contract required U.S. Home to make an initial deposit with attorney Pete Gravina in the amount of \$272,000 within three days and an additional deposit in the amount of \$816,000 within forty-six days, which was one day after U.S. Home's "due diligence" period expired. (Tab 1)

3. Prior to signing the Contract with U.S. Home, D&D had intended to develop sixty-four condominiums on the Property to be known as the Villas on the Rubicon, and the Contract states in paragraph 4 that U.S. Home's intended use of the Property was "as a building site for condominiums." (Tab 1)

4. The "due diligence" clause in the Contract provided U.S. Home with forty-five days to "determine whether the Property is suitable, in Buyer's sole and absolute discretion, for Buyer's intended use and development of the Property." During the due diligence period, U.S. Home could "conduct any tests, analyses, surveys and investigations" which it deemed necessary "to determine to Buyer's satisfaction the Property's . . . zoning and zoning restrictions; . . . consistency with local, state and regional growth management and comprehensive land use plans; availability of permits, government approvals and licenses; . . . and other inspections that Buyer deems appropriate to determine the suitability of the Property for Buyer's intended use and development." (Tab 1)

5. The due diligence clause also provided that "Buyer shall deliver notice to Seller prior to the expiration of the Due Diligence Period of Buyer's determination of whether or not the Property is acceptable. Buyer's failure to comply with the notice requirement shall constitute acceptance of the Property in its present, 'as is' condition." (Tab 1)

6. The Contract also provided that "[i]n the event the sale is not closed due to any default or failure on the part of Buyer, Seller may . . . seek specific performance." (Tab 1)

U.S. Home's Dilemma: Wanting to "Lock-up" the Property
Without Taking the "Entitlement Risk"

7. At the time the Contract was signed, land use entitlements or approvals which would permit the construction of condominiums on the Property ("the Entitlements") had not been obtained, and the Contract did not include any requirement or contingency for obtaining the Entitlements. (Tab 1)

8. U.S. Home's broker, Gary Tasman, testified that while U.S. Home was willing to take "the market risk," it was not willing to take "the entitlement risk." (Tab 5)

9. Darrin McMurray, U.S. Home's representative at the trial, confirmed that he "didn't want to take the entitlement risk", and he admitted that U.S. Home wanted to "lock up" the Property. Specifically, he testified: "Absolutely. We wanted to lock up the property. We liked the property at that time." (Tab 3)

10. One of the reasons why U.S. Home liked the property "at the time" and wanted to "lock it up" is revealed in U.S. Home's due diligence folder, known as the Green Folder, which noted that: "Southwest Florida continues to be one of the hottest housing markets in the United States," expanding "with an annual start rate increase of over 20% compared to last year." The Green Folder also explained that the acquisition of the Property would allow U.S. Home "to enter the booming Cape Coral market in advance of the planned entry in 2007," and John Debitetto (the person U.S. Home designated for depositions as its representative with the most knowledge about the transaction) confirmed that it "was my objective to get into that market [i.e. Cape Coral]

in '06 or '07 to expand our presence." In the Green Folder, U.S. Home assessed the "market risk" for the transaction as "low." (Tab 51 and Joint Exhibit 36)

11. Faced with the dilemma of being unwilling to take the "entitlement risk" but having a contract that imposed no requirement on D&D to obtain Entitlements – and wanting, at that same time, to "lock up" the Property – U.S. Home instructed its broker, Gary Tasman, to negotiate an amendment to the Contract. (Tab 5)

The Amendment: Reallocating the Contract Risks

12. Prior to the expiration of the Due Diligence Period (when U.S. Home had the right to walk away from the Contract and receive its deposit), Tasman, on behalf of U.S. Home, approached D&D about amending the Contract to provide a specific deadline by which D&D must obtain the Entitlements. (Tab 5)

13. However, Ron Davis of D&D testified that he told Tasman "absolutely not, because I didn't know how long it would take to get a PDP, so I would not agree to it." Tasman corroborated this testimony, acknowledging that Davis told him "we can't guarantee any approval time." (Tab 4 and Tab 5)

14. Accordingly, instead of agreeing to an amendment setting forth a deadline for obtaining Entitlements, U.S. Home and D&D signed an amendment that would keep the property "locked up" for U.S. Home and also protect U.S. Home from the "entitlement risk." The amendment did not require U.S. Home to close on the Property until and unless D&D obtained approval for a Planned Development Project. (Tab 2)

Specifically, the Amendment states:

The Closing Date shall be changed to within fourteen (14) days of Seller's receipt of the PDP (Planned Development Project) from the City of Cape Coral.

15. The Amendment contained no date or deadline by which D&D was required to obtain the PDP. (Tab 2) Thus, the Amendment, consistent with Tasman's testimony, had the effect of allocating the entitlement risk to D&D and the market risk to U.S. Home¹.

D&D's Efforts to Obtain a PDP

16. Prior to being approached by U.S. Home to buy the Property, D&D had entered into a letter agreement with the engineering firm of Neese & Associates ("Neese") in November 2004, which stated that Neese would obtain a PDP for the Property, and based on that letter agreement, D&D agreed in the Amendment that closing would occur fourteen days after receipt of the PDP.

17. However, while Neese initially began the process of obtaining a PDP, it actually applied, on June 28, 2005, for a Site Plan Permit ("SPP") instead of a PDP based on the recommendation of the City's staff. While D&D signed the application for the SPP, it assumed and understood that the application was part of the process for obtaining a PDP.

18. D&D made a number of inquiries to Neese about the status of the PDP and repeatedly emphasized the need to obtain it promptly, as D&D wished to close the transaction as soon as possible and receive the purchase price from U.S. Home.

19. In or around February of 2006, D&D learned that Neese had applied for an SPP instead of a PDP. D&D learned, through its investigation, that all or virtually all of the work that was being done for the SPP was also necessary for a PDP; it learned that the same staff members who had been reviewing the SPP would be assigned to review

¹ A second amendment to the Contract was agreed to on July 2, 2005, which obligated D&D to diligently pursue boat dock approval through the SFWMD, although closing was not conditioned upon obtaining dock approval.

the PDP; and D&D also learned that the overall time frame for obtaining a PDP would not be significantly impacted by the fact that the initial application requested only an SPP.

20. Immediately upon learning that Neese's initial application requested only an SPP, D&D instructed Neese to proceed with an application for a PDP, which was filed on April 27, 2006. In order to expedite the approval process, D&D offered to pay one and one-half times Neese's normal rates. D&D also hired a second engineering company, Avalon Engineering, to assist Neese. The PDP was ultimately obtained approximately six months later on November 6, 2006; U.S. Home's expert acknowledged that the PDP was obtained so quickly because of the work that had previously been done on the SPP. (Tab 11)

The Directive from U.S. Home's Parent

21. In the meantime, U.S. Home's parent company, Lennar, had detected "weak market conditions," and in a press release to shareholders (D&D Exhibit 418), Lennar explained that "[s]ince early 2006 we have focused on fortifying our balance sheet b y . . . significantly reducing land purchases and s t a r t s We have written off option deposits and pre-acquisition costs on land we no longer desire to close." (Tab 35)

22. John Debitetto, D&D's corporate representative with the most knowledge about the transaction, testified that from January to April 2006 "[w]e were working to renegotiate... all of our land takedowns." He also testified that he was "asked to watch my inventory levels very closely. Inventory being vertical construction." (Tab 37)

The March Meeting

23. In March 2006, U.S. Home requested a meeting with D&D, and Bob D'Andrea met with U.S. Home's representatives John Debitetto and Tom Guszinski on March 7. Mr. Debitetto testified that he had received the instruction to "renegotiate with any of our business partners . . . whether it's buying pens and pencils or land" prior to the March 7 meeting. (Tab 42)

24. Mr. D'Andrea testified that the meeting lasted "maybe five minutes or less" and U.S. Home asked "[w]ould you let us walk away from the contract?", explaining that "our marketing strategy has changed." (Tab 41)

25. D&D refused to go along with U.S. Home's request at the March meeting to let U.S. Home walk away from the Contract, and D&D continued with its efforts to obtain the PDP.

The Termination Letter

26. On June 7, 2006, U.S. Home sent a letter "to provide notification" that it "has declared D&D Investments of Lee County, LLC to be in default" for failure to timely obtain a PDP. (Tab 45)

27. U.S. Home's termination letter was sent just over eleven months from the date that Neese had submitted the initial application for an SPP and just over eleven months from the expiration of U.S. Home's Due Diligence Period, which raises the issue of whether it was reasonable, under all of the circumstances of this case, for U.S. Home to send a termination letter on June 7, 2006 when the Amendment to the Contract provided no date or deadline for obtaining the PDP.

The Evidence Relating to Reasonable Times for Obtaining a PDP in Cape Coral in 2005-2006

28. Various witnesses with expertise testified about the reasonable time for obtaining a PDP in Cape Coral in the 2005 to 2006 time period as follows:

a. Fluegel. U.S. Home's expert, Walter Fluegel, testified in his first deposition that twelve months was a reasonable time for obtaining the PDP, and he subsequently testified that nine to twelve months was the range of reasonableness. He also acknowledged that most of the items necessary for obtaining a site plan were also necessary for a PDP, and he admitted that this "overlap" explained why D&D was able to obtain the PDP so quickly after the application was filed on April 27. (Tab 11)

b. Demanche. Chris Demanche, a former member of the Cape Coral planning staff, also referenced nine to twelve months, but noted that 2005 was the "height of the building boom" and that "sometimes PDP's could be anticipated to take longer than a year to obtain." (Tab 12)

c. Daltry. Wyatt Daltry testified that the average completion time for a PDP was "somewhere around thirteen months" in 2005 and 2006. (Tab 13)

d. Mazurkiewicz. D&D's expert, Joe Mazurkiewicz (who was involved in developing Cape Coral's PDP process; who reviewed that process on three subsequent occasions; who voted to approve or deny many PDPs in his capacity as Mayor sitting with Cape Coral's City Council; and who, through his consulting company, has applied for approximately thirty-five PDPs in Cape Coral since 2003) testified that the filing of the application for the SPP prior to filing for the PDP had no negative impact at all on the duration of obtaining the PDP. He also testified that the time it took to obtain the PDP was "well within the time frame that I gave to all of my clients at this

time," which was eighteen to twenty-four months. And he specifically testified that D&D obtained the PDP "in a reasonable period of time." (Tab 14)

e. Miller. Linda Miller, a former Cape Coral permitting supervisor and currently a senior planner with Avalon Engineering (which U.S. Home's counsel acknowledged was the pre-eminent planning company in the Cape Coral area), testified that the "average approval time for PDPs during 2005 was from sixteen to twenty-four months." (Tab 15)

29. In addition to witnesses with expertise who testified about the reasonable time for obtaining a PDP, two exhibits were admitted that provided data on the issue. Joint Exhibit 304 listed various PDP projects in Cape Coral and concluded that the "average length per project," excluding PDP amendments, "is 1.10 years," which is more than thirteen months. Similarly, Joint Trial Exhibit 318 listed thirty-five PDP applications in Cape Coral in 2005 with their application and approval dates and noting whether each PDP was still under review. Excluding one application that was "withdrawn," the exhibit showed that twenty-one of thirty-four PDPs (or 61%) took over one year for approval. (Tabs 16 and 17)

30. Michael Prince, one of the engineers who worked on D&D's Project, provided testimony indicating that it could be expected to take more than the average time because of its shape and small size and because of the need for a special storm water management system that was disfavored by government agencies. (Tab 18) Mr. Mazurkiewicz agreed that the water management system needed for this Project was "much harder to get permitted, and it takes much more time."

31. Linda Miller, the former Cape Coral Permitting Supervisor and Senior Planner with Avalon Engineering, testified that among all of the PDP projects in Cape Coral in 2005, as listed on Exhibit 318, the one most like the Project at issue was Cape Tuscany, which took more than fifteen months to obtain PDP approval. (Tab 17)

U.S. Home's Lack of Due Diligence

32. As noted above, the Contract provided U.S. Home with broad and expansive due diligence rights. Prior to the expiration of the due diligence period, U.S. Home was required to deliver a written notice to D&D stating whether or not the property was acceptable, and the Contract provided that U.S. Home's "failure to comply with this notice requirement shall constitute acceptance of the Property in its present 'as is' condition." (Tab 1)

33. The evidence was undisputed that U.S. Home failed to comply with the notice requirement, and, therefore, U.S. Home accepted the Property "in its present 'as is' condition."

34. The evidence established that U.S. Home's due diligence, as set forth in its Green Folder, included inaccuracies such as a statement that PDP approval was "administrative" and would not require public hearings. The Green Folder also indicated (on page 00150 of Joint Trial Exhibit 36) that PDP approval could be obtained as early as August 2, 2005 – less than one month after U.S. Home's due diligence period expired. (Tab 51 and Joint Exhibit 36)

35. A number of witnesses testified that information about the status of PDP applications and approvals was easily and readily available as a public record. For example, U.S. Home's own expert, Mr. Fluegel, acknowledged that anyone could have

made a public records request or simply made a telephone call or sent an email to the planning staff to determine what kind of entitlement application had been filed for D&D's project. (Tab 11)

36. U.S. Home's representative at trial, Mr. McMurray, when asked if anyone from U.S. Home even checked with the City, testified as follows:

A. I don't have good information on that, no.

Q. Sitting here today, now, in the third day of this lawsuit or whatever day it is of this lawsuit, you don't know if your people ever checked with the City?

A. I don't know if we have, no. (Tab 49)

37. Similarly, Mr. Debitetto, U.S. Home's representative with the most knowledge of the transaction, testified as follows:

Q. Okay. So you had an obligation under the contract in your due diligence period to – to verify whether or not this approval could be obtained and when it could be obtained. Correct?

A. Yes.

Q. Okay. But you didn't do it in this case that you're aware of?

A. Not that I'm aware of. (Tab 50)

The Prior Rulings in this Case

38. While U.S. Home has refused to take responsibility for its actions, this Court has previously held that U.S. Home could have discovered the status of governmental approvals through the exercise of ordinary diligence and that it agreed to accept the Property in its "as is" condition. Specifically, in a Summary Final Judgment entered by Judge Rosman on June 18, 2009, the Court held as follows:

1. As a matter of law, U.S. Home is a sophisticated purchaser that entered into a contract to purchase commercial property known as the Villas of the Rubicon.
2. As a matter of law, the contract contained an integration clause relating to representations found within the terms of the contract and also contained an inspection period, 45 days for U.S. Home to conduct its inspections and investigations as to whether the property was suitable for U.S. Home's purchase.
3. As a matter of law, the contract provided that if U.S. Home failed to give notice of termination of this contract within the due diligence period, it agreed to accept this property in its "as-is" condition.
4. As a matter of law, U.S. Home, a sophisticated purchaser of commercial property, that agreed to an "as-is" purchase contract after the expiration of the due diligence period, and could have discovered the status of governmental approvals, through the exercise of ordinary diligence, has no cause of action for fraud.
5. As a matter of law, the claims for fraud, negligent misrepresentation, rescission, and equitable lien are barred under the doctrine of caveat emptor. (Tab 53)

39. Subsequently, after U.S. Home attempted to resurrect its claim for rescission, despite Judge Rosman's ruling, this Court entered an Order dated April 9, 2010, dismissing the new rescission count and stating that: "The Court adopts the findings made" in Judge Rosman's Order. (Tab 55)

U.S. Home's Claim of Unclean Hands

40. While U.S. Home's claims for fraud, negligent misrepresentations, rescission and equitable lien based upon alleged false statements and nondisclosures were disposed of by the Summary Final Judgment dated June 18, 2009 and the subsequent Order dated April 9, 2010, U.S. Home nevertheless presented evidence at trial (which was summarized on a large demonstrative exhibit) alleging that D&D had

"concealed" various facts and was, therefore, guilty of "unclean hands." However, all of the alleged acts of concealment related to the status of the entitlements, which are matters of public record (as Mr. McMurray acknowledged on cross-examination) and which could have been discovered with ordinary diligence.

41. Furthermore, Florida law states that "a party asserting unclean hands 'must prove that he was injured in order for the unclean hands doctrine to apply'". Tribeca Lending Corporation v. Real Estate Depot, Inc., 42 So. 3d 58 (Fla. 4th DCA 2010). (Tab 57)

42. While U.S. Home did not clearly articulate at trial how it claimed to be injured by D&D's alleged unclean hands, the thrust of its case was that it expected to be able to "go vertical" or begin construction in time to capture the 2005-2006 selling season. The evidence did not establish any link between the claimed harm of missing the 2005-2006 selling season and the alleged unclean hands, and the Court finds that the alleged acts of unclean hands did not cause the claimed harm for a number of reasons, as set forth below.

Reasons Why the Alleged Acts of Unclean Hands did not Cause the Alleged Harm

43. First and foremost, U.S. Home was charged with knowledge of the status of the entitlement applications at least through the conclusion of its due diligence period, which ended on July 5, 2005. At that time, no PDP application had been filed, and U.S. Home is charged with that knowledge. Even U.S. Home's expert testified that the reasonable time for obtaining a PDP for this project ranged up to twelve months (Tab 11), which would mean that U.S. Home could have had no reasonable expectation of

obtaining a PDP until mid-2006, which is long after the 2005-2006 selling season had ended.

44. Second, the evidence was undisputed that U.S. Home could not have "gone vertical" or started building its planned project without an Environmental Resource Permit ("ERP") from the South Florida Water Management District ("SFWMD"), and that permit was obtained on September 13, 2006. D&D's expert, Robert Howard, testified that the permit was obtained within a reasonable time, and U.S. Home offered no evidence to rebut this testimony. (Tab 19) In fact, U.S. Home elected not to call its expert witness on that subject, Andrew Tilton, during its case in chief, and D&D offered his testimony by deposition in which he affirmatively stated that "the calculations" used to obtain the permit from SFWMD met the standard of care. When asked if there was "some other aspect of the permitting that you have criticisms or a question about?", Mr. Tilton testified "No, . . . I just looked at a couple of sketches, so I can't really opine on that." (Tab 20) In summary, the undisputed evidence established that the ERP from SFWMD was obtained within a reasonable time on September 13, 2006.² Accordingly, even if D&D had obtained a PDP in record time for the 2005-2006 selling season, U.S. Home still could not have "gone vertical" since it would not have had the ERP from SFWMD.

45. Third and similarly, U.S. Home was not ready to "go vertical" for the 2005-2006 season because it had not even completed building plans, suitable for a building permit, before it sent the termination letter on June 7, 2006. The evidence established

² In fact, in the one other project with docks and an exfiltration trench surface water management system like Villas on the Rubicon that was known to U.S. Home's expert, Mr. Tilton, the SFWMD permit took 18.2 months to acquire – 4 months longer than the Villas on the Rubicon. (Page 38, Line 18 – Page 39, Line 16; Page 40, Line 1 – Page 41, Line 7; Page 46, Lines 17-23).

that U.S. Home, through its parent Lennar, hired an architect to revise D&D's building plans on August 25, 2005 but did not submit revised plans to the Building Department until April of 2006. (Tabs 21, 22 and 23) The City responded to those plans in May 2006 with eight pages of comments, and U.S. Home did not respond to the City's comments until June 5, 2006, two days before it sent a termination letter. (Tabs 24 and 25) Thus, even if a PDP had been available in early 2006, U.S. Home could not have "gone vertical" since it had not even completed work on building plans, which were needed for a building permit.

46. Fourth, U.S. Home had not prepared any condominium documents, which were also necessary before it could "go vertical." (Tab 26)

47. Fifth, even if all entitlements had been in place in early 2006 and even if U.S. Home had completed building plans and condominium documents, it is extremely doubtful that U.S. Home would have actually proceeded to build the Project in light of its parent company's policy that "focused on fortifying our balance sheet by carefully managing inventory levels . . . and significantly reducing land purchases and starts." That policy had been in effect "since early 2006" according to Lennar's press release for its shareholders. (Tab 35) This conclusion is confirmed by Mr. Debitetto's testimony that he was not only instructed to renegotiate all contracts but that "in 2006 I was asked to watch my inventory levels very closely. Inventory being vertical construction." (Tab 37)

48. Ultimately, the court finds that with reasonable due diligence U.S. Home would have known that no PDP had been applied for and/or that a SPP had been applied for when the forty-five (45) day due diligence period ended. With this

knowledge U.S. Home should have been on notice that any PDP approval would not be started until after the due diligence period ended, leading to delays in the ultimate approval of the permit.

49. The court notes, and agrees with, the argument that Neese was an agent of D&D. The court also notes that Neese made mistakes throughout the permitting process. Many of these mistakes were made prior to the expiration of the due diligence period and should have been discovered during the due diligence period. In the end D&D was able to obtain the PDP on November 6th, 2006. Based on the information that U.S. Home should have had after the due diligence period the court does not find this timeframe unreasonable.

50. Likewise, the court notes the alleged misrepresentations that were made to U.S. Home by D&D. Many of these alleged misrepresentations occurred prior to the expiration of the due diligence period and would have been discovered with even a modicum of due diligence. The rest should have been suspect due to the position the permitting process was in when the due diligence period ended and could have easily been discovered with simple inspection of public records by U.S. Home.

51. For all of these reasons, the court finds that U.S. Home has failed to prove that the circumstances it claims to constitute unclean hands caused it any harm, and, therefore, the unclean hands doctrine does not apply.

U.S. Home's Failure to Offer to Close

52. The evidence is undisputed that U.S. Home never offered to close or demanded a closing prior to sending the termination letter of June 7, 2006. Mr. Debitetto admitted this. (Tab 28)

53. In Jay Vee Realty Corp. v. Jaymar Acres, Inc., 463 So. 2d 1053 (Fla. 4th DCA 1983), a buyer's duty to close was conditioned upon it being able to obtain plat approval and the seller was required to furnish an abstract of title. Approximately fourteen months after the contract had been executed, the abstract had not been delivered and the plat had not been approved, and the seller wrote a termination letter. The buyer filed suit for specific performance, and the appellate court affirmed the trial court's order requiring specific performance, explaining:

Although appellee did not obtain plat approval during the fourteen months after execution of the contract, the record supports the trial court's findings that the lapse was not unreasonable, particularly since the contract contained no time for performance of this condition. . . . In order for a defendant to raise delay as a defense to specific performance, the defendant himself must have performed or offered to perform all terms of the contract. (Tab 30) (emphasis added)

54. Similarly, in Thoelke v. Morrison, 172 So. 2d 604 (Fla. 2d DCA 1965), the court held: "The plaintiffs did not perform nor offer to perform the contract. This they must do in order to avail themselves of the defendants' delay as a defense." (Tab 29)

55. In light of U.S. Home's failure to demand a closing or offer to close, it cannot avoid specific performance by claiming delay on the part of D&D.

D&D's Tender of Performance

56. After obtaining the PDP, D&D sent a letter to U.S. Home stating that it would close the transaction on November 28, 2006. (Tab 59)

57. U.S. Home, through its counsel, responded with a letter dated November 21, 2006 stating: "As you may surmise by the filing of suit by Lennar Homes, Inc. against your client, Lennar does not intend to close upon the property, and, therefore, it will not appear on the date and the time indicated in your client's communication." (Tab 60)

58. The undisputed evidence established that D&D appeared for the closing, and it was ready, willing and able to close.

The Court's Ruling on Timeliness

59. In the absence of a specific deadline for obtaining the PDP, D&D was obligated to obtain it within a "reasonable time," and "what constitutes a reasonable time, of course, depends upon the circumstances at the time." Tyner v. Woodruff, 206 So. 2d 684 (Fla. 4th DCA 1968). (Tab 9)

60. Based upon all of the circumstances described above, the court finds that regardless of whether or not the "time is of the essence" clause applies to the obligation to obtain the PDP, U.S. Home was not justified in sending the termination letter on June 7, 2006, and its conduct constituted an anticipatory breach or repudiation of the Contract. The Court also finds that D&D obtained the PDP within a reasonable time and that U.S. Home materially breached the Contract by refusing to close in November 2006.

61. Further, in any event, U.S. Home could not terminate the contract or avoid specific performance based upon D&D's alleged delay in obtaining the PDP since U.S.

Home never demanded closing or offered to close the transaction. Thoelke, supra, and Jay Vee, supra.

The Court's Findings as to Why U.S. Home Wanted Out of the Contract

62. While the evidence shows that both parties hoped to close the transaction before the end of 2005, U.S. Home's Green Folder specifically states that U.S. Home had planned – even before finding D&D's project – to enter the Cape Coral market in 2007, and Mr. Debitetto confirmed this. (Tab 32, Tab 51 and Joint Exhibit 36) It is clear from the Green Folder that U.S. Home considered the Cape Coral market to be "booming" and thought that it would continue to be exceptionally strong.

63. The evidence – including U.S. Home's plan to enter the Cape Coral market in 2007; Mr. McMurray's stated desire to "lock up" the Property; U.S. Home's presumed understanding that it could not, under any circumstances, complete all permitting to go vertical before the 2005-2006 selling season; Mr. Debitetto's admission that he never notified D&D of any "concerns regarding a delay in obtaining the PDP" (Tab 27); the lack of any written demand to close before the end of 2005; and the failure of U.S. Home to proceed diligently with building plans and condominium documents that were necessary to "go vertical" – indicates that U.S. Home's broker, Mr. Tasman, was correct in explaining that U.S. Home was content to put this project in a different "bucket" to be developed later, perhaps in the 2006-2007 selling season consistent with its pre-existing plan to enter the Cape Coral market at that time. (Tab 51, Joint Exhibit 36, and Tab 32)

64. The evidence also indicates that the real reason U.S. Home wished to terminate the Contract was the perceived "weakening" of the economy in early 2006, as

referenced in the press release for Lennar's shareholders. (Tab 35) This was confirmed by Mr. Debitetto, who testified that he had been instructed to renegotiate all contracts (whether for pencils or land) prior to the meeting with D&D in March of 2006 at which U.S. Home asked to be released from the Contract – not because of the absence of a PDP but because of a change in "marketing strategy." (Tabs 41 and 42) Furthermore, Mr. Debitetto admitted that the decision to send the termination letter to D&D was "consistent" with the "timing" and the "policy" referenced in Lennar's press release (i.e., to fortify the balance sheet by "significantly reducing land purchases and starts." Tab 35) (Debitetto deposition page 302)

65. The Court finds that when U.S. Home sent the termination letter in June 2006, it was motivated by changed market conditions (rather than by the absence of a PDP), which was contrary to the re-allocation of risks that was negotiated by the parties and set forth in the Amendment to the Contract. While that Amendment allocated the market risk to U.S. Home and the entitlement risk to D&D, U.S. Home – after its parent company detected a weakening economy and gave instructions to hoard cash – improperly attempted to shift the market risk to D&D when it sent the termination letter in June 2006 and refused to close in November.

Specific Performance

66. The Contract specifically provides that D&D may seek the remedy of specific performance (Tab 1), and D&D has carried its burden of proving its right to that remedy.

67. In a case for specific performance "the seller is entitled to a credit for all reasonable expenses, including property taxes, on the property since the scheduled

closing date, as well as the legal rate of interest on the sales price since the scheduled closing date, to compensate the seller for the unavailability of the sale funds." Kissman v. Panizzi, 891 So. 2d 1147 (Fla. 4th DCA 2005). (Tab 62) Accordingly, the Court finds that D&D is entitled to \$14,758,049.41, as of October 20, 2010, plus a per diem of \$1,788.49 for each day between October 20, 2010 and the date of this Judgment, plus interest at the legal rate thereafter. (Tab 63)

Final Judgment

On the basis of the evidence, findings and conclusions set forth above, IT IS ADJUDGED that:

A. D&D Investments of Lee County, Inc., whose address is 12580 University Drive #102, Fort Myers, Florida 33907, is entitled to specific performance, as provided in the Contract. D&D shall recover from U.S. Home \$14,758,049.41, plus per diem interest of \$1,788.49 for each day between October 20, 2010 and the date of this Judgment, plus interest at the legal rate thereafter, for which let execution issue consistent with the terms of this Final Judgment.

B. U.S. Home Corporation, whose address is 700 N.W. 107th Avenue, Suite 400, Miami, Florida 33172, shall immediately commence preparation for closing which shall occur within 30 days of the date of this judgment. U.S. Home shall deliver funds at closing consistent with the findings set forth above, and D&D shall execute and deliver to U.S. Home a sufficient warranty deed without restrictions or encumbrances, which reflects that title is good and marketable, as required by the Contract except current taxes and restrictions common to the subdivision for the following described property located in Lee County, Florida:


Lots 1, 2, 3, 4, 5, 6 and Lots 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 Block 759, Cape Coral Unit 22, according to the plat thereof recorded in Plat Book 14, Page 1 through 16, inclusive, of the Public Records of Lee County, Florida.

C. As to all claims asserted by U.S. Home, U.S. Home shall take nothing by this action and D&D shall go hence without day as to those claims.


D. As the prevailing party in this litigation, D&D is entitled to an award of costs, as well as attorneys' fees, against U.S. Home pursuant to the terms of the Contract.

E. The Court reserves jurisdiction to enforce the terms of this Final Judgment and to determine the amount of attorneys' fees and costs that D&D is entitled to recover.

DONE AND ORDERED in Chambers at the Lee County Courthouse, Fort Myers, Florida on this 6th day of December, 2010.



The Honorable Michael T. McHugh
Circuit Court Judge

Conformed copies to: 

Edward K. Cheffy, Esq.
Louis D. D'Agostino, Esq.
Michael W. Pettit, Esq.
Alan J. Kluger, Esq.
Cathy S. Reiman, Esq.

6409-13201-3321

26

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

IN RE: The Marriage of

AMYKALRA,
Wife,

and

CASE NO. 06-DR-002469

AJAYKALRA,
Husband.

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE came on for trial before the undersigned Circuit Court Judge on the 31st day of October, 2007 and the 29th day of November, 2007 in Chambers, Lee County, Florida. The Husband, Ajay Kalra, was personally present and represented by his counsel, Melissa G. Skeen, Esquire and the Wife, Amy Kalra, was personally present and represented by her counsel, Ed Larsen, Esquire of Thompson Law Firm, P.A. The Court having considered the pleadings on file herein, the evidence introduced on behalf of the Husband and Wife, the argument and representation of counsel, and being fully advised in the premises, now makes the following Findings and enters the following Judgment of Dissolution of Marriage:

FINDINGS

1. RESIDENCY: The Husband and Wife were residents of the State of Florida for more than six (6) months next before the filing of the Petition for Dissolution of Marriage by the Wife on or about the 1st day of June, 2006.

2. MARRIAGE: The parties were legally married to each other on the 8th day of August, 1998 in St. Louis, Missouri.

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Charlie Green, Lee County Clerk of Circuit Court

Deputy Clerk DLESLIE
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3. **CHILDREN:** There has been one (1) child born of the marriage to wit: Akash Kalra, D.O.B. June 15, 2000.
4. **SHARED PARENTAL RESPONSIBILITY:** The parental responsibility of the minor child of the parties should be shared, with the primary residence of the child being with the Wife, and the secondary residence of the child being with the Husband.
5. **MARITAL ASSETS AND LIABILITIES:** The parties acquired marital assets and incurred liabilities during the marriage, individually by either spouse or jointly by them.
6. **HOSPITAL AND MAJOR MEDICAL INSURANCE:** Hospitalization and major medical insurance is currently available through the Husband's employer.
7. **ALIMONY:** The Wife's request for permanent periodic alimony is denied. The Wife is entitled to Bridge-the-Gap alimony and has received Bridge-the Gap alimony during the pendency of this proceeding. The Husband continued to pay all marital liabilities and all of the Wife's expenses from the date of the filing the Petition for Dissolution of Marriage until the Wife vacated the former marital home on or about March 1, 2007. From March 1, 2007 through the date of the Final Judgment, the Husband continued to pay all marital liabilities, including the cost of the Wife's vehicle and health insurance. The Wife's request for future Bride-the-Gap alimony is denied. The Court specifically considered the factors enumerated in Florida Statute 61.08 and finds:
 - a. **The standard of living established during the marriage.** The parties enjoyed a relatively high standard of living during the marriage. The Wife is currently employed as a nurse making \$63,000 per year. There is no evidence that the Wife's employment was adversely effected by the marriage. The Wife is

currently fully employed. In fact, she is making more money than she has at any point in her life.

- b. **The duration of the marriage.** The parties were married for seven years and ten months. This is a short term marriage.
- c. **The age and the physical and emotional condition of each party.** The Court has considered the age, education and training of the parties. The Husband is 37 years old and a practicing physician. The Wife is 34 years old and a practicing Registered Nurse. The Court finds no evidence that either party has any other age, physical or emotional conditions for the Court to consider.
- d. **The financial resources of each party, the non-marital and the marital assets and liabilities distributed to each.** The Court has equitably divided the marital assets and liabilities of the parties leaving both parties with approximately \$475,000.00 in marital assets. The Husband's annual income is approximately \$476,000.00 per year. The Wife's annual income is approximately \$63,000.00 per year. The Court finds a disparity of income of the parties, however, a disparity in the incomes of the parties alone is not a basis for the Court to award alimony.
- e. **The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party.** The Court finds no evidence that either party contributed more to the marriage.
- f. **All sources of income available to either party.** The Court found no other sources of income of either party except as indicated in this judgment.

8. **IRRETRIEVABLE BROKEN**: The marriage between the parties is irretrievably broken.
9. **JURISDICTION**: That this Court has jurisdiction over the parties hereto and the subject matter of this action to dissolve the marriage of the parties.

FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

Based on the foregoing Findings, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. **JURISDICTION**: This Court has jurisdiction of this matter and the parties. The Husband and Wife have been residents of the State of Florida for more than six (6) months before the date of the filing of the Petition for Dissolution of Marriage.
2. **IRRETRIEVABLY BROKEN**: The marriage of the parties is irretrievably broken. Therefore, the marriage of the parties is dissolved.
3. **ALIMONY**: The Wife's request for future alimony in the form of permanent, periodic, rehabilitative or lump sum is denied.
4. **PARENTING TIME**: The Mother shall be designated as the Primary Residential Parent of the minor child. The Father shall be designated as the Secondary Residential Parent of the minor child. The Father shall have reasonable and liberal parenting time with the minor child, Akash, as follows:
 - a. On alternating weekends from Friday after school returning the child to school or child care on Tuesday mornings. This schedule is predicated on the Husband's current work schedule that includes him having Mondays off each week. In the event that the Husband's work schedule changes and he has a different day off each week, the parties shall adjust the schedule so that the Husband has an extra overnight during his alternating weekend parenting time.

b. When it is not the Husband's scheduled weekend, he shall have parenting time on Thursday nights, picking the child up from school or child care and returning the child to Starbucks at the corner of Colonial Boulevard and Fowler Street in Fort Myers at 7:00 p.m. All exchanges not completed at school will take place at the Starbucks, unless agreed to by the parties.

c. The parties shall rotate the child's winter break, spring break and Christmas vacation periods with the Husband having the child during spring break and the first week of Christmas break during odd years and the Wife having the child for winter break and the second week of Christmas break during odd years. This schedule is reversed during even years.

d. The Wife shall have the child during the Thanksgiving holiday weekend, including Thanksgiving day in odd years and the Husband shall have the child during this holiday in even years.

e. The parties shall equally divide the summer vacation period with each parent having up to two consecutive weeks each summer. Each parent shall provide the other with notice of their selected two week period prior to June 1st of each year.

f. The child shall spend Father's Day and Mother's Day with the appropriate parent.

g. The child shall spend his Birthday with the parent that is regularly scheduled to have him on that day.

h. The parties shall be flexible in this parenting schedule and may alter this schedule at any time so long as both parents agree.

5. **SHARED PARENTAL RESPONSIBILITY:** The parties shall have Shared Parental Responsibility of the minor child.

A. **Shared Parental Responsibility.** Shared parental responsibility means a court ordered relationship in which both parents retain full parental rights and responsibilities and in

which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly. Shared parenting means sharing the rights, responsibilities and joys of raising a child. The parties shall share parenting of the child.

B. Decisions Affecting A Child. Shared parenting means that each parent is to have a voice and commitment in making decisions important to the welfare and upbringing of their child. Neither parent has any greater priority or duty to making parenting decisions and **may not** make any major parenting decisions without consulting the other parent. Each parent should be flexible in sharing parenting responsibilities to facilitate the mutual goal of establishing and continuing a close, full and affectionate relationship between each parent and child.

a) Day to Day Decisions. When the child is in the physical care of a parent, that parent shall see that the child is properly fed, cared for, and taken to school. That parent shall respond to medical and dental emergencies. In an emergency, the prior permission of both parents shall not be necessary. That parent will arrange for the competent supervision for the child at all times when the parent is away from the home. Day to day decisions of a routine nature, such as bedtime, homework, and all day to day school activities shall be made by the parent physically caring for the child.

b) Major Decisions. All decisions affecting the child's growth and development, including choice of school, extent of travel away from home, choice of camp, major medical treatment, special lessons, psychotherapy, psychoanalysis or like treatment, part or full time employment, purchase or operation of a motor vehicle, hazardous sports or activities and permission to marry prior to attaining the age of majority, shall be considered major decisions and shall be discussed and agreed to by both parents. The consent of either parent shall not be arbitrarily withheld.

C. Child's Rights. The minor child has the following minimum rights:

- a) Right to a loving, free and open relationship with both parents.
- b) Right to be treated as an important human being, with unique feelings, ideas and desires.
- c) Right to continuing care and guidance from both parents.
- d) Right to know and appreciate what is good in each parent.
- e) Right to love a parent despite unworthy qualities of that parent.
- f) Right to forgive a parent for any harm that parent may have caused the child, knowingly or unknowingly.

- g) Right to never hear one parent, or the relatives and friends of one parent, running down and degrading the other parent. It is our duty as parents to prohibit and prevent our relatives and friends from running down and degrading the other parent in the presence of the child.
- h) Right to express love, affection and respect for a parent in the presence of either parent at any time and any place, without having to stifle that love out of a fear of disapproval by either parent.
- i) Right to know that the parents' decision to end their relationship is not the responsibility of the child.
- j) Right not to be a source of argument between parents.
- k) Right to honest answers to questions about changing family relationships.
- l) Right to be able to experience regular and consistent contact with both parents and to know the reason for any cancellation of time or change of plans.
- m) Right to have a relaxed, secure relationship with both parents without being required or allowed to manipulate one parent against the other.
- n) Right to be encouraged to visit and contact the other parent, by letter and telephone, frequently and continuously.
- o) Right to have their parents cooperate to make visitation plans for the child and not to require the child to arrange for visitation.
- p) Right to have child support timely paid and in full.
- q) Right to visitation with the parent obligated to provide child support even if child support is late or behind.

D. Shared Parenting Guidelines. The parties shall abide by the following shared parenting guidelines.

- a) Each parent has an absolute, solemn duty never to alienate the child's affection for the other parent. There is no justification for alienating the child from the other parent under any circumstances.
- b) The parties will recognize the child as a totally separate entity from themselves and shall encourage the child's autonomy, and separate the child's need from their needs.
- c) The parties shall promote the other parent in the eyes of the child and not "run down" or alienate the other parent from the child. The parties need to separate their feelings for each other from their duties as parents.

- d) The parties shall reassure the child that the absent parent has not abandoned them, still loves them, and is thinking about them, no matter how strongly each might personally feel that the other parent is a "bad" person.
- e) The parties shall each become and remain knowledgeable of the child's general developmental needs and characteristics at different stages of development. The parties shall try to understand and respond appropriately to the child's behavior by placing it in the broad context of information about developmentally appropriate behavior, needs, stages, and abilities of the typical child.
- f) The parties shall be adaptable and flexible in responding to the child's behavior.
- g) The parties shall provide an environment in which the child is free to love and spend time with the other parent. They shall encourage the child to have good feelings about the other parent and the other parent's extended family. The parties will not influence the child in any way that might negatively affect the loving relationship with the other parent.
- h) The parties will encourage the child to remember the other parent on special occasions, allowing the child to telephone on a reasonable basis, the time and length of the telephone calls to be reasonable under the circumstances. The child shall be assured of privacy during all calls with either parent.
- i) The parties shall communicate with each other openly, honestly and regularly with clarity and respectfulness to avoid misunderstandings.
- j) The parties will plan together rather than through the child. The parties will plan and consult with each other in advance to schedule or arrange time with the child.
- k) The parties will not take sides or take issue with decisions or actions made by the other parent in front of the child. The parties will present a united front on the handling of any problems with the child.
- l) The parties will **consistently** enforce appropriate rules and standards, although the rules at each house may not be exactly the same.
- m) The parties will not degrade the other parent, fight, or argue with the other parent in the child's presence.
- n) Neither party will withhold or restrict time with the other parent as a punishment to the child or the other parent.
- o) Each party will take a consistent and predictable role in the child's life using time with the child to strengthen their relationship with the child.

- p) Neither parent shall make plans for the child during the time the child is scheduled to spend time with the other parent without the consent of the other parent.
- q) Time with a child and child support, while they are emotionally connected, are separate and distinct under the law. A parent's time with child shall never be denied because of non payment of child support.
- E. **Medical Care or Illness.** Both parents shall promptly notify the other of any illness or accident or other circumstances affecting the child's mental or physical health or general welfare. Each parent shall promptly notify the other parent of the circumstances surrounding the need for medical or psychological care, including which doctor, or professional the child was seeing and the reasons for the visit. Each parent has the right to inspect and receive any of the child's medical or psychological records. Each parent is free to discuss with any doctor or therapist treating the child, the reason for and necessity for that treatment. Both parents have the right to visit the child at the place of confinement in the event of any mental or physical illness or accident.
- F. **Entitlement to School Information.** Both parents should be listed as parents on the child's school records, and may contact the school and the child's teacher and receive report cards and information on the child's progress, as well for being notified of school conferences and events. Each parent is entitled to access to complete and detailed information directly from any teacher or school which the child may attend as well as from the other parent. School reports should be photocopied promptly after receipt and supplied to the other parent. Each parent shall promptly notify the other parent of all of the child's related activities which encourage or allow parental participation. Each parent is encouraged to and shall freely communicate with the child's teachers and counselors. Each parent shall be timely advised by the other parent of all school conferences, recreational happenings and opportunities that could be shared with mutual pleasure and benefit.
- G. **Entitlement to Participate.** Each parent is entitled to participate in and attend special activities in which the child is engaged, such as religious activities, school programs, sports events and other extra curricular activities and programs in which the child may later become involved.
- H. **First Choice for Child Care.** In addition to the regular parenting schedule, the parties shall each have the first right and option, in their sole discretion, to take care of the child when the child is spending time with the other parent and that other parent's needs child care for more than four hours. If a parent does not exercise their right to be the first choice for child care, the parent scheduled to have the child with them shall make other arrangements for child care at their sole expense. The parties shall notify the other parent of their need for child care services as early as possible prior to the time services are needed.
- I. **Informed of Whereabouts.** Upon request by the other parent, each parent shall, to the best of their ability, keep the other parent informed of the child's present and future

location and whereabouts when the child is with them or with any other person with their permission or acquiescence.

J. Communication Between Parent and Child.

- a) Telephonic Access. The child shall be allowed to telephone each parent from the other's house at any time and shall be assured of privacy during all calls with either parent. Each parent shall be entitled to open and reasonable telephonic communication with the child in order to maintain a stable and predictable role in each child's growth and development. Telephone calls supplement the physical contact the child is entitled to enjoy with each parent. The primary purpose of telephone communication is to enjoy time with the child similar to time away from the other parent's home.
- b) Telephone calls from a parent shall be at a reasonable time of the day or evening so as not to intrude on family life at the other household. As a general principal, they should not be made at mealtime or homework time or after the child's bedtime.
- c) If the child is not available at the time of the call, the child shall be encouraged to return the call.
- d) The telephone call shall be to speak with the child and not to harass or argue with the other parent. Telephone calls shall not be made in a disruptive manner not shall they be so numerous as to constitute an annoyance or be disruptive to the visit at the other parent's home.

K. Prior Notice of Moving a Child's Residence. Neither parent shall move the child's residence without giving the other parent at least thirty (30) days advance notice of the move. Each parent shall keep the other parent notified in writing as to their current residence address and telephone number and the child's current address and telephone number.

L. Change of Geographic Location. The present parenting schedule presumes frequent and continuing contact by both parents which is made possible because of the close physical proximity of both parents. In order to assure that both parents are able to maintain frequent and continuing contact, neither Parent shall move the permanent residence of the child from Lee County.

M. Acquiring Parent to Transport. The acquiring parent shall transport the child from school, camp or the other parents home when it is their scheduled time to have the child.

6. CHILD SUPPORT:

- a. The Husband shall pay the sum of \$2,497.38 per month, plus the disbursement fee of \$5.25 or 4%, whichever is less, in support of his minor child through the State

of Florida Disbursement Unit by separate Income Deduction Order. See attachment "A". All payments for child support shall be made payable to the "Clerk of Court, Lee County, Florida" and mailed to:

State of Florida Disbursement Unit
Post Office Box 8500
Tallahassee, Florida 32314
Case No. 06-DR-002469 (Lee County)

- b. The Husband's first child support payment is due on January 1, 2008 and payable according to his pay schedule thereafter.
 - c. The Husband shall pay the Disbursement Unit directly until the Income Deduction Order is in effect and the child support is taken from his pay.
 - d. Child support guideline worksheets have been filed in this matter.
7. **CHILD MEDICAL CARE AND INSURANCE:** The Husband shall be responsible for providing medical insurance for the child as long as insurance is available through his employer. The cost of the health insurance has been included in the child support calculation. Deductible and out of pocket expenses shall be divided pursuant to the relative incomes of the parties. The Husband will be responsible for 88% of these expenses and the Wife will be responsible for 12%.
8. **CHILD DENTAL CARE, OPTOMETRIC AND ORTHODONTICS:** The Husband shall be responsible for 88% of any uncovered dental, optometric and orthodontic expenses and the Wife will be responsible for 12%..
9. **TERMINATION OF CHILD SUPPORT:** The Husband's child support obligation shall terminate upon the following:

- a. the child reaching the age of 18, however, the husband's child support obligation shall continue until the child reaches the age of 19 as long as the child is attending school with a reasonable expectation of graduation before the age of 19;
- b. the death of the child;
- c. the valid marriage of the child;
- d. the child becoming self-supporting by permanent and full time employment exclusive of holidays, vacation and part-time employment.

10. **CHILD SUPPORT ARREARAGE:** There are no child support arrears. The Husband paid all the expenses of the marital home during the period that the Wife and minor child resided in the home. The Husband has paid child support directly to the Wife in the amount of \$2,200.00 per month since March, 2007.

11. **CHILD EDUCATIONAL EXPENSE:** The minor child is currently enrolled in private school. Both parties agree that the minor child should receive a quality education. Each reserves the right to participate in the decision as to where the minor child should attend school and the actual costs of schooling. In the event both parties wish for the child to continue in private school, the parties shall share the costs of the private school, including tuition, registration fees and books in proportion to their incomes. Currently the Husband has 88% and the Wife has 12% of the total income of the parties.

12. **DEPENDENT DEDUCTION:** The Wife shall be entitled to take credit on her federal income tax for the minor child.

13. **LIFE INSURANCE:** Both parties shall maintain life insurance in an amount that will cover their child support obligations and expenses incident to this agreement.

14. **PREPAID COLLEGE FUND:** The child's prepaid college fund shall be held in trust for the child.

15. **EQUITABLE DISTRIBUTION:**

- a. The Wife shall receive the items listed on the Equitable Distribution Worksheet attached hereto and incorporated herein as Exhibit "A" which are free from any claim from the Husband and further identified as follows:
- i. Boone County National Bank xxx8077, with a balance of \$1.
 - ii. Smith Barney xxx013, with a balance of \$7,375.
 - iii. Janus Capital Appreciation Portfolio 941.3569 with a balance of \$2,105.
 - iv. Citistreet xxxx7748 with a balance of \$2,105; less 25% tax effect, for a total of \$1,578.75
 - v. National Financial Services Roth IRA xxx1839 with a balance of \$587, less 25% tax effect, for a total of \$440.25
 - vi. Boone County National Bank xxx4002 with a balance of \$481, less 25% tax effect, for a total of \$360.75
 - vii. The home located at 11613 Plantation Preserve, Fort Myers, Florida, which is Wife's non-marital property, and any liability associated with the home.
 - viii. 18k Platinum Ring, and any other jewelry in Wife's control and/or possession
 - ix. The 2007 Hummer Vehicle
- b. The Husband shall receive the items listed on the Equitable Distribution Worksheet attached hereto and incorporated herein as Exhibit "A" which are free from any claim from the Wife and further identified as follows: