

**Redacted Application  
for Nomination to the  
Seventh Judicial  
Circuit Court**

Jacquelyn Roys Clifton



## APPLICATION FOR NOMINATION TO THE CIRCUIT 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: Jacquelyn Roys Clifton Social Security No.: [REDACTED]

Florida Bar No.: 550108 Date Admitted to Practice in Florida: 4/15/2002

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.

**Derrevere, Stevens, Black & Cozad**  
**Attorney**  
**2005 Vista Parkway, Suite 210**  
**West Palm Beach, FL 33411**  
**(561)684-3222**

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.

**Current residential address since June, 2018:**

[REDACTED]  
**Palm Beach County**

**I have resided in Florida since August 1979**

**Cell phone number: 386-547-9100**

**Email: jrc@derreverelaw.com**

3. State your birthdate and place of birth.  
**Born: [REDACTED] in Staten Island, NY**
4. Are you a registered voter in Florida (Y/N)? **Y**
5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

**Florida: April 15, 2002, through present**

**United States District Court- Southern District of Florida, Admitted June 30, 2016**  
**United States District Court- Middle District of Florida, Admitted February 23, 2022**

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

Yes, my maiden name was Jackie/Jacquelyn Roys from birth to 2003 and 2004- November, 2015. I was known as Jackie/Jacquelyn Roys Miller from November 2002-December 23, 2003.

#### **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).

##### **Schools:**

**Florida Coastal School of Law**

**Attended: 1999-December 2001**

**Degree Conferred: Juris Doctor in December 2001**

**Class Standing and GPA: Will provide upon receipt**

**Florida State University**

**Attended: August 1995- August 1997**

**Degree Conferred: Bachelor of Science in Criminology**

**Class Standing and GPA: No Academic Distinction**

**St. Johns River Community College**

**Attended: 1991-1995**

**Degree Conferred: Associates of Arts**

**Class Standing and GPA: No Academic Distinction**

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.

**USD Study Abroad, 2000**

**Intramural Softball 1995-1997**

**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.

**Derrevere, Stevens, Black, & Cozad**  
2005 Vista Parkway, Suite 210

Remote home office

Attorney, June 2023-Present

Bryan Black, equity partner and direct supervisor (561) 684-3222

**Jacquelyn Roys Clifton, P.A.**

Remote home office

Attorney, November, 2020 - June, 2023 (P.A. is still active)

I established Jacquelyn Roys Clifton, P.A. during the COVID-19 lockdown as I was receiving a high volume of calls from potential clients from the Seventh Judicial Circuit regarding representation for Family Law matters. At that point in time, courts were holding court virtually so I was able to represent clients in the Seventh Circuit while living out of county. This benefitted these clients as it was more cost effective than having to pay for my travel expenses from Palm Beach County to the counties encompassed in the Seventh Judicial Circuit.

I also worked as Of Counsel for Halifax Law Group from September 2021-May, 2023. I worked remotely through my home office, and was a 1099 attorney for Halifax Law Group. The address for Halifax Law Group is 444 Seabreeze Blvd. Suite 890, Daytona Beach, FL 32118. Bethany Schonsheck, 386-492-4880.

I also practiced Family Law for Compass Law Group, remotely from my home office from April 2021-September 2021. Their address now is 146 W. Sybelia Ave., Maitland, FL 32751. Cheri Hobbs, 407-340-2523.

**MedPro Healthcare Staffing**

Non-legal employment

December 2015-October, 2017

Director of International Operations

H-1B Cap Program

1580 Sawgrass Corporate Parkway, Suite 200 Fort Lauderdale, FL 33323

Elizabeth (Liz) Tonkin, President MedPro Staffing (cell) [REDACTED]

From their website: MedPro Healthcare Staffing is a Joint Commission certified, leading provider of temporary and contract staffing services to healthcare facilities throughout the United

States. Since 1983, MedPro has successfully served the needs of our employees and clients by placing thousands of quality healthcare professionals into facilities seeking top talent.

MedPro recruits qualified healthcare professionals in the U.S. and internationally to meet the needs of our diversified client base. MedPro is one of the largest recruiters of therapists and nurses from outside the U.S.

MedPro currently has contracts with numerous organizations to service a multitude of healthcare facilities in the U.S. The company counts among its clients prominent healthcare facilities and organizations such as the Department of Veterans Affairs, University of Miami Hospital, and Tenet Healthcare.

- I originally worked on an H-1B Visa Immigration project beginning in December, 2015 through March, 2016. According to the American Immigration Council and the U.S. Citizenship and Immigration Services websites, the H-1B Visa is a nonimmigrant visa that allows employers to petition for foreign professionals to work in specialty occupations. On behalf of Med Pro, we petitioned for Lab Technicians and Physical Therapists that met the qualifications for the H-1B program, and had a signed contract with Med-Pro to perform the relevant medical services in the United States.

I then transitioned into working as Director of International Operations and over-seeing MedPro's pipeline to have our foreign nurses that met the necessary and stringent requirements to work within the United States. This included overseeing the recruitment, scheduling and completion of the NCLEX examination, scheduling and completion of the English examination, obtaining VisaScreen, obtaining U.S. licensing in the assigned state(s) of opportunity, obtaining an approved I-140 visa petition, and when the priority date is current, obtain travel permissions.

Once the immigrant is granted their immigrant visa (green card) or the immigrant is the recipient of selection in the H-1B Visa lottery, we would schedule their transportation and arrival in the United States for their orientation and placement. The orientation consisted of necessary professional transition training, but MedPro also arranged for driving lessons, mobile phone cellular phone contracts, and other critical training areas for life in the United States.

The intent of MedPro was to always have the immigrating employees and the home office employees work together when possible because the atmosphere was one of incorporation and family. On a routine blood pressure check by one of Med Pro's training/teaching nurses in October, 2017, my blood pressure was unexpectedly and dangerously high. I was encouraged (instructed) by my Executive Staff and the nurse instructors to immediately contact my doctor as I was 7 months into a high-risk pregnancy. My doctor ordered me to immediate bed rest until such time that my son could be delivered. My son was born on December 5, 2017, via an emergency C-Section.

After several months of debate, I elected to spend the next several years focusing on motherhood, and resumed practicing law on a selective basis upon the establishment of Jacquelyn Roys Clifton, P.A., in November 2020, as further discussed above. I went to work in my current position at Derrevere, Stevens, Black & Cozad as my son was beginning kindergarten.

**Ayo & Iken, PLC**

Attorney, July 2015-November 2015

701 Brickell Ave, Miami FL 33131 (I was the only attorney at this location)

703 W Bay St. Tampa, FL 33606 (main office location)

**Office of the State Attorney's Office 7<sup>th</sup> Judicial Circuit**

Assistant State Attorney, January 2013-February 2015

Homicide Investigations Unit North (HIU)-Off site office

**Rice & Rose Law Firm**

Attorney, March 2011-January 2013

**Office of the State Attorney's Office 7<sup>th</sup> Judicial Circuit**

Assistant State Attorney, 2009- March 2011- HIU North

Assistant State Attorney, April, 2005-2009-Volusia County

**Inman & Fernandez**

Attorney, November 2004-April 2005

2065 Herschel Street, Jacksonville, FL 32204

E. T. Fernandez, (Now deceased)

**Office of the State Attorney's Office 7<sup>th</sup> Judicial Circuit**

Assistant State Attorney, April 2002-November 2004-Volusia County

Certified Legal Intern- February 2002-April, 2002- Certified Legal Intern

**Office of the State Attorney's Office, 4<sup>th</sup> Judicial Circuit, Intern 1997**

311 W. Monroe St, Jacksonville, FL 32202

(My last semester of Law School)

**Public Defender's Office**

407 N Laura St, Jacksonville, FL 32202

Witness Interviewer 1997-1998

**Arthur G. Dozier School for Boys, Internship through FSU for undergraduate credits**

January-August 1997

In June, 2024, Governor Ron DeSantis signed HB 21 which established a victim compensation based upon the egregious treatment the boys received while in the custody of this state institution.

**Chili's Grill & Bar**

Bartender and server, 1998-1999 (between undergraduate graduation and beginning Law School)  
11101 San Jose Blvd, Jacksonville, FL 32223

Server, 1995-1997 (transferred from Mandarin location in Jacksonville, FL when I went to FSU)  
719 Apalachee Pkwy, Tallahassee, Florida 32301 (current location of supervisor unknown)

Bartender and server, 1993-1995 (while attending community college prior to moving to Tallahassee to attend FSU) 11101 San Jose Blvd, Jacksonville, FL 32223 (current location of supervisor unknown)

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.

**Current Practice.** I am currently practicing Premise Liability/Construction Defect/Insurance Defense cases. These cases include a wide variety of legal issues as they cover personal injury and alleged poor craftsmanship. In each of the cases, I represent the insured defendant. If the case is one that involved personal injury that has a management company, I typically represent the Homeowners Association and the Management Company due to an indemnification clause in the contract between the Homeowners Association and the Management Company. It is an interesting dynamic as the insurance company pays the bill, authorizes obtaining experts, approves the settlement amount(s), but our client is the business being sued. Most of the time, these cases are determined on a cost/benefit analysis.

**Prior Practice.** I have practiced in a variety of areas of the law. I have done a significant amount of family law practice, some business law and discrimination cases, and some employment law. Most of these cases were very emotional for my clients. The typical dispute involved people that they were close to either in the workplace or because they previously resided as a family. When emotions are involved with litigation, it adds additional challenges because decisions are not always based on dollars and cents, but are fueled by emotions. When emotions are the driving force, sound decisions are rarely made. It is imperative that the client is able to rely on me to speak frankly to them and get them to see the benefits or the burdens of the position they want to take or the opposing party is taking.

Most of my years of law practice were spent as an Assistant State Attorney. As a Prosecutor, my client was the State of Florida, which is comprised of taxpayers interested in having a safe community for their family. Typically, victims of crimes are considered in the outcome of the cases that impacted them, but ultimately, it is the job of the Prosecutor to make sure the laws are effectively applied and followed.



Allowing the victims to feel that they have been heard, and actually hearing them in the legal process, is an important component for a Prosecutor. In cases involving violence, sex crimes, and homicide cases, victims and next of kin always believe that seeking justice provides the closure they need to heal. It is certainly a step in that direction, but rarely when the perpetrator is sentenced does the victim/next of kin "put this behind them and move on" like the clients can in my current practice.

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	<u>0</u> %	Civil	<u>80</u> %
Federal Trial	<u>0</u> %	Criminal	<u>0</u> %
Federal Other	<u>0</u> %	Family	<u>20</u> %
State Appellate	<u>0</u> %	Probate	<u>0</u> %
State Trial	<u>99</u> %	Other	<u>0</u> %
State Administrative	<u>1</u> %		
State Other	<u>0</u> %		
<b>TOTAL</b>	<u>100</u> %	<b>TOTAL</b>	<u>100</u> %

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

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

Jury?	<u>100 +</u>	Non-jury?	<u>25</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>1</u>
Appellate?	<u>0</u>		

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

I have never argued in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal. However, I substantially participated in drafting the Appeal in for Petitioner in *Commercial Carrier Corporation, et al., v. Kester Ray Kelley, et al.*, (2005) 5th DCA Case No. 5D05-289: Certiorari granted; Oder Quashed.

Lead Counsel E.T. Fernandez, III (now deceased) and co-counsel Katie D. McCranie  
[kdms@edwardsragatz.com](mailto:kdms@edwardsragatz.com); 904-399-1609;

I had no interaction with Opposing Counsel, however, they are listed in the opinion as: James E. Collins [jimmy@aclwfl.com](mailto:jimmy@aclwfl.com), 352-427-1846; and Robert H. McLean of Ayres, Cluster, Curry, McCall, Collins & Fuller, P.A.

Opinion: *Commercial Carrier Corp. v. Kelley*, 903 So.2d 240 (Fla. Dist. Ct. App. 2005); 30 Fla. L. Weekly D1118

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.*

1. David Barksdale [odb@bedellfirm.com](mailto:odb@bedellfirm.com); 904-353-0211x146; and Brian Coughlin  
[btc@bedellfirm.com](mailto:btc@bedellfirm.com); 904-353-0211 x 124 for the Defendant

State v. Christopher Linus Fires

1st Degree Murder

Co-Counsel for the State: Travis Mydock. Current contact information

[tmydock@mydocklaw.com](mailto:tmydock@mydocklaw.com); 904-494-8402

St. John's County Case No.: 11001684CFMA

185 So.3d 1254 (Table), 2015 WL 9261221(Unpublished)

2. James Valerino for the Defendant, Office of the Public Defender 7th Judicial Circuit

Current contact information: [jimmyv47@aol.com](mailto:jimmyv47@aol.com); 407-314-9287

State v. Eric Niemi

1st Degree Murder

Co-Counsel for the State: Tim A. Pribisco Jr. Current contact information:

[tim@theshoelaw.com](mailto:tim@theshoelaw.com); 904-872-7463

3. Doug Williams [dwilliams32114@icloud.com](mailto:dwilliams32114@icloud.com) ; 386-290-0622 (cell) and Carine Mitz (closest match I can find is [mitzc@elderaffairs.org](mailto:mitzc@elderaffairs.org), office 850-414-2000) for Defendant  
State v. Paul Miller Case No. 2012-00171-CFFA  
2<sup>nd</sup> Degree Murder with a Firearm  
Co- Counsel for the State: Kayla Hathaway. Current contact information:  
[kayla@cflawer.com](mailto:kayla@cflawer.com); 386-427-5227.
4. Michael Huddelston for Respondent, [huddlestonlaw@outlook.com](mailto:huddlestonlaw@outlook.com); (386) 738-0080  
Bowers v. Bowers Case No. 2009-11175-FMDL  
Dissolution of Marriage
5. Gary Wood for Defendant (386) 326-3993; [garrywood2011@hotmail.com](mailto:garrywood2011@hotmail.com)  
Mark Johnson 2<sup>nd</sup> chair for State (386) 329-0259  
State v. William Gregory Case No. 2007-00866-CFFA  
First Degree Murder, Firearm (Death Penalty)
6. Brad J. Bradley; 904-209-0530; [bbradley@sjcfl.us](mailto:bbradley@sjcfl.us) Robert Fields (now deceased), Ralph Rowe (386) 530-0529; [rowe03@yahoo.com](mailto:rowe03@yahoo.com) for Defendant;  
Ken Ulich 2<sup>nd</sup> Chair for State (904) 420-8141; [ulichlaw@gmail.com](mailto:ulichlaw@gmail.com)  
State v. Clint Horvatt Case No 2008-2584-CF  
Principal to First Degree Murder

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.*

1. Pre-Suit Mediation Settlement 2/2025

Joshua Gershenson v. Winston Towers 500 Association, Inc. and Fitness Tech of Miami, Inc.

My firm represented Winston Towers 500 Association, Inc.

Plaintiff's counsel: Joshua E. Orlan, Esq. of Orlan Injury Law, PLLC

(954)281-2540

[Josh@orlaninjurylaw.com](mailto:Josh@orlaninjurylaw.com)

Counsel for Fitness Tech of Miami, Inc: David Wagner, Esq. of Clyde & Co

(305)329-1810

[David.wagner@clydeco.us](mailto:David.wagner@clydeco.us)

2. Settled 12/2024  
Adam Polereczki v. W.M., a minor, and The School Board of Volusia County, Florida  
Volusia County Case No.: 2019-30706 CICI  
My office represented W.M.  
Plaintiff's counsel: Jason Harr, Esq. of The Harr Law Firm  
(386)267-4897  
[jasonharr@harrlawfirm.com](mailto:jasonharr@harrlawfirm.com)  
Counsel for The School Board: Aaron Wolfe, Esq of Doran Sims Wolfe & Yoon  
(386)253-1111  
[awolfe@doranlaw.com](mailto:awolfe@doranlaw.com)
  
3. Settled 11/2024  
Sierra, Fernando v. Lakeview at the Hammocks Condominium "D" v. North Star Contractors  
v. J.S.Pro Painting  
Miami Dade County Case No: 2022-001717-CA-01  
My firm represented North Star Contractors  
Plaintiff's counsel: Carlos Jordi, Esq. of Rubenstein Law  
(786)523-7218  
[cjordi@rubensteinlaw.com](mailto:cjordi@rubensteinlaw.com)  
Counsel for Lakeview at the Hammocks Condominium "D": Kevin M. Vannatta, Esq. of  
Lewis Brisbois  
(954)678-4090  
[Kevin.Vannatta@lewisbrisbois.com](mailto:Kevin.Vannatta@lewisbrisbois.com)  
Counsel for JS Pro Painting: Daniel Traugott, Esq of Gables International Plaza  
(786)633-4716  
[dtraugott@pgdlegal.com](mailto:dtraugott@pgdlegal.com)
  
4. Settled 10/2024  
Clara Martinez v. Pacifica Loan Three, LLC d/b/a Laurel Grove Apartment Homes  
Clay County Case No.: 2024CA000132  
My firm represented the defendant.  
Plaintiff's counsel: Corey J. Portnoy, Esq. of Morgan & Morgan  
(904)361-4441  
[cportnov@forthepeople.com](mailto:cportnov@forthepeople.com)
  
5. Settled 10/2024  
NV5, INC a foreign corporation, v. Skyrise Engineering & Testing, LLC, a Florida limited  
liability company, Richard Fesdjian, an individual, and Eric J. Stern, an individual  
Broward County Case No.: CACE-23-018608  
My firm represented the defendants.  
Plaintiff's counsel: Jake Blumstein, Esq. of Tripp Scott, P.A.  
(954)525-7500  
[jsb@trippscott.com](mailto:jsb@trippscott.com)

**6. Settled 9/2024**

**Chris and Tannaz Fiore v. Continuum on South Beach, The South Tower Condominium Association, Inc, Continuum of South Beach Master Association, Inc, First Service Residential, Inc., Marquis-Association Management, LLC, and Guardtech Security Group, Inc.,**

**Miami Dade County Case No.: 2022-011863-CA-01**

**My office represented Continuum of South Beach Master Association, Ind., and Marquis-Association Management, LLC.**

**Plaintiff's counsel: Lorne Berkley, Daniels Rodriguez Berkeley Daniels & Cruz, P.A.**

**[LBerkeley@drbdc-law.com](mailto:LBerkeley@drbdc-law.com)**

**(954) 577-8332**

**Each of the other parties reached a settlement prior to my personal involvement in the case. There information is as follows:**

**Continuum on South Beach, The South Tower Condominium Association and First Service Residential Florida Inc., were represented by attorney David Chalet, [dchalet@eisingerlaw.com](mailto:dchalet@eisingerlaw.com), 954-894-8000;**

**Subrogation Case: Cincinnati Insurance Company, represented by attorney Stephen Barker, [slb@stephenbarkerlaw.com](mailto:slb@stephenbarkerlaw.com), 561-886-8352**

- 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.**

**On average, I have appeared via Zoom or in person for court approximately 8 times per month in the last five years. While an Assistant State Attorney, I appeared in court daily.**

- 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.**

**Not applicable.**

- 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?**

**Not applicable.**

- 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.

1. *State v. William Gregory*; Case No. 2007-00866-CFFA; *Gregory v. State*, 118 So. 3d 770, 2013 Fla. LEXIS 1308, 38 Fla. L. Weekly S 471, 2013 WL 3214455 (Fla. 2013);

Lead counsel for the State; 7<sup>th</sup> Circuit Court Volusia County, Judge Parsons; February 21, 2011- March 3, 2011, guilt phase, March 8 and 9<sup>th</sup>, 2011 penalty phase, sentenced to death on 2 counts of April 14, 2011. Gary Wood and Mark Johnson were the other attorneys involved.

This case was significant because I was arguing for the ultimate penalty. This was the first time I was the lead attorney on a death penalty case. I attended Our Lady of Lourdes Catholic Church at the time and Father Phil would always gather a group of people from our congregation to travel to Tallahassee to pray and/or protest an execution. I was unsure if I should continue attending services at Our Lady of Lourdes and spoke with Fr. Phil regarding these matters. This was a very significant case for me professionally and personally. It was a time for personal and professional reflection and growth.

2. *State v. Joseph Scott Freeman*; Case No. 2006-036254 CFAES; *Freeman v. State*, 1 So. 3d 373, 2009 Fla. App. LEXIS 2232, 34 Fla. L. Weekly D 252 (Fla. Dist. Ct. App 5th Dist. 2009);

Prosecutor for the State; 7<sup>th</sup> Judicial Circuit Volusia County; Judge Hutcheson; Trial began on or around November 13, 2007 with a disposition date of November 20, 2007.

Opposing counsel was appointed from the Office of the Public Defender, Seventh Judicial Circuit. Although I am not sure of exact contact information, the Florida Bar lists the contact for a Larry D. Powers as [lepoer77@earthlink.net](mailto:lepoer77@earthlink.net); 386-214-1093 (cell) and Linda Hadad, not eligible to practice law in Florida 321-423-1386 (cell) [hadad.linda@yahoo.com](mailto:hadad.linda@yahoo.com). I do not know if this contact information is accurate.

The Defendant in this case was charged with Aggravated Stalking, Possession of a Weapon during felony kidnapping and a violation of an injunction against repeat violence. The victim in this case was held captive for seven days and taken through six states while her captor was armed. It was a scary set of circumstances which could have easily resulted in a far more grave outcome. In preparation for trial, I met with civilian and law enforcement witnesses. I had witnesses traveling in from each of the six states that the ordeal covered. With substantial testimony before the jury, and after several days of the State's case in chief, a seasoned law enforcement officer responded to my question as anticipated, and then, seemingly as an afterthought, added some prejudicial information. A defense's Motion for Mistrial was denied, and the jury convicted the defendant as charged. The lesson learned from this case was to not take for granted even the most

experienced law enforcement's knowledge of admissible evidence. Although I discussed with this Federal Agent and all law enforcement, not to discuss the defendant's prior criminal history, I must not have made it clear enough. This case was such a significant case because of the dangerous acts of the defendant, but also because of the number of witnesses that had to travel to testify, and the length of time the jury had to commit to the process. The time and tax dollars dedicated to this trial were significant and should not be wasted because of a preventable mistake. Most importantly, though, was the potential impact on the brave victim if she had to testify again in the presence of someone that had perpetrated significant harm to her person.

3. State v. Ismael Hernandez; 2005-035420 CFAES;

Circuit Court 7<sup>th</sup> Judicial Circuit; Judge Hutcheson; October 17, 2007. Opposing counsel was Saul Baran from the Office of the Public Defender, Florida Bar lists current contact information as office: 386-313-5097; [waneagle@aol.com](mailto:waneagle@aol.com), and co-counsel for the State was Kelly Sharples (f/u a Kelly Wark) [REDACTED] (cell). I prosecuted this defendant with Kelly Sharples.

This case taught me the impact of police misconduct. Although not with mal intent, law enforcement seized the computer without a warrant. The computer contained homemade videos of the defendant sexually abusing [REDACTED]. The computer contained irrefutable evidence of each of the four counts of Sex Act with a child. This evidence was suppressed as illegally obtained and I was left with little evidence to prosecute this case. The jury returned a verdict of guilty of three of the four counts. The Judge advised the jury, after verdict, that all of the acts were on tape, but he had to suppress it because of police misconduct. The jury was furious. I felt that I personally let them down even though I was not involved in the questionable conduct, and I was obligated to follow the Judge's ruling. Because of this case I focused on training law enforcement in the area of search and seizures.

4. State v. Kyle Shoultes; 2006-03061 CFAES;

Circuit Court 7<sup>th</sup> Judicial Circuit Volusia County; Judge Piggotte, November 9, 2006. Opposing counsel was Mitch Novas, last known contact was 386-239-7730 (cell).

This case was [REDACTED] was alleged to have inappropriately touched his [REDACTED] over her clothes, and having her reciprocate the touching while making comments about teaching her sexual activity. This child was 11 years old at the time of reporting, and it had been going on for several months. My victim's mother routinely stated in the victim's presence that she did not know who to believe and really [REDACTED]. Each time the child heard this she was understandably devastated. The only evidence I had beside this the child's testimony was some corroboration as to the victim and the defendant being alone at these times, as well as the victim's younger sibling that would not be able to testify. I learned that justice doesn't always equate to a guilty verdict. (I tried this case and it resulted in a mistrial, and the second trial resulted in a not guilty verdict.) Sometimes

justice allows the victim to be heard. When this child's mother was able to listen to all of the evidence, she heard some things that convinced her that these acts had occurred. Even though the evidence did not convict the jury, this child did not have to [REDACTED] with this person a day longer. That was the justice needed.

5. State of Florida vs. Clarence A. Zacke ; 2005 Governor's appointment in Brevard County. I am not sure of the case number, it may be 5D07-1819. We tried it in 2005. I was second chair to Phil Havens, Esquire, 7<sup>th</sup> Judicial Circuit Office of the State Attorney. I don't recall opposing counsel. It has recently been reported that the defendant died in prison, although, his prison sentence was significantly reduced due to several instances of turning State's witness. We prosecuted Mr. Zacke for sex crimes that he committed years prior to the trial. Mr. Zacke was about to be released from prison for unrelated charges, and the statute of limitations was about to expire on the sex crimes. His adopted daughter came forward with the allegations of long term sexual abuse when she was younger. Some background will explain why the Governor's appointment was necessary.

Although I was not involved in the original conviction, if memory serves me correctly, Mr. Zacke was trafficking marijuana when his small aircraft crashed which lead to the recovery of marijuana and the arrest of Zacke and the pilot. Mr. Zacke solicited someone to commit first degree murder on the pilot since the pilot was going to testify against him. Mr. Zacke also solicited someone to then kill the hit man, which was accomplished. The person that was murdered was Dicky Hunt, a brother of an Assistant State Attorney. He was convicted of solicitation to commit first-degree murder and conspiracy to commit murder.

The victim of the sexual battery cases had come forward previously, but because he was sentenced to a long-term sentence on the above-mentioned charges, there was not much discussion that the victim recalled about her participating in the prosecution of her adopted father. When it became evident that he was going to be released from prison, his adopted daughter did not want to see him live free. She wore a wire and visited him in prison. He gave enough evidence on the wire for us to use it to secure his conviction and five life terms.

Mr. Zacke testified against other inmates. One went to the electric chair, and one was freed after serving twenty years of what was deemed to be a wrongful conviction. Mr. Zacke's convictions were all secured based on someone wearing a wire. In each of his trials, the jury got to hear Mr. Zacke speak of his crimes.

The courage it took for his daughter to come forward and confront this person that took so much from her still resonates with me. She protected so many people from what might have been if this man was released. He had no limits on the pain he would inflict upon others for his own gain. His adopted daughter, Michelle, was quoted in a Florida Today article. "The world is finally safe from him. He was an evil monster, and I am elated that Satan finally called his son, Clarence Albert Zacke, home to hell." Each time I read her



profound quote, I am frozen for a moment as I am again overcome by her bravery and determination to rid the community of his terrorous reign.

To be transparent, I must acknowledge the scope of cases (and not just a particular case) that I have personally litigated that have had a huge impact on me.

I spent years in the sex crimes unit, prosecuting alleged sexual offenders and predators (the designation defined by the written law) after they sexually violated victims. At some point child pornography on the internet became rampant. This means that these crimes were photographed or videotaped. This also meant that in order for law enforcement to obtain a warrant, I had to view the sexual abuse of babies and young children with pacifiers in their mouths. I have watched hundreds of videos (in the interest of justice) of perpetrators sexually violating children. Some of those cases went to trial. I still pray for my jurors in all of my cases, but especially these child pornography cases, because I had to show them the evidence to prove my case. As hard as it is for me to view and discuss this type of crime, I chose to involve myself in this profession for the pursuit of justice. My jurors did not choose this and I always worry about the impact of these videos on them.

#### **6. Adam Polereczki v. W.M., a minor, and The School Board of Volusia County, Florida**

I represented W.M. in this matter, and was retained in year five of this tragedy. W.M. was a thirteen year old student that was relentlessly bullied. He had enough and engaged in a fist fight that lasted less than two minutes. The plaintiff was wearing a white shirt that had no evidence of injury. He did not bleed. He did photograph a few red spots which may have turned into a bruise. If so, that evidence was not provided. The plaintiff went to the emergency room that night and had x-rays and MRI's performed when he was given a clean bill of health.

W.M. spent the next five years of his life having to defend himself in this action. His parents had to pay legal expenses, and they lived in fear of what was to come. W.M. had this matter battering him daily until well after his 18<sup>th</sup> birthday. I was retained in April, 2024 to extract W.M. from this groundhog day nightmare. It was unfathomable to me that an incident that occurred when a bullied child was thirteen years old turned into a case lasting over five years and stealing W.M.'s remaining youth.

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.

See the attached for two recent writing samples. Although I alone drafted each of these samples, the senior partner always reviews submissions prior to being filed, and our paralegal compiles and marks the exhibits.

## 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.

No.

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.

Thirteenth Judicial County Court, JNC, 2013, not certified.

Seventh Judicial Circuit Court, JNC, 2024, certified for Governor DeSantis' consideration.

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.

I currently hold Seat 4 in an appointed position on the Town of Loxahatchee Groves Planning Zoning Board Committee. This appointment is a public office, and it can be "quasi-judicial" if the matter calls for the Committee to act in that capacity. I have not had to participate in a quasi-judicial capacity to date.

This appointment was effective on May 7, 2024, through present, and is not a paid position.

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;

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

(iii) the citations of any published opinions; and

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

None.

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.

None.

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.

Not applicable.

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.

Not applicable.

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.

Not applicable.

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.

Please see response to answer 25 above in this application.

#### NON-LEGAL BUSINESS INVOLVEMENT

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

None.

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

Other than described above in question number 9 of this application, above, none.

#### POSSIBLE BIAS OR PREJUDICE

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

None.

## PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

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

*There was an Easement Around Here Somewhere*

<https://derreverelaw.com/there-was-an-easement-around-here-somewhere/>

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.

None.

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.

As the President of the Volusia/Flagler County Association of Woman Lawyers, I made remarks and presented the gavel to Judge Melissa Ditzler on February 15, 2023. Transcripts of remarks are not available.

I have appeared on two television shows related to cases that I prosecuted. The first show was related to the case of State v. Joseph Scott Freeman: (AFFIRMED)  
Volusia County Case No.: Case No. 2006-036254 CFAES  
Fifth District Court of Appeal Case No.: 5D07-4337  
Supreme Court of Florida Case No.: SC09-402

The series was Escaped, and the show was titled Obsessed Kidnapper, Season 1, Episode 10  
<https://www.imdb.com/title/tt1434692/>

The second show was related to a murder for hire which resulted in two separate homicide trials.  
State v. Clint Horvatt Putnam County Case No.: 2008-2584-CF  
State v. William Foster

The series was titled Happily Never After, and the show was titled A Ride with Evil, Season 3, Episode 1. [https://www.imdb.com/title/tt3541076/?ref=tt\\_mv\\_close](https://www.imdb.com/title/tt3541076/?ref=tt_mv_close)

As president of Volusia Flagler Association of Women Lawyers, I introduced retired Justice R. Fred Lewis as a guest speaker. Transcripts of remarks are not available. There is a hard print News Journal Article memorializing the event.

As president of Volusia Flagler Association of Women Lawyers, I proudly introduced the Honorable William Parsons as a guest speaker. Transcripts of remarks are not available.

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.

Throughout the years I worked as an Assistant State Attorney, I would routinely teach courses at the School of Emergency Services at Daytona State College, 1200 West International Boulevard, Daytona Beach Florida, 32120. The subject ranged from search and seizure, a defendant invoking their Fifth Amendment right, probable cause versus reasonable suspicion, and things of that nature. I would also participate in in-house law enforcement training as a prosecutor.

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.

None.

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

No.

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.

Volusia/Flagler Association for Women Lawyers, President 2012-2013

Volusia/Flagler Association for Women Lawyers, Board Member 2011-2012

Volusia/Flagler Association for Women Lawyers, Member 2011-2014

Volusia County Bar Association Board Member 2011- 2014 and 2022-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.

The Federalist Society, June 2024

Dunn Blount American Inns of Court 2005-2008

Florida State Alumni Association (Lifetime)  
St. Rita's Catholic Church 2017-2024  
Our Lady Queen of the Apostles Catholic Church, 2024- present  
Parent Teacher Organization in Palm Beach County 2023-2024  
Florida Bar Speaker

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.

No.

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

I have assisted many individuals who were unable to afford legal representation except during the period of employment with the Office of the State Attorney.

45. Please describe any hobbies or other vocational interests.

Spending time with my family, volunteering for my son's schooling and extra-curricular events, reading, biking, football, attending major league baseball stadiums, and theater.

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.

No.

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

LinkedIn: <https://www.linkedin.com/in/jacquelyn-roys-clifton-b2969138/>

Facebook: <https://www.facebook.com/jackie.roys>

Instagram: <https://www.instagram.com/jackieroysclifton/>

## 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 Michael Larry Clifton, Jr. since November 28, 2015. He is currently employed as Vice President of Compliance at Aero-Precision Repair and Overhaul Co., Inc.

I was previously married to Michael Miller, current address and telephone number unknown.

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.

████████████████████

## 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.

1. United States Bankruptcy Court Middle District of Florida, Orlando Division, Orange County; In re: Jacquelyn Roys, Debtor; 6:13-bk-02505-CCJ; Bankruptcy; Plaintiff; discharge date April 18, 2014.

When purchasing my first home in 2005, my mortgage was financed as an interest only loan. I diligently paid the mortgage payments as required. When the loan matured, the payments far exceeded my ability to pay. Due to the significant decline in the market, I was unable to refinance because the home would not appraise for the amount due. I was faced with having to pay a significant lump sum (close to \$50,000.00) to buy down the mortgage to the appraised price to obtain financing. I did not have the money necessary to buy down the mortgage. I sought advice of counsel, and was advised to cease paying the monthly payments because the mortgage company would then negotiate the terms with me. I did as advised, and was able to successfully negotiate the payment terms for a period of time. As part of the re-negotiation process, there was a mandatory credit counseling component. I attended the course as instructed, however, due to the negative equity in the home because

of the market crash coupled with the changes in lending, I was unable to secure a mortgage. The only discharge in the bankruptcy was the home mortgage, as all other debts were paid.

2. Circuit Court, Volusia County; Wells Fargo Bank, Etc. v. Jacquelyn Roys, Et Al; 2011-31294-CICI; Foreclosure; Defendant; June 10, 2015 Final Judgment in *rem* only per Bankruptcy See Case No. 6:13-bk-02505-CCJ.

See explanation above.

3. Volusia County; Jeffrey Garrison v. Catherine Mediaas, Et. AL; 2011-32117-CICI; Civil Tort Claim; Defendant; Dismissed.

Plaintiff is a Criminal Defendant that was convicted at Jury Trial, (Case No. 2005-033412 CFAES) and is serving a 30-year sentence. The other defendants to this case include Florida Department of Law Enforcement, analyst and supervisor, as well as 2<sup>nd</sup> chair counsel for the State. The Attorney General's Office represented the Defendants in this case.

4. Florida Middle District Court, Orlando Office, Columbia County; Jeffrey Garrison v. Catherine Mediaas, Et. AL; 6:11-cv-1091-Orl-28DAB; Writ of Habeas Corpus; Same as above, #3; Dismissed.

5. Circuit Court, Volusia County; Bank of America National Association v. Rex Willis, Et. AL; 2012-30938-CICI; Foreclosure; Defendant; Voluntarily Dismissed with Prejudice as to [Jacquelyn Roys] only.

I was not the mortgagee of the home subject to this property. I was a named party in the event that I held an interest in the property. Once it was determined that I did not hold an interest in this property, I was dismissed from this lawsuit.

6. Michael Joseph Miller, Petitioner. Final Judgment dated 12/23/2003, Volusia County; Case No. 2003-34865-FMCI.

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.

United States Bankruptcy Court Middle District of Florida Orlando Division, see detailed explanation in this application, question number 53, above.

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

No.

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

I have complied with all legally required tax return filings.

## 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.

Unlike many attorneys, I did not know from an early age that I was going to be a lawyer. I did not have any attorneys in my family. I did not have any personal experience with lawyers, judges, or the legal system. In fact, I do not ever recall having an overwhelming conviction or desire to attain a certain job or career. The only thing I remember without question is that whatever I was going to do, I was going to work hard at it and I was going to do it well. It never occurred to me to question why when I was sick, I slept on a pallet under my mother's desk while she worked. It was just how we got things done. We worked. It was what we did and what we knew.

I was the middle of three children. My father was in the Navy, and we relocated from Fallon, Nevada to Jacksonville (Orange Park) Florida in 1979. Shortly thereafter, my father left for deployment and chose not to return for any substantial period of time. As a young child, I recall missing my father, but I do not recall having any idea of the struggles that my mother faced on a daily basis. Without us knowing the hardships she endured, my mother navigated three young children, in a new state far from home and without support. The only hint of a struggle that my sister, brother or I were aware of was when we were visited by investigators searching for my father in the early morning hours as my mother was getting us ready for school. Regardless of the unsettling events of the morning, we went to school each day with the assurance from our mother that we were loved and valued, and who, quite frankly, did not have the luxury of missing work. I had no idea how that work ethic would benefit me in the long run.

Throughout high school and college, I worked. Upon obtaining my Associates of Arts degree, I went to Florida State University and began taking Humanities classes. While at work, a colleague was studying for a Criminal Justice test. He asked me to quiz him for his test. I found the subject matter to be fascinating. In that chance circumstance, my perspective changed. I became interested in the law. I enjoyed studying the history and evolution of the law, the procedural component, the application of each law, all of it fascinated me. I elected to take classes in Criminology with a focus on Juvenile Justice. I had some fun in college and remain close with my work friends from Florida State.

I went to law school, passed the bar and was hired as a Certified Legal Intern (CLI) in the Seventh Judicial Circuit, Office of the State Attorney. In 2002, I moved from Jacksonville, Florida to Daytona Beach to begin my law career. When I walked into that court room for the very first time, there was no doubt I was where I was supposed to be. Shortly after getting sworn in, I did my first trial which was a felony bench trial in front of the Honorable Hubert Grimes. I was very nervous. Upon expressing this to the bailiff, he said to me, "If you don't have stage fright, you need to stay off of the stage. If you don't have stage fright it means you stopped caring." The impact of those words still have a profound impact on me today. I still apply them to my choices in life. Here I am, twenty-two years and counting, I still have that stage fright before appearing in court- whether it is virtual or in person. Twenty-two years later, I still care about being the best advocate I can be for my client. Twenty-two years later, I still care about being a positive representative of our profession. Twenty-two years later, there is no doubt that it is my time to take a position as a Judge in the Seventh Judicial Circuit.

Over the course of my twenty-two years of practicing law, the judges that I practiced in front of have made me a better lawyer. I have looked up to them and their position, I have learned from them, I have been judged by them, and I have viewed the bench as something that should only be sought after the work was put in, the career was developed, the skills were honed, and the demeanor was obtained. I knew from that first day that to achieve the position of a mentor and a judge in the Seventh Judicial Circuit, I had to put in the work.

I spent years prosecuting the most violent crimes. I have advocated for children and families and I have litigated over injuries and damages. I have put in the work. I have held the hands of people that had horrible things happen to them, I have had to share the sorrow of rulings that did not go in a client's favor, and I have celebrated hard fought victories with people that needed those victories to take their next step in their new life. Each of my cases, each of my areas of practice, each of my clients, each of my colleagues, and each of my positions have provided me with the skills, the disposition, the desire, the tools and the knowledge to assist me in holding judicial office. Each of the judges that I have practiced in front of have prepared me to do what is required of this coveted position.

After practicing family law, I elected to get certified as a Supreme Court Certified Family Law mediator in 2015. I believed that the training would assist me in my law practice. It certainly has. I do not maintain my mediator certificate, as my goal in the certification was simply to be a better advocate.

The value that my childhood brings to the bench is rare and likely unmatched. I had a single mother that moved an 11-, 9-, and 7-year-old from Florida to Illinois on Christmas Day so she could obtain her certification as an Orthotist. She raised three children with advanced degrees. I know from experience that judgement should not come from pre-conceived expectations, but each person should be viewed as a whole and valuable. Each person has value even if they come from humble beginnings. My humble beginnings allow me to see the people in front of me

regardless of the people that surround them. My humble beginnings allow me to recognize people for who they are, not from where they come from, or who their parents are.

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.

There is no substitute for experience. The contribution that I would bring to the Bench would be continued drive and passion to maintain the integrity of our profession. I recognize the importance of listening and addressing specific areas of a case and maintaining that focus while making a ruling according to the written law. The law requires a plain reading for a just application. Attempting to legislate from the bench or changing the meaning of a word in order to obtain a desired outcome does everyone a disservice. The public and the litigants before the specific tribunal deserve judges that follow the law and enforce the law. Our profession deserves that as well, and anything less than that violates the trust of the people, of our profession, the Constitution of the United States, and that of the Great State of Florida.

## 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.

(Listed in alphabetical order)

1. **Mary Aldrich, EA**  
President, Owner and Enrolled Agent at Tiger Tooth Tax Consulting Inc.  
4626 S Clyde Morris Blvd, Suite 3  
Port Orange, Fl 32129  
[mary@tigertoothtax.com](mailto:mary@tigertoothtax.com)  
[REDACTED]
2. **Bryan W. Black**  
Equity Partner, Derrevere, Stevens, Black & Cozad  
2005 Vista Parkway, Suite 210  
West Palm Beach, FL 33411  
[bwb@derreverelaw.com](mailto:bwb@derreverelaw.com)  
561-684-3656

3. **Hon. Leah R. Case**  
Chief Judge, Seventh Judicial Circuit  
251 N. Ridgewood Ave., Rd. 294  
Daytona Beach, FL 32114

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████████████████████

4. **Hon. Karen Foxman**  
251 N. Ridgewood Ave., Rd. 294  
Daytona Beach, FL 32114

████████████████████  
████████████████████

5. **Hon. Christopher France**  
Seventh Judicial Circuit  
1769 E. Moody Blvd., Bldg. 1  
Bunnell, Florida 32110

████████████████████  
████████████████████

6. **Sheriff Robert Hardwick**  
4015 Lewis Speedway  
St. Augustine, Florida 32084

████████████████████  
████████████████████

7. **Hon. Christopher Kelly**  
Seventh Judicial Circuit  
101 N. Alabama Ave,  
DeLand, FL 32724

████████████████████  
████████████████████

8. **Jason Lewis**  
7th Judicial Circuit Chief of Homicide and Flagler County Managing State Attorney  
1769 E. Moody Blvd., Bldg. 1  
Bunnell, Florida 32110

████████████████████  
████████████████████

9. **Hon. Carlos Mendoza**  
District Judge, United States District Court for the Middle District of Florida  
Commissioned on June 27, 2014

[REDACTED] (Chambers email)  
[REDACTED]

10. **Kelly Sharples**  
Derrevere, Stevens Black & Cozad, [KWS@derreverelaw.com](mailto:KWS@derreverelaw.com)  
[REDACTED]

**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 10th day of February, 2025.

Jacquelyn Roys Clifton

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:     \$14,423    

Last Three Years:     \$157,029              \$81,076              \$19,934    

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:     \$14,423    

Last Three Years:     \$157,029              \$81,076              \$19,934    

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.

Rent:

Current Year-To-Date:     \$1,800.00    

Last Three Years:     \$13,200.00              \$13,200.00              12,000.00    

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:     \$0    

Last Three Years:     \$0              \$0              \$0    

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:     \$0    

Last Three Years:     \$0              \$0              \$0

**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 02/10, 2025 was \$1,656,330

**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 \$175,000

**ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:**

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

VALUE OF ASSET

DESCRIPTION OF ASSET (specific description is required - see instructions p. 3)	VALUE OF ASSET
1301 C Road, Loxahatchee, FL (residence and rental property)	\$1,070,000.00
Joseph Gumar & Co., LLC (IRA)	\$53,966
Principal Individual Retirement Account	\$291,368.09
PNC Bank Savings Account	\$65,366
PNC Bank Checking Account	\$45,747
Florida College Investment Plan	\$20,000
Florida Retirement System	\$19,723
Principal Retirement Account (Defined Benefit)	\$205,741.00

**PART C - LIABILITIES**

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

NAME AND ADDRESS OF CREDITOR

AMOUNT OF LIABILITY

Nissan Motor Acceptance 8900 Freeport Pkwy, Rear Dock, Irving, TX 75063	\$43,046
Navient 123 Justison St. #300, Wilmington, DE 19801	\$52,555

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY

**PART D - INCOME**

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING \$1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
Derrevere, Stevens, Black & Cozad	2005 Visa Parkway, Suite 210	\$157,029
Rent	1301 C Rd Loxahatchee, FL 33470	\$13,600

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

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
13			

**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			
DO I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

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

**OATH**

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

  
SIGNATURE

STATE OF FLORIDA

COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me this 10 day of Feb, 2025 by Jacquelyn Clifton



(Signature of Notary Public—State of Florida)  
 Notary Public State of Florida  
 Catherine Phillips  
 (Print, Type, or Stamp Name of Notary Public)  
 Expires 02/28/26

Personally Known \_\_\_\_\_ OR Produced Identification X

Type of Identification Produced Florida

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: 02/10/2025

JNC Submitting To: 7th Judicial Circuit

Name (please print): Jacquelyn Roys Clifton

Current Occupation: Attorney

Telephone Number: 386-547-9100 Attorney No.: 550108

Gender (check one):  Male  Female

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

County of Residence: Palm Beach County

Gender (check one) Male  
Female

*FLORIDA DEPARTMENT OF LAW ENFORCEMENT*

DISCLOSURE PURSUANT TO THE  
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Printed Name of Applicant

Jacquelyn Roys Clifton

Signature of Applicant

A handwritten signature in black ink, appearing to read "J. Roys Clifton", is written over a horizontal line.

Date: 02/10/2025

# **Writing Sample One**

WIN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT IN AND FOR ORANGE  
COUNTY, FLORIDA

CASE NO: 2024-CA-005917-O

THE OLIVE HOMEOWNERS'  
ASSOCIATION, INC.,

Plaintiff,

v.

EQUITY OLIVE, LLC, A&M HOMES,  
LLC; MICHAEL WENRICH  
ARCHITECTS, INC; EIERMANN  
ENGINEERING, INC; OVIEDO  
SURVEYING, LLC dba H&H SURVEY  
CONSULTANTS; FLORIDA DESIGN  
SOLUTIONS INC dba FDS  
ENGINEERING ASSOCIATES; KEESE  
AND ASSOCIATES; UES  
PROFESSIONAL SOLUTIONS, LLC fka  
UNIVERSAL ENGINEERING SCIENCES  
INC; UNROE ENGINEERING INC; and  
HOME BUYERS WARRANTY CORP.

Defendants,

\_\_\_\_\_ /

A&M HOMES LLC,

Third-Party Plaintiff,

v.

COMPLETE ACCESS CONTROL OF  
CENTRAL FLORIDA, INC.; COLLIS  
ROOFING, INC.; COAST 2 COAST  
STUCCO, LLC; GREG BASOM  
FRAMING, INC.; CAPITAL PAINTING  
GROUP, INC.; BUILDERS FIRST  
SOURCE-FLORIDA, LLC; INTEGRITY  
DRYWALL & CONSTRUCTION LLC;  
THOMAS LUMBER COMPANY, INC.;  
DEWIT CUSTOM CONCRETE INC;  
FOCAL POINT LANDSCAPE, INC.; **K&L  
GRADING, INC**; SOLAR-TITE, INC.;  
AMERICAN OUTDOOR LIVING, INC.

nka B&D PROPERTIES SOUTH, INC;  
JUST FLOORS, LLC; BEST WRAP, LLC;  
JOSS CONTRACTING, LLC.

Third-Party Defendants. /

**DEFENDANT, K&L GRADING, INC.'S MOTION FOR  
JUDGMENT ON THE PLEADINGS**

**COMES NOW**, Third-Party Defendant, K L GRADING, INC. aka K&L GRADING, INC. ("K&L"), by and through undersigned counsel, pursuant to Fla. R. Civ. P. 1.140(c), as well as the additional legal authorities cited herein, respectfully files the above-styled Motion for Judgment on the Pleadings ("MJP") and in support thereof states:

**RELIEF REQUESTED**

1. K&L respectfully requests that the Court enter an Order which grants this Motion and enters Judgment on the Pleadings in favor of K&L and against DEFENDANT/THIRD-PARTY PLAINTIFF, A&M HOMES, LLC'S ("A&M") Third Party Complaint ("TPC") for Breach of Contract, Common Law Indemnity, Contractual Indemnity, Negligence and Violation of the Building Code.

**INTRODUCTION**

2. Plaintiff, THE OLIVE HOMEOWNERS' ASSOCIATION, INC., as owner of the real property project called The Olive and located in Orange County, Florida (the "Project") sued defendants, including A&M for damages allegedly caused by various design and construction defects relating the Project. See Ex. 1: Complaint.

3. In turn, Third-Party Plaintiff, A&M HOMES, LLC ("Third-Party Plaintiff" or "A&M"), as contractor of the Project sue the Defendants including K&L, for "pass-through" damages allegedly



caused by construction defects relating to a re-roofing project at the Property. See Exhibit 2: TPC. Pass-through damages are damage that the Plaintiff claims it has suffered, not damage that A&M suffered.

4. Per the TPC, K&L and A&M entered into a written sub-contract agreement wherein K&L was to provide labor, services, materials, and equipment in connection with grading and fill at the Project. See an example used at Ex. 2: Third-Party Complaint at Ex. A thereto.

5. Plaintiffs allege that A&M failed to plan, develop, design, construct, inspect, and/or maintain the Community reasonably and adequately. As a direct result the ASSOCIATION and its members have suffered and continue to suffer damages proximately caused by defects and deficiencies in the construction of the Community, including, but not limited to defects in and to the following (collectively, the "Defects and Deficiencies"):

- a) Non-compliant guardrail post attachments
- b) Non-compliant attachment of roof framing
- c) Non-compliance management of concentrated flows
- d) Missing/blocked weeps at stucco terminations
- e) Cracks/penetrations in stucco
- f) Non-compliance isolation at dissimilar cladding materials
- g) Non-compliance flashing installation
- h) Non-compliant roof slope
- i) Non-compliant parapet cap and metal edge flashing installation
- j) Missing membrane under rooftop deck framing
- k) Non-compliant fluid applied membrane at decks
- l) Faulty site drainage system
- m) Defective building envelope installation
- n) Defective fire wall and framing installation

See ex. 1: Complaint, ¶¶27-29.

6. K&L answered, generally denying the claims alleged against it and asserted numerous affirmative defenses. See Exhibit 3: K&L's Answer and Affirmative Defenses.

7. A&M does not seek to recover damages to any Property A&M owns and therefore, A&M' unequivocally does not seek recovery for first-party damages.

8. In its Third-Party Complaint, A&M brought the following claims against K&L :

Count LVI – Breach of Contract (pg. 74).

Count LVII – Common Law Indemnity

Count LVIII – Contractual Indemnity (Section 9 of agreement – attorney fees).

Count LIX – Building Code Violation (none identified).

Count LX – Negligence (Pg. 79). (plead as a passthrough claim).

See Ex. 2: at pages 74-79.

**I. Count LIX and Count LX are prohibited as a matter of law**

9. As a matter of law, Negligence and Violation of the Building Code are first-party claims and cannot be used as causes of action to pass-through damages that a defendant owes to a Plaintiff but seek recovery thereof from another third-party.

10. Per the Complaint and TPC, the property damages that A&M seeks to recover belong to the Plaintiffs as owners of the Property/Building. Because A&M is not the owner of the property that was allegedly damaged, A&M has failed to state a cause of action for Negligence and for Violation of the

Building because the damages it seeks are not first-party damages, the only damages permitted per those claims.

11. At paragraph 407 and 412 of the TPC, A&M clearly states that it is damaged only by having to defend against ASSOCIATION'S claims and to the extent only seeking to pass-through liability to K&L for alleged damages to Plaintiffs' property. by alleging as follows:

**COUNT LIX – BUILDING CODE VIOLATIONS**

*(Against K&L)*

403. A&M reasserts the allegations contained in Paragraphs 1 through 45 above as if fully set forth herein.

404. This is an action for building code violations seeking damages exceeding \$50,000.00, exclusive of costs, interest, and attorneys' fees.

405. K&L owed A&M a duty to perform its scope of work on the Project in compliance with all applicable building codes.

406. ASSOCIATION has sued A&M for violation of certain building code provisions. A&M disputes ASSOCIATION's allegations of construction defects in the underlying Complaint. However, if such allegations are proven true, K&L has breached its duties and has caused damages by failing to perform its scope of work on the Project in a workmanlike manner, and in compliance with applicable building codes.

407. Accordingly, A&M has been damaged by having to defend against ASSOCIATION's claims and to the extent of any recovery by ASSOCIATION for the alleged construction defects and related code violations.

**WHEREFORE**, A&M HOMES, LLC demands judgment against K&L GRADING, INC. for any damages associated with K&L GRADING, INC.'s building code violations and such other relief this Court deems just and proper.

**COUNT LX – NEGLIGENCE**

*(Against K&L)*

408. A&M reasserts the allegations contained in Paragraphs 1 through 45 above as if fully set forth herein.

409. This is an action for negligence seeking damages exceeding \$50,000.00, exclusive of costs, interest, and attorneys' fees.

410. K&L owed A&M a duty to perform its scope of work on the Project in a workmanlike manner; in accordance with any and all Project drawings and specifications; in accordance with industry standards, applicable building codes, and other governing regulations; and so as not to destroy or otherwise damage other property or components of the Project. K&L knew or should have known that a breach of these duties would damage A&M.

411. A&M disputes ASSOCIATION's allegations of construction defects in the underlying Complaint. However, if such allegations are proven true, K&L has breached these aforementioned duties and caused damages by failing to perform its scope of work on the Project 1) in a workmanlike manner, 2) in accordance with any and all contract drawings and specifications, 3) in compliance with industry standards, applicable building codes, or other governing regulations; and 4) so as not to destroy or otherwise damage other property or components of the Project.

412. Accordingly, A&M has been damaged by having to defend against ASSOCIATION's claims and to the extent of any recovery by ASSOCIATION for the alleged construction defects, and K&L's breach of its duties was the direct and proximate cause of said damages.

**WHEREFORE**, A&M HOMES, LLC demands judgment against K&L GRADING, INC. for any damages associated with K&L GRADING, INC.'s negligence and such other relief this Court deems just and proper.

See Ex. 2: A&M'S TPC

12. As a matter of law, K&L is entitled to an Order which *grants* this Motion and *enters* Judgment on the Pleadings relating to A&M's Third-Party Complaint for Negligence and Violation of the Building Code.

#### **STANDARD OF REVIEW**

13. Rule 1.140(d), Florida Rules of Civil procedure provides that "After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings." *Fla. R. Civ. P. 1.140(d)*.

14. The Court's review is limited to the pleadings themselves and the attachments thereto. *Glen Garron, LLC v. Buchwald*, 210 So. 3d 229, 233 (Fla. 5th DCA 2017); see also, *Siegel v. Whitaker*, 946 So. 2d 1079, 1081 (Fla. 5th DCA 2006) ("A motion for judgment on the pleadings is decided only on the pleadings and attachments thereto and may be granted only if the movant is entitled to judgment as a matter of law").

15. In considering a judgment on the pleadings, a trial court properly considers all documents incorporated in, or attached to, the pleadings. See *Nicholas v. Ross*, 721 So.2d 1241, 1243 (Fla. 4th DCA 1998) and *Veal v. Voyager Prop. & Cas. Inc. Co.*, 51 So. 3d 1246, 1249 (Fla. 2d DCA 2011). With respect to documents not physically attached to a complaint, but specifically referenced therein, the court in *Veal* explained that:

[I]n this case, the complaint refers to the settlement agreement, and in fact, [plaintiff's] standing to bring suit is premised on the terms of that agreement. Accordingly, since the complaint impliedly incorporates the terms of the agreement by reference, the trial court was entitled to review the terms of that agreement [in deciding the motion to dismiss] ...

*Id.* See also FLA. R. CIV. P. 1.130(a) ("All documents upon which action may be brought or defense made ... shall be *incorporated in* or attached to the pleading." *Id.* See also, *Nationstar Mortg., LLC v. Zorie*, 146 So. 3d 1209, 1212 (Fla. 5th DCA 2014).

16. A judgment on the pleadings should be granted only when the party is clearly entitled to a judgment as a matter of law based upon the pleadings. In ruling on a motion for judgment on the pleadings, the Court must accept as true all well-pleaded allegations of the non-moving party and disregard all of the denials in the defendant's answer. *Newsome v. GEO Group, Inc.*, 72 So. 3d 168 (Fla. 4<sup>th</sup> DCA 2011); *Lutz v. Protective Life Ins. Co.*, 951 So. 2d 884 (Fla. 4<sup>th</sup> DCA 2007); *Tres-AAA-Exxon v. City First Mortg., Inc.*, 870 So.2d 905, 907 (Fla. 4<sup>th</sup>

DCA 2004); *Thompson v. Napotnik*, 923 So.2d 537, 539 (Fla. 5th DCA 2006); *Yunkers v. Yunkers*, 515 So.2d 419, 420 (Fla. 3d DCA 1987).

#### MEMORANDUM OF LAW

17. As a matter of law, Florida, like Courts in other jurisdictions recognizes only three (3) causes of action that permit the recovery of third-party/pass-through damages: indemnity, subrogation or contribution. See Fla. R. Civ. P. 1.180; *Rupp v. Philpot*, 619 So. 2d 1047 (Fla. 5<sup>th</sup> DCA 1993).

18. A claim for Negligence is not a claim for third-party damages but is a remedy to recover first-party damages. To state a claim for negligence a plaintiff must plead facts demonstrating that: (1) a legal duty was owed by the defendant to the plaintiff; (2) that the defendant breached that duty of care; (3) that the plaintiff was injured/ damaged as a result of defendant's breach of the duty of care; and (4) that the plaintiff sustained damages as a result of the breach. *Bartsch v. Costello*, 170 Sp. 3d 83 (Fla. 4<sup>th</sup> DCA 2015).

19. On point is *GAF Corporation v. The Zack Company*, 445 So. 2d 350 (Fla. 3d DCA 1984) wherein the Court held that the roofing contractor had no claim for negligence against the manufacturer, even though the contractor had been sued by reason of the defective roofing materials and judgments rendered against him where the roofing contractor suffered no personal injury or property damages, i.e., there were no cognizable tort damages sustained by the roofing contractor required in order to state a claim for negligence.

20. Here, because A&M is not the owner of the property, A&M has not sustained damage to its property. A&M does not allege or seek first-party damages from K&L in its claims for negligence and Violation of the Building Code. As a matter of law, negligence is not a cause of action to pass-through third-party damages to another.

21. K&L is entitled to Judgment on the Pleadings as to A&M'S TPC for Negligence against K&L .

22. Based upon the foregoing, A&M is also not entitled to third-party damages against K&L for violation of Florida Building Codes.

23. The pleadings establish that A&M has not suffered damage to any real property it owns as a result of any alleged violation of the building code.

24. K&L is entitled to Judgment on the Pleadings relating to A&M'S TPC for violation of the Building Code .

WHEREFORE, K&L is entitled an Order which *grants* the Motion for Judgment on the Pleadings and *enters* Judgment on the Pleadings relating to A&M' S TPC for Negligence and Violation of the Building Code. *See* Ex. 2, TPC.

## II. Failure to state a cause of action

25. K&L'S scope of work in this cause was to provide certain services related to the supply and installation of grading and fill at the Project. *See* Ex. 2 at Paragraph 384.

26. In the January 4, 2024, expert report prepared by Charles Taylor Engineering Technical Servies attached to Exhibit 1, Plaintiff's Complaint as Exhibit C, the only reference that incorporates the scope of K&L'S Contract pursuant to *See* Ex. 2 at Paragraph 384 is at page 5 of 30 wherein it comingles job responsibilities as "Drainage" exceeds the scope of K&L' s services.

27. Specifically, the issues complained of :

**1. GRADING AND DRAINAGE**

The Olive Townhomes site is relatively flat and bounded by existing residential structures and city streets. Drainage from the townhomes and garages is directed into landscaped areas and onto concrete and brick pavements through gutters and downspouts from the roofs, scuppers at awnings, and surface drained exterior decks. The downspouts outlet are at the base of the building walls.

See Exhibit 1, at Exhibit C, page 5 of 30.

28. The identified issue is the drainage that is directed into landscaped areas and onto concrete and brick pavements through gutters and downspouts from the roofs, scuppers at awnings, and surface drained exterior decks. See *id.*

29. Accompanying this explanation are three photos which further support Plaintiff's claim that the drainage is the problem, which does not have anything to do with K&L.



October 18, 2023, Disc PRE1, Photograph 158, JF, 6-unit building, downspout outlets at base of wall.



October 18, 2023, Disc PRE1, Photograph 159, JF, 6-unit building, downspout outlets at base of wall.



October 18, 2023, Disc PRE1, Photograph 223, JF, 2-unit building, downspout outlets at base of column.



30. There is nothing in the Pleadings or the Exhibits attached thereto, that complain of “supply and installation of grading and fill at the Project”.

31. The Purpose of a motion for judgment on the pleadings is to test the legal sufficiency of the cause of action and to permit the trial judge to examine the allegations of the pleadings and determine whether there are any issues of fact to be resolved. *Alanco v. Bystrom*, 544 So. 2d 217 (Fla. Dist. Ct. App., 3d Dist. 1989).

32. There are no issues of fact to be resolved based upon the pleadings.

33. Accepting as true the allegations in the pleadings, there is not a cause of action alleged related to the grading, and therefore, against K&L.

34. Since A&M failed to state a claim against K&L, and the grading was inspected and accepted by A&M and then the owner, K&L’S Motion for Judgment on the Pleadings should be granted as a matter of law.

35. WHEREFORE, K&L is entitled an Order which *grants* the Motion for Judgment on the Pleadings and *enters* Judgment on the Pleadings because A&M’S TPC failed to state a cause of action.

### **III. The Accepted Work Doctrine/Slavin Doctrine**

36. Importantly, grading must be completed prior to laying the foundation, constructing the structure, the installation of drainage, and the landscaping.

37. The only way to move beyond the grading (aka the scope of K&L’S contract) and into the building phase and the landscaping phase requires acceptance of the grading work by the contractor and the subsequent professionals working on the Project.

38. The *Slavin* doctrine protects contractors from liability for injuries to third parties by presuming that the owner has made a “reasonably careful inspection” of the contractor’s work prior to

accepting it as completed. *Slavin v. Kay*, 108 So. 2d 462 (Fla. 1959). If the owner accepts the contractor's work as complete and the alleged defect is patent, then the owner "accepts the defects and the negligence that caused them as his own," and the contractor will no longer be liable for the patent defect. *Valiente v. R.J. Behar & Co., Inc.*, 254 So. 3d 544 (Fla. 3d DCA 2018); *Plaza v. Fisher Dev., Inc.*, 971 So. 2d 918, 924 (Fla. 3d DCA 2017).

39. "Under the *Slavin* doctrine, a contractor cannot be liable for injuries sustained by third parties when the injuries occur after the contractor completed its work, the owner of the property accepted the contractor's work, and the defects causing the injury were patent."; *Fla. Dep't of Transp. v. Capeletti Bros.*, 743 So. 2d 150, 152 (Fla. 3d DCA 1999) (stating that "the

liability of a contractor is cut off after the owner has accepted the work performed if the alleged defect is a patent defect which the owner could have discovered and remedied"); *Vancelette v. Boulan South Beach Condominium Association, Inc.*, 229 So. 3d 398 (Fla. 3d DCA 2017).

40. WHEREFORE, K&L is entitled an Order which *grants* the Motion for Judgment on the Pleadings and *enters* Judgment on the Pleadings relating to A&M' S TPC based on the Accepted Work Doctrine.

# **Writing Sample Two**

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2023-CA-007903

MARIA TEREZA FONSECA FRANCO,  
an individual,

Plaintiff,

v.

DORSET AT CENTURY VILLAGE  
CONDOMINIUM ASSOCIATION, INC.,  
a Florida Not for Profit Corporation, and  
CREST MANAGEMENT GROUP, INC.,  
a Florida Profit Corporation.

Defendants.

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**DEFENDANTS' MOTION FOR DISMISSAL OF THIS ACTION WITH PREJUDICE  
OR IN THE ALTERNATIVE, MOTION FOR INTRODUCTION OF SPOILIATION AND  
ADVERSE JURY INSTRUCTION FOR SPOILIATION OF EVIDENCE AND  
SUPPORTING MEMORANDUM OF LAW**

COMES NOW, Defendants, CREST MANAGEMENT GROUP, INC. ("CREST") and DORSET AT CENTURY VILLAGE CONDOMINIUM ASSOCIATION, INC. ("DORSET"), collectively hereinafter ("Defendants") by and through undersigned counsel and pursuant to Florida Rules of Civil Procedure, as well as the additional legal authorities cited herein, and respectfully files this Motion as further styled above, and states:

**INTRODUCTION AND RELIEF REQUESTED**

1. Plaintiff intentionally destroyed all existing evidence in this cause and irreparably harmed and prejudiced Defendants because they are unable to determine or defend against causation, a crucial element, of Plaintiff's alleged slip and fall. Defendants respectfully request that the Court enter an Order which *grants* this Motion for dismissal of this action with prejudice, or in the alternative, finding therein that Defendants are entitled to introduce evidence of spoliation of evidence and an adverse jury instruction as a result of the continued use and discarding of the

shoes that Plaintiff was wearing at the time of her alleged fall, the vacuum cleaner Plaintiff claims she was carrying at the time of her alleged fall, her cellular telephone Plaintiff alleges was broken as a result of her alleged fall, and Plaintiff's watch that she alleges was damaged as a result of her alleged fall. Plaintiff's intentional destruction of and her failure to preserve these items has created prejudice to the Defendants as they are unable to analyze and develop their defense due to Plaintiff's actions. Defendants and/or their experts do not have the opportunity to inspect, analyze, and test or otherwise examine the vacuum cleaner, the shoes, or any of Plaintiff's alleged damaged personal property. Plaintiff should not be able to benefit from her total destruction of every piece of evidence.

### **BACKGROUND**

2. This is a premises liability case that was initiated by Plaintiff by the filing of her Complaint on July 27, 2023. Plaintiff filed an Amended Complaint on October 26, 2023. According to the Plaintiff's Complaint and Amended Complaint, on or about November 22, 2021, Plaintiff descended the exterior stairwell of the premises of Defendant, DORSET, and slipped on the exterior stairwell, fell, and suffered damages as a result of this fall. Plaintiff now sues Defendants for damages. *See* Complaint and Amended Complaint attached hereto as composite **Exhibit 1**.

3. Plaintiff's Complaint and Amended Complaint asserts a claim for Negligence against DORSET (Count I) and a claim for Negligence against CREST (Count II). *See Exhibit 1*.

4. Plaintiff alleges the reason she fell and sustained injuries was because the exterior stairwell at the Subject Premises was "overly slick" and "improperly maintained." Plaintiff alleges that Defendants failed to "install safety strips or grips" on the subject stairwell. *See id at ¶¶11(b)*

and 17(b). Plaintiff further alleges that the concrete exterior steps had a “smooth, non-abrasive finish” which caused her to slip and fall. *See id* at ¶5.

5. Plaintiff alleges in part that the Defendants failed to maintain the premises in a reasonably safe condition. *See id* at ¶¶11(c) and 17(c).

6. Defendants sent Plaintiff a Preservation of Evidence Letter, dated August 1, 2023, specifically requesting that Plaintiff preserve, in relevant part, “mobile phones— the shoes Plaintiff was wearing at the time of the alleged incident, as well as any items she was carrying on or around her person at the time of the alleged incident.” See Preservation of Evidence Letter attached hereto as **Exhibit 2**.

7. Defendants advised Plaintiff that she was to provide sufficient notice prior to changing or modifying any evidence in this cause, and Plaintiff was warned that “failure to do so will result in spoliation of evidence critical to the defense of the claims asserted.” *See id*, at final paragraph.

8. On January 4, 2024, Plaintiff testified in her deposition that at the time of the alleged fall, she was wearing flip-flop shoes that were slip resistant. *See Plaintiff's Deposition*, at 25:5-12 and 15-21, attached hereto as **Exhibit 3**.

9. Plaintiff wore the shoes many times between the time she fell and the time she threw them away. *See id*. at 67:16-25.

10. Plaintiff took photographs of the top and the bottom of her shoes and supplied them to Defendants through the discovery process. *See id*. at 65:15 – 67:25; *see also*, photographs of Plaintiff's shoes attached hereto as **Exhibit 4**.

11. Plaintiff wore the shoes “all the time” in between the time she fell and when she took the photographs of the shoes. *See Exhibit 3*. at 67:16-25.

12. Plaintiff does not recall if she took the photographs of the shoes in December or January. *See id. at 66: 19-25.*

13. Plaintiff does not have any photographs of the shoes as they existed at the time of her alleged fall. *See id. at 65:15 – 67:25.*

14. Plaintiff had a vacuum cleaner in her hand as she traversed the steps. *See id. at 68: 6-12.* She carried the vacuum on her right side as she was going down the stairs. *See id. at 76:1-25.* Plaintiff had the vacuum in her right hand and when she fell, the vacuum went down the stairs. *See id. at 71: 4-8.* It was a light vacuum. *See id. at 76: 10.*

15. Plaintiff continued to use her vacuum cleaner after it fell down the steps, and then threw it away in 2022. *See id. at 64:1-65:25.*

16. Plaintiff had her cell phone in her right pocket when she allegedly fell. She had the phone fixed, but does not know the name of the store where she took it and paid cash. *See id. at 76:20- 77:21.* She had the phone fixed days after she fell. *See id. at 78:5-10.*

17. Plaintiff did not photograph her broken screen on her phone. *See id. at 83: 17-19.*

18. Plaintiff's watch fell down the stairs and she does not know if she threw the broken watch away. *See id. at 83:5-10.*

19. Plaintiff did not photograph her broken watch. *See id. at 83:11-14.*

20. At the time the Plaintiff filed her Complaint on July 27, 2023, and her Amended Complaint on October 26, 2023, the personal property, including her shoes, watch, and vacuum cleaner, had already been discarded.

21. Plaintiff knew it was raining but had stopped raining by the time she left. *See id. at 68:10-11.*

22. Plaintiff's footwear could have been tested using the ASTM standard for slip resistance in wet and dry conditions had they been produced.

23. Without the physical evidence, Defendants are irreparably prejudiced and left with no way to evaluate or challenge the Plaintiff's claims that the Defendants failure to maintain the stairs caused or contributed to Plaintiff's slip, which she claims was the cause of her damages. *See, e.g., Exhibit 1.*

24. Defendants answered the Plaintiff's Complaint and Amended Complaint, generally denying all claims and asserted numerous affirmative defenses, including their first affirmative defense wherein they assert that Plaintiff's own carelessness and/or negligence was the sole or contributing cause of the alleged slip, that Plaintiff was wearing improper footwear with insufficient and/or no thread, and carrying items in her hands while walking down the stairs. *See Defendants' Answer and Affirmative Defenses, attached hereto as Composite Exhibit 5 at ¶ 21.*

25. In their eleventh affirmative defenses, DEFENDANTS assert that to the extent Plaintiff spoiled, altered, or adulterated evidence, all claims should be dismissed or limited as a result of Plaintiff's Failure to preserve critical evidence they have substantially and severely prejudiced Defendant. *See Composite Exhibit 5, at ¶ 31.*

### MEMORANDUM OF LAW

26. Courts have employed various sanctions in these matters including dismissal of a claim, the striking of pleadings, the entry of a default on the issue of liability, the exclusion of an expert witness, the creation of an evidentiary presumption, and the exclusion of expert testimony. *See DePuy, Inc. v. Eckes*, 427 So. 2d 306 (Fla. 3d DCA 1983).

27. The destruction of evidence does not have to be in bad faith if it prevents the grieved party their ability to proceed. The absence of bad faith does not prevent the court imposing sanctions that include striking a pleading. *Accord Rockwell International Corp. v. Menzies*, 561 So. 2d 677 (Fla. 3d D.C.A. 1990). Plaintiff altered the condition of the shoes – a critical piece of evidence to the defense– by wearing them in between the time she fell and the time she



photographed them. Egregiously, and despite knowing that the shoes were of significant evidentiary value (evidenced by the fact that Plaintiff photographed the shoes), Plaintiff deliberately discarded the shoes. In doing so, she permanently destroyed crucial evidence and denied Defendants the ability to examine, analyze, and test the slip-resistant tread of the shoes to determine the extent to which they caused Plaintiff's fall, or to what extent, if any, they were a contributing factor to Plaintiff's alleged slip and fall. Plaintiff's intentional actions have denied Defendants any meaningful chance of developing their defenses raised in **Exhibit 5 at ¶¶ 21 and 31**. Due to Plaintiff's intentional destruction of evidence, and the resulting prejudice to Defendants, the only equitable remedy available to Defendants is a dismissal of the Action with prejudice.

28. In the alternative, Defendants seek an adverse inference jury instruction as to the adverse inference to be drawn from Plaintiff's spoliation of evidence. *See Martino v. Wal-Mart Stores, Inc.* 835 So. 2d 1251, 1257 (Fla. 4th DCA 2003) (holding that the adverse inference concept is not based on a strict legal duty to preserve evidence; rather, an adverse inference may arise in any situation where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence); *American Hospitality Mgmt. Co. of Minnesota v. Hettiger*, 904 So. 2d 547 (Fla. 4th DCA 2005).

29. The case most on point to the matter at hand is *Golden Yachts, Inc. v. Hall*, 920 So. 2d 777 (Fla. 4th DCA 2006). Therein, Mr. Hall sued Golden Yachts seeking damages for personal injuries he sustained while aboard a boat at Golden Yachts. *Id.* at 778. At the time, the boat was supported by a boat cradle, consisting of two "H" frames. *Id.* About 10 days after the incident, plaintiff's counsel wrote Golden Yachts requesting that all material from the cradle be preserved and offered to store it. *Id.* About a year after the lawsuit was filed and Golden Yachts had cross-claimed the cradle's manufacturer, the experts for the plaintiff and the manufacturer discovered

that the H frames preserved by Golden Yachts for inspection were not the ones involved in Mr. Hall's incident. *Id.* at 779.

30. Plaintiffs in that case amended, bringing a claim for spoliation of evidence, which was denied, since Florida, under *Martino*, does not recognize a direct cause of action for spoliation against a party in a lawsuit. *Id.* at 779-80. The manufacturer, however, filed a Motion for Sanctions and for Negative Inferences. *Id.* at 780. The Trial Court denied the motion for sanctions but granted the motion for a negative inference. *Id.* The jury found Golden Yachts 100% liable. *Id.* On Appeal, the Court affirmed, finding that Golden Yachts had a duty to preserve the evidence because plaintiff's counsel made a timely request for it to do so, (although for an adverse inference, a duty is not required). *Id.* The Court further cited *Martino* agreeing that it was not error for the trial court in *Golden Yachts* to allow both evidence of the spoliation to be submitted to the Jury and to give an adverse inference instruction as to the party who spoiled the evidence, as these remedies may be cumulative. *Id.*

31. Prior to exercising any leveling mechanism due to spoliation of evidence, the Court must answer three threshold questions: (1) whether the evidence existed; (2) whether the spoliator had a duty to preserve the evidence<sup>1</sup>; and (3) whether the evidence was critical to an opposing party's ability to prove its prima facie case or defense. *Golden Yachts, Inc.*, 920 at 780; *Reed v.*

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<sup>1</sup> Florida Courts have consistently held that a non-spoliating party need not demonstrate that the spoliating party owed a strict legal duty to preserve the self-damaging evidence in order for a Court to impose an adverse inference jury instruction upon the spoliating party. *The League of Women Voters of Florida v. Detzner*, 172 So. 3d (Fla. 2015) (holding that "Florida courts have, in any event, found a duty to preserve evidence in circumstances when a party should reasonably foresee litigation"); *Martino v. Wal-Mart*, 835 So. 2d 1251 (Fla. 4th DCA 2002) (finding that an adverse inference may arise in any situation where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence); *American Hospitality Mgmt. Co. of Minnesota v. Hettiger*, 904 So. 2d 547 (Fla. 4th DCA 2005) (holding that a Defendant could be charged with a duty to preserve evidence where it could reasonably have foreseen the claim).

*Alpha Prof. Tools*, 975 So. 2d 1202 (Fla. 5th DCA 2008) (holding that “[t]he goal in spoliation cases is to assure that the non-spoliator does not bear an unfair burden”).

32. These requirements are clearly met in the instant case. As to the first requirement, the evidence in this case is: Plaintiff’s shoes, watch, cell phone, and vacuum cleaner were the physical and personal property of Plaintiff, and which were on her person or being carried in her hands at the time of the alleged slip and fall as laid out and cited in paragraphs 2 through 25 in the Background section above.

33. As to the second requirement, as noted in footnote #1, under the circumstances, Plaintiff had a legal duty to preserve the evidence because litigation was reasonably foreseeable. Shortly after the alleged slip and fall, Plaintiff engaged an attorney, initiated litigation, and photographed the shoes at issue. *See Exhibit 1, 2, 3, and 4.*

34. As to the third requirement of the standard set out in *Golden Yachts*, Defendants’ ability to have the evidence examined was critical to their ability to defend against Plaintiff’s claims and has been permanently denied due by Plaintiff’s intentional actions. Whether Plaintiff’s shoes caused or contributed to her fall was a crucial factor to the Defendants’ defense. By intentionally altering, removing, and destroying the evidence, Plaintiff has thwarted Defendants’ ability to examine, inspect, test, or preserve critical evidence for presentation at trial.

35. In *Torres v. Matsushita Elec. Corp*, 762 So.2d 1014 (5<sup>th</sup> DCA 2000), Plaintiff sued the alleged manufacturer of a vacuum that caught fire and injured her, claiming a manufacturing defect and negligent design. The Plaintiff photographed the vacuum cleaner and provided the vacuum cleaner to an expert for inspection. *See id.* Plaintiff’s attorney threw away the vacuum cleaner before the defense had an opportunity to inspect it. *See id.* The defense argued that due to the spoliation by Plaintiff’s counsel, they were denied an opportunity to examine and test the vacuum cleaner at issue and such inspection would constitute a “vital aspect” of their defense. *See*

*id.* The Court dismissed the Plaintiff's claim with prejudice, stating: "The inadvertent or accidental loss or destruction of the vacuum cleaner, while in custody of Plaintiff's attorney...is a critical issue to the Defendant, as it precludes any form of examination by the Defendant or the Defendant's expert. The Defendant is precluded from testing whether or not it is Defendant's product. Moreover, the Defendant is precluded from testing whether or not the product was modified, and the Defendant is precluded from testing whether or not the product has been broken or misused. **The Defendant is further precluded from testing the causation** of the fire or an examination of the alleged defective product. "See *id.* at 1016, (*emphasis added.*)

36. There are other possible explanations of why the Plaintiff slipped and fell not chargeable to the Defendants. Due to Plaintiff's spoliation, Defendants are precluded from any form of examination by the Defendants or the Defendants' expert.

37. Just as in *Torres*, supra, the Defendants here are precluded from testing the causation of the slip and fall due to Plaintiff's destruction of property. Unlike in *Torres*, the current case is **even more egregious** as it was the conduct of the **Plaintiff herself**, not her counsel, who's intentional act prevented Defendants from developing and testing any component of their defense. Plaintiff not only destroyed the shoes that she was wearing at the time of the alleged slip and fall, but she also only photographed them **after altering** them, and provided no evidence having to do with the age, condition, and weight of the vacuum cleaner she was caring with one hand to her side, while wearing flip flops, and traversing concrete stairs after a rainstorm. Causation is a "vital aspect" of the defense and the Defendants are precluded from testing the causation of Plaintiff's slip and fall.

### **CONCLUSION**

38. Plaintiff has intentionally altered, removed, and destroyed crucial evidence prior to Defendants and their experts being afforded the opportunity to inspect, examine, test, or preserve

the materials. Plaintiff's alterations, removal, and destruction of evidence occurred at a point when litigation was being contemplated and/or after it had been initiated. As a result, Defendants' ability to fully and fairly defend against Plaintiff's claims has been completely prevented and Defendants have been irreparably prejudiced. Plaintiff should not be rewarded for her intentional destruction of crucial evidence. The claims against Defendants should be dismissed as Plaintiff's intentional actions have ultimately denied Defendants due process. In the alternative, Defendants should be permitted to present evidence of Plaintiff's intentional destruction and spoliation of evidence and the jury should be instructed as to the permissibly adverse inference resulting from such spoliation of evidence.

**WHEREFORE**, Defendants, CREST MANAGEMENT GROUP, INC. and DORSET AT CENTURY VILLAGE CONDOMINIUM ASSOCIATION, INC., respectfully move this Honorable Court for an Order which *grants* the Motion dismissing with prejudice Plaintiff's Amended Complaint. In the alternative, Defendants request a finding therein that Defendants are entitled to introduce evidence of Plaintiff's destruction of evidence and to an adverse inference jury instruction regarding Plaintiff's claims alleged against Defendants, together with any further relief deemed just and proper.