

APPLICATION FOR NOMINATION TO THE FLORIDA SUPREME COURT

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: Thomas Nelson Palermo **Social Security No.:** [REDACTED]

Florida Bar No.: 530034 **Date Admitted to Practice in Florida:** September 15, 2001

- 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.

My current employer is the State of Florida.

I serve as a Circuit Judge in the 13th Judicial Circuit.

My work address is follows:
800 East Twiggs Street, Chambers 408
Tampa, Florida 33602

- 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.

[REDACTED]

Hillsborough County

I have lived in my home since [REDACTED].

I have lived in Florida since birth (1975) with the exception of four years in Washington, D.C. (undergraduate at American University) with a semester abroad in Belgium, and a year in London (LL.M. at King’s College London).

My cell phone number is [REDACTED]

My email address is [REDACTED]

- 3. State your birthdate and place of birth.
I was born on [REDACTED], in Tampa, Florida.
- 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.

The Florida Bar, September 15, 2001, at my wedding.

As an AUSA, we were automatically waived into practice before the Middle District of Florida. There was no formal admission required.

6. Have you ever been known by any aliases? If so, please indicate and when you were known by such alias.

Tom, in lieu of Thomas, mostly by friends.

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).

King's College London, 2001-2002
LL.M. (Banking & Finance)

Florida State University College of Law, 1998-2001
J.D. *cum laude*

American University, Washington, D.C., 1994-1998
B.A. in C.L.E.G. (Communications, Law, Economics, Government) with a minor in International Relations

Jesuit High School, Tampa, Florida, 1990-1994

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.

A. Undergraduate

Student body president, American University (1996-1997)
(elected sophomore year, served junior year)

Delta Tau Delta, American University (1994-1998)

Intern, Senator Connie Mack, Florida (1994-1995)

Intern/Staff Assistant, Congressman Sam Gibbons (1995-1996)

Intern (Research), North Atlantic Treaty Organization (NATO), Partnership for Peace (PfP), Partnership Coordination Cell (PCC) at the Supreme Headquarters Allied Powers Europe (SHAPE) in Mons, Belgium (1997)

Disc jockey, WVAU (college radio station, mostly blues-jazz format) (1994-1995)

Business Manager, A-TV (college tv station) (1995-1996)

Speaker Pro Tempore, General Assembly, American University Student Government (1995-1996)

Anderson Hall Representative, General Assembly, American University, Student Government (1994-1996)

President, Living Learning Center (LLC) at American University (1995-1996)

Temporary staff, World Bank, Office of the Regional Vice President for SE Asia (1998)

Volunteer, Martha's Table (DC soup kitchen) (1994-1998)

B. Law School

President, Republican Law Student Association, FSU COL (1998-1999) (co-founder)

Membership Chair, Tallahassee Bar Association Law Students Division (1998-1999)

Pro Bono Volunteer, Department of Children and Families General Counsel's Office (1998)

President, Tallahassee Young Republicans (2000-2001)

North Florida Coordinator, YP4W (Young Professionals for Bush) (2000)

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.

1. Circuit Judge
13th Judicial Circuit
800 East Twiggs Street, Chambers 424
Tampa, Florida 33602
2019-present
2. Assistant United States Attorney
U.S. Attorney's Office (Department of Justice)
Middle District of Florida
400 North Tampa Street, Suite 3200

Tampa, Florida 33602
2007-2019

3. Assistant State Attorney
Office of the State Attorney
13th Judicial Circuit
419 North Pierce Street
Tampa, Florida 33602
2003-2007
4. Law Clerk
U.S. Magistrate Judge Elizabeth Jenkins (retired)
801 North Florida Avenue
Tampa, Florida 33602
2002-2003
5. Movie Extra
Casting Collective London
Gensurco House
3-5 Spafield Street
London EC1R 4QB
United Kingdom
+ (44) 20 8592 0099
2001-2002
6. Law Clerk
Callahan Law
449 Central Avenue, Suite 203
Saint Petersburg, Florida 33701-3877
2000

At the time, Michael Callahan's practice was in Tallahassee.
7. Law Clerk
de la Parte, Gilbert, and Bales, P.A. (now de la Parte Gilbert McNamara Caldevilla)
P.O. Box 2340
Tampa, Florida 33601-2350
2000
8. Graduate Intern (now known as House Fellows)
Florida House of Representatives
Academic Excellence Council (now known as the Education & Employment Committee)
308 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300
1999-2000

This was a committee that existed from 1998-2000 under Speaker John Thrasher. Beneath it were the following subcommittees: Colleges & Universities, Community College & Career Prep, Education Innovation, and Education/K-12.

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 joined the bench almost four years ago. Since taking the bench, I have been assigned to divisions in Unified Family Court, among them, a domestic relations division, a juvenile delinquency division, and a dependency division. I currently serve in Domestic Relations Division I, which is often known simply as family law. I have served in this division since January 3, 2022. In this division, I preside over three broad categories of cases: divorce, paternity, and Chapter 63 adoptions. I had no prior experience in family. Family law intersects with every other aspect of law.

Prior to Domestic Relations, I presided over a juvenile delinquency division. As a Circuit Judge in a juvenile delinquency, I preside over cases involving juveniles alleged to have committed crimes. Since COVID-19 crippled normal court operations, I helped to stand up--in only 36 hours--a remote video system for juvenile detention hearings that allowed the Court to maintain a critical function, reduce the number of people appearing at the courthouse, expand access to juvenile detention proceedings, all without costing taxpayers any additional funds and, because juveniles were no longer being transported to the courthouse, saving money.

Prior to joining the delinquency division, I served in the Dependency Division. This was my first assignment on the Circuit bench. I presided over dependency and termination of parental rights bench trials. This assignment included successfully presiding over a high-profile case that drew media, threats, and protests.

Prior to taking the bench, I served as a federal prosecutor at the United States Attorney's Office in Tampa, Florida. My practice generally consisted of directing grand jury investigations, presenting indictments, negotiating pre-indictment and post-indictment resolutions to cases, motion practice, trials, sentencings, and post-conviction litigation, including assisting with but not directly handling appeals of my own cases. I estimate that I carried approximately sixty matters at any given time. I investigated and prosecuted most of the types of crimes prosecuted by the United States Attorney's Office. As an Assistant United States Attorney (AUSA), I did not have clients, but I worked with client agencies. I handled the full panoply of federal criminal cases and worked on cases that have also had civil aspects (e.g., qui tam-related cases).

On July 17, 2017, I became a Reviewer. This was a new position, created by a former U.S. Attorney and adapted from the practices of our Appellate Division and from the Tax Division in Washington, D.C. In that capacity, I reviewed and approved investigatory pleadings, search

warrants, 2703(d) applications, and performed the initial review of Title III applications. I served as the Reviewer in the Violent Crimes and Narcotics Section.

In 2016-2017, I served as the Senior Litigation Counsel for the Criminal Division. In that role, I trained and mentored other AUSAs, tried significant cases, and worked to develop our relationships with our client agencies. I devised and implemented a training program for the AUSAs hired in Tampa over the preceding three years. I also trained many law enforcement officers, including holding a District-wide Title III training program.

My practice at the U.S. Attorney's Office evolved over the course of my 12-year career. My last assignment was in the Transnational Organized Crime (TOC) Section at the U.S. Attorney's Office. In this Section, our focus was crime with an international footprint and generally targeted major narcotics trafficking organizations. Prior to TOC, I served in the Economic Crimes Section, the Organized Crime Section, and the Violent Crime and Narcotics Section. I began my work with the Office prosecuting smaller cases and, over time, I developed and prosecuted a substantial number of large, complex cases.

I have tried many cases before most of the Tampa Division District Judges, including a completed murder-for-hire case before Judge Merryday (*United States v. Lopez*, 8:11-cr-269-T-23AEP); a tampering with a federal witness by threat of death before Judge Jung (*United States v. Beach*, 8:18-cr-293-T-02TGW); an intended murder of a federal witness case before Judge Whittemore (*United States v. Thomas*, 8:11-cr-561-T-27MAP); a significant healthcare fraud prosecution before Judge Covington (*United States v. Bane et al.*, 8:09-cr-352-T-33MAP); a lawyer engaged in healthcare fraud case before Judge Moody (*United States v. Tokarsky*, 8:07-cr-521-T-30EAJ); a felon-in-possession case before Judge Castagna (*United States v. Hires*, 8:07-cr-120-T-27TBM); a Hobbes Act robbery case before Judge Lazzara (*United States v. Moody*, 8:09-cr-234-T-26TGW); an overdose with death case before Judge Honeywell (*United States v. Smith*, 8:18-cr-235-T-36AAS); and a maritime narcotics smuggling case before Judge Bucklew (*United States v. Polshyn et al.*, 8:15-cr-480-T-24JSS). In addition to the breadth of criminal cases I have prosecuted, because of my background in prosecuting economic crimes, I have had broad exposure to *qui tam* cases, bankruptcy proceedings, and many civil matters. Because many of my criminal cases were subject to appeals, I had the opportunity to review briefs, participate in mooted oral arguments, and listening to them.

Additionally, I took a leadership role in a number of collateral duties. I served as the District's Opioid Coordinator until I left the U.S. Attorney's Office to become a judge. This involved coordination of national anti-opioid efforts, District-wide anti-opioid efforts, training for more than 200 law enforcement officers from across Florida, prosecution of cases, and outreach, particularly to combat opioid abuse. Previously, I served as the District's Human Trafficking Task Force Coordinator and the District's Mortgage Fraud Coordinator. I formed the District's Mortgage Fraud Task Force with then AUSA-Anthony E. Porcelli. Many of these interagency collateral duties required a unique degree of collaboration, consensus building, gentle persuasion, and cultivation of an ability to disagree without being disagreeable. I also served as a Commissioner for various Mutual Legal Assistance Treaty requests from foreign governments,

including one effecting the repatriation of stolen medieval Italian illuminated manuscripts. I also assisted in numerous special projects, including embedding at the FBI's Fort Pierce Resident Agency after the Pulse nightclub attack to assist in the emergency response efforts.

During my services as an AUSA, I was cleared for Top Secret (TS)/Sensitive Compartment Information (SCI).

Prior to joining the U.S. Attorney's Office, I served as an Assistant State Attorney (ASA) in the Thirteenth Judicial Circuit in and for Hillsborough County. As an ASA, I served as the Deputy Chief of the Economic Crime Unit, the Lead Trial Attorney for that Unit, a line prosecutor in a felony division, and a domestic violence prosecutor. I also had the unusual responsibility of serving as lead counsel in a civil case against a conglomerate of strip clubs (Galardi South Enterprises).

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>2</u> %
Federal Trial	<u>20</u> %	Criminal	<u>21</u> %
Federal Other	_____ %	Family	<u>77</u> %
State Appellate	_____ %	Probate	_____ %
State Trial	<u>80</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:

For the last four years, I have presided in court as a judge. On average, I am in court four to five days a week and occasionally seven days a week, e.g., during duty week.

The year before that, I was in court less often. I was a federal prosecutor. I was in federal court several times a week and, for trials, continuously.

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

Jury? At least 63 Non-jury? unknown
Arbitration? _____ Administrative Bodies? _____
Appellate? _____

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.

N/A

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.

No.

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.

No.

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.*

The last six cases I tried are as follows:

United States v. Corey Smith, 8:18-cr-235-T-36AAS. I was sole counsel for the United States. Defense counsel was Michael Maddux, TEL: (813) 253-3363, email: mmaddux@madduxattorneys.com. Verdict: March 4, 2019.

United States v. William Beach, 8:18-cr-293-T-02TGW. I was sole counsel for the United States. Defense counsel was Serbo Simeoni, TEL: (727) 799-3506, email: simeoni07@gmail.com. Verdict: December 18, 2018.

United States v. Carlos Arturo Cuervo Borja, 8:17-cr-514-T-27TGW. I was lead counsel for the United States. My co-counsel was SAUSA Nick DeRenzo, TEL: (510) 437-3350, email: nicholas.g.derenzo@uscg.mil. Defense counsel were Cynthia Hernandez, TEL: (813) 841-2933, email: cynthia@cynthiahernandezlaw.com, and Bryant Scriven, TEL: (813) 226-8522, email: bryant@scrivenlawfirm.com. Verdict: August 22, 2018.

United States v. Jay Goldberg, 8:17-cr-613-T-24TGW. I was co-counsel for the United States. Lead counsel was AUSA Mike Sinacore, TEL: (813) 274-6000, email: michael.sinacore@usdoj.gov. Defense counsel in the case were Roger Futerman, TEL: (727) 344-5511, email: futermanlaw@yahoo.com; Bjron Brunvand, TEL: (727) 446-7505, email: bjorn@acqutter.com; and Brian Palacios, TEL: (813) 461-3457, email: bp@brianpalacioslaw.com. Verdict: June 28, 2018.

United States v. Akbar Fard, 8:17-cr-131-T-33MAP. I was sole counsel for the United States. Defense counsel at trial was Bruce Lehr, TEL: (305) 377-1777, email: blehr@llmlawfirm.com. Verdict: February 9, 2018.

United States v. Donna Demps, 8:16-cr-89-T-17TGW. I was lead counsel for the United States. My co-counsel was Kristen Fiore, TEL: (813) 274-6000, email: kristen.fiore@usdoj.gov. Defense counsel was Serbo Simeoni, TEL: (727) 799-3506, email: simeoni@gmail.com. Verdict: October 5, 2016.

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.*

United States v. Santiago Silva-Ortiz, 8:18-cr-470-T-24JSS. Guilty plea, January 14, 2019. I was sole counsel. Defense counsel was Kevin Beck, TEL: (727) 294-3199.

United States v. J. Bradley Tatsch, 8:18-cr-290-T-17AAS. Guilty plea, January 9, 2019. I was sole counsel. Defense counsel was Adam Allen, TEL: (813) 228-2715.

United States v. Angelica Maria Sierra Campe, 8:18-cr-410-T-35AEP. Guilty plea, January 9, 2019. I was sole counsel. Defense counsel was Mark O'Brien, TEL: (813) 228-6989.

United States v. Juan Carlos Epieyu, 8:18-cr-470-T-24JSS. Guilty plea, January 7, 2019. I was sole counsel. Defense counsel was Ronald Kurpiers, TEL: (813) 892-8501.

United States v. Apolinar Pushaina, 8:18-cr-470-T-24JSS. Guilty plea, December 19, 2018. I was sole counsel. Defense counsel was Robert Hambrick, TEL: (727) 538-4119.

United States v. Juan Carlos Caceres Lopez, 8:17-cr-132-T-33AAS. Guilty plea, December 10, 2018. I was sole counsel. Defense counsel Donald Kilfin, TEL: (727) 256-3598.

- 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.

Over the last four years, I have appeared in court almost every day, either virtually or in-person.

- 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.

N/A

- 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?

N/A

- 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.

United States v. Aldissi and Bogomolova, 8:14-cr-217-T-33EAJ, aff'd *United States v. Aldissi*, No. 15-14193, 2018 WL 6584488 (11th Cir. Dec. 13, 2018). I was sole counsel for the United States in a month-long trial. The victim agencies included NASA, the Office of the Secretary of Defense, the United States Army, the National Science Foundation, and key national security components across the United States government. The case was a sophisticated fraud case with witnesses, each of whom were stars in their respective fields. In 2019, NSF presented the conviction to a national group of over 100 agents, two U.S. Attorneys, and the Inspector General for the Department of Justice. The case has had a national impact, vindicated important national priorities, and was well-litigated. The MDFL District Judge who presided over the trial was Virginia Hernandez Covington, TEL: (813) 301-5340. Defense counsel was Todd Foster, TEL: (813) 565-2756, email: tfoster@tfosterlawgroup.com; and (now Circuit Judge) Lyann Goudie, TEL: (813) 272-6879, email: felonydivb@fljud13.org.

United States v. Luis Lopez, 8:11-cr-269-T-23AEP, aff'd *United States v. Lopez*, 562 F. App'x 891 (11th Cir. 2014). I was co-counsel for the United States in this completed murder-for-hire case. The case involved the cold-blooded execution of a husband for insurance proceeds by a gang hitman at the request of his wife. It was a particularly tough case and I had the privilege of joining Walter Furr, TEL: (813) 244-4600, email: cfurr@tampabay.rr.com, in trying it. The prosecution closed a cold case homicide. The MDFL District Judge who presided over the trial was Stephen Merryday, TEL: (813) 301-5001. Defense counsel was Matt Farmer, TEL: (813) 228-0095, email: mattfarmer1@aol.com.

United States v. Gary Todd Smith, 8:16-cr-120-T-17TGW, aff'd *United States v. Smith*, 853 F. App'x 589 (11th Cir. 2021), cert. denied, 142 S. Ct. 291 (2021). This was a massive fraud case with more than \$63 million in losses. The defendant ran a sophisticated factoring fraud and loan fraud that had features of a Ponzi scheme. The sentencing lasted five days and involved the testimony of approximately 50 victims. I had the privilege of leading the case from initiation and I was sole counsel throughout the proceedings. This case brought in victims who ranged from a desperately poor retired garment worker to Wall Street brokers to a woman who was forced out of her beautiful condo in Sarasota to live in an old barn. This case was filled with financial devastation, sophisticated financial and accounting issues, and fierce litigation. On December 6, 2018, Smith was sentenced to 40 years' imprisonment. The MDFL District Judge who presided over the case was Elizabeth Kovachevich, TEL: (813) 301-5730. Defense counsel in the case was Robert Tager, TEL:(727) 847-8155, email: roberttager@co.pinellas.fl.us. Finally, as an aside, I note that the panel that affirmed the case included Judges Luck and Lagoa.

United States v. Gregory Spain, 8:11-cr-65-T-27EAJ, aff'd *United States v. Spain*, 460 F. App'x 849 (11th Cir. 2012). The Spain case started as a felon-in-possession of a firearm investigation. The firearm turned out to be a ballistics match to an unsolved murder of an African American man in Seminole Heights whose body had been found near where Spain had been caught with the gun. Further investigation revealed Spain had robbed a nearby Family Dollar Store using what appeared to be the gun. During the robbery, he pointed the gun at the clerk and pulled the trigger twice but the gun misfired. The case went to trial and Spain was convicted of the gun possession, the Hobbes Act robbery, and using a gun in a crime of violence. At his sentencing, the parents of the deceased attended, knowing that this case solved their son's murder. As a result of this federal prosecution, the State offered and Spain accepted a concurrent 30-year sentence for the murder itself. The MDFL District Judge who presided over the trial was James Whittemore, TEL: (813) 301-5880. Defense counsel in the case was Alec Hall, TEL: (813) 228-2715, email: alec_hall@fd.org.

United States v. James Cobb, 8:14-cr-123-T-33MAP, aff'd *United States v. Cobb*, 842 F.3d 1213 (11th Cir. 2016). On March 21, 2016, the IRS issued a press release identifying the Top 10 Identity Theft Prosecutions in the United States. This was the top case on the list. During the execution of the search warrant, Cobb was caught with lists and medical records (including many stolen from the local VA) containing the personal identification information of more than 7,000 victims. Cobb, who was on federal supervised release for a felon-in-possession of a firearm conviction, had an AR-15 in a downstairs closet, stored beneath his Presentence Report from his previous federal conviction and he stored with the PSR additional personal identification information he had stolen from other victims that he was using in his fraud scheme. The MDFL District Judge who presided over the case was Charlene Honeywell, TEL: (813) 301-5060. Defense counsel was Mark Ciaravella, TEL: (813) 221-1640, email: mark@ciaravella.com.

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.

Please see the attached samples.

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.

Governor DeSantis announced my appointment to the Circuit bench on March 29, 2019. I took the bench on May 13, 2019. I was elected without opposition (Group 41, 13th Judicial Circuit) on November 3, 2020.

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 an application to the JNC for the 13th Judicial Circuit in March 2019. I was selected to be among the 6 names submitted to the Governor for his consideration. I was then selected by the Governor to serve as a Circuit judge.

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.

N/A

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;

Alicia Tarrant
Guardian ad Litem
700 East Twiggs Street, Suite 750
Tampa, Florida 33602
(813) 272-5110

Nathan Watters
Assistant State Attorney
419 North Pierce Street
Tampa, Florida 33602
(813) 272-5400

Patrick Hood
Assistant Public Defender
P.O. Box 172910
Tampa, Florida 33672
(813) 277-1565

Traci Koster
Koster Legal
1646 West Snow Avenue, #116
Tampa, Florida 33606
(813) 537-5757

Nicole Gehringer
Harris, Hunt & Derr, P.A.
100 South Ashley Drive, Suite 300
Tampa, Florida 33602
(813) 223-5421

Paul Phipps
Nelson Law Group
3003 West Azeele Street
Tampa, Florida 33609
(813) 350-7890

(ii) the approximate number and nature of the cases you handled during your tenure;

I have handled thousands of cases. Trial courts sip from a fire hydrant. To date, I have been assigned to Unified Family Court and, within it, three divisions: dependency, delinquency, and now domestic relations (often called family law).

Dependency generally involves allegations that a child was abused, abandoned, or neglected. The cases were broadly divided between dependency cases, where parents worked towards reunification with their children, and termination of parental rights cases. In a successful termination case, the case truly ended with an adoption, where the child became part of a forever family. This was a due process division in which parents were entitled to legal representation and entitled to an appeal.

Delinquency involves allegations that a child committed an act of delinquency, which, if committed by an adult, would constitute a crime. The Florida constitution, statutes, and the relevant federal and state legal authority carve out such acts from the criminal justice system, creating essentially a diversionary scheme to rehabilitate juveniles. My assignment in delinquency spanned much of the direct COVID crisis, raising numerous unusual challenges. As one of seven essential operation divisions, it never shutdown, although in-person operations did. This was a due process division in which children were entitled to legal representation and entitled to an appeal.

Domestic relations, that is, family law, involves divorces, paternity cases, and adoptions. On average, the divisions carry approximately 800 cases. There is a heavy load of *pro se* cases. The docket is also heavily influenced by mental health issues and, to a substantially lesser extent, substance abuse issues. The docket is replete with high conflict cases, unsurprising based on the subject matter. Divorce cases in particular carry a special tension between the law and normal life, e.g., no-fault divorces versus the need by the parties to express their

respective aggrievements. Divorce cases also touch on aspects of every other area of law (corporate law, fraud, domestic violence, wiretapping, complex commercial litigation, injunctive relief, etc.). It is an intensely human area of law. Issues involving children run the gamut from the tragic to the joyous. Completed adoptions remain the greatest joy in the division.

I have also volunteered to assist with other divisions. I presided over my first criminal jury trial on January 18, 2023.

(iii) the citations of any published opinions; and

N/A

(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.

In the Interest of J.M., 19-DP-371. Appeal voluntarily dismissed, *J.M. and T.B. v. DCF*, 291 So.3d 1245 (2d DCA 2020). This was one of the first cases assigned to me when I took the bench. It was an unusually high-profile dependency case. Tragically, a young boy was diagnosed with leukemia. Medical professionals sought to treat him with a conventional treatment regimen that was, historically, extremely successful. In a dramatic fashion, the parents declined the treatment, choosing instead alternative remedies to cure the cancer, e.g., marijuana and silver water. Medical experts believed the parents' treatment plan would lead to the death of the child. The parents fled with the child and the State of Florida intervened. On September 9, 2019, I adjudicated the child dependent after a well-litigated final hearing. The case raised issues about the limits of parental choice over the medical treatment for their child and featured some complex dynamics beyond that seen in a typical dependency case. In the end, the parents were successfully reunified with the child, who completed the cancer treatment protocol and is now healthy and well. Counsel in the case at the final hearing were as follows: for the State, Kenneth Beck; for the Guardian ad Litem program, Nancy Lawler; for the child as Attorney ad Litem, Scott Horvat; and, for the parents, Brooke Elvington.

In the Interest of J.J., 20-CJ-2281-A. This case raised the novel question: does the immunity hearing provision of Stand Your Ground apply to juvenile delinquency cases? I answered the question by finding that it does not apply because the statute expressly applies to criminal prosecutions and delinquency cases are not criminal prosecutions. The juvenile was still able to avail himself of the affirmative defense and, on August 25, 2021, he ultimately prevailed because of it. The case forced a review and reflection on the legal underpinnings of the delinquency system and what the delinquency system actually is. The attorneys on the case for the Stand Your Ground immunity hearing arguments were, for the State, Nathan Watters, and, for the Child, Antina Mobley.

In the Matter of the Adoption of R.B., 18-DP-281; 19-DP-932. I was the last judge to handle this case. On November 25, 2019, I presided over the adoption of the Child. To make it special and to share the moment with colleagues who shared parts of the case, I invited Judge Caroline Tesche-Arkin and Chief Judge Ronald Ficarrota to preside over the final hearing with me. It is, as far as I can tell, the only adoption hearing over which our Circuit had three judges presiding. I have never had to work so hard to refrain from showing emotion on the bench. The Child was adopted by the homicide detective, who met the Child on the night his father murdered his mother, his sister, and tried to murder him. The final hearing saw ultimate horror conclude with enduring love. Within the last 18 months, I had the opportunity to see the Child and family following a special recognition of them by First Lady DeSantis and Attorney General Moody. The resilience of that Child and the love of the family remains a lasting inspiration. Attorneys in the case included Rachel Medlin in the adoption case and, in the preceding aspect of the case, Kenneth Beck (AAG), Scott Horvat (AAL), Nancy Lawler (GAL), and David Dee (counsel for the father).

Graham v. Graham, 22-DR-6962. This case is ongoing and thus my remarks about it are necessarily limited. On August 7, 2022, I decided a UCCJEA issue regarding whether Hawaii or Florida should have jurisdiction over the children. This was the first case over which I presided that involved a conflict with another state's trial court over jurisdiction. The two sides are well-represented by Traci Koster and Nicole Gehringer.

Distefano v. Distefano, 15-DR-14422. This case was completed at the trial court level on July 13, 2022, by a stipulated order entered at Document 917. Domestic relations (family law) is different. In November 2021, the Chief Judge announced that I would takeover Domestic Relations Division I on January 3, 2022. On December 16, 2021, the Petitioner in the case preemptively filed a federal lawsuit against me, retired Circuit Judge Martha Cook, Circuit Judges Melissa Polo, Denise Pomponio, and Chief Judge Ronald Ficarrota, 2nd DCA Judge Anthony Black, and U.S. District Judges Thomas Barber and James Moody. *Distefano v. Palermo et al*, 8:21-cv-2920-MSS-JSS (M.D.FL. 2021). The federal case was eventually dismissed on March 16, 2022. It was my introduction to family law. But the case over which I was to preside offered an intensive education in challenging cases and the various factors that drive them. Few parties come to the court because they are happy. The question becomes how best to preside over cases when the cases bring personal attacks, threats, and abuse. It is an underappreciated aspect of service in the judiciary. Much of the role of the court focuses on our being humble before the law while requiring compliance with it. We bring to bear our intellect and reason on the conflict between others but without passion or prejudice. This includes and is especially true when we are confronted by personal attacks. I mark Distefano as significant not for the legal issues but for all that it taught me about my colleagues and about the price humility before the law sometimes extracts. I remain deeply impressed by my colleagues and grateful to have had the opportunity to serve amongst them. The attorneys in the case were Frances Martinez and Michael Lundy.

- 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.

M.M. v. State, 339 So. 3d 411 (2d DCA 2022) (per curiam). Judges Casanueva and Khouzam concurred. Judge Labrit specially concurred.

T.H. v. State, 349 So. 3d 951, 954 (2d DCA 2022). Judge Casanueva wrote the opinion. Judge Silberman concurred. Judge Atkinson dissented.

Int. of B.A., 299 So. 3d 531, 532 (2d DCA 2020).

- 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.

- 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.

No, I am not aware of any complaint made about me to the JQC.

- 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.

No.

- 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.

No.

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.

N/A

- 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 joined the Bar at my wedding reception on September 15, 2001. Two days later, my wife and I moved to London, where we both sought master's degrees. I attended King's College London and was awarded an LL.M. in Banking & Finance. While we were in graduate school, we worked for the Casting Collective as movie extras. We worked periodically for them depending on our schedules and available projects, e.g., the London disaster sequence in the movie *The Core*. The compensation was comparatively *de minimis*.

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.

There are 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.

The Opioid Crisis, Crim. Just., Winter 2019.

"Cocoanuts:" *Looking at Modern Mortgage Fraud*, 57 Fed. Law. 38 (June 2010), cited in Arthur Durst, *Property and Mortgage Fraud Under the Mandatory Victims Restitution Act: What Is Stolen and When Is It Returned?*, 5 Wm. & Mary Bus. L. Rev. 279, 287-88, 304 nn.61-66, 71 (Feb. 2014).

I anticipate that another article will be published in April:
Opioids: From Fields of Poppies to Fatal Fentanyl, GPSolo, April 2023.

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.

N/A

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.

See attached Appendix. I have done my best to capture as many of the past presentations and speeches I have given.

- 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 not taught any courses at institutions of higher education, except as a guest lecturer. Those are generally covered in the Appendix provided for question 37.

I have been accepted to teach a course on society and the law next year at the University of Tampa. I am in the process of creating a syllabus for the course.

- 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.

2022 Luis A. “Tony” Cabassa Award (Tampa Hispanic Bar Association) (November 3, 2022)

2020 Robert W. Patton Outstanding Jurist Award (HCBA YLD) (March 25, 2021)

2019 FBI recognition for excellence in prosecuting major criminal case (*United States v. Gary Todd Smith*)

2019 Special Achievement for Program Contract/Grand Fraud Investigation Award, Tampa Region Financial Crimes and Inspectors General Council

2019 Complex Financial Crime Investigation Award, Tampa Region Financial Crimes and Inspectors General Council

2018 HHS-OIG Inspector General’s Cooperative Achievement Award (in recognition of efforts on Shire Pharmaceuticals investigation team)

2018 NASA-OIG presentation of KSC-81PC-137, Space Shuttle Columbia on Pad 39A (in recognition of performance in *United States v. Akbar Fard*)

2018 Case of the Year Award, Tampa Region Financial Crimes and Inspectors General Council (for prosecutions related to Advanced Biohealing)

2017 U.S. Department of Labor-Inspector General Team Award (for investigation and prosecution of major healthcare-related case)

2017 U.S. Coast Guard (Citation) Meritorious Team Commendation (for meritorious service while serving on the *United States v. Polshyn* trial team as sole prosecutor)

2017 FBI recognition for demonstrated excellence in prosecuting major criminal case (*United States v. Polshyn*)

2017 FBI challenge coin (for participating in the post-Pulse nightclub attack response efforts and embedding immediately in the Fort Pierce FBI-RA in the aftermath of the attack).

2017 U.S. Postal Service Office of the Inspector General plaque (for significant work identifying healthcare fraud by Amerimed leading to the prosecution of four cases)

2016 NASA Office of the Inspector General recognition for outstanding contribution to the mission of the NASA Inspector General.

2016 Public Corruption Investigation Award, Tampa Region Financial Crimes and Inspectors General Council (investigation into corruption at the U.S. Postal Service)

2016 Complex Financial Crime Investigation Award, Tampa Region Financial Crimes and Inspectors General Council (investigation into complex ring of identity theft targeting veterans receiving healthcare at the U.S. Department of Veterans Affairs and using their identities to file fraudulent tax returns to obtain refunds)

2016 Department of the Army, Patriotic Civilian Service Award for leadership and dedication to ensure the investigation and prosecution of major fraud procurement cases and contributing to the readiness of the U.S. Army

2016 DEA, FBI, Coast Guard Investigative Service, and U.S. Coast Guard recognition for *United States v. Polshyn* prosecution. This recognition was done directly by the case agents.

2015 Council of Inspectors General on Integrity and Efficiency Award for Excellence (sponsoring agency: National Science Foundation)

2015 Council of Inspectors General on Integrity and Efficiency Award for Excellence (sponsoring agency: U.S. Department of Veterans Affairs)

2015 NASA recognition for dedication to public service and significant contributions to the NASA Office of the Inspector General's mission (presented with an American flag flown in space aboard Space Shuttle Endeavor, STS-108, launched December 5, 2001)

2015 Defense Criminal Investigative Service and U.S. Army (Army CID MPFU) recognition for major contributions to the Department of Defense and U.S. Army through the prosecution of *United States v. Aldissi* (presented with an American flag flown over the U.S. Embassy, Kabul, Afghanistan on July 4, 2011)

2015 Case of the Year Award, Tampa Region Financial Crimes and Inspectors General Council (for prosecution of *United States v. Aldissi*)

2015 National Science Foundation Office of the Inspector General plaque in recognition of leadership, effort, and dedication in the investigation and prosecution of Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) fraud cases

2015 U.S. Department of Homeland Security Office of the Inspector General plaque for dedication and professionalism greatly furthering the mission of protecting the homeland

2010 Raymond E. Fernandez Award from the Hillsborough County Sheriff's Hispanic Advisory Council for outstanding contributions to the criminal justice system

2009 U.S. Postal Office of the Inspector General plaque in recognition of outstanding efforts and contributions through mail theft prosecutions

2009 U.S. Attorney's Office Mortgage Fraud Award for outstanding contributions in mortgage fraud prosecutions

2009 U.S. Department of Health and Human Services Integrity Award for major contributions to the Office of the Inspector General's goals and objectives

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

N/A

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.

Commissioner, 2d DCA Judicial Nominating Commission (2006-2010)

Member, Initial Screening Committee, 13th Judicial Circuit Professionalism Committee (2019-present)

Florida Bar Grievance Committee (13A) (2015-2019)
Chair (2018-2019)

Master, Goldberg-Cacciatore Criminal Law Inn of Court (2002-present)
President (2011-2012)

Master, Cheatwood Inn of Court (2009-present)

Master, Givens Family Law Inn of Court (2022-present)

Master, Ferugson-White Inn of Court (2019-2021)

Executive Council Member, Florida Bar Criminal Law Section (2018-present)

Member, Federal Court Practice Committee, Florida Bar (2012-2018)

Co-chair, Bench Bar Committee, Hillsborough County Bar Association (2017-present)

Executive Board Member, Federal Bar Association (Tampa Bay Chapter) (2008-2011)

Co-chair, American Bar Association, White Collar Crime Regional Subcommittee (2012-2014)

Member, Merit Selection Panel (MDFL, retention of USMJ Porcelli) (2017)

Member, Cuban American Bar Association (2020-present)

Member, Tampa Hispanic Bar Association (2019-present)

Member, Jesuit Bar Association (2019-present)

Member, Federalist Society Tampa Bay Chapter (2019-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.

Boy Scouts of America (BSA) (2016-present)

Vice President, GTBAC District Operations (2023-present)

Fort Brooke District Chair, GTBAC (2020-2022)

Board Member, Greater Tampa Bay Area Council (2020-present)

Pathfinder Committee (2020-present)

Troop 4 adult leader (2021-present), currently an Assistant Scout Master

Adult Committee and Committee Chair, Pack 23 (2019-2022)

Assistant Cub Master, Pack 23 (2016-2021)

Honorary Wing Commander, 6th Air Mobility Wing, U.S. Air Force, MacDill AFB (2022-present)

Saint John's Episcopal Day School

Trustee (2022-present)

Board Guest/Committee Member (2021-2022)

Economic Club of Tampa (formerly Exchange Club of Tampa) (2004-present)

Leadership Tampa (2021-2022)

Leadership Tampa Alumni (2022-present)

- 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.

I do not and have not.

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

Because I serve as a judge now and previously as a federal prosecutor, my engagement in traditional *pro bono* work has been necessarily limited. I have sought alternatives to it. For example, with the Jesuit Bar Association, around Christmas, I volunteered to perform a non-legal screening of potential *pro bono* clients at Metropolitan Ministries. I have also previously volunteered at Project Zapatos with the Sheriff's Hispanic Advisory Council and at a recent Blue Star Families Nourish the Service event. To the extent it qualifies, I served on committees associated with lawyer professionalism, both as a judge and a lawyer, and worked on bench and bar conferences. I have presided over numerous student mock trials and run law-related programs for the Boy Scouts, e.g., a law merit badge program at the courthouse.

45. Please describe any hobbies or other vocational interests.

My free time is mostly spent being a father. This often involves Scouting. My major hobby is fishing. I grew up on the water here in Florida, mostly saltwater fishing with my father and now my son. As is true of all boat owners, I use the boat far less than I would like. I also enjoy reading, omnivorously consuming good books be they fiction or non-fiction.

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.

I have never served in the military.

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

Facebook: thomas.n.palermo (private)

Instagram: tommy987321 (private)

LinkedIn: www.linkedin.com/in/thomas-palermo-19036046 (public)

Twitter: @ThomasNPalermo (public)

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 [REDACTED]. She is a Grant Management Administrator (Level V) at Moffitt Cancer Center. We were married on September 15, 2001.

- 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.

[REDACTED], age 13.

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.

No.

- 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.

No.

- 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.

No.

- 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.

No.

- 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 am and have been compliant.

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.

Over time, our resumes become filled with the impressive. It never matches the reality of our lives. While in high school, my first job was working at Long John's Silver. I worked the cash register, cleaned the restaurant, and the fryers. We ask judges to be humble before the law. I had good reason early on to simply be humble. My second job was working for my father at Guide On of Florida. My brother and I both worked there, manufacturing trailer guide components for boat trailers. We both became lawyers.

My parents ensured that we would have every educational opportunity. My mother devoted her entire career to it. She served as an English teacher and then as a professor. It was her dream and she achieved it. Her first language is Spanish. And, when she was twelve, her father died. And not long after, her mother. Her cousins finished raising her and they became my grandparents.

There were times when my mother had to choose between food and books. And she chose books. No one loves more fiercely nor set a finer example.

I have put on many law-related programs for the Boy Scouts. In them, I always circle back to the Pledge of Allegiance. The Pledge was written by Francis Bellamy, who, in the later years of his life, lived here in Tampa at the intersection of Bayshore Boulevard and Wallcraft Avenue. His Pledge was incorporated into federal law (4 U.S.C. § 4) and is a promise we have all made. It ends with six key words: "...with liberty and justice for all." A judiciary acting in its proper role makes those words real. For the law to be just, it must be something a person can know in advance and therefore be capable of governing his or her own conduct accordingly. When the judiciary determines the law based on preferred outcomes or personal preferences, it replaces the rule of law with the whim of the judge. At the forefront of the Florida judiciary is the Florida Supreme Court. By its opinions, it reshapes Florida's legal system, and, by order, example, and leadership, it shapes the conduct of judges and lawyers. Explaining it to Scouts reinforces the meaning of serving within it.

It is not just Scouts that reinforce it. For example, in November 2014, I taught with the Department of Justice's Human Rights and Special Prosecutions Unit at the International Law Enforcement Academy in El Salvador as part of an effort to combat international human trafficking. I presented regarding an international kidnapping case I prosecuted, but I also received an eye-opening education from lawyers, doctors, and other law enforcement professionals. The rule of law is easy to take for granted until it is lost.

The greatest additional experience that assists me in holding judicial office is fatherhood. One need not be a parent to be an effective judge. Fatherhood reopens your eyes to the wonders of the world, but it also leaves you intensely vulnerable to the happiness and well-being of a child, something over which you have little control. Fatherhood changes your perspective. It requires patience and empathy. In being a father, I draw on my Italian and Spanish roots, on all the lessons imparted to me by family. As a father, I confront my deepest fears but also experience my greatest joys. It is a profoundly humbling experience.

- 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.

First, I spent a majority of my career in federal court. I would bring a perspective in line with that adopted by the current Supreme Court. I appreciate the limited role of the judiciary and the Supreme Court's role in fostering and protecting it.

Second, I appreciate the role of the Supreme Court within Florida's system of government. I have served for much of my professional career in the executive branch. In that capacity, I learned the value of stability, predictability, and humility within the law. I have worked in the legislative branch. From it, I appreciate the centrality of the legislative function and the court's remove from it. I have also served in the courts. From it, I have applied the lessons of my work

in the other two branches to remain faithful to my oath to support the Constitutions of the United States and the State of Florida. The Florida Supreme Court does not just say what the law is but it also shapes the conduct of lawyers and establishes and revises the rules of procedure. I have served as a Bar referee, as a Grievance Committee chair, and on our Circuit's professionalism committee. No Florida court plays a more significant role in maintaining the rule of law. I can contribute to that mission.

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.

Hon. Susan H. Rothstein-Youakim
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(former Assistant U.S. Attorney and Organized Crime Chief)
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Hon. Stephen Muldrow
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Email: w.stephen.muldrow@usdoj.gov

Hon. Anthony E. Porcelli
U.S. Magistrate Judge
801 North Florida Avenue
Tampa, FL 33602
Chambers: (813) 301-5540
Email: anthony_porcelli@flmd.uscourts.gov

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 3rd day of April, 2023.

Thomas N. Palermo
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: \$45,515

Last Three Years: \$164,707 \$156,784 \$153,381

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: \$33,180

Last Three Years: \$128,521 \$122,281 \$119,845

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

Current Year-To-Date: N/A

Last Three Years: N/A N/A N/A

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: N/A

Last Three Years: N/A N/A N/A

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: N/A

Last Three Years: N/A N/A N/A

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

PART A – NET WORTH

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

My net worth as of December 31, 2022 was \$793,403.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

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

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Home (FMV, Hills. Property Appraiser)	\$763,289
Cars, boat, household furnishings, clothing, jewelry	\$112,400
Bank Accounts, Florida Prepaid, 529 Plan, stocks	\$160,219
Retirement Accounts	\$247,363

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
American Education Services, P.O. Box 2461, Harrisburg, P.A. 17105	\$8,504

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
Flagstar Bank, P.O. Box 660263, Dallas, Texas 75266	\$467,198
Ford Credit Union, P.O. Box 542000, Omaha, NE 68154-8000	\$14,166

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida	200 East Gaines St., Tallahassee, Florida 32399	\$164,707

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see Instructions on page 8]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

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

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

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

OATH

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

Thomas N. Pagan

SIGNATURE

STATE OF FLORIDA

COUNTY OF

HILLSBOROUGH

Sworn to (or affirmed) and subscribed before me this 3rd day of April, 2023 by THOMAS PAGAN D

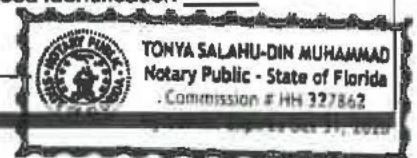
(Signature of Notary Public—State of Florida)

Tonya Salah-Din Muhammad

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

Personally Known OR Produced Identification

Type of Identification Produced _____



JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: April 3, 2023

JNC Submitting To: Florida Supreme Court JNC

Name (please print): Thomas N. Palermo

Current Occupation: Circuit Judge

Telephone Number: (813) 272-5468 Attorney No.: 530034

Gender (check one): Male Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: USA

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.

Thomas Nelson Palermo
Printed Name of Applicant

Thomas N. Palermo

Signature of Applicant

Date: April 3, 2023

Writing Samples

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DOMESTIC RELATIONS DIVISION
UNIFIED FAMILY COURT

IN RE: the Matter of:

[redacted],
Petitioner,

Case No.: [redacted]

and

Division: I

[redacted],
Respondent.

_____ /

IN RE: the Matter of the Termination

Case No.:
[redacted] of Parental

Rights for the Proposed
Adoption of a Minor Child

Division: I

Infant Girl [redacted]

_____ /

**ORDER ON THE ADOPTION AGENCY'S MOTION
REGARDING NAMED BIRTH FATHER'S CONSENT AND NOTICE**

This case involves the potential adoption of an infant girl. The birth mother consented to the adoption, offering the girl up for adoption to an adoption agency. The birth father has objected to the adoption. The adoption agency has asked the court to find the father in default under section 63.052(3)(a), Florida Statutes. (*See* Mot., Doc. 38; Mem., Doc. 43; Resp., Doc. 49.) The father opposed the motion. (*See* Resp't's Opp'n, Doc. 44.) As a "defense," the father contended that his purported compliance with section 63.062(2)(b), Florida Statutes, necessitated his consent to the adoption. In the end, section 63.062(2)(b) is no defense; its application leads to a dispositive result in favor of the adoption agency.

The Court held several hearings, including an evidentiary hearing and a subsequent

hearing for supplemental legal argument. (See Doc. 42; Doc. 46.) The final hearing on the issue was held on February 2, 2023. Present before the Court for all the relevant hearings on this case were the adoption agency, which was represented by counsel Robert Webster III, and the father, [redacted], who was represented by counsel David Hurvitz. The mother testified at the hearing held on September 6, 2022. The father and the adoption agency's case manager, Hayley Swyley, both testified at the October 18, 2022, hearing. Counsel for the adoption agency and the father were present for a teleconference held on January 6, 2023. The father and all counsel were present for the final hearing on the issue held on February 2, 2023.

I. Findings

A man, [redacted] (“the father” or “[redacted]”), and a woman, [redacted] (“the mother” or “[redacted]”), not married to each other, conceived a child together.¹ While [the mother] was pregnant, [the father] reasonably paid for what care he could. On January 10, 2022, the two became parents when a healthy baby girl, [redacted], was born here in Florida. [The father]’s name is not on the birth certificate. (See Doc. 35 at 2, *In re: the Termination of Parental Rights*, Case No. [redacted].) The next day, the mother placed their daughter up for adoption, giving her to an adoption agency, [redacted]. [The father] did not know in advance or at the time that [the mother] was placing the baby up for adoption.

The child, [redacted], falls under the jurisdiction of this Court.

As [the mother] admitted in open court, shortly after the birth of their daughter, she lied to the father by telling him that their baby had died from Sudden Infant Death Syndrome (SIDS). The tangled web she weaved was partially memorialized in a series of texts between the parents. On or about January 14, 2022, she sent [the father] a text containing a description of SIDS and

¹ [The father] is married to [redacted], not [the mother]. (See Doc. 12 at 1, *In re: the Termination of Parental Rights*, Case No. [redacted].)

then professed “I love you.” (See Doc. 12 at 6, *In re: the Termination of Parental Rights*, Case No. [redacted].) That same day, she also texted:

I miss you so much. I feel like being around you just by itself would make me feel better. I need you. [emojis] What do you think about her? I’m kinda glad you didn’t get to hold her or see her in the flesh. It sounds kinda fucked up but that alone really fucked me up 10x more[.] I didn’t think she was gonna come out and say fuck anything mom got and look exactly like you feet and all [emojis] but she was everything I could’ve wanted. I hope I’m not making it worse for you by telling you things. I just wanna share it with you[.]

Id. at 5. She told him by text:

This is all my fault. I could’ve done something better or different. I really feel like that in the pit of my stomach. I shouldn’t have smoked. I shouldn’t have stressed out so much. I should’ve drank [sic] more water. Ill [sic] probably always blame myself because if something like that did happen, it would be. I really wanna die. How the fuck does someone go through this and be ok[?]

Id. at 4. Although conveyed in a mixture of words and emojis, the father’s anguish was palpable.

At nearly the same time, [the mother] was also lying to the adoption agency. For example and among other lies, in her Affidavit of Diligent Search and Inquiry (Pet. Ex. D, Doc. 6 at 38, *In re: the Termination of Parental Rights*, Case No. [redacted]), she averred that she “[did] not have a telephone number or any social media contact information for [the father] since I deleted all contact information after our relationship ended.” This was during the time when she was actually texting with [the father]. She lied about not knowing where he lived. (*Id.*) In verifying the Petition, she further lied about his not having paid a fair and reasonable amount of living and medical expenses incurred in connection with the pregnancy. (*Id.* at 3, 5, ¶¶ 8(F), 18(D).) The mother—while testifying in the paternity case in the presence of the adoption agency’s counsel and with the agency having an opportunity to cross-examine her—was honest in open court when she confessed to lying to the father about [the child]’s death.

The adoption agency, on the other hand, acted honorably and followed the law. Despite the information contained in the mother's affidavit, it diligently searched for and, after finding [the father], served [him] with the Petition. The Petition (Doc. 6) was filed January 12, 2022. The Summons (Doc. 10) was issued on January 19, 2022. On January 21, 2022, the Summons was e-filed. (*See* Doc. 11.) And, on January 31, 2022, the father filed his Affidavit and Verified Response Contesting the Birth Mother's Adoption Plan and the Termination of the Father [redacted]'s Parental Rights. (*See* Doc. 12.) On the same day, he also filed his Claim of Paternity with Florida's Putative Father Registry. (*See* Doc. 12 at 7.) The Claim of Paternity was timely filed.

It is undisputed that the father made fair and reasonable payments of living and medical expenses during the pregnancy in accord with his financial ability. It is also undisputed that he did not make them after or in connection with his daughter's birth.

The father also filed a paternity case in which, by his and the mother's testimony, his paternity was established.² This occurred in the presence of counsel for the adoption agency, who was afforded the opportunity to examine both the mother and the father. The adoption agency does not contest that [redacted] is the biological father. The paternity inquiry did not occur until after the initiation of the termination of parental rights case however, and therefore, has no legal import here. *See* Fla. Stat. § 63.062(1)(b).

It is beyond a reasonable doubt that one person in this case committed fraud: [the mother]. She lied to both [the father] and the adoption agency, which she took money from as part of the adoption process. And yet, Florida law makes no exception for the father based on her

² The cases have been heard together and effectively consolidated. The TPR case necessarily controls the resolution of the paternity case. Therefore, this Order is being entered in both cases.

deceit: “[e]ach parent of a child conceived or born outside of marriage is responsible for his or her actions and is not excused from strict compliance with this chapter based upon any action, statement, or omission of the other parent or a third party, except as provided in s. 63.062(2)(a).” Fla. Stat. § 63.063(1) (emphasis supplied). There is no relevant exception in § 63.062(2)(a); any fraud by the biological mother does not alter the outcome.

Against this tapestry of events, the adoption agency sought a default judgment against the biological father for failure to strictly comply with section 63.062(3)(a), Florida Statutes. (See Doc. 38, *In re: the Termination of Parental Rights*, Case No. [redacted].)

II. A Shield Is Not a Sword

The adoption agency argues that the Court must enter a default judgment against the father. Consistent with the requirements of section 63.062(3), Florida Statutes, the adoption agency served notice of the intended adoption plan upon the father. In all material respects, the adoption agency complied with the requirements of the section. The factual inquiry then turns to the conduct of the father.

The law requires the Court to enter a default judgment if “the unmarried biological father or entity whose consent is required fails to timely and properly file a verified response with the court and, in the case of an unmarried biological father, a claim of paternity form with the Office of Vital Statistics.” Fla. Stat. § 63.062(3)(a). Here, all sides agree and the Court finds that the father properly and timely filed both a verified response with the Court and a claim of paternity form with the Office of Vital Statistics.

The adoption agency argues, however, that the father was also required to take additional step(s). Specifically, the agency relies upon the rest of the subsection of the statute:

To avoid an entry of a default judgment, within 30 days after receipt of service of the notice of intended adoption plan:

1. The unmarried biological father must:
 - a. File a claim of paternity with the Florida Putative Father Registry maintained by the Office of Vital Statistics;
 - b. File a verified response with the court which contains a pledge of commitment to the child in substantial compliance with subparagraph (2)(b)2; and
 - c. Provide support for the birth mother and the child.
2. The entity whose consent is required must file a verified response setting forth a legal basis for contesting the intended adoption plan, specifically addressing the best interests of the child.

Fla. Stat. § 63.062(3)(a). While the father completed (1)(a) and (b), he failed to satisfy requirement (1)(c), that is, to provide support for the birth mother and the child.³ The adoption agency argues that, as a result of that failure, the Court must enter a default. But that rewrites the provision of the statute.

The legislature created a sword and a shield. The sword is the preceding sentence that requires the court to enter a default when the father fails to complete two requirements: timely file a verified response and a claim of paternity form. This is but one of the ways through which a default might be entered against a father. The legislature also created a shield against default judgments by providing unmarried biological fathers a legal mechanism to avoid default judgments by completing three requirements, that is, adding in a third requirement to also provide support for the birth mother and child. In sum, the legislature erected a safe harbor in which a father is sheltered from a court entering a default against him. The adoption agency's interpretation of the statute requires the Court to turn the shield—“[t]o avoid entry of a default”—into a sword.

³ While the father provided the mother support before the child was born, he failed to support her after the child was born, that is, when she went from being a pregnant woman to a birth mother. The term “birth mother” necessarily focuses the inquiry on whether support was made after the child was born.

The Court must give full effect to the actual words of the statute. *See Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198 (Fla. 2007) (“We are required to give effect to ‘every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage.’” (quoting *Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 366 (Fla. 2005))). “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012) [hereinafter, Scalia & Garner, Reading Law]). As it was long ago observed: “The words of a statute are to be taken in their natural and ordinary signification and import; and if technical words are used, they are to be taken in a technical sense.” James Kent, Commentaries on American Law 432 (1826), *quoted in* Scalia & Garner, Reading Law at 69, n.1. “[T]he goal of interpretation is to arrive at a ‘fair reading’ of the text by ‘determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.’” *Ham*, 308 So. 3d at 947 (quoting Scalia & Garner, Reading Law at 33). Such a fair reading will always be mindful of the “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal v. United States*, 508 U.S. 129, 132 (1993) *superseded by statute on other grounds*, Pub. L. 115–391, § 403(a), 132 Stat. 5221. And we interpret the words of a statute based on their meaning at the time of enactment. *See New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019); Scalia & Garner, Reading Law § 7, at 78 (“Words must be given the meaning they had when the text was adopted.”). In other words, the text of the law says what it means and means what it says when the legislature said it. Here, the statute is clear and unambiguous so there is no need to resort to additional rules of statutory construction. *See*,

generally, *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (overruling *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

Silence speaks volumes. The legislature omitted the third requirement (provide support for the birth mother and the child) from the mandatory default provision, that is, the sword, yet included the third requirement in the safe harbor provision, that is, the shield. If the legislature meant to include the requirement in the mandatory default provision, it would have. Not having completed the third requirement simply means that this father, [redacted], is not sheltered by the safe harbor. [The father] did not provide support for the birth mother and the child, only for [the mother] when she was pregnant, *i.e.*, still a *potential* mother. He may be subject to other forms of default. But, he did what he needed to do to avoid the Court being required to enter this default against him under the sword provision.

Thus, the adoption agency has not met its burden to require the Court to enter a default against [the father].

III. Waiver and Surrender

The father raised a separate defense against the adoption agency's request for him to be subject to a default. He argued that the adoption agency should have no recourse to section 63.063, Florida Statutes, because he met the requirements of section 63.062, Florida Statutes. (*See, e.g.*, Doc. 44 at 5, *In re: the Termination of Parental Rights*, Case No. [redacted].) As a threshold matter, one need not meet or fail to meet the requirements of section 63.062 before one may seek recourse to section 63.063. As the adoption agency fully proved, however, the father has failed to meet the relevant requirements of section 63.062.

[The child] was less than six months old when she was placed with the adoptive parents. Therefore, the case falls within the ambit of section 63.062(2)(b), which requires unmarried

biological fathers to have taken three steps “prior to the time the mother executes her consent for adoption:”

1. Filed a notarized claim of paternity form with the Florida Putative Father Registry within the Office of Vital Statistics of the Department of Health, which form shall be maintained in the confidential registry established for that purpose and shall be considered filed when the notice is entered in the registry of notices from unmarried biological fathers.

2. Upon service of a notice of an intended adoption plan or a petition for termination of parental rights pending adoption, executed and filed an affidavit in that proceeding stating that he is personally fully able and willing to take responsibility for the child, setting forth his plans for care of the child, and agreeing to a court order of child support and a contribution to the payment of living and medical expenses incurred for the mother's pregnancy and the child's birth in accordance with his ability to pay.

3. If he had knowledge of the pregnancy, paid a fair and reasonable amount of the living and medical expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability and when not prevented from doing so by the birth mother or person or authorized agency having lawful custody of the child. The responsibility of the unmarried biological father to provide financial assistance to the birth mother during her pregnancy and to the child after birth is not abated because support is being provided to the birth mother or child by the adoption entity, a prospective adoptive parent, or a third party, nor does it serve as a basis to excuse the birth father's failure to provide support.

Fla. Stat. § 63.062(2)(b).

The father may have failed to satisfy subsection 2(b)(1) because the claim of paternity form was not filed “prior to the time the mother execut[ed] her consent for adoption.” *See* Fla. Stat. § 63.062(2)(b)(1). The mother’s Consent to Adoption was signed on January 11, 2022. (*See* Doc. 6 at 9-14, *In re: the Termination of Parental Rights*, Case No. [redacted].) The paternity form was not filed until January 31, 2022. (*See* Doc. 12 at 7, *In re: the Termination of Parental Rights*, Case No. [redacted].) Alternatives exist that may vitiate the requirement for strict compliance with that subsection. *See* Fla. Stat. § 63.054. At a hearing, the adoption agency conceded that the father complied with subsection 2(b)(1). For this Order, the Court assumes *arguendo* that this is correct.

Subsection 2(b)(2) was satisfied. “Upon service of a notice of an intended adoption plan or a petition for termination of parental rights pending adoption,” the father timely executed and filed an affidavit in the termination of parental rights case in compliance with subsection 2(b)(2). *See Fla. Stat. § 63.062(2)(b)(2).*

The adoption agency is correct—and, at one of the hearings, the father conceded—that he did not strictly comply with subsection 2(b)(3). The father, in accord with his ability to pay, made fair and reasonable payments incurred in connection with the mother’s pregnancy. However, he did not pay a fair and reasonable amount in connection with the child’s birth in accord with his financial ability and he was not prevented from doing so by the birth mother or any other person or authorized agency having lawful custody of the child. Regardless of the level of compliance required by section 63.062(2),⁴ [the father] made no payments regarding any expenses incurred in connection with the child’s birth and, therefore, failed to comply at all with that aspect of Subsection 2(b)(3). He otherwise failed to meet the requirements of section 63.062(2)(b) and, as such, any parental rights he has with respect to the child are terminable without his consent. *See Heart of Adoptions, Inc. v. J.A.*, 963 So.2d 189, 200 (Fla. 2007).

From the father’s perspective, the sequence is awful: his daughter was born (January 10th), but then he was told she was dead (by at least January 14th), and then informed that she had been placed up for adoption (by at least as early as January 18th). On or about January 19, 2022, the adoption agency informed the father that:

[i]n addition, if you desire to establish and/or protect your rights, you should contact an attorney immediately and, within 30 days, send a fair and reasonable amount of support for the birth mother and child, in accordance with your financial ability. [The biological

⁴ *See D.S. v. J.L.*, 18 So. 3d 1103, 1109 (Fla. 1st DCA 2009) (noting “Section 63.062(2) does not expressly state the required level of compliance.”). Whether it is strict compliance or not, there was simply no compliance with the requirement that [the father] pay a fair and reasonable amount in connection with the child’s birth.

mother] is in need of financial assistance now. Her monthly needs during the pregnancy and six-week post-partum period include: housing, utilities, telephone, food, toiletries, clothing, and transportation. Additionally, she may have incidental medical expenses that are not covered by Medicaid. To avoid any confusion about payment and to avoid any questions about the means for you to contribute towards these expenses, your payments should be sent to the adoption entity identified above so that receipt of the funds can be verified under Florida law. Your failure to pay a fair and reasonable amount of living and medical expenses for the birth mother during her pregnancy and for the child after birth may be used to establish your consent is not required or that you legally abandoned the child.

(See Doc. 9 at 3, ¶ 8, *In re: the Termination of Parental Rights*, Case No. [redacted].) The father admitted that (1) he had not provided any financial support in a repetitive customary manner for the child since the child began living with the prospective adoptive parents, (2) he paid no medical expenses in connection with the minor child, (3) that no person prevented him from paying one-half the reasonable and necessary expenses incurred for health care for the child not covered by medical insurance, (4) he had not contacted the adoptive agency to offer financial support for the child, only providing funds to the birth mother, (5) no one prevented him from providing financial support for the minor child. (See Doc. 38 at 8-9, *In re: the Termination of Parental Rights*, Case No. [redacted].) Having made no payments regarding the birth of the child, the father did not fully comply with Subsection 2(b)(3).

An unmarried biological father who does not comply with each of the conditions provided in subsection 2 is deemed to have waived and surrendered any rights in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required. See Fla. Stat. § 63.062(e).

In an abundance of caution, the father has thirty days from the date of the entry of this Order to show that he had already complied fully with Subsection 2(b)(3). If the father cannot

show full compliance, he is deemed to have waived and surrendered his rights in relation to his child.

ORDERED on the date set forth in the electronic signature block.

Electronically Conformed 3/27/2023
Thomas N. Palermo

Thomas N. Palermo
Circuit Judge

Copies to the parties and counsel of record.

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
UNIFIED FAMILY COURT
JUVENILE DIVISION**

IN THE INTEREST OF

Case No.: 20-CJ-2281-A

J.J.,

A CHILD.

Division: F

_____ /

**ORDER ON BURDEN OF PROOF FOR THE CHILD'S MOTION TO
DISMISS BASED ON STATUTORY IMMUNITY
(STAND YOUR GROUND)**

On July 21, 2021, J.J. (the Child) filed a motion to dismiss the Petition¹ pursuant to Florida Rule of Juvenile Procedure 8.085 and §§ 776.012 and 776.032, Florida Statutes. Doc. 60. In the motion, the Child asserts that § 776.032(4), Florida Statutes, applies. *Id.* at 4. This provision sets forth the burden during an immunity hearing in criminal prosecutions. After reviewing the motion, the Court ordered the parties to brief whether § 776.032(4) applies in juvenile delinquency cases and, if it does not, what burden should apply. On August 11, 2021, the State filed its brief. Doc. 69. On August 12, 2021, the Child filed his brief. Doc. 72. After a careful review of the briefings, the Court finds that § 776.032(4) applies to criminal prosecutions, but not to juvenile delinquency cases. Applying *T.P. v. State*, 117 So.3d 864 (Fla. 4th DCA 2013), and the dissent in *Bretherick v. State*, 170 So.3d 766 (2015), the Court finds that the initial burden is preponderance of the evidence and it is on the Child. If the Child meets his initial burden, then the burden shifts to the State to rebut the affirmative defense beyond a reasonable doubt.

¹ The Motion actually asks the Court to dismiss the Information, Doc. 60 at 1, but, in delinquency and in this case, there is no Information, only a Petition.

Procedural History

On November 4, 2020, the Child was arrested for the delinquent act of Aggravated Battery (Great Bodily Harm). Doc. 17 (CRA). At his detention hearing, the Court ordered the Child placed on supervised release, specifically, intensive home detention. Doc. 3 (Detention Order). On December 7, 2020, the State of Florida filed a Petition for Delinquency, alleging that the Child committed the delinquent act of Aggravated Battery (Great Bodily Harm). Doc. 20 (Petition). Discovery was conducted. See, e.g., Doc. 45 (Notice of Taking Deposition). The case was set for an adjudicatory hearing. Doc. 54 (Clerk's Minutes). On July 21, 2021, the Child, asserting that he acted in self-defense, filed his motion to dismiss under Florida Rule of Juvenile Procedure 8.085. Doc. 60.

Averment

The dismissal motion avers that, on September 14, 2020, the Petition victim was engaged “in a verbal disagreement with a subject at the County Hills Park.” Doc. 60 at 1. The Petition victim “left the park but later returned with his older brother-in-law.” *Id.* The Petition victim and his brother-in-law “had a verbal discussion with the subject and his brothers.” *Id.* After the discussion, the Petition victim “charged (ran toward) and grabbed the Child, J.J., trying to tackle the Child to the ground.” *Id.* After the Petition victim “forcefully grabbed the Child, the Child responded physically, in self-defense, by using force against [the Petition victim’s] use of unlawful force.” *Id.* The defense asserted in the motion—justifiable use of force, that is, self-defense—pursuant to § 776.012(1), Florida Statutes.²

² For the convenience of the reader, § 776.012(1), Florida Statutes states that “[a] person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.”

Process

The dismissal motion properly invoked Rule 8.085. The justifiable use of force defense is an affirmative defense. Florida Rule of Juvenile Procedure 8.085(2), entitled “Motion to Dismiss,” requires, in pertinent part, that “[a]ll defenses not raised by a plea of not guilty or denial of the allegations of the petition shall be made by a motion to dismiss the petition.” Any child who wishes to raise an affirmative defense must, therefore, raise it through a motion under Rule 8.085(2).

The Child further cited the immunity hearing statute, § 776.032(1), Florida Statutes, which set forth, in relevant part, that “[a] person who uses or threatens to use force as permitted in § 776.012 ... is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person ...” The Child asserted that he need only make a *prima facie* showing to obtain an evidentiary hearing, noting that “Florida Law requires a **criminal defendant** to raise a *prima facie* claim of self-defense immunity before trial.” *Id.* at 3 (emphasis supplied). The Child argued that the burden is set forth in § 776.032(4), Florida Statutes, here quoted in full:

In a **criminal prosecution**, once a *prima facie* claim of self-defense immunity from **criminal prosecution** has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from **criminal prosecution** provided in subsection (1).

(emphasis supplied). In sum, the Child claims that he has made a *prima facie* claim for the justifiable use of force in self-defense and, therefore, the burden should now be on the State of Florida to rebut his immunity claim by clear and convincing evidence under § 776.032(4).

Plain Language

On its face, section 776.032(4) applies to criminal prosecutions. Delinquency proceedings are not criminal prosecutions. Therefore, it does not apply.

“In interpreting the statutes, we follow the ‘supremacy-of-text principle’—namely, the principle that [t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. Dec. 31, 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). The Court’s primary task in statutory construction is to give the statutory text its plain and obvious meaning; Courts lack the “power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.” *State Farm Fire & Cas. Ins. Co. v. Wilson*, No. 2D19-4046, 2021 WL 2024167, at *2 (Fla. 2d DCA 2021) quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984).

Section 776.032(4), Florida Statutes, expressly applies to only one category of cases: criminal prosecutions.

Although the term “criminal prosecutions” is unambiguous, section 776.032(1) expressly defines the term: “[a]s used in this subsection, the term ‘criminal prosecution’ includes arresting, detaining in custody, and charging or prosecuting the defendant.” There is a common feature in each of the aspects of criminal prosecutions described: the defendant. In other words, the object of each of the verbs listed is plainly the defendant: arresting the defendant, detaining the defendant in custody, charging the defendant, or prosecuting the defendant. Criminal cases have defendants.³ Juvenile delinquency cases do not; they have

³ This is true even in the style of the cases. The style of a criminal case is always styled State of Florida versus _____, defendant. See, e.g., Fla.R.Crim.P. 3.986 (forms related to judgment and sentence). In court, we refer to the Child, not the defendant.

children.⁴

In its brief on the issue, the State argued that “Florida Rules of Juvenile Procedure directly address ‘arresting, detaining juveniles in custody, and charging or Prosecuting’ juvenile defendants.” Doc. 69 at 7. In support of this proposition, the State discussed Florida Rule of Juvenile Procedure 8.010, which governs detention hearings. The State’s discussion consistently refers to juvenile defendants in relation to other language in the Rule. *See, e.g.*, Doc. 68 at 7 (“Subsection (f)(1) provides that the juvenile defendant ‘shall be advised of the nature of the charge for which he or she was taken into custody.’”). The problem is that “juvenile defendants” is not the language of the Rule. The Rule actually refers to the “child.” For example, staying with Subsection (f)(1), the Rule states that “[a]t the detention hearing the persons present shall be advised of the purpose of the hearing and the **child** shall be advised of (1) the nature of the charge for which he or she was taken into custody.” (emphasis supplied.) Even the State’s brief itself properly follows the correct convention, referring to J.J. as the Child and not the “juvenile defendant” throughout the brief. These cases may be juvenile delinquency prosecutions or prosecutions of violations of law by a child but they are not criminal prosecutions.

There is no ambiguity in § 776.032(4), Florida Statutes. The legislature means what it plainly said and only what it said. And the legislature did not include juvenile delinquency within the ambit of § 776.032(4).⁵ The only reason the language is potentially ambiguous is because many are simply unsure what juvenile delinquency actually is.

⁴ In juvenile delinquency cases, the style is “In the interest of _____, a child,” or “In the interest of _____, children.” *See Fla.R.Juv.P. 8.025* (style of pleadings and orders).

⁵ If the legislature wants juvenile delinquency to fall under the ambit of Fla. Stat. § 776.034(4), the statute could be amended, for example, to say “criminal prosecutions and juvenile delinquency cases.”

Neither Fish nor Fowl

Humans feel the need to classify and categorize; we love taxonomy. Even Julius Caesar in his Commentaries on the Gallic Wars begins with “[a]ll Gaul is divided into three parts.” Julius Caesar, *De Bello Gallico* (“Gallia est omnis divisa in partes tres.”). Lawyers are no different. Most lawyers cleave the law in two: civil law and criminal law. Only the most intrepid lawyers venture into the areas of the law that are some of both but, in the end, are neither, like juvenile delinquency. See *State v. Boatman*, 329 So. 2d 309, 312-13 (Fla. 1976) (“Juvenile delinquency proceedings are neither wholly criminal nor civil in nature. The United States Supreme Court has refused to simplistically categorize juvenile proceedings as either ‘criminal’ or ‘civil,’ avoiding thereby a ‘wooden approach.’ While certain federal constitutional rights obtain in juvenile proceedings, others do not.”); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Juvenile delinquency falls under the umbrella of the Unified Family Court. It is its own area of law. Frequently treated as criminal, juvenile delinquency is actually a legislative carve out that shunts children away from the criminal justice system. See *State v. A.N.F.*, 413 So. 2d 146, 147 (Fla. 5th DCA 1982) (“The jurisdiction of the Juvenile Court is specially carved out of the general jurisdiction of the circuit court, and it is by special legislative grace and favor, that individuals are given special treatment and consideration under that system.”). Juvenile delinquency is perhaps the original diversion scheme.

The Florida Constitution clearly expresses a distinction between those charged with crimes, Article I, § 15(a), and children “charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases,” Article I, § 15(b). This is the constitutional underpinning of Florida’s juvenile delinquency system.

In criminal prosecutions, the accused have the right to a jury trial. This right initially flows from the Sixth Amendment to the United States Constitution. In language not dissimilar to §

776.032(4), Florida Statutes, that is, “criminal prosecutions,” the Sixth Amendment’s first four words define the scope of its application: “[i]n all criminal prosecutions.” Yet, in juvenile delinquency, there are no jury trials, because, at least for now, juvenile delinquency is not a criminal prosecution. See *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (holding that juveniles have no right to a jury trial).

This is not to say that children accused of juvenile delinquency are without rights. The substance of other rights enumerated in the Sixth Amendment applies even if not from the Sixth Amendment itself. Those rights arise as a matter of due process flowing from the Fourteenth Amendment. See *McKeiver*, 403 U.S. 528, 532 (1971) (citing *In re Gault*, 387 U.S. 1, 30-31 (1967)). In 1868, in the aftermath of the Civil War, our nation adopted the Fourteenth Amendment, which included a Due Process Clause that was unambiguously aimed at the states, but otherwise matched the language of the Fifth Amendment: “No State shall . . . deprive any person of life, liberty, or property without due process of law.” This same language is expressed directly in Article I, § 9 of the Florida Constitution: “No person shall be deprived of life, liberty, or property without due process of law . . .” Thus, a Florida juvenile’s due process rights flow from both Article I, § 9 of the Florida Constitution, and the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court itself determined that the applicable due process in juvenile delinquency embraces adequate written notice; advice as to the right to counsel, retained or appointed; confrontation; cross-examination; the privilege against self-incrimination; and the standard of proof beyond a reasonable doubt. *McKeiver*, 403 U.S. 528 (1971); *In re Gault*, 387 U.S. 1 (1967) (overruled on other grounds as stated in *Allen v. Illinois*, 478 U.S. 364 (1986)).

In Florida, the applicable due process standard in juvenile delinquency proceedings is fundamental fairness. *State v. D.H.*, 340 So. 2d 1163, 1166 (Fla. 1976). As such, judicial proceedings involving juveniles must include fair hearings, in which the juvenile’s constitutional and legal rights are protected and enforced. § 985.01(1)(b), Fla. Stat. (stating a purpose of chapter 985 is “[t]o

provide judicial and other procedures to assure due process through which children, victims, and other interested parties are assured fair hearings . . . , protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.”). In that way, the Constitutions of the United States and Florida, the Florida legislature, and the courts have defined the juvenile delinquency as having features similar to criminal prosecutions but remaining separate and distinct from them.

Numerous examples exist of the differentiation between delinquency proceedings and criminal proceedings. *See, generally, D.H.*, 340 So. 2d at 1166 (violations of law should be treated as acts of delinquency and not as crimes); *M.F. v. State*, 563 So. 2d 171, 172 (Fla. 3d DCA 1990) (holding that an adjudication of delinquency is not a criminal conviction). The Florida Supreme Court explained that

[a] child offender, even after being adjudged delinquent, is never held to be a criminal, even if the act would be considered a crime if committed by an adult. The key to this difference in approach lies in the juvenile justice system’s ultimate aims. Juveniles are considered to be rehabilitatable. They do not need punishment. Their need lies in the area of treatment. Therefore, while a juvenile whose liberty the state seeks to restrain must be afforded a certain minimum standard of due process, it has never been held that he enjoys the full panoply of procedural rights to which one accused of a crime is entitled.

In Int. of C. J. W., 377 So. 2d 22, 24 (Fla. 1979) (citing *Breed v. Jones*, 421 U.S. 519 (1975); *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967)). In establishing the authority of the Circuit Court over certain offenses, the legislature tracked Article V, Section 30(c)(3) of the Florida Constitution. In § 26.012(2)(c), Florida

Statutes, the legislature vested the Circuit Court with jurisdiction over “all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985.” In subsection 2(d), the legislature vested the Circuit Court with jurisdiction over “all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged.” The Florida Constitution and legislature draw distinctions between criminal and juvenile delinquency.

The legislature itself established the juvenile delinquency system in Chapter 985 of the Florida Statutes. There the legislature established exclusive original jurisdiction of the circuit court over “proceedings in which a child is alleged to have committed ... a delinquent act or violation of law.” § 985.0301(1)(a), Fla. Stat. The statutes are filled with similar indications that juvenile delinquency cases are not simply criminal prosecutions.

Lawyers and courts have sometimes failed to take note of the difference. In Stand Your Ground proceedings, the discussion and citations are routinely to criminal cases and references to the criminal rules. This Court finds that juvenile delinquency cases are not criminal prosecutions. And, because of that, § 776.034(4), Florida Statutes, does not apply. However, this does not mean that children are not able to raise the underlying affirmative defenses prior to the adjudicatory hearing. Indeed, if they wish to employ the defense, they must raise it in a pre-hearing motion to dismiss. See Fla. R. Juv. P. 8.085(2).

Florida Rule of Juvenile Procedure 8.085

There is no doubt that affirmative defenses apply in delinquency cases. See, e.g., *G.T.J. v. State*, 994 So.2d 1182 (Fla. 2d DCA 2008). The Child correctly relies upon a motion to dismiss to raise it. See *T.P. v. State*, 117 So.3d 864 (Fla. 4th DCA 2013). Florida Rule of Juvenile Procedure 8.085(2) requires all defenses not raised by a plea of not guilty or denial of the allegations of the petition to be raised through such a motion.⁶

⁶ Florida Rule of Juvenile Procedure 8.085(2) gives children the right to seek a pre-adjudicatory hearing dismissal of the delinquency petition because of an

The remaining issues are (1) what is the burden of proof and (2) who has it.

This Court is not without guidance on what the burden should be if § 776.032(4), Florida Statutes, does not apply. That provision was only added to section 776.032 in 2017. In *Bretherick v. State*, 170 So.3d 766 (2015), the Florida Supreme Court answered the question about the burden in criminal cases under the then operative iteration of section 776.032 (2014). *Bretherick* concluded that at a pretrial immunity hearing “the defendant bears the burden of proof, by a preponderance of the evidence, to demonstrate entitlement to Stand Your Ground immunity.” *Id.* at 768.

T.P. v. State, 117 So.3d 864 (Fla. 4th DCA 2013), is one of the few delinquency cases to even mention § 776.032, Florida Statutes. It never addressed § 776.032(4), which did not become law until 2017, nor even directly the application of § 776.032 to juvenile delinquency cases. These were simply not the issues in the case. What *T.P.* actually addressed was whether the child could raise a specific affirmative defense under § 776.013(3). In *T.P.*, the circuit court had found that the affirmative defense under Florida Statute § 776.013 did not apply, “misunderstanding the section to apply only to homes and vehicles.” 117 So.3d 864, 866. The 4th DCA rejected this interpretation of the affirmative defense. The 4th DCA found that “the trial court erred in its legal conclusion that section 776.013 did not apply ... [and] reverse[d] for the trial court to consider the motion to dismiss under a proper construction of the [section 776.013].” *Id.* The 4th DCA ordered the trial court to determine whether under the evidence presented the child could satisfy his burden of preponderance of the evidence. *Id.* In this way, though never squarely on the issue, the 4th DCA implied that section 776.032 applied and, although it did not say it explicitly, that the burden effectively tracked that established in *Bretherick*.

affirmative defense. This is true regardless of § 776.032(1), Florida Statutes. As a result, the Court need not determine whether § 776.032(1) applies because the process involved in seeking relief under it would be exactly the same as that which exists under Rule 8.085(2). What is clear from the text of the Florida Statutes is that § 776.032(4) does not apply.

Adhering to *T.P.*, the burden is then on the movant—the Child—and the burden is by preponderance of the evidence.

However, that is only be the initial burden. Here, this Court is persuaded by the dissent in *Bretherick*. The dissent argued that the burden should be the same as when a Stand Your Ground defense is presented at trial, because “the essential nature of the [underlying] factual question” is the same in both settings. *Id.* at 779 (Canady, J., dissenting). In other words, the burden should be on the State to “establish[] beyond a reasonable doubt that the defendant's conduct was not justified under the governing statutory standard.”⁷ *Id.* The majority in *Bretherick* rejected this, at least in part, because, requiring it would force the State to prove its case twice under the same burden. But those same concerns do not exist in juvenile delinquency cases. Because the adjudicatory hearing is a bench trial, the trial court need not rehear the entire case a second time. If the motion to dismiss is denied, the Court can rely upon the testimony it already heard, permitting the parties to call additional witnesses or offer additional evidence and to permit the parties to make additional appropriate arguments to complete the adjudicatory hearing. In other words, the duplication of effort in criminal prosecutions that concerned the Florida Supreme Court need not exist in juvenile delinquency. The logic and reasoning of the dissent applies even better in delinquency cases than it does in criminal prosecutions. Once the Child meets his initial burden, the burden of proof shifts to the State and that burden must be beyond a reasonable doubt, exactly as it would be during the adjudicatory hearing. *See, generally, G.T.J. v. State*, 994 So.2d 1182 (Fla. 2d DCA 2008).

Conclusion

The Child properly filed a motion to dismiss the petition under Florida Rule of Juvenile Procedure 8.085(2), raising the affirmative

⁷ In adopting § 776.032(4), Florida Statutes, the legislature largely adopted the *Bretherick* dissent but with a “clear and convincing” burden on the State as opposed to the more exacting trial burden of “beyond a reasonable doubt.” If not for *T.P.*, the Court would have entirely adopted the burden from the *Bretherick* dissent.

defense of justifiable use of force in self-defense. Because the Court finds that § 776.032(4), Florida Statutes, does not apply to juvenile delinquency cases, the initial burden is on the movant. His burden is by a preponderance of the evidence. If he satisfies his burden, the burden shifts to the State of Florida to rebut the affirmative defense. That burden is beyond a reasonable doubt.

Done and ordered on August 24, 2021.

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Thomas N. Palermo, Circuit Judge

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Articles



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The Opioid Crisis

BY THOMAS N. PALERMO

in August 2018, the Centers for Disease Control and Prevention (CDC) released provisional data showing that, in 2017, there were 49,068 opioid-related overdose deaths in the United States of America, a 16 percent increase from 2016. (See National Institute on Drug Abuse, “Overdose Death Rates” (revised Aug. 2018), <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.) Of the 2017 opioid-related deaths, 29,406 of them involved synthetic opioids such as fentanyl, up 46 percent from 2016. (*Id.*) The

data reflect the consequences of ever-more-powerful opioids being sold and consumed here in the United States. Every injection, snort, or swallow is like a pull of the trigger in the opioid-equivalent of Russian roulette because each use carries the real risk of death or serious bodily injury.

When we discuss the opioid crisis, we use the term “opioid” interchangeably to describe “opiates,” which are drugs derived from the opium poppy (e.g., heroin), and “opioids,” which are synthetic drugs with similar effects (e.g., fentanyl).

Illicit or licit, natural or synthetic, the chemical response in the brain is roughly the same. Opioids bind to specific receptors in the brain, lowering the perception of pain, sometimes generating a sense of chemically induced euphoria, but also causing respiratory depression and even death. For most users, opioids come in two modalities: illicit opioids (e.g., heroin) and licit opioids (e.g., prescription drugs like OxyContin). Buprenorphine, codeine, fentanyl (and its analogues), heroin, hydrocodone, hydromorphone, meperidine, methadone, oxycodone,

oxymorphone, tramadol, and morphine are all opioids.

With opioids, history seems to keep repeating itself. In 1821, Thomas DeQuincy wrote *Confessions of an English Opium-Eater*. DeQuincy explained how his opium use began with his taking the opium-tincture laudanum for a toothache and ended with him being an addict. Sixteen years before DeQuincy's *Confessions*, Friedrich Sertürner first isolated the alkaloid morphine from opium. He named "morphine" for Morpheus, a Greek god associated with an aspect of sleep. Morphine, once isolated, had medicinal purposes but also was found to be addictive.

In 1874, C.R. Wright, an English pharmacist, was supposedly working to enhance the medicinal value of morphine while reducing its addictiveness. Wright's experiments led to diacetylmorphine, which was manufactured by Bayer, a German pharmaceutical company. The product was sold legally until at least 1913. Diacetylmorphine was used as a pain reliever and a cough suppressant. Bayer marketed diacetylmorphine under the name by which we know it best: heroin. One hundred five years later, we are still battling the unintended consequences of the invention of heroin.

The narrative of our current opioid crisis often begins with pharmaceutical manufacturers, "pill mill" pain clinics, and a deluge of prescription opioids like OxyContin. Prescription opioids have turned some people into addicts. This narrative has cut deep into popular culture. For example, Kanye West revealed his battle with opioid addiction after he received a prescription for an opioid to combat the aftereffects of a medical procedure. On Travis Scott's song "Watch," West rapped: "opioid addiction, pharmacy's the real trap, sometimes I feel trapped, Jordan with no Phil Jack[son]." (TRAVIS SCOTT, *WATCH* (Epic Records 2018).)

The flood of prescription opioids did not just turn people into addicts, however; it also drew drug addicts from other drugs to opioids. But as governments became more successful at stopping the incoming tide of

prescription drugs and drug-dealing medical professionals, some percentage of prescription drug addicts turned or returned to illicit drugs. Today, the illicit drug causing the most death is fentanyl and its analogues.

Fentanyl is a strong narcotic analgesic that was first synthesized around 1960 by Janssen Pharmaceutica of Belgium. (See Esmé E Deprez, Li Hui & Ken Wills, *Deadly Chinese Fentanyl Is Creating a New Era of Drug Kingpins*, BLOOMBERG, May 22, 2018.) Today, fentanyl is prescribed to treat serious pain, including that relating to post-surgical care, cancer treatments, and hospice care. Prescription fentanyl comes in several forms, including as a transdermal patch (e.g., Duragesic), an IV solution, a tablet (e.g., Fentora), and a lollipop (e.g., Actiq). The fentanyl plaguing America today is rarely diverted from a prescription but is, instead, illicitly manufactured fentanyl in the form of a white or off-white powder.

Fentanyl itself is deadly. In an interview with the *Washington Post* on July 12, 2018, Attorney General Jeff Sessions explained:

When it comes to synthetic opioids, there is no such thing as a small case. . . . Three milligrams of fentanyl can be fatal. That's equivalent to a pinch of salt. It's not even enough to cover up Lincoln's face on a penny. Depending on the purity, you could fit more than 1,000 fatal doses of fentanyl in a teaspoon.

(Sari Horwitz, *Sessions Targets 10 Areas in U.S. for Crackdown on the Sale of Fentanyl*, WASH. POST, July 12, 2018.) Indeed, fentanyl can be 100 times more potent than morphine, which is the baseline against which the potency of opioids is measured and conveyed by way of the descriptor of "morphine milligram equivalents," or MMEs. In contrast, heroin, which is lethal enough, is usually only 10 times as potent as morphine. Fentanyl has even been

purposefully used to kill. On August 14, 2018, Nebraska employed a four-drug cocktail to carry out the death sentence of Carey Dean Moore. One of the four drugs used in the cocktail was fentanyl. (Mitch Smith, *Potent Opioid with Deadly Track Record Gets Put to a New Use*, N.Y. TIMES, Aug. 15, 2018, at A10.)

Fentanyl is being compounded by illicit drug suppliers into batches of heroin, cocaine, ecstasy, and any and every illicit drug—smoked, snorted, injected—and pressed into pills. Readily and cheaply produced, fentanyl and its analogues are now the number one problem in the opioid crisis. This becomes apparent in the examination of local death data, which can reveal fentanyl spikes after a sudden influx of fentanyl into an area leads to a pronounced increase in overdose deaths.

Fentanyl has a core chemical structure, but modifications of that structure can produce different effects. There are at least four licit fentanyl analogues—alfentanil, carfentanil, remifentanil, and sufentanil—but there are hundreds of illicit variations, including acetylfentanyl, acrylfentanyl, butyrylfentanyl, cyclopropylfentanyl, and furanylfentanyl (sometimes called China White). Narcotics traffickers are constantly tinkering with fentanyl's structure, generating new variations, and then selling them.

These variations can dramatically change the potency of fentanyl. The most famous licit variation is carfentanil (a carboxylated fentanyl), which was meant to anesthetize large animals, such as elephants. Carfentanil is approximately 10,000 times more potent than morphine; a few specks of carfentanil can be lethal to most human beings. During a hostage crisis in a Moscow theater in October 2002, evidence suggests that the Russian government may have used an aerosol mixture of carfentanil and remifentanil to knock out the Chechen terrorists to try to prevent the killing of the 750 hostages that the terrorists held captive. (See James R. Riches et al., *Analysis of Clothing and Urine from Moscow Theatre Siege Casualties Reveals Carfentanil and Remifentanil*

Use, 36 J. ANALYTICAL TOXICOLOGY 647 (Nov. 1, 2012), <https://doi.org/10.1093/jat/bks078>.) The carfentanil-infused aerosol may have killed more than 120 of the hostages. (*See id.*) There are also drug dealers and suppliers who sell carfentanil to drug users, and, predictably, people die as a result.

For drug dealers, overdose deaths attract the attention of law enforcement, but, perversely, they also can attract customers. Trapped on the hedonic treadmill, addicts frequently chase ever-more-potent opioids as they try to get back to their highest high. These addicts look for the dealers with the most potent drugs and so, rather than another addict's death being a warning, it can serve as a calling card that the dealer is selling the most potent drugs. This is a disturbing pattern among some of the most hardened opioid addicts.

Opioids also are killing those who never intended to take them. Most illicit drug users fundamentally have no idea what they are taking when they buy and use illicit drugs. Drug suppliers, armed with cheap and potent fentanyl, are mixing it into things being sold as ecstasy pills, Xanax pills, and even cocaine. It is not just those in the drug trade who are being put at risk. Law enforcement officers have suffered nonfatal overdoses because they were exposed to opioids while conducting searches in opioid-strewn environments.

Not all of these combinations are inadvertent. The fentanyl-cocaine combination may be the latest iteration of the "speedball," a mixture of cocaine as an "upper" and another drug as a "downer." In the past, the speedball downers were morphine and later heroin. By combining uppers and downers, drug users seek the euphoria while hoping that the combination cancels out other side effects of the drugs. The reality is that the combination actually appears to increase the risk of overdosing and dying. Alternatively, some dealers may be sneaking in comparatively cheap fentanyl into batches of cut cocaine. Whatever the reason, the results are the same: a sharp rise in cocaine-opioid deaths.

Another factor in some of the opioid-overdose deaths is the combination

of opioids with other central nervous system (CNS) depressants like benzodiazepines (e.g., Xanax). The combination does not usually occur through compounding the way cocaine mixed with fentanyl can. Instead, the person using the opioids—prescribed or illicit—is also taking the CNS depressant, legally or illegally. This combination significantly increases the depressive effects of both drugs upon the respiratory system.

During a crisis, law enforcement acts with speed and purpose. The number one goal is to bring down the number of deaths. In the short term, there is one thing that is clearly saving lives: the widespread adoption and deployment of naloxone hydrochloride (e.g., Narcan and Evzio). Quick administration of sufficient naloxone hydrochloride can reverse an overdose event. Naloxone hydrochloride, which is a narcotic antagonist, has a greater affinity between it and the opioid receptors in the brain than that between the receptors and opioids. Naloxone hydrochloride therefore can displace opioids from the brain's receptors, buying the body time to metabolize and eliminate the opioids.

When opioids enter the human body, the body's basic metabolic processes begin to break them down so that they can be eliminated through what is essentially a process of detoxification. The liver is heavily involved. Forensic toxicologists characterize the metabolism process in terms of "plasma half-life," which is how long it takes to reduce by half a given concentration of a drug in the body. The first-pass metabolism can occur in only minutes; the body converts the drug into another form (e.g., heroin becomes the unique 6-monoacetylmorphine). The second-pass metabolism can, again, be as quick as a matter of minutes, but the traces of the metabolite created often remain for hours. The body continues to process those metabolites. For example, heroin metabolizes into the unique 6-monoacetylmorphine, which then metabolizes into the nonunique morphine, which is also what results from the use of heroin, codeine, and morphine. Given enough time, the body

metabolizes and eliminates the opioids.

The metabolism process leaves behind the key forensic clues used to prosecute opioid-caused deaths. In the federal system, distributing a drug the use of which results in death or serious bodily injury carries with it at least a 20-year minimum mandatory sentence. (21 U.S.C. § 841(a)(1), (b)(1)(A)–(C).) The US Supreme Court has limited the enhancement to cases where the "use [of the drug] is a but-for cause of the death or injury." (*Burrage v. United States*, 134 S. Ct. 881, 892 (2014).) The autopsy normally answers the "but-for" causation question.

For that answer, prosecutors often turn to an unsung hero in death investigations: forensic toxicologists. Forensic toxicologists determine what was in the body of the decedent. Extremely potent drugs like fentanyl can kill quickly, meaning the body may not have time to thoroughly distribute the drugs through the circulatory system, much less fully metabolize them. In such cases, blood from the heart or within the core of the circulatory system frequently can contain some of the clearest evidence of the drug that caused the death (e.g., fentanyl). The forensic toxicologists have to know not just where to take the samples from, but how to figure out what is in them.

The necessary equipment to perform these identifications is not cheap, maintaining the core competency required takes work, and keeping up on the latest opioids (e.g., fentanyl analogues) is time-consuming. Forensic toxicologists not only help to answer the "but-for" cause of death; they also help to identify drugs found at the scene of overdoses, particularly when other forensic units could not because they lacked the necessary equipment or capabilities. This makes the forensic toxicologist the lynchpin of many opioid-death investigations and prosecutions.

Unfortunately, forensic toxicology is frequently one of the slowest parts of the autopsy process. In television police dramas, the toxicology reports come back in moments, leaving plenty of time for clever plot twists. In reality, the toxicology results can lag six

months behind the death. This slows the investigation and prosecution of the deaths. It is also likely why the CDC data for 2017 came out in August 2018. This delay slows the learning curve of law enforcement about what drugs are killing people at any given moment, making it harder to effectively react. Further, medical examiners and forensic toxicologists are constantly straining to work with limited resources and ever-growing demands.

Ideally, the strain will be reduced by reducing the number of overdose deaths. Over the long and medium terms, the fastest way to achieve that goal is to severely constrict the supply of opioids being used outside the legitimate care of true medical practitioners. There have been two main fronts in the anti-opioid effort, one against the overprescribing medical practitioners and the other against the illicit drug trade.

There has been significant success on the prescription opioid front. Prosecutors have pursued medical professionals involved in illegally and improperly distributing licit opioids. Laws have been passed that have curtailed many pill mills. Technology has been used effectively. For example, Prescription Drug Monitoring Programs (PDMP) databases capture controlled substances dispensed to individuals and reveal critical information about both drug-seeking and drug-supplying behaviors. This is a significant asset in the fight against prescription opioid diversion. The main battle is now against illicit opioids.

Domestically, the illicit opioid trade is little different than any other illicit narcotics trafficking. There are street-level dealers, sometimes themselves addicts, and suppliers. Law enforcement employs all of the traditional techniques and tools to investigate the cases (e.g., undercover operations, confidential informants, search warrants, wire taps). Reacting in a crisis requires agility, focus, and a continuous evaluation of the success of each strategy employed to tackle the opioid crisis. The key is finding strategies that work.

One strategy that has shown success, i.e., fewer overdoses, is to focus on

geographic areas where a large number of overdoses are occurring. Such focused operations can be characterized by maximum sustained effort with local, state, and federal partners to pursue opioid and opioid-related crimes. While some of the individual cases may be comparatively small, the intent is to generate maximum deterrence in the aggregate and to save lives in specific communities that are in the direst need of help. For example, in 2017, the US Attorney's Office for the Middle District of Florida initiated OCDEF Operation Hot Batch in Manatee County with the Manatee County Sheriff's Office, DEA, ATF, Border Patrol, and IRS-CI. (See Jessica de Leon, *Operation Hot Batch Is Coming after Heroin Dealers in Manatee*, BRADENTON HERALD, Apr. 15, 2017.) The Operation targeted the dealers, not the addicts, and started at the street level with a goal of working up the supply chains. (See Dan Sullivan, *A Dealer's Downfall: How Efforts to Tackle the Opioid Crisis Brought down a Group of Drug Traffickers*, TAMPA BAY TIMES, Apr. 18, 2018.) Law enforcement estimated that there was a corresponding 78 percent decrease in the number of overdoses in the area targeted. (*Id.*)

Prosecutors are generally filing the most serious readily provable offenses against opioid narcotics traffickers. These criminal charges are frequently little different from those filed in the 1980s "cocaine cowboys" era or the 1990s "crack cocaine" era. The biggest difference between the eras is the behavior on the streets. Instead of drive-by shootings and gang warfare, there are drive-up purchases and packages in the mail. Just as with past eras, the opioid crisis is replete with death, but it feels centered on people using opioids and not on the control of the distribution and supply of the drugs.

Part of this also may be a result of technology. The dark web anonymously connects drug dealers with manufacturers and global suppliers. Bitcoin and other cryptocurrencies add another layer of anonymity to purchases. Once a purchase is made, the opioids, particularly synthetic opioids, often are mailed to the

domestic buyer. (*See Lethal Opiates Delivered by Mail from China, Killing Addicts in the U.S.*, NAT'L PUB. RADIO (Mar. 11, 2017), <https://www.npr.org/2017/03/11/519649096/can-china-ban-on-deadly-opioid-save-lives-in-the-u-s>.) The packages are even frequently mailed through international mail or freight forwarders, adding additional anonymity for the seller from the purchaser. Because synthetic opioids are so potent, significant amounts of them can be mailed in relatively small and hard-to-detect packages, unlike other drugs. In this way, technology has flattened the hierarchy of some aspects of opioid distribution and perhaps temporarily broken up parts of the cartel drug trade model, at least for certain synthetic opioids.

Opioids continue, however, to present a significant transnational, organized-crime problem. For example, narcotics traffickers in Mexico's southwest state of Guerrero are among the top producers of heroin being imported into the United States. (*On the Hunt for Poppies in Mexico—America's Biggest Heroin Supplier*, NAT'L PUB. RADIO (Jan. 14, 2018), <https://www.npr.org/sections/parallels/2018/01/14/571184153/on-the-hunt-for-poppies-in-mexico-americas-biggest-heroin-supplier>.) Mexican drug trafficking organizations also are making, procuring, smuggling, and trafficking in fentanyl. (Kristina Davis & Sandra Dibble, *Fentanyl Has Taken over America's Drug Market. Where Is It Coming from?*, SAN DIEGO UNION TRIB., June 17, 2018.) Much of the fentanyl from Mexico is apparently purchased from China or manufactured in Mexico using precursor chemicals from China. (*Id.*) The Mexican fentanyl also is being compounded with other drugs and cutting agents so that the fentanyl is comparatively impure, unlike the pure fentanyl coming in directly from China or indirectly through Canada. However, the quantities can be staggering. In March 2018, Francisco Quiroz-Zamora was indicted after having allegedly arranged for nearly 20 kilograms of fentanyl—enough fentanyl to potentially kill 10 million people—to be shipped from

Mexico to New York. (Katie Zezima, *Suspected Drug Kingpin Charged with Trafficking in Enough Fentanyl to Kill 10 Million People*, WASH. POST, Mar. 27, 2018.) The Quiroz case allegedly involved the Sinaloa cartel. (*Id.*)

This presents an international problem that will be fought, at least in part, in American courtrooms. In October 2017, Attorney General Sessions announced the first-ever indictments of Chinese nationals for fentanyl trafficking, charging 32 defendants in those cases. (See Press Release, Dep't of Justice, *Two Chinese Nationals Charged with Operating Global Opioid and Drug Manufacturing Conspiracy Resulting in Deaths* (Aug. 22, 2018), <https://www.justice.gov/opa/pr/two-chinese-nationals-charged-operating-global-opioid-and-drug-manufacturing-conspiracy>.) On August 22, 2018, Attorney General Sessions announced the unsealing of a 43-count indictment against the leaders of the Zheng drug-trafficking organization based in China, whom the indictment alleges sold drugs that killed at least two people in Ohio. (*Id.*) The Attorney General explained, “[f]entanyl and its analogues are the number one killer drug in America today, and most of them come from China. . . . By cutting off fentanyl and its analogues at the source, we can save American lives.” (*Id.*)

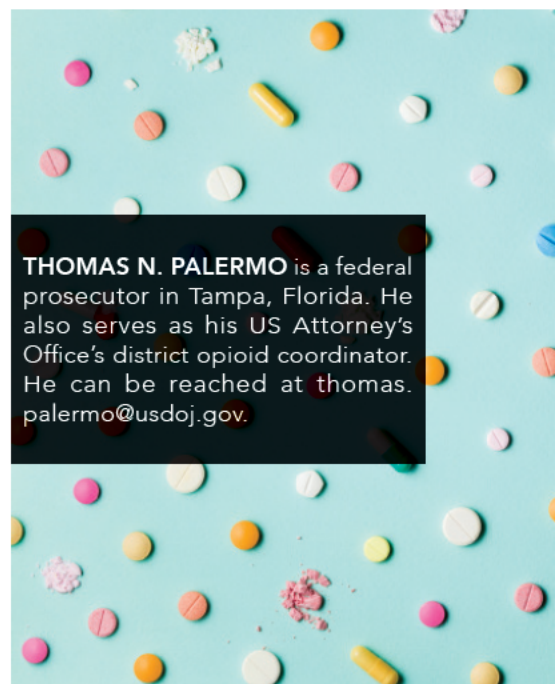
The Chinese government also has taken some steps to reduce opioid manufacturing in China. Until March 2017, carfentanil could be legally manufactured and sold by Chinese companies, which then shipped it all over the world. In March 2017, China banned the domestic manufacturing and sale of carfentanil, acrylfentanyl, furanylfentanyl, and valeryl-fentanyl. (*China's Fentanyl Ban a "Game-Changer" for Opioid Epidemic, DEA Officials Say*, CNN (Feb. 16, 2017), <https://www.cnn.com/2017/02/16/health/fentanyl-china-ban-opioids/index.html>.) But there is still more work to be done to reduce the export of fentanyl, fentanyl analogues, and fentanyl precursors. (See Sui-Lee Wee & Javier C. Hernández, *China's Opioid Bazaar Is Booming, Making It Hard for U.S. to Patrol*, N.Y. TIMES, Nov. 10, 2017, at A8.)

This is also not China's first involvement in a fight against opioids. On June 3, 1839, Lin Zexu, an official in the Qing Dynasty, took a stand against opium flowing into China. (See Cui Jia, Cao Li & Hu Meidong, *Drugs Destroyed to Mark Humen Opium Destruction*, CHINA DAILY (June 3, 2009), http://www.chinadaily.com.cn/china/2009-06/03/content_8170968.htm.) Lin confiscated over 1,000 tons of opium in the city of Humen at the mouth of the Pearl River. (See *The Opium Wars Still Shape China's View of the West*, THE ECONOMIST (Dec. 19, 2017).) At the time, China controlled tea, which it sold for silver. England was a voracious consumer of tea, and it controlled India's poppy fields. This led to a new trade pattern: opium for tea (and other Chinese goods like porcelain). But opium was addictive and viewed by Lin and others in China as a vice that they did not want to spread. Unfortunately, Lin's efforts failed, serving instead as one of the causes of the First Opium War (1839–1842) between the British and Chinese. (See *id.*) It ended in the signing of the Treaty of Nanking, resulting in China ceding Hong Kong to the British. (See *Cheung v. United States*, 213 F.3d 82, 84 (2d Cir. 2000) (citation omitted).) Thereafter, England and China fought a Second Opium War (1856–1860) and entered into a series of “unequal treaties” that resulted in China being forced to endure opium's spread. Not so today. Today, America, China, and much of the world share a common enemy in opioids.

As with all confrontations, the acme of victory is winning a war without having to fight it. Prosecutors thus utilize community outreach to try to reduce the number of addicts and deaths. Among other initiatives, there are frequent, prosecutor-led community screenings of the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) jointly produced film *Chasing the Dragon*, which is meant to educate the public on the dangers of opioids. The film is freely available online at <https://www.fbi.gov/video-repository/newss-chasing-the-dragon-the-life-of-an-opiate-addict/view> and is part of

the community outreach toolkit law enforcement hopes will save lives. Everyone in and out of the criminal justice system is encouraged to view it, screen it, share it, or otherwise do their part to stop the spread of opioid addiction.

Although this crisis has existed in various permutations for centuries, it has evolved and reached devastating proportions. Every death is a call to action. The entire criminal justice system has a powerful and positive role to play in fighting this epidemic and saving lives. A multilayered approach of meting punishment to deter others from distributing powerful killer opioids, administering effective treatment to addicts entering the criminal justice system, and connecting people to available services may be used to help prevent addiction, relapse, recidivism, and death. The defense bar, prosecutors, and the courts all have a valuable role to play in reducing the opioid death toll. Tom Petty, who died from a fentanyl-related overdose last year, made his career writing songs about everyday Americans. As everyday Americans, we “won't back down” in our fight to save lives. ■



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Going “Cocoanuts”: Looking at Modern Mortgage Fraud

Groucho Marx meets mortgage fraud. A look at modern mortgage fraud, the law, a little of the law of unintended consequences, and, perhaps, a reminder that those who forget the past are doomed to repeat it.

By Thomas N. Palermo

In 1929, the Marx Brothers released their first feature-length film, “The Cocoanuts.” Groucho Marx played Mr. Hammer, the owner of the Cocoanuts Hotel, during the Florida real estate boom in the 1920s. In one scene, Groucho, as a land developer auctioning Florida land of nebulous value, tries to sell the land based on the price of homes that have not yet been built. He informs his potential buyers: “You can have any kind of a home you want to; you can even get stucco! Oh, how you can get stuck-oh!” During the auction itself, Chico Marx disastrously rigs the bids and outbids everyone, including himself: “I go higher! Higher! I have plenty of numbers left!” As in the film, the most recent real estate boom saw no end to the bidding, but the numbers ended up being just as real as Chico’s.

Today, such a plot would end with a slew of prosecutions related to mortgage fraud, because the purchase of the homes would have been financed fraudulently through mortgage lenders. Prosecuting mortgage fraud has become a major priority of the U.S. Department of Justice, and these criminal cases are percolating in ever greater numbers throughout the district courts around the United States. To that end, background information regarding mortgage fraud, some examples of current schemes, and a brief discussion regarding sentencing may be of value to anyone involved with or interested in these cases.

Mort Gage: French for Dead Pledge

To understand mortgage fraud, it is useful to look at a common definition of the term: mortgage fraud involves a “material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan.” As a practical matter, such fraud, which is usually found on mortgage-related paperwork, is committed to get money.

Usually, mortgage fraud cases start with a house, which someone (for example, a builder or a homeowner) wants to sell and someone else wants to buy (for a residence or as an investment). Once upon a time, a buyer might have gone to his or her bank directly to borrow the money from a lender, who would have loaned money deposited into the bank’s various accounts. Over the last decade, however, buyers have turned to mortgage brokers to originate such mortgage loans.

A mortgage broker’s job consists of, in part, pairing qualified borrowers with appropriate lending programs. Brokers are then paid by commission when a loan closes. Mortgage brokers are supposed to collect information from borrowers, including their income, employment, assets, liabilities,



and intent regarding occupancy of the property (for example, primary residence or investment property). This information is usually reduced to writing on a Uniform Residential Loan Application (Freddie Mac Form 1003), which the borrower and the broker then sign—usually under penalties that include federal prosecution for making a false statement.

Once the borrower has secured financing, he or she would eventually attend a closing of the loan, in which the sale is completed. In Florida, for instance, the closing is customarily done by a title agent or by an attorney acting as a title agent. The title agent is supposed to be paid a commission upon the closing of the loan. At the closing, the parties and the title agent sign all the final documents, including the HUD-1 Settlement Statement, which the title agent prepares and which ostensibly describes the money going into and out of the transaction.

The HUD-1s in the title and lender files should match, as opposed to the “dueling” HUD-1s that appear in some cases involving criminal conduct by title agents. In cases involving such dueling statements, a relatively truthful one may appear in the title file but a false statement will be

submitted to the lender or, when two or more lenders are involved, fundamentally different HUD-1s will be submitted to each of the lenders.

Criminal Statutes

The use of the HUD-1 Statement is mandated by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2603. Even though the form is never submitted to the U.S. Department of Housing and Urban Development (HUD), the form is within HUD's jurisdiction and, therefore, falsity on it can lead to a distinct charge: a violation of Title 18, U.S. Code, § 1001, which is a deliberate false statement within the jurisdiction of a branch of the federal government. See, for example, *United States v. Wilkins*, 308 F. App'x 920 (6th Cir. 2009), *cert. denied*, *Wilkins v. U.S.*, 129 S. Ct. 2805 (2009).

When the closing agent closes the loan, documents are mailed to the lender, and the money is wired—usually across state lines—from the lender's bank account to the closing agent's bank account. The closing agent should disburse the money in accordance with the lender's instructions. This process explains why schemes related to mortgage fraud are prosecuted using a distinct set of charges. These frauds are not prosecuted under a federal "mortgage fraud" statute; no such statute exists. Instead, the mortgage loan process lends itself to prosecution under the traditional tools used by a prosecutor who deals with federal white-collar crimes: mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343), conspiracy (18 U.S.C. §§ 371 and 1349), and false statements (18 U.S.C. § 1001).

It is interesting to note that most mortgage fraud cases that were prosecuted before 2009 affected financial institutions, which ended up holding the bad mortgages; but, under 18 U.S.C. § 1344, the cases could not be prosecuted as bank frauds themselves. The statute relating to bank fraud does not define financial institutions, 18 U.S.C. § 20 does, and it does not include most fraud committed by common mortgage lenders, such as the Mortgage Warehouse of Clearwater, Fla. See 18 U.S.C. § 20 (2008). On May 20, 2009, a tenth subsection to the definition of financial institutions took effect and added the following: "a mortgage lending business (as defined in section 27 of this title) or any person or entity that makes in whole or part a federally related mortgage loan as defined in Section 3 of the Real Estate Settlement Procedures Act of 1974." 18 U.S.C. § 20 (2010). However, the Ex Post Facto clause of the U.S. Constitution prohibits retroactive application of penal legislation. U.S. Const. Art. I, § 9, cl. 3. The irony is, of course, that many of the lenders that are now included in the statute are out of business or have been consumed by lenders that would have already qualified.

Liars' Loans and Industry Insiders

In the now infamous stated income loans (also known as liars' loans), lenders allowed borrowers simply to tell the lenders how much money they earned, rather than requiring a verification of income from the borrower's employer. But the borrowers still used the same universe of documents common to all mortgage loans. Thus, borrow-

ers who lied did so in the face of explicit and dire warnings of criminal and civil penalties regarding untruthfulness.

When a lender relied on the truthfulness of the borrower, the borrower's lies were all the more material to the fraud. Much of this fraud could perhaps have been avoided had lenders simply assumed that, after being warned that borrowers would be prosecuted for lying, borrowers simply still could not be trusted to tell the truth on their applications for mortgage loans. However, except for the most vanilla mortgage origination fraud—a borrower who lies to a lender to get the lender to authorize a loan—there may be complicity on the part of an industry insider, invariably to get a lender to fund a particular loan that, had the truth been properly disclosed, would never have been funded.

Current Schemes

Rescue from Mortgage Foreclosures

In the recent and ongoing sagging real estate market, the current schemes appear to have shifted away from investments and basic mortgage origination fraud. Instead, schemes designed to rescue borrowers from mortgage foreclosures seem to be on the rise. In these schemes, a third party preys on people who can no longer afford to pay their mortgages. These schemers recruit individuals with good credit, usually paying them some amount of money (for example, \$5,000 per house) to become straw purchasers, who then buy the homes from the homeowners who cannot afford their mortgages.

The straw purchasers are usually told that the original homeowners will be the tenants in the property, and the original homeowners are told that they will lease back their property at a rate that is less than the current mortgage rate and will be able to buy back their property in a few years. With original homeowners losing their houses, there is a measure of desperation preyed upon by the mortgage foreclosure rescue fraud schemers. Unfortunately for the homeowners, these schemes are generally doomed to failure: the new mortgage that is taken out by the straw purchaser is invariably larger than the original mortgage was.

With the straw purchasers, the appeal of such a scheme is simply to their greed—the age-old illusory promise of money for nothing. But, of course, in life there is no such thing. When the straw purchasers do not go the extra step of bringing a false check to the closing or letting their conspirators put money into their bank accounts to bring to the closing, the title agent, when not complicit, may catch the money coming from someone other than the borrower. If it is not caught or the title agent is involved, misrepresentations are then made to the lender about money being put into the transaction by a person who is, instead, getting money out of it.

Moreover, sometimes title agents do not even require someone to bring money on behalf of the buyer but merely net out of the deal the difference between what the borrower should have put into the deal and what the seller should have gotten out of it. When the true settlement of the money is done, the majority of the difference between the first mortgage and the second mortgage (that is, the equity, real or fake), less the supposed money from the

straw purchaser, invariably ends up in the hands of the foreclosure rescue schemers.

Down Payment “Assistance”

The renewed rise of down payment assistance programs follows a similar pattern. On their face, these programs are not necessarily fraudulent; they become so when there is no fully and completely truthful disclosure to the lender that the borrower is being given money to purchase the property. These schemes operate in much the same way that straw purchaser-type schemes do, with lenders being told that borrowers are putting money into the deals when, in reality, the borrowers have no “skin in the game.”

Furthermore, when the person or entity providing the assistance recoups the money, the “assistance” is really a loan, which is not disclosed to the lender. To get the money back, these schemes often involve an inflated sales price for the home, hidden fees, or false debts to collect the money back from the buyer—often from the seller or through money diverted from the seller. When these schemes, in all their various iterations, are not completely disclosed, they are fraudulent and therefore totally illegal. Material misrepresentations to others to induce them to lend money are at the heart of prosecutions of cases involving wire fraud and mail fraud.

Short Sale Fraud

Another scheme that has become more common in the current down market involves short sale fraud. Short sales involve the lender, who would otherwise be foreclosing on the property, agreeing to a sale of a property in which it will realize a substantial loss. These frauds often involve a realtor falsely telling the original lender that the sales price is the best price the homeowner can get and are often followed by a simultaneous or near-simultaneous sale (or even simulated sale) that might look like the following:

Homeowner owes to original lender:	\$200,000
Lender approves sale at “best” price:	\$100,000
Sale “occurs” with immediate resale:	\$150,000

The original homeowner, the person behind the simultaneous sale, and often the homeowner’s realtor (behind the false short sale package sent to the lender) split the \$50,000 difference.

Sentencing Issues

Finding the Victim for Sentencing

In the majority of indictments related to mortgage fraud, the victims are frequently the lenders. However, by virtue of the nature of the mortgage market, the original lender, who is the victim at trial, is rarely the victim at sentencing under the U.S. Sentencing Guidelines, which require the victim to have suffered a pecuniary loss. U.S. SENTENCING GUIDELINES MANUAL § 2B1.1, cmt. n.1 (defining victim as any person who sustained any part of the actual loss). As a result of the realities of the mortgage and real estate markets, many sentences for those convicted of mortgage fraud can be tricky.

Often the key is to find the final holder of the debt. Loans are resold on the secondary market many times. Some victims involve a collectivized but disparate group of bondholders who held mortgage-backed securities. Sometimes the victims are just individuals who invested in assignments of mortgages. In other instances, the victim is the bank that bought the bank that bought the imploded last lender that held the debt. As a practical matter, the best friend of someone trying to identify the victim is the Mortgage Electronic Registration System and its online search feature (www.mers-servicerid.org/sis/).

Definition of Financial Institutions and Reality

The expansion of the definition of financial institutions can have an impact in sentencing those convicted of mortgage fraud. If a defendant in a case involving mortgage fraud derives more than a million dollars in gross receipts from a financial institution, he or she will be subject to a two-level increase to his or her total offense level and, therefore, increased punishment under the guidelines. U.S. SENTENCING GUIDELINES MANUAL § 2B1.1(b)(14)(A) (Nov. 2009). The definition of financial institutions given in the guidelines includes the definition found in 18 U.S.C. § 20, which has now been expanded to cover mortgage lending businesses. U.S. SENTENCING GUIDELINES MANUAL § 2B1.1, cmt. n.1. (Nov. 2009). As a result of the *Booker* ruling, the increased penalty does not necessarily lead to an ex post facto issue. See, generally, *United States v. Matbis*, 239 F. App’x 513, 517 n.2 (11th Cir. 2007).

However, much of the fraud, at least that done by industry insiders, does not appear to have been committed for amounts that were anywhere near a million dollars. Rather, the payment structure for industry insiders created a system of perverse incentives. Often the mortgage broker and the title agent, who had a legal duty to stop vast swathes of the mortgage fraud that ran rampant through the industry, got paid only if they found a way to push the loans through to closing. The shock is how few of the industry participants (such as brokers and title agents) appear to have committed mortgage fraud for anything more than their normal commission upon the closing of the loans.

Determination of Losses and the Collateral Offset Rule

Calculation of a sentence for a mortgage fraud-related offense usually falls under U.S. Sentencing Guideline § 2B1.1, which is driven heavily by one important factor: the size of the losses. U.S. SENTENCING GUIDELINES MANUAL § 2B1.1(b)(1). When the lender has not yet resold the property after foreclosure or has not completed a short sale, there is no perfected loss; fortunately, according to this provision, “the court need only make a reasonable estimate of the loss.” U.S. SENTENCING GUIDELINES MANUAL § 2B1.1, cmt. n.3(C).

Calculation of the estimates when the property has not yet been resold usually starts with a basic number: the original amount of the loan. If the collateral has not been disposed of by time of sentencing, the loss—that is, the loan amount—is reduced by “the fair market value of the collateral at the time of sentencing.” U.S. SENTENCING GUIDELINES MANUAL § 2B1.1, cmt. n.3(E)(ii). There are endless ways to find the value of the collateral—the property—at the time

of sentencing. See, for example, *United States v. Greene*, 279 F. App'x 902, 908 (11th Cir. 2008). As a practical matter, for example, in Florida, the common technique for estimating the value of the collateral is to make use of the property appraiser's estimate of value for each county's property tax assessment, which is usually publicly available on the appraiser's Web site (www.hcpafl.org, for example).

As a result of the collateral offset rule, the Sentencing Guidelines call for greater sentences as the local real estate market plummets further, which is perhaps appropriate given the harm wrought upon the country. The rule also had the unintended result of limiting prosecutions during the real estate boom itself: as any practitioner involved in federal white-collar prosecutions can tell you, cases without losses are not prosecuted frequently. The effect of the collateral loss rule as applied in offenses related to mortgage fraud is perhaps an example of the law of unintended consequences.

Restitution

The last thorny issue in sentencing those convicted of mortgage fraud is calculating restitution, which involves something of a formula: the unpaid balance on the loan, minus the value of the collateral on the date the victim bank gained control of the collateral, plus the bank's expenses prior to that same date. See *United States v. Catherine*, 55 F.3d 1462, 1465 (9th Cir. 1995). When the bank

has not yet taken control of the property, a process may be made available: ordering restitution of the full amount of the loan, without subtracting the value of the collateral, with an understanding that, in the future, the value of the collateral will be offset when the property is sold through the state civil proceeding. See 18 U.S.C. § 3664(j)(2)(A) (2010).

If the amounts ordered for restitution could actually be collected, much of the financial losses inflicted upon the American economy from mortgage fraud could be restored. Unfortunately, many of the defendants will never be in a position to make good on the enormous harm they have wrought. Robert Sarnoff described finance as "the art of passing money from hand to hand until it finally disappears." It is from these orders and the orders that have yet to be written from prosecutions still to commence that we will know how much actually disappeared in what was the last decade's version of "The Cocoonuts." **TFL**

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Named after the renowned federal district judge from Dallas, Texas, the Sarah T. Hughes Civil Rights Award was created to honor that man or woman who promotes the advancement of civil and human rights amongst us, and who exemplifies Judge Hughes' spirit and legacy of devoted service and leadership in the cause of equality. Judge Hughes was a pioneer in the fight for civil rights, due process, equal protection, and the rights of women.

CRITERIA AND PROCESS:

The award will be presented at the Presidential Installation Banquet to an attorney or judge whose career achievements have made a difference in advancing the causes that were important to Judge Hughes. Such work may include either ground-breaking achievement or a body of sustained and dedicated work in the area of civil rights, due process, and equal protection.

The nominee should: have at least ten years of practice; either be a member in good standing of a state bar association or retired; demonstrate sustained and verifiable excellence in the legal profession; and be of good character.

The nomination package should have the following:

1. A resume and biography of the nominee.
2. A two- to three-page description of the career achievements of the nominee as a lawyer or a jurist in the area of civil rights, due process, and equal protection.
3. No more than three testimonials or letters of recommendation.
4. No more than three articles about the nominee. Any such articles must be primarily focused on the nominee's work in civil rights, due process, and equal protection.
5. A list of the other awards the nominee has received.

All nomination materials must be received at FBA Headquarters by close of business on July 30, 2010. The award recipient will be expected to attend the Presidential Installation Banquet in New Orleans to accept the award in person on Sept. 25, 2010. The FBA will reimburse the award recipient's reasonable travel and hotel expenses in connection therewith.

The nomination deadline is July 30, 2010.

Appendix to Question 37

Appendix to Question 37

1. March 29, 2023: Stetson University College of Law Federalist Society Chapter, presentation on textualism and originalism. Co-presented with Judge Michael Bagge-Hernandez. An introduction, overview, and an explanation for why such a method is important to the proper functioning of the judiciary.
2. March 7, 2023: Rotary Club of Tampa, Opioids. I presented to the Rotary Club about opioids, focusing on the science and history.
3. March 1, 2023: HCBA Courtroom Do's and Don'ts from Civil Judges. I organized a panel that included U.S. District Judge Virginia Hernandez Covington, 2nd District Court of Appeal Judge Nelly Khouzam, 10th Judicial Circuit Chief Judge-elect James Yancey, 13th Circuit Judge Jennifer Gabbard, and Hillsborough County Judge Joe Tompkins. I also co-moderated the program with retired 13th Circuit Judge E. Lamar Battles.
4. February 23, 2023: Mock Trial competition (Saint John's Episcopal). Mix of seventh and eighth grade students. I gave them a tour of the courthouse, taught them about the legal system, and then I presided over their mock trial.
5. February 1, 2023: Givens Family Law Inn of Court: Group presentation on equitable distribution. I moderated the program.
6. February 1, 2023: HCBA Courtroom Do's and Don'ts: moderated a panel that included Circuit Judge Chris Nash, County Judge James Giardina, and 6th Circuit Judge Keith Meyer. The core of the program focused on improving the performance of counsel by cultivating some good behaviors and discouraging some bad ones.
7. January 12, 2023: Duty Week Overview, 13th Judicial Circuit. I taught at our internal judicial training on duty week. I specifically covered shelter hearing and shared certain scripts/colloquies I had prepared.
8. November 28, 2022: Economic Club of Tampa: Anatomy of a Courtroom tour. I hosted the Economic Club in Courtroom 1 and used it as a means of teaching about the legal system and our legal traditions.
9. November 1, 2022: Panel at Western Michigan University Cooley Law: panel discussion with Judge Susan Rothstein-Youakim about the practice of law generally and being an introvert in the practice of law.
10. October 21, 2022: Collegiate Leadership Tampa: Welcome and Court Overview, co-presented with Judge Michael Hooi.
11. October 21, 2022: Western Michigan University Cooley Law. I served as a guest lecturer at a Constitutional Law class to discuss the Commerce Clause and *Lopez*. I specifically drew from my past experience as a federal prosecutor to give examples of how the federal government obtains jurisdiction over various gun crimes.
12. October 13, 2022: HCBA Bench Bar conference. I was the co-chair of the conference. Approximately 400 attorneys attended. Much of the state and local federal judiciary attended. I hosted the civil and family law view from the bench segment and I held a special segment in which I interviewed Florida Supreme Court Chief Justice Carlos Muniz.
13. October 12, 2022: Black Robe White Coat Program. I was among the judges that participated in our annual forum with medical practitioners and students. I hosted a small group during the morning and participated with the Court in a lunch time Q&A session.

14. October 7, 2022: Tour of the Courthouse and Anatomy of a Courtroom. University of Tampa criminology students and faculty invited to the courthouse. I gave them a personal tour and walked them through the significance of aspects of the courtroom in the context of the American legal system.
15. September 22, 2022: HCBA Meet the New Judges. I hosted and presented at a special program introducing all of the recent gubernatorial appointments to the local bar.
16. May 3, 2022: HCBA Family Law Section Brown Bag lunch. Co-presented with Circuit Judge Wendy DePaul. Topics included ethical issues, practice pointers, and other family law issues.
17. April 28, 2022: Mock Trial: Classical Conversations (eight grade mock trial competition). Presiding judge. Organizer was Emily Rodriguez.
18. April 13, 2022: Mock Trial: Classical Conversations Challenge B (eight grade mock trial competition). Presiding judge. Organizer was Deborah Sistrunk.
19. March 8, 2022: Cheatwood Inn of Court: Panel discussion (Judge Ann-Leigh Moe and Matt Lucas (2nd DCA)): Ethical Advocacy at Trial and on Appeal. My focus was on ethics in trial and the obligation of attorneys to tell the truth and avoid prohibited conduct in closing arguments. The big example I used was an uncorrected lie by a witness on direct in a juvenile delinquency case (Campbell).
20. March 4, 2022: Search Warrants: taught at the State Attorney's Office for approximately 50 in-person participants and 73 Zoom participants. Audience was the State Attorney's Office and state law enforcement, e.g., the Tampa Police Department, Hillsborough County Sheriff's Office, USF Police Department, etc. Co-taught with Judges Samantha Ward (Administrative Judge, Criminal Division) and Lyann Goudie (felony letter division). Taught about the fundamental requirements of search warrants (probable cause, particularity), drafting warrants, and special issues with warrants. Shared a "prompt list" to improve the affidavits.
21. February 28, 2022: Boy Scout Troop 4 anti-drug presentation (Second Class Scout requirement 7c). The program focused on the dangers of drugs, smoking, and alcohol. The audience was the Scouts in the Tarpon Patrol, who were all working on their Second-Class rank requirements.
22. February 24, 2022: Office of the State Court Administrator (OSCA) Juvenile Delinquency Judges Training Program. First, I ran the entire conference, which lasted four days. Second, I presented every day a "nuts-and-bolts" segment, where I taught about essential aspects of a delinquency case (e.g., detention, arraignment, adjudicatory hearings, disposition hearings, ethics, etc.). The audience was approximately ½ of the delinquency judges in the state. The conference ran for four Thursdays in February 2022.
23. February 21, 2022: Office of the State Court Administrator (OSCA) Florida Court Personnel conference. Taught with Judges Daliahn Weiss (15th Circuit) and Bill Burgess (6th Circuit) the Criminal Law Update for the Florida appellate clerks (DCA and Supreme Court). I specifically covered the U.S. Supreme Court update, some of the Florida Supreme Court, and issues arising from and as we exit the COVID pandemic.
24. February 17, 2022: Office of the State Court Administrator (OSCA) Juvenile Delinquency Judges Training Program. First, I ran the entire conference, which lasted four days. Second, I presented every day a "nuts-and-bolts" segment, where I taught about essential aspects of a delinquency case (e.g., detention, arraignment, adjudicatory

- hearings, disposition hearings, ethics, etc.). The audience was approximately ½ of the delinquency judges in the state. The conference ran for four Thursdays in February 2022.
25. February 10, 2022: Office of the State Court Administrator (OSCA) Juvenile Delinquency Judges Training Program. First, I ran the entire conference, which lasted four days. Second, I presented every day a “nuts-and-bolts” segment, where I taught about essential aspects of a delinquency case (e.g., detention, arraignment, adjudicatory hearings, disposition hearings, ethics, etc.). The audience was approximately ½ of the delinquency judges in the state. The conference ran for four Thursdays in February 2022.
 26. February 3, 2022: Office of the State Court Administrator (OSCA) Juvenile Delinquency Judges Training Program. First, I ran the entire conference, which lasted four days. Second, I presented every day a “nuts-and-bolts” segment, where I taught about essential aspects of a delinquency case (e.g., detention, arraignment, adjudicatory hearings, disposition hearings, ethics, etc.). The audience was approximately ½ of the delinquency judges in the state. The conference ran for four Thursdays in February 2022.
 27. November 19, 2021: Hillsborough County Bar Association (HCBA) Senior Counsel Luncheon: at the request of Thomas Hyde, I presented an in-depth program on the Opioid Crisis, including a historical review and a discussion of chemistry. I was the sole presenter.
 28. October 10, 2021: American Bar Association Rule of Law Initiative (ROLI): co-presented with United States District Judge Virginia Covington, MDL. My part of the presentation focused on the federal Rules of Evidence and technology, with a special discussion about technology itself. The program was for the Colombian judiciary. It was taught by Zoom.
 29. October 19, 2021: Cheatwood Inn of Court: presented the latter portion of the program on direct and cross examination. Specifically, I showed the technique I used to take advantage of the information elicited during examinations to form my closing arguments, using past closings from my federal criminal trials.
 30. October 16, 2021: Law Merit Badge Day for the Greater Tampa Bay Area Council (GTBAC). I organized, ran, and taught at program for approximately 80 Scouts to teach them about the law and help them earn their Law Merit Badges.
 31. October 12, 2021: Hillsborough County Bench Bar (HCBA) Bench Bar Conference. I co-chaired the conference with Circuit Judge Samantha Ward. I spoke briefly at the luncheon and also introduced the 2nd DCA Chief Judge Robert Morris and the Florida Supreme Court Chief Justice Charles Canady. The conference lasted one full day and had approximately 300 lawyers and judges participating and attending.
 32. September 23, 2021: Guest Professor: University of Tampa, Law and Advocacy class (Professor Charles Connally). Taught about substantive criminal law, comparing and contrasting certain Florida and federal statutes, and using my past federal trials as examples.
 33. August 2, 2021: Federal Cyber Camp: Internet Safety and Security (co-presented with Special Agent M. Anthony “Tony” Magos of the U.S. Secret Service-Tampa) for the Federal Bar Association, Tampa Bay Chapter. Virtual program.
 34. June 10, 2021: Video segment: filmed with the assistance of Court Multimedia a video segment explaining the history behind the previous and most recent iteration of the juvenile delinquency differential pick-up order for the Office of State Court Administration (OSCA).

35. June 10, 2021: Speaker Fever 2021: Florida Bar Annual Convention. This was a special panel discussion for the Florida Bar Convention, tightly focused on how to put on great CLE programs. The panel was moderated by H. Scott Fingerhut, Chair of the Criminal Law Section's Executive Committee CLE Committee. I was on the panel because of the ABC's of Juvenile Delinquency program I put on for the Criminal Law Section. I focused on lessons learned and principles to put on better CLE programs. The other panelists were Terry Hill, Division Director, Programs, Florida Bar; Rebecca Bandy, Director, Florida Bar's Henry Latimer Center for Professionalism; Jonathan Israel, Director, LegalFuel; and Kim Torres of Torres Mediation Services, Melbourne, FL.
36. June 4, 2021: Hillsborough County Bar Association's (HCBA) Young Lawyers' Division (YLD) State Court Trial Seminar: served on the judicial panel capping the program. Other judges included Lyann Goudie, Darren Farfante, Lyann Goudie, Michael Bagge-Hernandez, Barbara Twine Thomas, and Chris Nash. Discussed trial skills and strategies, life lessons for young lawyers.
37. June 1, 2021: Scouting Beacon, Greater Tampa Bay Area Council, BSA. I did the June 2021 Scouting Beacon, a video message down by the Council. My video message was about the values of Scouting at its best and included some recruiting and membership information.
38. May 18, 2021: Judicial Q&A (UF Law): part of the BALS Family Forms Clinic's annual courthouse tour for a small group of UF law students. I sat on a small panel of judges, answering the questions of the UF Law students.
39. April 22, 2021: Guest Professor: University of Tampa, Law and Advocacy class (Professor Charles Connally). Taught about trial advocacy using some of my past trials as examples (Polshyn, Aldissi, Lopez, etc.).
40. April 14, 2021: Panelist: "Path to the Bench" for the Tampa Hispanic Bar Association, the Hispanic Bar Association of Central Florida, and the Broward County Bar Association. I served on the panel with Judges Carlos Rodriguez, Olga Levine, Luis Calderon, Gisela Laurent, and Michael Bagge-Hernandez.
41. March 17, 2021: Panelist: "Ethical and Effective Mediation in the Age of Zoom" for the Broward County Bar Association, the Association of South Florida Mediators and Arbitrators, the Collaborative Family Law Professionals of South Florida, and the North Dade Bar Association. Co-panelists included Anthony Garcia (Garcia Mediation) and Judges Michael Bagge-Hernandez (Hillsborough) and Elizabeth Gibson (Orange).
42. March 12, 2021: Panelist for the Western Michigan University Cooley Law School hosted judicial panel entitled "So You Want to Be a Judge." The program was co-presented by the Federalist Society student chapter, the Federal Bar Association student chapter, the Black Law Students Association-Tampa Bay Chapter (BALSA-TB), the Hispanic Organization of Legal Advocates-Tampa Bay Chapter (HOLA-TB), and the American Constitution Society student chapter. Co-panelists included Judges Miriam Valkenburg, Michael Bagge-Hernandez, and Jessica Costello.
43. March 12, 2021: classroom speaker for Hillsborough County Bar Association's Law Week (the 2021 Law Week theme: "Advancing the Rule of Law Now"). Speaking to a large group of 12th graders from Leto High School (Kathryn Pasley's Criminal Justice classes) on the topic "Advancing the Rule of Law."
44. March 12, 2021: classroom speaker for Hillsborough County Bar Association's Law Week (the 2021 Law Week theme: "Advancing the Rule of Law Now"). Speaking to a

large group of 10th to 12th graders from Alonso High School (Thomas Frisby's Criminal Justice classes) on the topic "Careers in the Legal Profession."

45. March 10, 2021: Oral Arguments Judge (panel judging, in the form of a traditional oral argument) for the 26th Annual Uvaldo Herrera Moot Court Competition (2021) put on by the Hispanic National Bar Association. Co-panelist with Judge Duncan (Minnesota). The moot court problem involved two questions: (1) is an unsuccessful attempt to detain a suspect by physical force a "seizure" within the meaning of the Fourth Amendment and (2) is the plaintiff's claim for excessive use of force barred under *Heck v. Humphrey* because she pled no contest to, and was convicted of, aggravated fleeing from a law enforcement officer. The Annual Uvaldo Herrera National Moot Court Competition brings together 32 teams of law students from the nation's top law schools to argue a case currently before the United States Supreme Court. I judged two rounds.
46. March 7, 2021: Presiding Judge for 2021 Judge Simms High School Mock Trial Competition. Saturday, Round 1. Served as presiding judge. Additionally, ASA Nathan Waters (13th Circuit) and Joseph Catania (Catania & Catania) served as co-scoring judges. Done by Zoom.
47. February 16, 2021: Hillsborough County Bar Association (HCBA) Technology Section's inaugural CLE: panel judicial discussion about the impact of technology on the court system and its impact going forward (post-pandemic). I was on the panel with USDJ Virginia Covington, USMJ Sean Flynn, 2d DCA Judge Susan Rothstein-Youakim, 13th Circuit Judge Darren Farfante, and Hillsborough County Judge Michael Bagge-Hernandez.
48. February 14, 2021: Presiding Judge for the 2021 TYLA National Trial Competition for Region 6. This was the last round before the national final rounds. The competition was put on by Florida Bar Criminal Law Section, the University of Florida Levin College of Law, the InterAmerican University of Puerto Rico School of Law, and the Texas Young Lawyers Association.
49. January 28, 2021: Duty Judge Assignment Refresher Course (13th Judicial Circuit). This was a training program put on for all of the Hillsborough County and 13th Circuit judges to review duty assignments. Chief Judge Ficarrota covered the Duty Week Overview, Juror Excusals, and Oath Administration; Judge Catherine Catlin covered First Appearances, Extraditions, and Medical Emergencies; Judge Katherine Essrig covered Shelter Hearings; I covered Detention Hearings (Juvenile); Judge Frances Perrone covered reviewing injunctions; and Judge Samantha Ward covered reviewing warrants. In addition to the program, I also distributed a go-by for both detention hearings and shelter hearings.
50. January 14, 2021: North Tampa Bar Association (NTBA) Monthly Membership Meeting: "Ethical and Effective Advocacy in the Age of Virtual Presence Software." Sole speaker.
51. November 18, 2020: Hillsborough County Bar Association (HCBA) Solo and Small Firm Section Continuing Legal Education program "Who's Zooming Who? A Guide to Practical Applications of Zoom in Court and in the Office." Speakers: Thomas N. Palermo, Circuit Judge; Anthony Garcia, Garcia Mediation.
52. November 17, 2020: Great American Teach-In speaker for Jefferson High School (Law and Leadership Academy, Elizabeth Morgan's class). I spoke by Zoom about a career in the law and about my own career. I actually spoke two days earlier than the official GATI because it worked best for the class schedule.

53. November 16, 2020: Hillsborough County Bar Association (HCBA) Bench Bar Committee Continuing Legal Education program “Hail the Chiefs!” A program on the state of the judiciary and COVID’s impact on it. Co-moderated the program with Circuit Judge Samantha Ward. Speakers: Chief Justice Charles Canady, Fl.Sup.Ct.; Chief Judge Nelly Khouzam, 2d DCA; Chief Judge Ronald Ficarrotta, 13th Cir.
54. October 21, 2020: Black Robe White Coat Program. I was one of the judges who participated. Doctors and medical professionals and students watched court proceedings, answered their questions about what they watched. One member watched in-person in the courtroom.
55. October 16, 2020: Florida Bar Criminal Law Section Continuing Legal Education program “ABCs of Delinquency.” The 1.5 hour CLE program featured a substantial pre-recorded segment where, among other things, I conducted two full mock detention hearings. I also co-moderated the program with Patricia Dawson. The full program is available at <https://youtu.be/AEIB-D3CR2Q>.
56. October 16, 2020: Tampa Hispanic Bar Association’s Celebration of Hispanic Heritage. One of the judicial speakers. I discussed the significance of my Hispanic heritage and some of my mom’s life story.
57. September 21, 2020: Cooley Law School child abuse and neglect case (professors Marisol Ruiz and Mary Lou Cuellar). Spoke about dependency and delinquency cases, statutes, and answered questions about dependency and delinquency.
58. September 18, 2020: Hillsborough County Bar Association’s Government Lawyers Section and Hillsborough Area Women Lawyers joint program “From Government Office to the Bench.” A panel discussion about our careers, advice, lessons learned.
59. September 9, 2020: Hillsborough County Bar Association Bench Bar Committee Continuing Legal Education program “Unmasking the Courts: a Judicial Town Hall with the Juvenile Divisions.” Co-moderator and panelist, discussing delinquency and dependency.
60. June 23, 2020: Hillsborough County Bar Association Bench Bar committee “Judicial Town Hall for Civil and Criminal Law.” I was one of the judges on the panel.
61. May 13, 2020: Central Florida Hispanic Bar Associations Continuing Legal Education program “Getting to Know a Judge.” On the panel discussing our pathways to the bench.
62. May 7, 2020: Hillsborough County Bar Association “Judicial Town Hall with Criminal Law Judges.” I was one of the judges on the panel.
63. May 4, 2020: Classic Conversations Mock Trial (judge for competition). I presided over a mock trial program.
64. March 27, 2020: Florida Bar Young Lawyer Division Government Lawyer Summit (opening remarks (Siara Lyndsey)) – need to check to see if it went
65. March 4, 2020: Florida Bar Criminal Law Section CLE “Daubert hearings in State and federal court.” Telephonic, statewide.
66. January 28, 2020: Hillsborough County Bar Association Young Lawyer Division and Hillsborough Area Women Lawyers Coffee at the Courthouse and Judicial Shadowing.
67. November 25, 2019: Cooley Law Schools final trials (judge)
68. November 13, 2019: University of South Florida (USF) Interprofessional Education Day guest speaker (opioid epidemic). “bringing together an interprofessional group of healthcare providers, civic leaders, community members, and USF Health students and educators from Medicine, Nursing, Pharmacy, Public Health, Athletic Training,

Rehabilitation, and Social Work to discuss ways to work together to address the pressing issue of the opioid crisis.”

69. October 10, 2019: Ferguson-White Inn of Court (Group One) program: *Expert Testimony in Florida (Daubert)*. Group leader and co-presenter.
70. October 8, 2019: Cheatwood Inn of Court program: Espionage, *United States v. Trofimoff* and Related Ethical Issues (moderator) (main speakers: Terry Furr, Susan Bucklew)
71. October 3, 2019: Hillsborough County Bar Association Bench Bar Conference (co-chair of the entire conference), panelist (plenary session, *Daubert/Fla. Stat. 90.702*), introduction of Prof. Ehrhardt for evidence).
72. October 2, 2019: Black Robe White Coat Program. One of the judges who participated. Doctors and medical professionals and students watched court proceedings, answered their questions.
73. October 2, 2019: Security Task Force, Ben Puckett – large group program: law enforcement, health and medical teams, first responders (HCSO Assembly Hall, Falkenberg): “The Opioid Crisis.”
74. September 11, 2019: East Hillsborough County Bar Association, luncheon speaker (A View from the Bench).
75. August 29, 2019: Federal Bar Association (Tampa Bay Chapter): Federal Sentencing Guidelines Conference: Drug Offenses panel (on panel with Michael Maddux and USPO Kelly Primrose)
76. July 29, 2019: Economic Club of Tampa: Opioid Crisis. (Speaker) ECOT also distributed a copy of my opioid crisis article.
77. June 29, 2019: Florida Bar Convention program for the Consumer Protection Law Committee and the Elder Law Section: Consumer Protection: Investigations and Enforcement Actions involving the Elderly: panelist in a discussion about elder exploitation, investment-related issues and scams, and, for me specifically, a discussion about *United States v. Bane* (health care fraud) and *United States v. Smith* (investment/loan fraud).
78. May 29, 2019: Florida Office of the Attorney General National Conference on Prevention Crime: Chasing the Dragon followed by presentation and Q&A. Co-presented with Joseph Smith (DOJ) and Khalilah Escarlera (DOJ).
79. May 21, 2019: Society of Former Special Agents of the FBI (Suncoast Chapter) luncheon speaker: opioid crisis, MDFL opioid activities, case study. (Invited by Chapter Chair Mary Rowan)
80. May 2, 2019: HSI Citizen’s Academy: demonstration of search warrant procedure (served as judge for simulated presentation and review of a search warrant, with AUSA Michael Bagge)
81. April 26, 2019: Florida Bar Basic Criminal Law speaker (4th Amendment Issues, 50 minutes, heavy focus on warrants and issues associated with warrants).
82. February 6, 2019: Stetson College of Law: Transborder Crime Class: human trafficking, money laundering, corruption, case studies.
83. November 1, 2018: FBI Citizen’s Academy graduation (graduation speaker, how the cases investigated by the FBI are carried through to trial and sentencing using examples of cases I had prosecuted)

84. October 16, 2018: Florida Bar Criminal Justice Summit: on the pretrial release panel. Discussed the differences between State and federal pretrial release, statutes, and mechanisms through which pretrial release is determined.
85. September 6, 2018: Federal Sentencing Guidelines conference (panelist with Angela Campbell and USPO Karmen Coates): Drug Offenses: Opioids and Cases Involving Deaths.
86. July 17, 2018: University of Tampa: "Police and Public Policy" graduate course guest lecturer (on behalf of USAO. Assisted by Joseph Smith, Community Outreach Coordinator) for Professor Christopher Capsambelis, Univ.Tampa.
87. July 10, 2018: Federal Bar Association (Tampa Bay Chapter): judicial clerkship panel for the Young Lawyers Division of the Federal Bar Association. Panelist. Moderators were Judges Porcelli and Sansone.
88. June 15, 2018: Florida Bar: Consumer Protection Law Committee's CLE, "Doing Well While Doing Good: Public/Private Partnerships." Panelist on two panels: (1) Introduction to Public Private Partnerships: Local, Federal, State, and Legal Services, and (2) Best Practices for Public Private Partnerships. The panels examined how private counsel can work with state and federal government offices – including the Attorney General's Office, the Federal Trade Commission, the U.S. Department of Justice, U.S. Attorney's Office – to develop cases to benefit their clients and citizens at large and how private counsel can partner with legal service organizations; discussed best practices to follow when partnering or working with a public entity; included ethical considerations when partnering with a public entity.
89. May 9, 2018: Florida Bar: Federal Court Practice Committee: Court Skills for Federal Practitioners: Opening Statements and Closing Arguments (done in USDJ Honeywell's courtroom)
90. April 25, 2018: Florida Bar: Federal Court Practice Committee: Court Skills for Federal Practitioners: Evidence and Objections (done in USDJ Honeywell's courtroom) (co-presented with AFD Adam Allen)
91. April 11, 2018: Pinellas Police Standards Council, Tampa Bay Regional Planning Council: brief remarks on the Opioid Crisis (invitation by SSA James Castano, FBI-Pinellas).
92. April 11, 2018: Florida Bar: Federal Court Practice Committee: Court Skills for Federal Practitioners: Witnesses (done in USDJ Honeywell's courtroom) (co-presented with Jason Stearns)
93. April 4, 2018: Florida Bar: Federal Court Practice Committee: Court Skills for Federal Practitioners: Courtroom Technology (done in USDJ Honeywell's courtroom)(co-presented with AUSA Michael Bagge and Michael Boucher)
94. March 26, 2018: SBIR Working Group (hosted by NSF-OIG): case presentation (*U.S. v. Fard*) and lessons learned.
95. March 2, 2018: Orange County Drug Free Office: Heroin Conference (Orlando): Chasing the Dragon, followed by panel.
96. February 16, 2018: Medical Examiners Commission: DOJ anti-opioid initiative presentation
97. November 9, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Title III (wiretaps) (co-presenters John Sinfelt and Seth Applebaum, both of DOJ OEO ESU)

98. October 26, 2017: annual Leadership Conference for the US Postal Service, Office of Inspector General, Southern Area Field Office (Mobile, Alabama): case study of the Amerimed criminal investigation. Invitation by SAC Max Eamiguel, USPS-OIG-Southern Area Field Office.
99. September 27, 2016: U.S. Attorney's Office (MDFL): New AUSA Orientation: Professionalism: co-presenter with AUSAs Robert Mosakowski (Chief, Economic Crimes), David Rhodes (Chief, Appellate Section), Charles Harden (SLC-Civil).
100. August 31, 2017: Osher Lifelong Learning Institute (OLLI) at the University of South Florida: Chasing the Dragon followed by presentation on opioid crisis and Q&A
101. August 23, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Leadership in Law Enforcement (joined by then Hillsborough County Sheriff David Gee, who was the main speaker)
102. August 22, 2017: The Financial Crimes and IG Council, U.S. Department of Health and Human Services Office of the Inspector General, and the U.S. Attorney's Office: Financial Crimes Training Conference (IG Training Conference, DOJ, Tampa): Grant and Procurement Fraud (co-presented with AUSA Charles Harden, 2 programs)
103. August 4, 2017: Florida Bar's Practicing with Professionalism (Tampa): Young Lawyers Professionalism Panel (co-panelist with Jason Whittemore (Wagner McLaughlin) and Eric Bartimmo (Jabil))
104. July 20, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Improving your Legal Writing (with AUSA David Rhodes, Chief of Appellate)
105. June 29, 2017: 26th Annual National Seminar on Federal Sentencing (Tampa Bay Chapter of the Federal Bar Association, co-sponsored by the NACDL, the Federal Bar Association's Criminal Law Section, and the ABA's Criminal Justice Section): Plea Bargaining (co-panelist with Yvette Gray, Kevin Napper, and AUSA Dan Baeza)
106. June 29, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Indictment Drafting
107. June 22, 2017: Federal Court Practice Committee (2017 Annual Convention of The Florida Bar): table moderator for Federal Judicial Round Table.
108. June 8, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Grand Jury (co-presented with AUSA Robert Mosakowski)
109. May 25, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Title III (Wire Taps) (districtwide training, including 140 law enforcement officers)(co-presented with OEO)
110. April 6, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Using Courtroom Technology (Courtroom 15B, USDJ Lazara's courtroom).
111. March 23, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Discovery in Federal Criminal Cases (if in doubt, give it out)
112. March 9, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Expert Witnesses (cross-examination) (co-presented with AUSA Amanda Kaiser)
113. February 23, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Expert Witnesses (co-presented with AUSA Randy Harwell, Civil Chief)

114. January 26, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Cross Examination (co-presentation with ASA Jay Pruner, Chief, Homicide, 13th Circuit)
115. January 12, 2017: Senior Litigation Counsel Training Program (AUSA Thomas Palermo, SLC-Criminal Division): Closing Arguments
116. November 10, 2016: Hillsborough County Bench Bar conference: “The Practical Uses and Challenges of Social Media Evidence.” Co-presenter with Todd Foster and Professor Rose. I also moderated the “View from the Bench – Federal” (USDJ Moody, USMJ Sneed, USBJ Delano).
117. September 1, 2016: NASA Central Field Office in-service training (Austin, Texas) (for SAC John Corbett, NASA-OIG, Johnson Space Center): 4 lectures: (1) investigative issues (4th Amendment, grand jury, search warrants), (2) investigative issues (interviews, investigative techniques), (3) pre-trial issues (discovery, litigation, trial preparation), (4) trial process and sentencing (testimony, issues trying large cases).
118. July 22, 2016: University of Tampa Sykes College of Business: Fraud Examination (graduate course, Professor Ullman): case studies in fraud.
119. June 8, 2016: Shumaker Loop Kendrick (Tampa) Litigation Department: presentation at the request of Shumaker partner Jaime Austrich to firm about what the U.S. Attorney’s Office does, a heavy discussion about white collar crimes, affirmative enforcement actions, qui tam cases, defensive actions, how to more effectively present fraud crimes uncovered in civil litigation to criminal authorities, discussion regarding restitution.
120. May 13, 2016: Brooks Debartolo Collegiate High School: post-college career speaker (with AUSA Chris Murray)
121. May 9, 2016: 2016 SBIR Workshop (sponsored by the National Science Foundation OIG, held at the U.S. Patent & Trademark Office in Alexandria, VA) also with the DoD Procurement Fraud Working Group (invitation originally by Director Fara Damelin, NSF-OIG): Criminal DOJ Case Studies: Prosecuting Program Perpetrators: case presentation and lessons learned (*United States v. Aldissi et al.*). DoD PFWG Training Seminar is the premier annual training conference on Government procurement fraud includes attendees from the Department of Defense, Department of Justice, NASA and other government agencies.
122. January 22, 2016: SBIR Investigations Workshop (Washington, D.C.; NSF-OIG): lessons learned in OIG/SBIR cases
123. December 4, 2015: Florida Bar: Basic Evidence CLE: “Criminal Evidence and Social Media Implications.” Focus on the Rules of Evidence and the application of the Rules in the context of social media evidence.
124. November 20, 2015: Osher Lifelong Learning Institute (OLLI) at the University of South Florida: From the Point of Spear: A Prosecutor’s Perspective on Federal Crime here in Tampa
125. November 2, 2015: Goldberg/Cacciatore Criminal Law Inn of Court Group 8 presentation: The Wonderfully Wacky World of Ethics and Warrants. Co-presenter on ethical rules related to warrants and a discussion of the various kinds of warrants.
126. July 15, 2015: University of Tampa Sykes College of Business: Fraud Examination (graduate course, Professor Ullman): case studies in fraud.

127. July 28, 2015: Inspectors General Training Conference: Grant and Procurement Fraud: Co-presenter with RAC Brooke Harris (DCIS), SA Miriam Gurruchaga (SBA-OIG), Steven Holtz (counsel, DCMA). (2 presentations, 1 hr. 15 min. each)
128. June 25, 2015: Florida Bar: Federal Court Practice Committee: Federal Judicial Roundtable (table moderator)
129. May 28, 2015: Federal Bar Association (Tampa Bay Chapter): Federal Sentencing Guidelines Conference: Fraud/Theft Offenses I. Panelist with Ernest Dion, Sandy Weinberg, Ross Garber.
130. January 13, 2015: Cheatwood Inn of Court: "Wait. Wait, To Tell the Truth: Lessons in Professionalism." One of the presenters for Judge Scriven's group. Focus on professionalism.
131. November 20, 2014: Joint international training program with the U.S. Department of Justice's Human Rights and Special Prosecutions Section and the U.S. State Department at the International Law Enforcement Academy (ILEA) in San Salvador, El Salvador: presented case study on *U.S. v. Hector Daniel Camejo de la Flor, et. al.* for law enforcement and judicial officials from countries that included the United States, Mexico, Guatemala, El Salvador, and Honduras.
132. November 14, 2014: American Bar Association Young Lawyers Division Litigation Committee: CLE: Careers in Criminal Law (panelist with with Anthony Aminoff (ADA, Manhattan), Zaiim Pezhmon(Brox Defenders), Seth Welner (Holland & Knight)).
133. October 30, 2014: Hillsborough County Bar Association Bench Bar Conference: social media evidence, co-presenter with Todd Foster and SAC Dave Thomas, FBI.
134. September 11, 2014: Florida Bar Young Lawyers Division: Practicing with Professionalism CLE: on a panel with Amy Rigdon (Holland & Knight) and Kristina Feher (Feher Law). Discussion about ethics, professionalism, career issues.
135. August 27-29, 2014: NW3C/Florida Department of Law Enforcement: mortgage fraud (presented with SA Ellen Wilcox, FDLE).
136. June 26, 2014: Federal Court Practice Committee: Federal Judicial Roundtable (table moderator)
137. June 13, 2014: National Seminar on Federal Sentencing (Tampa Bay Chapter of the Federal Bar Association): Health Care Fraud (co-panelist with Jacqueline Arango, and Ernest Dixon. Moderator was Professor Ellen Podgor, Stetson College of Law) (1.5 hours).
138. April 25, 2014: State Attorney's Office (13th Circuit, Tampa): Lecture: Daubert in Criminal Prosecutions.
139. November 14, 2013: Florida Land Title Association annual convention: mortgage fraud.
140. July 22, 2013: University of Tampa Sykes College of Business: Fraud Examination (graduate course, Professor Ullman): case studies in fraud.
141. April 10, 2013: Mortgage Bankers Association (Fla. Chapter Meeting): mortgage fraud (what it is, what not to do). Presentation followed by presentation from Beverly McReynolds (FLTA) and then joint Q&A.
142. January 15-17, 2013: National White-Collar Crime (NW3C) Mortgage Fraud training: taught about mortgage fraud, investigations, worked through some sample case documents. Co-presented over three days with SA Ellen Wilcox, FDLE.

143. July 11, 2012: University of Tampa Sykes College of Business: Fraud Examination (graduate course, Professor Ullman): case studies in fraud.
144. March 27, 2012: Stetson University College of Law: White Collar Crime panel for the Law and Order Society, the Veterans Association, and the Business Law group. Panelist in a discussion about white collar crime.
145. January 15-17, 2012: NW3C/FDLE Mortgage Fraud Training Program. I taught at the mortgage fraud training program for NW3C/FDLE at HCC's Criminal Justice Institute.
146. June 14, 2010: University of Tampa Sykes College of Business: Fraud Examination (graduate course, Professor Ullman): case studies in fraud (mortgage fraud).
147. May 20, 2010: Women's Council of Realtors and Greater Tampa Association of Realtors joint meeting: mortgage fraud presentation (20-30 minutes)
148. November 4, 2009: Florida Lant Title Association convention: mortgage fraud presentation (for attorney Alan Fields).
149. July 23, 2009: United States Probation (MDFL) conference (Bonita Springs): calculating federal sentencing guidelines in fraud offenses (special focus on mortgage fraud)
150. February 10, 2009: Florida Bar Government Affairs Committee/Real Estate attorneys (Tampa Embassy Suites – Cypress/Westshore): spoke about mortgage fraud, federal mortgage fraud taskforce activities, explained federal subpoena process, challenges in MF evidence collection.
151. February 22, 2008: Paralegals of Florida (Hillsborough County Chapter meeting) (Tampa Club): presentation on identity theft (50 minutes)
152. March 13, 2008: Panel Discussion on Identity Theft (Tampa Club)(with then TPD Detective Mary O'Connor)
153. August 31, 2007: State Attorney's Office (13th Judicial Circuit): presentation on Daubert.
154. June 29, 2007: identify theft presentation for federal court
155. June 14-15, 2007: Florida Insurance Fraud Education Committee (FIFEC): did presentations on legal issues and investigative issues involving identity theft; also on panel for ID theft discussion.
156. 2007 Florida Prosecuting Attorney's Association (FPAA) meeting: Identity Theft: Prevention, Detection, Prosecution.
157. 2007 Florida Bar: Basic Criminal Law: "Criminal Justice: Getting from the crime to the time." Presenter. Explanation of criminal justice system. Heavy emphasis of criminal procedure.
158. 2006 Florida Bar: Basic Criminal Law: "Criminal Justice: Getting from the crime to the time." Presenter. Explanation of criminal justice system. Heavy emphasis of criminal procedure.

Courtesy CV

THOMAS NELSON PALERMO

Circuit Court Judge
13th Judicial Circuit
800 East Twiggs Street, Chambers 408 Edgecomb
Tampa, Florida 33602
Phone: (813) 276-2968

JUDICIAL BIOGRAPHY

Circuit Court (Group 41) commission date: May 13, 2019.
Elected without opposition, November 3, 2020.

Judicial assignments:

1. Unified Family Court (June 2019 – present)
 - a. Domestic Relations Division I (January 2022 – present)
 - b. Delinquency Division F (January 2020 – January 2022)
 - c. Dependency Division C (June 2019 – January 2020)

2022 Luis A. “Tony” Cabassa Award (THBA) (November 3, 2022)

2020 Robert W. Patton Outstanding Jurist Award (HCBA YLD) (March 25, 2021)

EDUCATION

Master of Laws (LL.M.), University of London King’s College (KCL) (2002)
Specialization: Banking & Finance Law

Juris Doctorate (J.D.), *cum laude*, The Florida State University College of Law (2001)

Bachelor of Arts (B.A.), The American University (1998)
Major: Communications, Legal Institutions, Economics, Government (CLEG)
Minor: International Studies
Student body president (1996-1997)

PROFESSIONAL EXPERIENCE

Assistant United States Attorney, U.S. Attorney’s Office (Tampa) (May 2007 – May 2019)

- Federal prosecutor in Tampa, Florida. Served in the Transnational Organized Crime Section, the Economic Crimes Section, the Organized Crime Section, and the Violent Crimes and Narcotics Section.
- District Opioid Coordinator, Middle District of Florida (MDFL) (2017-2019). Responsible for coordinating anti-opioid efforts of the second most populous District in the United States. Prosecuted opioid-related cases, prepared a revised 2018 MDFL anti-opioid strategy, created a new intelligence and evidence-collection process with Florida medical examiners, shared best practices amongst opioid-responsible colleagues, and collected and analyzed the best available data on the opioid threat to the District.
- Reviewer. As part of the Section chain of command, responsible for reviewing investigatory techniques (*e.g.*, wiretap applications, search warrants, tracking warrants, pen registers) and certain pleadings prepared by other AUSAs prior to their presentation to the Court.
- Senior Litigation Counsel for the Criminal Division. Trained other AUSAs, including implementing a training program focused on new hires. In a one-year period, put on fourteen training programs, many in collaboration with partners, including a districtwide wiretap training program attended by more than 140 law enforcement officers and AUSAs. Worked to develop and improve partnerships with client agencies.

- Prosecuted a number of significant, complex cases, including a completed murder-for-hire, an intended murder-for-hire of a federal witness, a significant health care fraud prosecution, a narcotics distribution with death case, a complex science-related fraud case, a maritime drug smuggling case, a stolen identity refund fraud (SIRF) case involving numerous vulnerable victims, and many others.
- Previously served as the Human Trafficking Task Force Coordinator, formed the original MDLJ Mortgage Fraud Task Force with another AUSA, and served as the MDLJ's Mortgage Fraud Coordinator.
- Granted Top Secret/Secure Compartmentalized Information (SCI) clearance.

Assistant State Attorney, State Attorney's Office, Thirteenth Judicial Circuit (July 2003 – May 2007)

- In addition to service as a general prosecutor, served as the Deputy Chief of the Economic Crimes Unit, its Lead Trial Attorney, and as a domestic violence prosecutor.
- Tried most major crimes prosecuted in Florida, including murder, trafficking, burglary, and sexual battery.
- Served as lead counsel in a civil case against a conglomerate of strip clubs.

Federal Judicial Law Clerk, U.S. Magistrate Judge (Tampa) (July 2002 – July 2003)

- Researched for and otherwise assisted in the adjudication of federal civil and criminal litigation, Social Security appeals, and other duties as assigned.
- Drafted proposed orders, memoranda of law, and assisted in the preparation of legal presentations.

Tried more than sixty cases to verdict (2003–2019).

TEACHING, ARTICLES AND AWARDS

- Presented more than fifty times on various substantive topics, including wiretaps, rules of evidence, trial skills, *Daubert*, social media evidence, identity theft, fraud, the U.S. Sentencing Guidelines, domestic violence, money laundering, mortgage fraud, and criminal procedure.
- Author of *Opioids: From Fields of Poppies to Fatal Fentanyl*, GPSolo, to be published in April 2023.
- Author of *The Opioid Crisis*, Crim. Just., Winter 2019.
- Author of *Going "Cocoanuts:" Looking at Modern Mortgage Fraud*, 57 Fed. Law. 38 (June 2010).
- Numerous agency awards and recognition, including:
 - 2019 FBI recognition for excellence in prosecuting major criminal case (*United States v. Gary Todd Smith*).
 - 2019 Special Achievement for Program Contract/Grand Fraud Investigation Award, Tampa Region Financial Crimes and Inspectors General Council.
 - 2019 Complex Financial Crime Investigation Award, Tampa Region Financial Crimes and Inspectors General Council.
 - 2018 HHS-OIG Inspector General's Cooperative Achievement Award (in recognition of efforts on Shire Pharmaceuticals investigation team).
 - 2018 NASA-OIG presentation of KSC-81PC-137, Space Shuttle Columbia on Pad 39A (in recognition of performance in *United States v. Akbar Fard*).
 - 2018 Case of the Year Award, Tampa Region Financial Crimes and Inspectors General Council (for prosecutions related to Advanced Biohealing).
 - 2017 U.S. Department of Labor-Inspector General Team Award (for investigation and prosecution of major healthcare-related case).
 - 2017 U.S. Coast Guard (Citation) Meritorious Team Commendation (for meritorious service while serving on the *United States v. Polshyn* trial team as sole prosecutor).
 - 2017 FBI recognition for demonstrated excellence in prosecuting major criminal case (*United States v. Polshyn*).
 - 2017 FBI challenge coin (for participating in the post-Pulse nightclub attack response efforts and embedding immediately in the Fort Pierce FBI-RA in the aftermath of the attack).

- 2017 U.S. Postal Service Office of the Inspector General plaque (for significant work identifying healthcare fraud by Amerimed leading to the prosecution of four cases).
- 2016 NASA Office of the Inspector General recognition for outstanding contribution to the mission of the NASA Inspector General.
- 2016 Public Corruption Investigation Award, Tampa Region Financial Crimes and Inspectors General Council (investigation into corruption at the U.S. Postal Service).
- 2016 Complex Financial Crime Investigation Award, Tampa Region Financial Crimes and Inspectors General Council (investigation into complex ring of identity theft targeting veterans receiving healthcare at the U.S. Department of Veterans Affairs and using their identities to file fraudulent tax returns to obtain refunds).
- 2016 Department of the Army, Patriotic Civilian Service Award for leadership and dedication to ensure the investigation and prosecution of major fraud procurement cases and contributing to the readiness of the U.S. Army.
- 2016 DEA, FBI, Coast Guard Investigative Service, and U.S. Coast Guard recognition for *United States v. Polshyn* prosecution.
- 2015 Council of Inspectors General on Integrity and Efficiency Award for Excellence (sponsoring agency: National Science Foundation).
- 2015 Council of Inspectors General on Integrity and Efficiency Award for Excellence (sponsoring agency: U.S. Department of Veterans Affairs).
- 2015 NASA recognition for dedication to public service and significant contributions to the NASA Office of the Inspector General's mission (presented with an American flag flown in space aboard Space Shuttle Endeavor, STS-108, launched December 5, 2001).
- 2015 Defense Criminal Investigative Service and U.S. Army recognition for major contributions to the Department of Defense and U.S. Army through the prosecution of *United States v. Aldissi* (presented with an American flag flown over the U.S. Embassy, Kabul, Afghanistan on July 4, 2011).
- 2015 Case of the Year Award, Tampa Region Financial Crimes and Inspectors General Council (for prosecution of *United States v. Aldissi*).
- 2015 National Science Foundation Office of the Inspector General plaque in recognition of leadership, effort, and dedication in the investigation and prosecution of Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) fraud cases.
- 2015 U.S. Department of Homeland Security Office of the Inspector General plaque for dedication and professionalism greatly furthering the mission of protecting the homeland.
- 2010 Raymond E. Fernandez Award from the Hillsborough County Sheriff's Hispanic Advisory Council for outstanding contributions to the criminal justice system.
- 2009 U.S. Postal Office of the Inspector General plaque in recognition of outstanding efforts and contributions through mail theft prosecutions.
- 2009 U.S. Attorney's Office Mortgage Fraud Award for outstanding contributions in mortgage fraud prosecutions.
- 2009 U.S. Department of Health and Human Services Integrity Award for major contributions to the Office of the Inspector General's goals and objectives.

OTHER EXPERIENCES AND ACTIVITIES

- Boy Scouts of America (BSA) (2016 – present)
 - Vice President, GTBAC District Operations (2023 – present)
 - Fort Brooke District Chair (2020 – 2022)
 - Greater Tampa Bay Area Council, Board (2020 – present)
 - Pathfinder Committee (2020 – present)
 - Troop 4 adult leader (2021 – present), currently Assistant Scout Master
 - Assistant Cub Master, Pack 23 (2016 – 2021)
- Master, Herbert G. Goldberg Criminal Law Inn of Court (2002 – present)
 - President (2011 – 2012)

- Master, Cheatwood Inn of Court (2009 – present)
- Master, Ferguson-White Inn of Court (2019 – 2021)
- Member, Florida Bar’s Criminal Section Executive Council (2018 – present)
- Member, Florida Bar’s Federal Court Practice Committee (2012 – 2018)
- Florida Bar Grievance Committee (13A) (2015 – 2019)
 - Chair (2018 – 2019)
- Co-Chair, Bench Bar Committee, Hillsborough County Bar Association (2017 – present)
- Commissioner, Second District Court of Appeal Judicial Nominating Commission (2006 – 2010)
- Member, Merit Selection Panel (MDFL, retention of USMJ Porcelli) (2017)
- Member, Federal Bar Association (Tampa Bay Chapter) (2008 – 2011)
 - Executive Board (2008 – 2011)
- Co-Chair, American Bar Association, White Collar Crime Regional Subcommittee (2012 – 2014)
- Member, Economic Club of Tampa (2004 – present)
- Member, Cuban American Bar Association (CABA) (2020 – present)
- Member, Tampa Hispanic Bar Association (2019 – present)
- Member, Initial Screening Committee, Thirteenth Judicial Circuit Professionalism Committee (appointed by Chief Judge) (2019 – present)
- Leadership Tampa, Class of 2022. Class Champion.
- Honorary Wing Commander, 6th Air Mobility Wing, U.S. Air Force, MacDill AFB (2022 – present)
- Member, Federalist Society, Tampa Bay Lawyers Chapter (2019 – present)
- Board of Trustees, Saint John’s Episcopal Parish Day School (2022 – present)

PERSONAL BIOGRAPHY

I am a native of Tampa, Florida. My mother, whose first language is Spanish, is from Ybor City. She served a full career as a professor and, before that, as an English teacher at Leto High School. My father is from Seminole Heights. He owned a marine-related business in Drew Park. My brother and sister-in-law are attorneys and my sister is a real estate agent. My wife works at Moffitt Cancer Center and my son, age 13, is an active Boy Scout (Star Scout). Rounding out the Palermo family is our rescue dog, Apollo.