

**APPLICATION FOR NOMINATION TO THE
FIFTH DISTRICT COURT OF APPEAL**

(Redacted)

Christopher Kelly

May 19, 2026

**APPLICATION FOR NOMINATION TO THE
FIFTH DISTRICT COURT OF APPEAL**

Christopher Kelly

May 19, 2026



**APPLICATION FOR NOMINATION TO THE
FIFTH DISTRICT COURT OF APPEAL**

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: Christopher Kelly

Social Security No.: [REDACTED]

Florida Bar No.: 0061697

Date Admitted to Practice in Florida: 9/29/1995

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

**State of Florida
Circuit Judge, Seventh Judicial Circuit
101 N. Alabama Ave.
DeLand, FL 32724
386-822-5016**

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.

Residential Address:

[REDACTED]
[REDACTED]

**Time at residence: 4 years
Florida resident: 57 years**

Cell Phone:

[REDACTED]

Preferred Email:

[REDACTED]

3. State your birthdate and place of birth.

**10/21/1968
Daytona Beach, FL**

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

Yes

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

The Florida Bar

Member: September 29, 1995 – Present

United State District Court, Middle District of Florida

Member: April 2005 – 2011

Did not renew membership after 2011

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

No

EDUCATION:

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

University of Florida College of Law, 1992 – 1995

Juris Doctor, May 1995

GPA 2.80 / Class Rank 140/198

Florida State University, 1987 & 1988–1990

Bachelor of Science, August 1990

GPA 3.00

Daytona Beach Community College, 1983 & 1986 -1988

Associate of Arts, December 1988

United States Military Academy

Congressional Nomination, 1986

Admitted, July 1986

Honorable Discharge received before academic classes commenced due to complications from Asthma.

Fr. Lopez Catholic High School, 1982 – 1986

High School Diploma

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.

University of Florida, College of Law

Honor Committee

Advisor 1994-1995

University Elections Commission

Commissioner 1995

John Marshall Bar Association

Member 1992-1995

Class Representative 1992-1994

President 1995

Incoming Student Orientation and Advisor Program

Program Coordinator 1993-1995

Council of Ten

Torts Teaching Fellow

Florida Blue Key

Member, Installed 1995

Florida State University

Sigma Phi Epsilon Fraternity

Pledge, 1989

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.

Circuit Judge, Seventh Judicial Circuit, January 2022 – present

101 North Alabama Avenue

DeLand, FL 32724

Volusia County Court Judge, January 2013 – January 2022

101 North Alabama Avenue
DeLand, FL 32724

Office of the State Attorney, Seventh Judicial Circuit

Managing Assistant State Attorney, January 2011 – December 2012
Public Information Officer, January 2009 – December 2011
251 North Ridgewood Avenue
Daytona Beach, FL 32114

Crotty Bartlett & Kelly, P.A. (a/k/a Crotty & Bartlett, P.A.)

Partner/Associate, June 2003 – January 2009
(Last operating address – firm dissolved)
1540 Cornerstone Boulevard
Suite 230
Daytona Beach, FL 32114

Office of the State Attorney, Seventh Judicial Circuit

Assistant State Attorney, August 2000 – June 2003
251 North Ridgewood Avenue
Daytona Beach, FL 32114

Florida League of Cities, Inc.

Assistant General Counsel, June 1999 – August 2000
301 South Bronough Street
Suite 300
Tallahassee, FL 32301

Office of the State Attorney, Seventh Judicial Circuit

Assistant State Attorney, August 1995 – June 1999
251 North Ridgewood Avenue
Daytona Beach, FL 32114

County of Volusia, County Attorney's Office

Summer Intern, May – August 1994
123 West Indiana Avenue
DeLand, FL 32720

Law Offices of Frederick C. Morello, P.A.

Summer Intern, June – August 1993

111 North Frederick Avenue

2nd Floor

Daytona Beach, FL 32114

Office of the State Attorney, Seventh Judicial Circuit

Summer Intern, May – August 1993

251 North Ridgewood Avenue

Daytona Beach, FL 32114

Treasure Island Inn (No longer in business)

Event Manager/Front Desk Clerk, 1990-1992 & 1993

2025 South Atlantic Avenue

Daytona Beach Shores, FL 32118

Jon Hall Chevrolet

Sales Associate, 1990

551 North Nova Road

Daytona Beach, FL 32114

Sales Manager at time of employment:

Freda Pennington: 386-527-1229

Florida Department of Commerce, Bureau of Visitor Services

(Department dissolved – duties of Bureau subsumed by “Visit Florida”)

Information Specialist (OPS), 1988-1990

Tallahassee, FL 32399

Duties included:

- Answering a visitor’s information phone line.
- Providing information regarding destinations across the State of Florida.
- Facilitating the distribution of the official State of Florida Visitor’s Guide and brochures as requested for specific locations or activities in Florida.
- Staffing the Official State of Florida Welcome Center located with the State Capitol.
- Conducting visitor tours of the Florida State Capitol.

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.

Circuit Judge, Seventh Judicial Circuit

January 2022 – present

I am assigned to a family law division. As a family law judge, I routinely handle matters involving dissolution of marriage, adoptions, termination of parental rights, injunctions, paternity and other matters related to domestic relations.

**Volusia County Court Judge
January 2013- January 2022**

As a Volusia County Court Judge I spent eight years of my tenure primarily assigned to a civil division. I presided over a wide variety of matters including, small claims disputes, traffic and ordinance violations, landlord-tenant cases, breach of contract actions, foreclosures, construction lien litigation, as well as almost any other type of civil litigation where the amount in controversy did not exceed \$30,000 (\$15,000 prior to January 1, 2020).

In January of 2021 I rotated to a criminal division where I presided over misdemeanor cases including domestic batteries and assaults, stalking, thefts, trespassing and criminal traffic matters including driving under the influence. I have handled motions to suppress, motions to dismiss, bond hearings, and other similar matters, all while managing a sizeable caseload of several hundred cases.

From January 2015 through the latter part of 2017, I was assigned a circuit court docket handling family law cases in the Southern and Western Divisions of Volusia County pertaining to repeat, dating, and sexual violence and stalking injunctions.

Additionally, the ten County Court Judges in Volusia were primarily responsible for conducting weekday first appearances and extradition hearings, rotating the duty on a weekly basis.

**Office of the State Attorney, Seventh Judicial Circuit
Managing Assistant State Attorney
January 2011 – December 2012**

As Managing Attorney, I supervised 23 felony attorneys. The attorneys were assigned to several divisions within the office, including felony intake, felony trial, drug unit, sex crimes and special prosecutions. I also supervised 30 support staff which included secretaries, victim advocates and witness managers. Most of my day as a Managing Attorney was spent conferring with prosecutors on cases to assist them in case evaluation and trial strategy.

**Office of the State Attorney, Seventh Judicial Circuit
Public Information Officer
January 2009 – December 2011**

As Public Information Officer (“PIO”) my primary function was to collect, verify and disseminate information to the public through effective communication with the media on a circuit-wide basis. As PIO, I was directly involved in the discussion and evaluation of all major cases across the circuit as well as the development of office policy. As a member of the Office’s Executive Staff, I met with the State Attorney, Chief Assistant, and Chief Investigator on a regular basis.

**Crotty, Bartlett & Kelly, P.A. n/k/a Crotty & Bartlett, P.A.
Partner/Associate
June 2003 - January 2009**

In June of 2003 I was hired by Crotty & Bartlett primarily as a litigation associate. I became a partner in the firm in June of 2005. As a partner, I had the opportunity to gain an understanding and appreciation of the issues faced by solo and small-firm practitioners related to law office management.

At the onset of my employment with the firm, I assisted Laurence H. Bartlett with complex litigation matters, including challenging a trust agreement executed under undue influence and successfully litigating the enforcement of a restrictive covenant in an employment agreement.

In 2005, I expanded my practice to include estate planning with a focus on elder law. I also handled a variety of other matters including probate, business transactions, real estate, landlord-tenant, employment agreements, condominium & homeowner associations, and a handful of criminal defense cases.

The clients I regularly performed services for included car dealerships, banks, condominium and homeowner associations, and individuals requiring assistance with estate planning or other general civil matters.

**Office of the State Attorney, Seventh Judicial Circuit
Assistant State Attorney
September 2000 - May 2003; August 1995 - June 1999**

As an Assistant State Attorney, I had the opportunity to spend time handling a variety of cases in almost every division of the State Attorney’s Office. I started my career in the Juvenile Division in 1995. In 1996, I was transferred to the Domestic Violence Division and assigned to the specialized Domestic Violence Court. In the latter part of 1996, I was transferred to a

misdemeanor docket until I was promoted to a Felony Trial position in 1997. In 1998, I was assigned to the felony intake division, where I also served from 2000-2002. As a felony intake attorney, I conscientiously tried to ensure I had all necessary information available to me before deciding whether to file formal charges.

In 2003, I was promoted to supervisor of the Drug Unit, where I supervised two assistant state attorneys and was personally responsible for all facets of prosecuting drug trafficking cases. In all these positions, except for felony intake where my court appearances were more limited, I appeared in court on a near-daily basis handling arraignment hearings, bond hearings, other miscellaneous motion hearings, and jury and non-jury trials.

Florida League of Cities, Inc.
Assistant General Counsel
June 1999 - August 2000

As Assistant General Counsel, I regularly consulted with city attorneys from across the State of Florida on legal issues. In keeping informed of the challenges facing our members and representing their interests, I routinely traveled across the state to Ft. Lauderdale, Naples, Orlando, Jacksonville, Pensacola, and at times, even back home to Daytona Beach. While in Tallahassee, I put my prosecutorial experience to good use as an advisor to the League's Special Investigation Unit ("SIU"). The SIU investigated suspected insurance fraud on behalf of the League's insurance trust and was called upon to evaluate issues related to claims presented to the insurance trust. I also routinely reviewed drafts of contracts with hotels and entertainers the League was considering for major conferences.

Another responsibility involved moderating a legislative policy committee comprised of elected municipal officials, managers, and administrators. I was assigned to the Urban Administration Committee, which encompassed fire safety codes, building and construction codes, code enforcement, elections, eminent domain, homeland security, personnel and collective bargaining issues, public meetings, public property management, public safety, sunshine law, utilities, and telecommunication.

The Committee developed a Legislative Action Agenda setting forth the priorities of the League for each legislative session. I was then responsible for representing the interests of municipal governments by meeting with members of the Florida Legislature and administrative agencies and testifying before legislative committees on issues important to Florida's cities. Similarly, I was responsible for monitoring the legislative process and analyzing the impact of proposed state legislation on municipalities.

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>5</u> %
Federal Trial	<u>0</u> %	Criminal	<u>10</u> %
Federal Other	<u>0</u> %	Family	<u>85</u> %
State Appellate	<u>0</u> %	Probate	<u>0</u> %
State Trial	<u>100</u> %	Other	<u>0</u> %
State Administrative	<u>0</u> %		
State Other	<u>0</u> %		
 TOTAL	 <u>100</u> %	 TOTAL	 <u>100</u> %

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

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

Jury?	<u>20 (estimated)</u>	Non-jury?	<u>1050 (estimated)</u>
Arbitration?	<u>0</u>	Administrative Bodies?	<u>0</u>
Appellate?	<u>1</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.

Not Applicable

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.*

As a sitting judge for five years or more, I will defer to my answers in latter questions related to judicial experience

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.*

As a sitting judge for five years or more, I will defer to my answers in latter questions related to judicial experience

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

Over the last five years, I have appeared in court on almost a daily basis.

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.

As a sitting judge for five years or more, I selected the option to defer answering questions 16 & 17 in deference to latter questions specifically related to judicial experience.

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.

- i. ***Dolores J. Roach v. Virginia R. Urban and Grizzley's Bar & Grill, Inc.***
Volusia Clerk No.: 2006 32210 CICI
Circuit Court in and for Volusia County, Florida
Judge: Richard S. Graham (Case settled without court appearance)
Complaint filed: December 14, 2006
Opposing Counsel: Walter J. Snell (Limited Appearance)
Snell & Snell, P.A.
snellandsnell@mindspring.com
386-255-5334

This is a case that I litigated to settlement and the entry of a stipulated Final Judgment for monetary damages of \$192,191.88 on behalf of my client Dolores J. Roach.

In July 2006, my client, Dolores J. Roach was 85 years of age when she was persuaded by an employee of the assisted living facility, in which she and her recently deceased husband resided, to lend \$200,000.00 to the employee for the purchase of a bar and grill.

According to a written agreement drafted after the transfer of funds, and soon after the police began to investigate, the "loan" was to become a gift to the employee upon Mrs. Roach's death. Although Mrs. Roach was diagnosed with dementia and was also suffering from chronic depression, exacerbated by the death of her husband just prior to the transfer of funds, a determination was made by law enforcement that Mrs. Roach was not a victim of exploitation of the elderly because medically she had the capacity to consent, and the transfer was not obtained through deception or intimidation.

This case was significant for me from two perspectives. First, while Mrs. Roach technically had the capacity to consent, I believe her decision to lend the \$200,000.00 was the product of undue influence. In consultation with, and at the request of Mrs. Roach, I pursued a course of action to attempt to get the Florida Legislature to amend Florida Statutes to include "undue influence" in the definition of exploitation of the elderly in limited circumstances.

Second, my involvement with Mrs. Roach served as a guide for me in my elder law practice. I took extra measures with my clients to make sure that the decisions they made regarding the disposition of their property or the appointment of individuals to make decisions on their behalf, was the independent decision of the client, and not being unduly influenced by someone that stood to benefit.

In furtherance of this, I endeavored to speak to seniors' groups on various topics with an emphasis on taking the necessary steps to limit the opportunity for people to take advantage of them.

ii. *State of Florida v. Gary M. Richardson*
Circuit Court in and for Volusia County Florida

Judge: Julianne Piggotte / Richard B. Orfinger

Volusia Clerk No.: 1999 030703 CFAES

Information filed: March 5, 1999

Opposing Counsel: Not Applicable based on my participation in case.

I was involved in the case as the intake attorney and was responsible for directing the initial State Attorney Investigation and the filing of formal charges for DUI Manslaughter against Gary M. Richardson. Richardson was ultimately convicted by a jury, and sentenced to the maximum, 15 years in state prison.

The decedent had recently turned 16 years of age and was killed instantly when the vehicle she was driving was struck by Richardson. I still vividly recall personally meeting with the decedent's parents. Although I knew there was little that the prosecution of Richardson could do to bring comfort to them, it left an indelible impression on me of the importance of making sure that they were fully informed about the process.

This case was significant in my formation as a young prosecutor because it became the foundation of the way I would deal with victims and next of kin who find themselves suddenly immersed in the criminal justice system. I continued this practice of personally meeting with victims of violent crimes and the next of kin in cases involving death throughout my career.

iii. *State of Florida v. Paul Adams*
County Court in and for Volusia County Florida

Judge: Peter F. Marshall (Retired)

Volusia Clerk No.: 1996-047783 MMAES

Information filed: September 30, 1996

Opposing Counsel: Roy Edward Leinster (Deceased)

In August 1996, Paul Adams was charged with possession of cannabis and possession of drug paraphernalia, both first degree misdemeanors. In November 1996, Mr. Adams' attorney filed a motion to declare section 893.13, Florida Statutes unconstitutional as applied to the terminally ill.

The basis for the Motion was that cannabis was medically necessary for therapeutic purposes for Mr. Adams who was diagnosed with a terminal illness, and therefore the law prohibiting its possession was unconstitutional as applied to him.

A hearing on the Motion would have required a significant amount of time and resources, including the testimony of medical professionals and otherwise. Once the State prevailed on the Motion, it was clear that Mr. Adams' intent was to appeal the ruling as far as he could take it, again consuming a significant amount of the State's resources in an attempt to change the law utilizing the court system. In consultation with others, a decision was made to dismiss the charges against Mr. Adams.

This was significant at this formative point in my career as an attorney in learning to evaluate cases to include the overall impact to the system and the litigants involved.

- iv. State of Florida v. Willie Butler*
County Court in and for Volusia County Florida
Volusia Clerk No.: 1995 056519 MMAES
Judge: Thomas E. Bevis (Deceased)
Opposing Counsel: Kevin Bledsoe
County of Volusia, Legal Department
kbledsoe@volusia.org
386-785-5610

In 1996 I was assigned to the State Attorney's Office Domestic Violence Unit. During this time there was a county court division assigned exclusively to handle all misdemeanor domestic violence cases in Volusia County. When I was assigned to the Domestic Violence Unit, as often happened, I was handed a couple of boxes of cases that were in various stages of prosecution.

One of the boxes I was handed included a case that was set ready for trial, and this was to be my first jury trial. I had little time to familiarize myself with the case. I did all the things you were trained to do, verified the availability of witnesses, met with the victim and with the arresting officer in preparation for trial.

During trial, the defense attorney began to elicit testimony from the victim concerning an incident in which she was alleged to have threatened another man with a machete. I objected to the introduction of this testimony concerning the prior incident. The court admitted the testimony over my objection on the basis that this Defendant was claiming self-defense, alleging the victim threatened him with a meat cleaver and his knowledge of the prior incident was

therefore relevant to his claim of self-defense. There were also several other things the victim testified to that were inconsistent with her prior statements and the discussions we had during trial preparation. The jury came back not guilty.

I learned many valuable lessons from this, my first jury trial, and from the time I spent in the domestic violence unit. The first lesson was that you can never be too prepared and just when you think you are fully prepared, prepare for the unexpected.

The nature of trial work and dealing with victims and witnesses always adds an element of unpredictability. The best way to prepare for unpredictability is to be fundamentally sound in the nuts and bolts of the law, statutes, rules of procedure, evidence code and current case law. If you are fundamentally sound, you can handle pretty much anything that is thrown your way.

The time spent in the domestic violence unit also gave me a first-hand education on the dynamics involved in the cycle of violence and an understanding that a victim's tendency to recant or otherwise minimize was not a reason to be frustrated, but a challenge to become a better prosecutor and more effective interviewer by doing more listening than questioning.

- v. ***Case Style – Unable to recall***
Circuit Court in and for Volusia County Florida
Judge: John W. Watson (Retired / Senior Judge)
Time frame: 1995-1996
Opposing Counsel: Unable to recall

Although I don't recall the case style specifically, I still have a very vivid recollection of the words Judge Watson spoke and recently had the opportunity to tell him about the impact of those words. The words were significant to me in guiding my practice from there forward.

As a very new prosecutor, I was assigned to the juvenile division and at status conference announced one of my cases ready for trial. The juvenile was charged with criminal mischief as a first-degree misdemeanor. In making final preparations for trial, talking to witnesses, and preparing the evidence for submission; it became clear to me that I would only be able to prove criminal mischief as a second-degree misdemeanor.

On the morning of the trial, I was able to work out a negotiated plea with defense counsel. Judge Watson had some questions for me that he wanted answers to before he would accept the negotiated plea, particularly a plea to an amended charge on the morning of trial.

The inquiry revolved around why I was just finding out I could not prove the first-degree misdemeanor. At the time, I wasn't fully grasping the importance of the question, because to me the difference between a first-degree misdemeanor and a second-degree misdemeanor in juvenile court didn't seem significant. I explained that with all the cases I had, I only recently had the

opportunity to speak with the victim (cases were often filed by other prosecutors) and it was the first time I became aware of the proof issue.

The lessons I learned that morning continue to guide me to this day. You don't walk into a courtroom and make representations to the court, or as the court, without being fully prepared and having a full understanding of every aspect of your case.

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.

I was the drafter of the three writing samples attached.

- i. *Central Florida Medical & Chiropractic Center v. Progressive American Insurance Company*
“Order Granting Defendant’s Second Amended Motion to Enforce Defendant’s Proposal/Offer for Settlement and/or Motion to Tax Attorney’s Fees and Cost”
Volusia Clerk No. 2014 20479 CONS
Attached as Exhibit 1
- ii. *The Kidwell Group LLC., d/b/a/ Air Quality Assessors of Florida, as assignee of benefits from Kent Lang v. State Farm Florida Insurance Company*
“Final Judgment for Attorney Fees and Costs”
Volusia Clerk No.: 2015 12056 CODL
Attached as Exhibit 2

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.

Current position: Circuit Judge, Seventh Judicial Circuit
Appointed: December 22, 2021
Elected (without opposition): November 5, 2024
Dates of Service: January 3, 2022 - present

Former position: Volusia County Court Judge, Seventh Judicial Circuit
Elected: November 6, 2012
Reelected (without opposition) August 17, 2018
Dates of Service: January 8, 2013 – January 2, 2022

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.

In January 2023, I submitted an application to the Judicial Nominating Commission for the Fifth District Court of Appeal. My name was certified to the Governor's Office for consideration.

In September 2022, I submitted an application to the Judicial Nominating Commission for the Fifth District Court of Appeal. My name was certified to the Governor's Office for consideration.

In October 2021, I submitted an application to the Judicial Nominating Commission for the Seventh Judicial Circuit for a vacancy on the Circuit Court. My name was certified to the Governor's Office for consideration.

In September 2011, I submitted an application to the Judicial Nominating Commission for the Seventh Judicial Circuit for a vacancy on the Volusia County Court. My name was not certified to the Governor's Office for 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.

Not Applicable

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;

a. Philip Bonamo
(386) 299-8259
pbonamo@ricelawflorida.com
222 Seabreeze Blvd
Daytona Beach, FL 32118-4026

b. Michael Ciocchetti
(386) 334-0709
mike@floridainlaw.com
125 North Ridgewood Avenue
Daytona Beach, FL 32114

c. Theodore Doran
(386) 679-3318
tdoran@doranlaw.com
1020 W. International Speedway Blvd.
Suite 100
Daytona Beach, FL 32114

d. Sara Glover
(404) 933-0408
sara.glover@cobbcole.com
1 Daytona Blvd Ste 600
Daytona Beach, FL 3211

e. Michael Huddleston
(386) 337-4675
mchuddleston@hotmail.com
817 W New York Ave
Deland, FL 32720-5226

f. Kimberly Simoes
(407) 720-6440
kimberly@kimberlysimoespa.com
P.O. Box 621867
Orlando, FL 32862

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

a. Domestic Relations

- i. Adoption – over 150
- ii. Dissolution of Marriage – over 200
- iii. Modification of Final Judgment – over 300
- iv. Relocations – over 50
- v. Paternity – over 500
- vi. Other Domestic Relations – over 500

b. County Civil

- i. Evictions – over 5,000
- ii. Foreclosures – over 250
- iii. Insurance/Assignment of Benefits/PIP – over 10,000
- iv. Small Claims – over 5,000
- v. Traffic – over 2,000
- vi. Other County Civil – over 3,000

- c. Injunctions
 - i. Dating Violence- over 150
 - ii. Domestic Violence – over 1000
 - iii. Repeat Violence – over 500
 - iv. Sexual Violence – over 100
 - v. Stalking – over 600

- d. County Criminal
 - i. Criminal Traffic – over 1000
 - ii. Domestic Violence – over 300
 - iii. Other Misdemeanor – over 600

- e. First Appearance
 - i. Probable Cause / Bond Determinations – over 10,000
 - ii. Extradition Hearings/Waiver Hearings – over 100

- (iii) the citations of any published opinions; and
 - a. *Midland Funding LLC, v. James Seguin*, 27 Fla. L. Weekly Supp. 889 (Fla. Volusia Cty. Ct. 2019)
 - b. *Omnicare Medical Center, Inc., a/a/o Allen Mckee v. Windhaven Insurance Company*, 26 Fla. L. Weekly Supp. 604a (Fla. Volusia Cty. Ct. 2018)
 - c. *Mauricio Chiropractic Clinic, P.A., Etc., v. Windhaven Insurance Company*, 26 Fla. L. Weekly Supp. 118b (Fla. Volusia Cty. Ct. 2017)
 - d. *Robert P. Robinson v. United Services Automobile Association*, 24 Fla. L. Weekly Supp. 828b (Fla. Volusia Cty. Ct. 2016)
 - e. *New Smyrna Imaging, LLC., as assignee of Jeff Olkowski v. State Farm Mutual Automobile Insurance Company*, 23 Fla. L. Weekly Supp. 585a (Fla. Volusia Cty. Ct. 2015)
 - f. *Emergency Medical Associates of Tampa Bay, L.L.C., as assignee of Shawn McNally-Plast v. Progressive Select Insurance Company*, 23 Fla. L. Weekly Supp. 58b (Fla. Volusia Cty. Ct. 2014)
 - g. *Graham’s Carpet Cleaning and Restoration, Inc. a/a/o Ignacio Masci v. Tower Hill Prime Insurance Company* 22 Fla. L. Weekly Supp. 829a (Fla. Volusia Cty. Ct. 2014)

- h. *Michael Harner v. Rhonda Carter* 22 Fla. L. Weekly Supp. 462a (Fla. Volusia Cty. Ct. 2014)
- i. *Emergency Medicine Professionals, P.A. as assignee of Jessica Rettinger v. Acceptance Insurance Company* 22 Fla. L. Weekly Supp. 369a (Fla. Volusia Cty. Ct. 2014)
- j. *Emergency Medicine Professionals, P.A. as assignee of Londarel Harris v. Acceptance Insurance Company, Inc.* 22 Fla. L. Weekly Supp. 112a (Fla. Volusia Cty. Ct. 2014)
- k. *The Housing Authority of the City of Daytona Beach, Florida v. Michael A. Brown* 21 Fla. L. Weekly Supp. 1050a (Fla. Volusia Cty. Ct. 2014)
- l. *State of Florida v. Karen Yvonne Bridges-Case* 21 Fla. L. Weekly Supp. 679a (Fla. Volusia Cty. Ct. 2013)
- m. *Emergency Medicine Professionals, P.A. a/a/o of Jessica Rettinger v. Acceptance Insurance Company* 21 Fla. L. Weekly Supp. 569b (Fla. Volusia Cty. Ct. 2013)
- n. *David Meeks & Paula Meeks v. Ryan Henson #10 Land Trust & Glen E. Lutz* 21 Fla. L. Weekly Supp. 425b (Fla. Volusia Cty. Ct. 2014)
- o. *Central Florida Medical & Chiropractic Center, Inc. a/a/o Junior Newland v. Allstate Fire and Casualty Insurance Company* 21 Fla. L. Weekly Supp. 336a (Fla. Volusia Cty. Ct. 2013)
- p. *Stand-Up MRI & Diagnostics Center, P.A. a/a/o Tamara Brown v. Assurance America Insurance Company* 21 Fla. L. Weekly Supp. 75c (Fla. L. Weekly Supp. 2013)
- q. *John Sbardella, Etc. v. Nancy Jo Watson and Arthur Duwayne Watson* 20 Fla. L. Weekly Supp. 1074b (Fla. Volusia Cty. Ct. 2013)
- r. *Gardens of Daytona, LTD., v. Roshanda Mays* 20 Fla. L. Weekly Supp. 923b (Fla. Volusia Cty. Ct. 2013)

(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.

a. *Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company*
(Part I – Competing Motions for Summary Disposition – entry of Final Judgment)

Volusia Clerk No.: 2014 20479 CONS

Plaintiff's Attorney: Kimberly P. Simoes

Defendant's Attorney: Eric Biernacki, Whitney Dort, and Robert Adams

Complaint Filed: February 18, 2014

Final Judgment Entered: May 11, 2015

This case involved a constitutional challenge to the PIP statute and specifically recent legislative changes to the statute. Plaintiff alleged that the amendment to section 627.736(1)(a), Florida Statutes rendered the statute unconstitutional on its face and as applied in this case. The pivotal language added to the statute set forth a requirement that for the insured under a policy of PIP coverage to be eligible to receive medical benefits, the insured must receive initial services and care for a covered incident within 14 days of the motor vehicle accident.

The Plaintiff alleged that the requirement to seek treatment within 14 days constituted a denial of due process and equal protection and unreasonably denied the Plaintiff access to courts. The constitutional challenge was rejected, and final judgment entered on behalf of Progressive. The final judgment was affirmed on appeal by the Seventh Judicial Circuit in its appellate capacity as referenced by Volusia Appellate Clerk No.: 2015 10016 APCC.

This case was significant to me because it was the first time I presided over a constitutional challenge to a statute. Additionally, it was significant in that it was at the time a case of first impression.

b. *Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company*
(Part II – Order Granting Attorney Fees)

Volusia Clerk No.: 2014 20479 CONS

Plaintiff's Attorney: Kimberly P. Simoes

Defendant's Attorney: Eric Biernacki, Whitney Dort, and Neil Andrews

Order Entered: September 7, 2018

This was the continuation of the case as set forth in "a." above. The court having ruled in favor of the Defendant and the Final Judgment having been affirmed on appeal, the matter was now before the court on the issue of attorney fees.

The Defendant had extended an Offer of Judgment to the Plaintiff in accordance with section 768.79, Florida Statutes and the Defendant asserted it was now entitled to recover reasonable attorney fees in accordance with the statute. The Plaintiff countered that even though

an offer was made pursuant to section 768.79, this was a small claims case and the rules governing smalls claims court did not provide a procedural rule permitting proposals for settlement. Additionally, Plaintiff asserted that Fla. R. Civ. P. 1.442 which does govern proposals for settlement, had not been invoked and section 768.79 could not operate independently of 1.442 and therefore Defendant was not entitled to recover attorney fees.

In awarding attorney fees in favor of Defendant, I found that section 768.79 applied to PIP cases and conferred a substantive right to recover attorney fees and that an absurd result would follow if the court were to determine that the failure to adopt a rule of procedure was a valid basis to deny a party a substantive right conferred by the legislature.

This matter was significant because of the issues involved. The PIP statute generally provides a one-way street for Plaintiff as prevailing party to recover attorney fees. A determination that Rule 1.442 applies to small claims cases or that section 768.79 operates independently of a procedural rule potentially changes the playing field in PIP cases because of the availability of attorney fees to both parties.

Affirmed on appeal *Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company* 328 So.3d 1111 (Fla. 5th DCA 2021).

**c. *Theodore Doran v. State Farm Mutual Automobile Insurance*
Volusia Clerk No.: 2016 34709 COCI
Plaintiff's Attorney: Michael Ciocchetti
Defendant's Attorney: Troy J. McRitchie and Brendan J. McKay
Complaint Filed: December 12, 2016
Trial Dates: February 12-13, 2017**

This case was significant in that it was the first jury trial I presided over as a sitting judge. Although I had presided over many non-jury trials, things change significantly when you add the component of the jury.

In this case, a dispute arose between the Plaintiff and Defendant over damage to the Plaintiff's motor vehicle. In the scheme of things, the amount in controversy became insignificant and the case became more about the legal issues that were contested along the way and the resulting claims for attorney fees. The attorney fees issue took such prominence that counsel for State Farm requested the court to allow for the admission of evidence and testimony before the jury as to the amount of attorney fees being sought by Plaintiff. The request was denied, and the jury returned a verdict for Plaintiff.

**d. *State of Florida v. Cameron Joseph*
Volusia Clerk No.: 2018 109674
Defendant's Attorney: Martin G. White**

The Defendant was issued a civil traffic infraction for Failure to Use Due Care toward a Pedestrian resulting in a fatality. At the time of the incident, the Defendant was an on-duty Florida Highway Patrol Trooper who, while responding as back-up, struck the “pedestrian” as she fled on foot from her father’s motor vehicle. The father’s motor vehicle had just been stopped by another Trooper.

At hearing, Defense Counsel argued that at the time of impact, the Defendant’s vehicle had traveled off of the “street or highway” and was not in an area where vehicles normally traveled, therefore Chapter 316 and specifically the charged offense were facially not applicable to the alleged conduct. After reviewing the statutes and case law provided, I agreed and dismissed the citation.

The significance of this case was not so much about the dismissal as it was the nature of the difficulty for county court judges handling traffic infractions involving death or serious bodily injury.

The rules of procedure and case law lead to a conclusion that the judge must not only be the judge, but also the “prosecutor” while remaining neutral. A task often easier said than done.

I am aware that many of my colleagues in certain areas of the state have Assistant State Attorneys appear in traffic infraction cases where there is an allegation of a resulting death. While I’ve often thought that it would be beneficial to all parties to have a prosecutor appear, I was skeptical that the procedure was authorized by law.

In this case, I had to make that decision. I had an attorney attempt to make an appearance on behalf of FHP in prosecution of the citation. After researching the issue, I denied the request as not being authorized by rule or statute. The attorney was then sworn as an Assistant State Attorney and again sought to appear under the authority of the State Attorney to appear in all actions in this State civil or criminal. Although it would have made my job much easier, relying largely on the Florida Rules of Traffic Court and Florida Rules of Criminal Procedure, I found that the traffic court rules did not permit a prosecutor to appear.

This case was significant for me because there are procedures that are employed in other courts, counties and circuits that often would make the job easier but not necessarily supported by rule or law. I’ve always tried to ask the question, what is my authority for doing what I’m doing or for what I am being asked to do. This simple inquiry has served me well.

- e. The Kidwell Group, LLC., et al, v. State Farm Florida Insurance Company*
Volusia Clerk No.: 2015 12056 CODL
Plaintiff’s Attorney: Thomas J. Morgan, Sr., Thomas J. Morgan, Jr., Chad Barr, and Kimberly Simoes
Defendant’s Attorney: Curt Allen & Brian Hohman
Plaintiff’s Fee Expert: Darren Elkind

Defendant's Fee Expert: Janet Brown
Complaint Filed: November 15, 2015
Final Judgment for Attorney Fees Entered: July 28, 2020
The Kidwell Group, LLC., et al, v. State Farm Florida Insurance Company
Volusia Clerk No.: 2015 12032
Plaintiff's Attorney: Jeremy Hogan
Defendant's Attorney: Curt Allen & Brian Hohman
Complaint Filed: November 23, 2015
Final Judgment Awarding Attorney Fees Entered: September 15, 2016

The two cases above were handled separately but involved the same underlying issue. Each case involved the same Plaintiff, but in each case the Plaintiff employed different counsel who independently filed a voluntarily dismissal of the respective action.

However, in each of the cases, State Farm had given notice to the Plaintiff that pursuant to section 57.105, Florida Statutes the action was not supported by the material facts necessary to support the claim and the failure of the Plaintiff to dismiss the action within 21 days would result in State Farm seeking attorney fees. The voluntary dismissals filed both fell outside of the 21-day safe harbor period.

In each of the cases, I reached the conclusion that the claims filed by the Plaintiff were not supported by fact or law and that State Farm was entitled to recover reasonable attorney fees. The decision further went on to find that the fees would be apportioned equally between the Plaintiff and its attorney in each case.

These cases were significant for several reasons, including the way the cases were litigated. I was required to do a lot more refereeing than normal to maintain decorum. The cases also consumed a significant amount of time and involved challenging issues requiring significant research and analysis.

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.

***Heather v. Spencer* 395 So.3d 704 (Fla. 5th DCA 2024)**

***Watson v. Spencer* 397 So.3d 189 (Fla. 5th DCA 2024)**

The related cases involved competing claims for paternity brought by the legal father of the child and the putative father of the child. The legal father had signed a voluntary acknowledgment of paternity and was on the child's birth certificate. After trial, I found that although the mother of the child had committed fraud, there was no evidence of fraud on the part of the legal father and

since he had established a relationship with the child, the evidence was insufficient to disestablish the paternity of the legal father. The appellate court reversed finding that a presumption of paternity cannot rest on a false affidavit and since the affidavit was procured by the mother's fraud, the presumption of paternity was rebutted by the child's putative father.

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.

Central Florida Medical & Chiropractic Center a/a/o Ronald Sealey v. Progressive American Insurance Company

Volusia Clerk No.: 2014 20479 CONS

(This case was previously reference in my answer to 26(iv)a. above)

Per Curiam Affirmed on Appeal by the Seventh Judicial Circuit Court of Florida sitting in its appellate capacity

Volusia Clerk Appellate Case No.: 2015 10016 APCC per curiam affirmed

Trial Court Order attached as Exhibit 3.

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.

Yes.

I am aware that Tera B. Lau, (See Question 53, Ms. Lau also filed an action against me in Federal Court) a litigant in a family law case I presided over, filed a complaint against me with the Judicial Qualification Commission (JQC) in December 2022. I received no communication from the JQC regarding the complaint and have no actual knowledge of the substance of the complaint. Accordingly, there would have been no finding of probable cause, and I was not required to appear before the Commission.

Other than Ms. Lau, to my knowledge no other complaints have been filed against me.

Pursuant to Article V, Section 12(4) of the Florida Constitution, a complaint to the JQC is confidential until there is a finding of probable cause and a filing of formal charges.

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

No

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

Housing Authority of the City of Daytona Beach

Commissioner 1997-1999 & 2002-2008

Vice Chair 2004-2008

City of Daytona Beach Planning Board

Member 2000

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.

Not Applicable

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.

Jeff Galloway Marathon Training Program

Program Director, Daytona Beach

From 2002 – 2005, I served as the program director for the local branch of the Jeff Galloway Marathon Training Program. The program director was an independent contractor and compensation was based on the number of participants you signed up for your local program. I do not recall, nor have I been able to obtain documentation of the exact amount but can state that in no calendar year did the compensation exceed \$1,500.00 and the expenses far exceeded the compensation.

Pampered Chef

Sales Consultant

Approximately 2000-2001, I served as an independent sales consultant for Pampered Chef. Compensation was based on sales and paid mostly in free or discounted Pampered Chef products. I do not recall, nor have I been able to obtain documentation of the exact amount of compensation but can state that overall compensation did not exceed \$1,000.00.

POSSIBLE BIAS OR PREJUDICE

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

There are no types of cases or classifications, which as a general proposition, I would find difficult to sit as a presiding judge.

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.

Kelly, Christopher (2000 May-June). Florida Building Code. Quality Cities Magazine.

Kelly, Christopher (2000 January-February). Solid Waste. Quality Cities Magazine.

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, except as may be set forth in response to question 37 immediately below.

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.

Let the Sunshine In - An Overview of Florida Law on Open Meetings, presented on April 20, 2011, to elected and appointed officials from the City of South Daytona and the City of Port Orange.

Issues of Jurisdiction, presented on April 8, 2011, at the Daytona Beach Police Department for Law Enforcement Officers from agencies in the Seventh Circuit.

Constitutional Law and Issues of Criminal Procedure, presented to Daytona Beach Police Citizen's Academy in 2010.

Protecting our Seniors - Residents' Rights and Health Care Advance Directives presented in 2005 to the Senior Network of Advocates and Providers.

During my time in private practice, I also lectured a handful of times on issues related to elder law, for various groups in the community.

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.

Florida Judicial College:

Alternatives to Contempt

Instructor 2020-2024

Contempt

Instructor 2020-2026

County Court Civil Track Faculty

Instructor 2018, 2020 and 2021

Small Claims

Landlord – Tenant

Case Management

Best Practices

Mock Trial Faculty, 2018, 2020, 2022 & 2023

Trial Skills Workshop

Instructor

New Judges 2025 & 2026

General Magistrates and Hearing Officers 2025 & 2026

**Conference of County Court Judges of Florida (CCCJF)/
Florida State Court System - Office of Court Education:**

Common Evidentiary Issues in County Civil Cases

2022 CCCJF Annual Education Conference, July 2022

Instructor

The JQC and JEAC: What Judges Should Know

Distance Learning, August 2021

Instructor

Civil Symposium

2019 CCCJF Annual Education Conference
Steering Judge

Current Issues in Insurance Cases

2018 CCCJF Annual Education Conference
Steering Judge

Insurance Case Law Update

2017 CCCJF Annual Education Conference
Steering Judge

U.S. Supreme Court Cases (Applicable to DUI Cases)

2016 DUI Adjudication Lab
Instructor

Current Issues in Civil Traffic Infractions Involving Death & Serious Bodily Injury,

2016 CCCJF Annual Education Conference
Instructor

Veteran's & Mental Health

2015 CCCJF Annual Education Conference
Steering Judge

Fairness & Diversity Training for Judges

Seventh Judicial Circuit, December 2015
Instructor

Judicial Assistants Association of Florida

Vexatious Litigants

September 2025
Instructor

Florida Court Personnel Institute:

Contemplating Contempt

April 2021
Instructor

Volusia County Bar Association:

Tips & Techniques for Conducting an Effective Evidentiary Hearing

May & November 2019

Presenter

Professionalism: Rules and Canons that Guide Communications between Judges, Attorneys and Self Represented Litigants

January 2019

Presenter

Wills, Trusts, and Estates Seminar

March 2008.

Coordinator and Moderator

National Business Institute:

Civil Court Judicial Forum

May 2016

Panelist

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.

University of Florida College of Law, Honors in Appellate Advocacy, Spring 1993

University of Florida College of Law, Dean's List: Spring 1995

University of Florida, President's Spring Recognition of Outstanding Students 1995

Basilica of St. Paul, Order of St. Paul, January 2013

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.

Florida Conference of Circuit Judges

Member, January 2022 – present

Executive Committee, July 2022 – present

Judicial Education Vice-Chair, July 2022 – present

Commission of Trial Court Performance and Accountability

Member, July 2024 – present

Judicial Management Council

Member, July 2020 – July 2024

Workgroup on Trial Court Technology Strategies

Member, November 2021 – June 2023

**Workgroup on Trial Court Technology Strategies/Governance
Subgroup**

Member, June 2022 – June 2023

Workgroup on Vexatious Litigants

Member, April 2024 – June 2025

Judicial Circuit Assessment Committee

Member, June 2023- March 2024

Florida Court Education Council

Member, September 2021 – January 2022

**Workgroup on the Continuity of Court Operations and Proceedings During and After
Covid-19**

Member, April 2020 – June 2022

Member Criminal Subgroup

Member Civil Subgroup

Florida Court Education Council, Dean Selection Committee

Member, 2020

Conference of County Court Judges of Florida

Board of Directors, 2013 – 2022

Executive Committee, 2017- 2022

Circuit Representative, 2013 – 2017

Web Administrator, 2017- 2022

Education Committee

Member, 2013 – 2022

Vice Chair Civil Track, 2017 – 2021

Chair, 2021 - 2022
Legislative Committee,
Member, 2013-2017 & 2019 – 2022
Legislative Steering Committee, 2016 - 2020
Administration & Management Committee
Member, 2019 – 2022.
Civil Rules Committee
Member, 2013 - 2015
Traffic Rules Committee
Member, 2013 – 2017 & 2019
Chair, 2015 - 2017

Florida Bar

Member, 1995- present
Family Law Rules Committee
Member, 2023 – Present
Appointed Chair, July 2026
Civil Procedure Rules Committee
Family Law Rules Liaison, 2025 - Present
Traffic Court Rules Committee
Member, 2016 - 2022
Rules of General Practice and Judicial Administration Committee
Member (Traffic Rules Liaison), 2019 – 2021

National Association of Elder Law Attorneys, Inc.

Member, 2006-2009

Volusia County Bar Association

Member, 1997 – present
Director, 2005-2008 and 2012
Elder Law Section
Member, 2009

Volusia County Young Lawyer's Association

Member, 1995-1997

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.

Tiger Bay Club of Volusia County

Member, 2012 - present

Dunn-Blount American Inn of Court

Member, 2018 – present
Board Member, 2022 - present

Florida Supreme Court Historical Society

Member, 2019 – present

Basilica of St. Paul

Finance Committee & Endowment Trustee, 2006–present
Pastoral Council, 2008–2012

Daytona Beach Quarterback Club

Member, 1997-present
Coach 2011, Captain 2010, Captain-Elect 2009, Secretary 2008, Assistant Secretary 2007, Treasurer 2006, Assistant Treasurer 2005, Membership Chair 2003-2004

Gator Club of Volusia County

Board of Directors 2004-2012
Chair, Florida Young & Involved 2004-2006
Producer, Pigskin Preview Show 2004-2006

Daytona Beach Leadership Council

Member 2005-present
Board of Directors, 2007-2008

Father Lopez Catholic High School

School Board 2006-2009

Daytona Beach Track Club

Member 2002-2010
Board of Directors 2002-2007

Indigo Unit 2 Homeowner's Association

Board of Directors 2007

Susan G. Komen Race for the Cure

Volunteer Coordinator 2002-2003

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.

As sitting judge for the past 13 years, I have been restricted in the ability to perform pro bono legal work.

45. Please describe any hobbies or other vocational interests.

**Marathoning
Cooking**

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.

**Dates of Service: July 1, 1986 – August 8, 1986
Branch: United States Army
Rank: New Cadet, United States Military Academy
Type of Discharge: Honorable**

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

No current social media accounts. I previously maintained a personal Facebook account but deactivated/deleted the account in the fall of 2020.

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.

Single, never married

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.

Not Applicable

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.

Tera B. Lau v. Judge Christopher Kelly
6:22-CV-2000 U.S. Middle District Court / Orlando

Case Synopsis:

Plaintiff, Tera B. Lau, alleged a violation of her civil rights based on rulings made in a case involving the modification of a final judgment for dissolution of marriage.

Disposition:

Dismissed with prejudice on April 25, 2023.

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

No

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

No

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

No

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

No

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

No

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

No

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

No

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

I have complied with all legally required tax return filings.

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.

Administrative Judge of the Family Division, Seventh Judicial Circuit

Appointed by Chief Judge October 2025

Administrative Judge of the Volusia County Court

Appointed by Chief Judge upon recommendation of County Court Judges
2017 – 2021

Mentor Judge

2018-present

Volusia County Elections Canvassing Board Chair

2016 - 2021

Completed Faculty Training Course

February 2014 (Required before we can teach other judges)

Leadership Daytona Program

2004

Volusia County Citizen's Academy

2004

2020 Florida Transportation Plan Committee

Member, 2000 – representing the Florida League of Cities, Inc.

Institute for Florida Elected Municipal Officials

Completed, 1999

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.

For as long as I can remember, I have been a stickler for the rules. The role of the appellate court is to apply the rules. The breadth of my experience as a practitioner, judge, and educator gives me a unique perspective to understand the context in which these rules are being applied. I will bring the same fidelity to the rule of law that I have demonstrated throughout my life to the appellate court.

REFERENCES

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

Gina Beovides

Deputy Chief Judge, Eleventh Judicial Circuit

20 N.W. 1st Ave.

Miami, FL 33128

gbeovides@jud11.flcourts.org

(305) 349-7255

Steve Beres

Managing Director Racing Operations, NASCAR
1 Daytona Blvd.
Daytona Beach, FL 32114
sberes@nascar.com
(386) 547-1178

Leah R. Case

Chief Judge, Seventh Judicial Circuit
251 N. Ridgewood Ave.
Daytona Beach, FL 32114
lcase@circuit7.org
(386) 239-7792

James R. Clayton

Retired Circuit Judge, Seventh Judicial Circuit
1210 Carter Rd
Deland, FL 32724
jrclyton@yahoo.com
(386) 801 5153

Timothy P. Daly

Former Pastor, Basilica of St. Paul
1415 Ocean Shore Blvd.
Unit 708
Ormond Beach, FL 32176
ftimdaly@yahoo.com
386-547-1736

R.J. Larizza

State Attorney, Seventh Judicial Circuit
251 North Ridgewood Ave.
Daytona Beach, FL 32114
larizzar@sao7.org
386-239-7710

Lisa Lewis

Supervisor of Elections, County of Volusia
1750 South Woodland Blvd.
DeLand, FL 32720
llewis@volusia.org
386-804-0695

A. Christian Miller

Circuit Judge, Seventh Judicial Circuit
251 N. Ridgewood Ave.
Daytona Beach, FL 32114
cmiller@circuit7.org
(386) 239-7793

Dawn Nichols

Circuit Judge, Seventh Judicial Circuit
1769 E. Moody Blvd., Bldg. 1
Bunnell, FL 32110
dnichols@circuit7.org
(386) 313-4510

Robert W. Pickens, III

Circuit Judge, Seventh Judicial Circuit
101 N. Alabama Ave.
DeLand, FL 32724
rpickens@circuit7.org
(386) 943-7060

CERTIFICATE

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

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

Dated this 19th day of May, 2026.

Christopher Kelly

Printed Name

[Signature]

Signature

State of Florida

County of Volusia

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

physical presence OR online notarization

this 19 day of May, 2026.

By Christopher Kelly

Personally known _____

Produced ID _____

Type of Identification _____

Cindy Sutton
Signature Notary Public



Printed name of Notary Public

(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.

Judicial Salary

Current Year-To-Date: \$66,945.36

Last Three Years: 2025: 198,867.06 2024: 194,030.52 2023: 186,611.52

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: \$66,945.36

Last Three Years: 2025: 198,867.06 2024: 194,030.52 2023: 186,611.52

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

Current Year-To-Date: 0

Last Three Years: 2025: 0 2024: 0 2023: 0

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: 2025: 0 2024: 0 2023: 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: 2025: 0 2024: 0 2023: 0

General Information

Name: Hon Christopher Kelly

CONFIDENTIAL

PID 244889

AGENCY INFORMATION

Organization	Suborganization	Title
Judicial Circuit (7Th)	Elected Constitutional Officer	Circuit Judge

Net Worth

My Net Worth as of December 31, 2025 was \$ 543,000.00.

Assets

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

The aggregate value of my household goods and personal effect is \$ 51,500.00.

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

2025 Form 6 - Full and Public Disclosure of Financial Interests

Filed with COE: 05/18/2026

Description of Asset	Value of Asset
(Confidential) {REDACTED}	\$ 605,000.00
Checking & Savings (Trust)	\$ 13,209.75
Motor Vehicle - 2026 Chevrolet Colorado	\$ 11,692.00
Pension Contribtuion (State of Florida)	\$ 66,011.12
Mutual Fund - Growth Fund America/Class A (Wells Fargo)	\$ 3,734.47
Mutual Fund - Davis NY Venture Fund CL C (Wells Fargo)	\$ 37,471.69
Mutual Fund - JP Morgan Mid Cap Value R6 (Nationwide)	\$ 4,080.01
Mutual Fund - Small Cap Value Eq D (Nationwide)	\$ 1,378.78
Mutual Fund - T Rowe Price US MidCap Gr Eq D (Nationwide)	\$ 4,096.62
Mutual Fund - T Rowe Price Dividend Growth (Nationwide)	\$ 10,951.53
Mutual Fund - T Rowe Price Eq Inc B (Nationwide)	\$ 15,433.76
Mutual Fund - T Rowe Price Overseas Stock (Nationwide)	\$ 11,280.72
Stock - Carnival Corp (Wells Fargo)	\$ 3,054.00
Davis NY Venture Fund CL A (Wells Fargo)	\$ 8,010.98
Mutual Fund - Vngrd RealEst Index Inst (Nationwide)	\$ 3,985.79
Mutual Fund - Wasatch SmCap Gr Inst (Nationwide)	\$ 1,349.23
Mutual Fund - JAmFds New Wld R6 (Nationwide)	\$ 6,985.33
Mutual Fund - Vngrd Ttl IntlStkIndx (Nationwide)	\$ 16,871.21
Mutual Fund - Fid Blue Chip Gr K6 (Nationwide)	\$ 7,110.01
Mutual Fund - Fid Contra K6 (Nationwide)	\$ 9,853.60
Mutual Fund - Vngrd Inst Inx Inst Plus (Nationwide)	\$ 8,297.72
Bonds - AmFds Emrg Mkt Bd R6 (Nationwide)	\$ 2,707.30
Bonds - Dodge Cox Inc I (Nationwide)	\$ 17,374.91
Bonds - TRowePr Spectrum Inc I (Nationwide)	\$ 6,721.48
Fixed Asset - NRS Florida Fixed Fund (Nationwide)	\$ 9,363.65

Liabilities

LIABILITIES IN EXCESS OF \$1,000:

Name of Creditor	Address of Creditor	Amount of Liability
GM Financial	801 Cherry St., Suite 3500, Ft. Worth, TX 76102	\$ 21,611.08
United Wholesale Mortgage	P.O. Box 77404, Ewing, NJ 08628	\$ 291,853.03

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

Income

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2025 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission's website.

I elect to file a copy of my 2025 federal income tax return and all W2s, schedules, and attachments.

PRIMARY SOURCES OF INCOME:

Name of Source of Income Exceeding \$1,000	Address of Source of Income	Amount
State of Florida	200 E. Gaines St., Tallahassee, FL 32399	\$ 200,836.08

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

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

Interests in Specified Businesses

Business Entity # 1

N/A

Training

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

Signature of Reporting Official or Candidate

Under the penalties of perjury, I declare that I have read the foregoing Form 6 and that the facts stated in it are true.

Christopher Kelly

Digitally signed: 05/18/2026

Filed with COE: 05/18/2026

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: May 19, 2026

JNC Submitting To: **FIFTH DISTRICT COURT OF APPEAL**

Name (please print): Christopher Kelly

Current Occupation: Circuit Judge

Telephone Number: (386) 822-5016

Attorney No.:0061697_

Gender (check one): Male Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Volusia

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

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

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

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

Christopher Kelly

Printed Name of Applicant

Signature of Applicant

Date:

5/19/2020

EXHIBIT

1

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN
AND FOR VOLUSIA COUNTY,
FLORIDA

CENTRAL FLORIDA MEDICAL
AND CHIROPRACTIC CENTER,
a/a/o Ronald Sealey,

CASE NO.: 2014-20479 CONS
DIVISION: 71

Plaintiff,

v.

PROGRESSIVE AMERICAN
INSURANCE COMPANY,

Defendant.

**ORDER GRANTING DEFENDANT'S SECOND AMENDED
MOTION TO ENFORCE DEFENDANT'S PROPOSAL/OFFER FOR
SETTLEMENT AND/OR MOTION TO TAX ATTORNEY'S FEES
AND COSTS**

This Cause having come before the Court on Defendant's Second Amended Motion to Enforce Defendant's Proposal/Offer for Settlement and/or Motion to Tax Attorney's Fees and Costs, and the Court having reviewed the motion and the entire court file and considered the arguments of counsel, finds as follows:

Procedural History

1. Plaintiff filed the above-styled PIP suit against Defendant on or about February 18, 2014 in small claims court, and said lawsuit was served upon Defendant on March 6, 2014.

2. The Defendant served its Proposal for Settlement (“Proposal”) upon Plaintiff on July 18, 2014¹, more than 90 days after service of process on the Defendant.

3. The total amount of the Proposal was \$100.00 inclusive of attorney’s fees and costs, and it is undisputed that Plaintiff did not accept the Proposal within 30 days of receipt.

4. On May 8, 2015, the court granted Defendant’s Motion for Summary Disposition on the assignee’s failure to seek treatment and/or initial services and care within fourteen (14) days after the motor vehicle accident.

5. On June 8, 2015, the Plaintiff filed a Notice of Appeal of the Order Granting Defendant’s Motion for Summary Final Disposition and Denying Plaintiff’s Motion for Final Summary Disposition.

6. On July 31, 2017, this matter was brought to a final conclusion when the Seventh Judicial Circuit Court, sitting in its appellate capacity, Affirmed the Order of the lower court.

7. The result of the Seventh Circuit’s ruling was that Plaintiff recovered zero (\$0.00) dollars from Defendant, which is at least 25% less than the amount of the Proposal/Offer for Settlement.

8. As a result, the Defendant filed this Second Amended Motion to Enforce Defendant’s Proposal/Offer for Settlement and/or Motion to Tax Attorney’s Fees and Costs, requesting the court to determine its entitlement to attorney’s fees and costs pursuant to §768.79, Fla. Stat.

¹ The Certificate of Service on the Proposal is undated, however, the cover letter sent with the Proposal is dated July 18, 2014. Notwithstanding, the issue of whether the Plaintiff was in fact served with the Proposal, or the procedural timing of that service was not contested.

Arguments of the Parties

Defendant's Argument

9. The Defendant's position is that its entitlement to fees and costs pursuant to its Proposal is justified solely on the application of §768.79 and is not reliant upon the invocation of Fla. Civ. Pro. Rule 1.442.²

Plaintiff's Argument

10. The Plaintiff's position is that §768.79 requires the invocation of Rule 1.442 to properly enforce a proposal for settlement and an entitlement to attorney's fees.

11. Plaintiff also argues that even if the court finds that §768.79 applies to small claims actions independently of Rule 1.442, the court should deny the Motion pursuant to §768.79(7)(b)(5.), asserting this action "was in the nature of a test case presenting far-reaching importance affecting non-parties."

Analysis

Rule 1.442

12. After review, this Court believes that Fla. Stat. §768.79 provides independent authority to award attorney's fees in small claims cases without the formal invocation of Rule 1.442.

13. In reaching this conclusion, the court took into consideration the dichotomy between the substantive and procedural aspects of the statute as explained by *Hanzelik v. Hudon Inv. of America, Inc.*, 687 So.2d 1363 (Fla. 4th DCA 1997).

² While the Proposal for Settlement references that it is being served pursuant to both Fla. Stat. §768.79 and Fla. Civ. Pro. Rule 1.442, the record before the court establishes that Rule 1.442 was never invoked. Neither party is contending Rule 1.442 was invoked and central to the court's analysis is the fact that the Rule was not invoked.

14. In *Hanzelik*, the Court quoting from *Markert v. Johnson*, 367 So.2d 1003 (Fla. 1978), explained: “A rule of procedure prescribes the method or order by which a party enforces substantive rights or obtains redress for their invasion. Substantive law creates those rights.”

15. The Court went on to further explain that “while the offeror’s right to attorney’s fees under the offer of judgment statute is a substantive legislative enactment, the timing of both the offer and acceptance are procedural, and, therefore, within the province of the court.”

16. It is not contested in this case that “an insurer . . . may recover attorney’s fees pursuant to an offer of judgment or proposal for settlement in an action filed by its insured to recover PIP benefits.” *Gurney v. State Farm Mut. Auto. Ins. Co.*, 889 So. 2d 97, 99 (Fla. 5th DCA 2004). See also *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So.2d 1067 (Fla. 2006).

17. It is also not contested that the substantive right created by §768.79 is applicable to small claims actions.

18. What is contested is whether, in the absence of the procedural vehicle (specifically, the invocation of Rule 1.442 in a small claims action) may a party avail itself of the substantive right otherwise granted by the legislature in the enactment of §768.79.

19. The Florida Supreme Court is charged with the rule making authority for the courts.

20. As the rule maker, the Supreme Court adopted Fla. R. Civ. P. 1.442, as the procedural rule “for all proposals for settlement authorized by Florida Law.”

21. However, there is no express invocation or authorization for applying Rule 1.442 to a small claims action.

22. In its analysis, this court takes note of prior Florida Supreme Court pronouncements grappling with the relationship between §768.79 and Rule 1.442.

23. In a 1989 opinion amending Rule 1.442, the Florida Supreme Court addressed the “confusion” created by the enactment of section 768.79 in relation to Rule 1.442 and found it necessary to adopt a new rule stating “[t]o the extent the procedural aspects of new rule 1.442 are inconsistent with sections 768.79 . . . , the rule supersedes the statutes.”³

24. A few years later, in *Timmons v. Combs*, 608 So.2d 1 (Fla. 1992), the Florida Supreme Court again found it necessary to address the “complicated” relationship between §768.79 and Rule 1.442, opining that “[b]ecause the statute does contain procedural aspects which are subject to our rule-making authority, we hereby adopt the procedural portion of section 768.79 as a rule of this Court effective as of the date of this opinion.”

25. The takeaway from this court’s review of all cases addressing this issue is that where the legislature has granted a substantive right, that right may be subject to practice and procedure rules as adopted by the court.

26. Further, when a rule is adopted by the Florida Supreme Court concerning practice and procedure and such rule conflicts with a statute, the rule supersedes the statutory provision, and in the absence of an express procedural provision in the small claims rules, procedural provisions in statutes may apply.⁴

³ *The Florida Bar RE: Amendment to Rules of Civil Procedure, Rule 1.442* 550 So.2d 442 (Fla. 1989)

⁴ In the instant case, the Defendant complied with the procedural requirements of Rule 1.442 and the court finds it unnecessary to address the issue of whether compliance with only the procedural requirements as set forth in the statute would otherwise support an award of attorney fees under §768.79.

27. This court is further mindful that “[i]t is a basic tenet of statutory construction that statutes will not be interpreted so as to yield an absurd result.” *Williams v. State*, 492 So.2d 1051, 1054 (Fla. 1986).

28. Having found that §768.79 applies to PIP actions filed in small claims court, an absurd result would follow if this court were to then turn around and determine that the failure of the courts to adopt a rule of procedure rendered the substantive right created §768.79 inapplicable to a small claims action.

Test Case

29. The Plaintiff next argues that §768.79(7)(b)(5.) allows the court to deny fees outright if the court finds that the instant action was “a test case presenting far-reaching importance affecting nonparties.”

30. §768.79(7)(b) read in its entirety provides:

(b) **When determining the reasonableness** of an award of attorney’s fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following additional factors:

1. The then apparent merit or lack of merit in the claim.
2. The number and nature of offers made by the parties.
3. The closeness of questions of fact and law at issue.
4. Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
5. **Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.**
6. The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged. (Emphasis added.)

31. For comparison purposes, this court reviewed §57.105(3), which provides:

(3) Notwithstanding subsections (1) and (2), monetary sanctions **may not be awarded**:

(a) Under paragraph (1)(b) if the court determines that the claim or defense was initially presented to the court as a **good faith argument for the extension, modification, or reversal of existing law or the establishment of new law**, as it applied to the material facts, with a reasonable expectation of success.

(Emphasis added).

32. Both §768.79 & §57.105 establish a substantive right to attorney fees and both address the award of fees in similar situations, described in §768.79 as **test cases** and in §57.105 as **the modification of existing law or establishment of new law**.

33. However, the manner in which the award of fees is addressed is distinctively different.

34. §768.79 provides that it is a factor which may be considered in **determining the reasonableness** of the fee, whereas, in §57.105 the legislature has directly addressed the issue of entitlement by setting forth that fees **may not be awarded**.

35. Contrary to Plaintiff's assertion, under established Florida law, the application of the six factors in 768.79(7)(b) only allows a trial court to consider those factors in determining the reasonableness of an award of attorney fees, at most, to reduce the amount of fees awarded.

36. The application of the factors does not allow a trial court to deny entitlement to fees.⁵

⁵ See *Friday's Inc. v. Dvorak*, 663 So. 2d 606, 613 (Fla. 1995); *Braaksma v. Pratt*, 103 So. 3d 913, 915 (Fla. 2nd DCA 2012).

As such it is ORDERED AND ADJUDGED:

- A. Defendant's Second Amended Motion to Enforce Defendant's Proposal/Offer for Settlement is hereby GRANTED.
- B. This Court reserves jurisdiction as to the determination of amount of attorney's fees and costs to be awarded to the Defendant.

DONE AND ORDERED in Chambers at DeLand, Volusia County, Florida

9/7/2018 8:52 AM 2014 20479

CONS



e-Signed 9/7/2018 8:52 AM 2014 20479 CONS

Christopher Kelly
County Court Judge

Copies via eservice/U.S. Mail to:

Neil Andrews, Esq.

Kimberly Simoes, Esq.

EXHIBIT

2

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY,
FLORIDA

THE KIDWELL GROUP LLC,
d/b/a AIR QUALITY ASSESSORS
OF FLORIDA, as assignee of benefits
from KENT LANG,

CASE NO: 2015 12056 CODL
DIVISION: 71

SMALL CLAIMS DIVISION

Plaintiff,

vs.

STATE FARM FLORIDA
INSURANCE COMPANY,

Defendant.

FINAL JUDGMENT FOR ATTORNEY FEES AND COSTS

THIS CAUSE came before the Court upon the Defendant, State Farm Florida Insurance Company's ("State Farm"), Motion for Attorney Fees and Costs ("Motion" or "Motion for Fees") [Docket No.111] and the Court having weighed the evidence presented, entertained the arguments of counsel and considered the applicable law, hereby finds as follows:

Procedural History

1. On November 25, 2015 the Plaintiff, the Kidwell Group LLC, d/b/a Air Quality Assessors of Florida as assignee of benefits from Kent Lang, ("Plaintiff" or "Kidwell") sued State Farm alleging that Kidwell was the assignee

of the right to benefits under a State Farm insurance policy, for services rendered as a result of an alleged covered loss.

2. On January 11, 2016, State Farm served upon the Plaintiff a “Motion for Sanctions” [Docket No.: 15] advising the Plaintiff and its counsel that if the Plaintiff failed to dismiss the pending action within 21 days of service of the Motion for Sanctions, State Farm would seek the imposition of sanctions against the Plaintiff and Plaintiff’s counsel, the Morgan Law Group, P.A., (“the Morgan Group”) to include an award of attorney’s fees and costs, pursuant to section 57.105, Florida Statutes (“57.105”).

3. On April 11, 2016, more than 21 days after service of the Motion for Sanctions, the Plaintiff filed a Notice of Voluntary Dismissal without Prejudice in this action.

4. On April 25, 2016, State Farm filed this Motion for Fees seeking the award of 57.105 attorney fees on the basis that Kidwell “knew, or had available to them, sufficient facts to determine that they could not establish a claim or that the claim could not be supported by the existing law.”

5. The first hearing on State Farm’s Motion for Fees took place on June 22, 2016. It was anticipated that the issues of both entitlement and the amount of fees to be awarded, if any, would both be fully addressed at that hearing on June 22, 2016. However, during that hearing, while Attorney Thomas Morgan, Jr. was

testifying, it was called to the Court's attention by State Farm's counsel that the interests of the Morgan Group and Kidwell had become adverse. Kidwell was given the option to seek independent counsel, and chose to do so, requiring a postponement of the hearing.

6. Prior to the continuation of the hearing on State Farm's Motion for Fees, Kidwell's newly retained counsel, Attorney Kimberly Simoes, and the Morgan Group filed Motions to bifurcate the determination of entitlement to fees from the determination of the amount of fees owed.

7. The Court granted the Motion to Bifurcate over State Farm's objection and two additional hearings were required, on November 2, 2016, and on March 14, 2017, solely on the issue of entitlement.

8. On December 21, 2017, this Court entered an Order ("Entitlement Order") [Docket No.: 157) finding that the lawsuit brought against State Farm by Kidwell was unsupported by law or fact and pursuant to section 57.105, State Farm was entitled to recover its reasonable attorney fees.

9. Additionally, in the Entitlement Order, in consideration and application of subsection 57.103(3), Florida Statutes, the Court found that Kidwell and its attorneys, the Morgan Group, would be responsible in equal amounts for any attorney fees the Court awarded to State Farm.

10. The Court also found that State Farm was the prevailing party in this

action and entitled to recover costs from Kidwell in accordance with section 57.041, Florida Statutes, and Fla. R. Civ. P. 1.420(c).

11. The hearing as to the amount of costs and fees took place over two separate days, August 15, 2018, and August 15, 2019.

Analysis as to Amount of Attorney Fees & Costs

Stipulations

12. It was stipulated by the Morgan Group that the hourly rates charged by State Farm's counsel were reasonable.¹ Accordingly, the Court finds the following rates to be reasonable:

- Attorney Curt Allen - \$220 per hour;
- Attorney Alex Cayer - \$195 per hour;
- Attorney Sean Hernandez - \$195 per hour;
- Attorney Brian Hohman - \$195 per hour;
- Attorney Mohammad Mubarak - \$195 per hour; and
- Paralegal Melissa Lopretto - \$95 per hour.

Witnesses & Evidence

13. In support of the amount of the fees and costs requested, State Farm called two witnesses: Attorney Brian Hohman as the custodian of records for Butler Weihmuller Katz Craig ("the Butler Firm"), and Attorney Janet Brown as an expert witness as to the reasonableness of the amount of fees claimed.

¹ The record does not reflect that Kidwell's attorney affirmatively joined in the stipulation as to the reasonableness of the hourly rates. However, Kidwell's co-counsel, Chad Barr, was present when the stipulation was announced, raised no objection, and presented nothing to contest the reasonableness of the hourly rates.

14. Through the testimony of Attorney Hohman, State Farm introduced into evidence the billing records supporting the fees and costs being sought in the cause.²

15. Mr. Hohman testified that the total amount of fees being sought was \$83,849.00 and the total amount of costs was \$18,734.18, inclusive of the expert fee.

16. Ms. Brown testified that she had reviewed the files and invoices of State Farm's counsel and she believed that all of the billing entries were reasonable and necessary in defense of State Farm against the action filed by the Plaintiff.

17. The Morgan Group called Attorney Darren Elkind as its expert witness, and also called Attorney Curtis Allen, one of State Farm's attorneys, and Attorney Thomas Morgan, Jr., from the Morgan Law Group.

18. Mr. Elkind testified that he believed a reasonable fee to be \$21,015.00.

19. Mr. Elkind further testified that, in reviewing the time for work performed prior to the entry of the Entitlement Order, he disallowed time that he categorized as falling "into four buckets."

20. Mr. Elkind explained that the first "bucket" was time he disallowed for work performed after the date that State Farm filed its Motion for Sanctions,

² Defendant's 1 & 3.

February 3, 2016.³

21. The second “bucket” was time disallowed for an inordinate amount of correspondence, also referred to as unnecessary “back and forth” or “bicker[ing].”

22. The third “bucket” included time disallowed for two attorneys attending the same hearing.

23. The fourth “bucket” disallowed time spent travelling⁴ by the attorneys.

24. In addition to the four buckets, Mr. Elkind also testified that with the exception of a very limited amount of time, he completely disallowed all time for work done post Entitlement Order because it was his “understanding that you don’t get fees for fees even in the context of a sanction.”

25. Mr. Elkind testified that he knew that the Butler Firm performed the work for which it billed, but his opinion was based on what he believed was reasonable and compensable under the guiding rules and case law.

26. Along those lines, Mr. Elkind testified that he adjusted some of the time entries as it related to what was billed versus what he believed was an

³ Although Mr. Elkind stated he disallowed for work performed after the filing of the Motion for Sanctions, in the context of the remainder of his testimony, the time disallowed was from the filing of the Motion for Sanctions until the filing of the Notice of Voluntary Dismissal. Mr. Elkind did allow for time after the filing of the Notice of Voluntary Dismissal as it related to the determination of entitlement on the Motion for Fees.

⁴ The office of the Butler Firm is located in Tampa, Florida.

appropriate amount of time to bill for the task. He also disallowed a number of entries for “assessing case strategy.”

27. Mr. Elkind broke down the allocation of the work he believed to be compensable as follows:

	Hours	Rate		
BAH	20.2	\$195	=	\$ 3,939.00
APC	11.5	195	=	2,242.50
CLA	57.7	220	=	12,694.00
SHE	9.3	195	=	1,813.50
MM4	0.6	195	=	117.00
MBL	2.2	95	=	<u>209.00</u>
				\$21,015.00

28. While Mr. Elkind outlined the categories of billing entries he believed should not be allowed, with one very limited exception, he was not asked to identify any specific entries that he was disallowing or reducing as excessive as to the time spent or the specific reason why the particular work identified in a specific entry was not reasonable.⁵

29. Mr. Elkind was not asked to, and did not express an opinion as to the costs incurred in this action.

Time after the filing of the Motion for Sanctions

⁵ On more than one occasion, the Morgan Group did attempt to enter into evidence the out-of-court handwritten notes of Mr. Elkind on State Farm’s billing records. However, the Court sustained State Farm’s objection. (See August 15, 2018, Transcript, pgs. 109-113 and 173. See also August 15, 2019, Transcript, pgs. 11-16.)

30. Mr. Elkind testified that it was his opinion that attorney fees should be disallowed for the time that State Farm continued to litigate the underlying case after the filing of the Motion for Sanctions. Mr. Elkind was candid that he was not aware of any rule that provided a bright line cut-off, but based his opinion on the belief that continued litigation was unnecessary if State Farm had in its possession information that proved the claim filed by the Plaintiff to be without merit.

31. The Fourth District Court of Appeal's decision in *Yakavonis v. Dolphin Petroleum*, 834 So. 2d 615 (Fla. 4th DCA 2006), is instructive. There, the appellate court addressed an argument that attorney's fees could only be imposed *after* the expiration of the 21-day safe harbor period. In rejecting such an argument, the *Yakavonis* court found that **there is nothing in the statute that requires the computation of time to begin only after the expiration of the safe harbor period.**

32. Applying *Yakavonis* to the instant facts, this Court declines to read into Section 57.105 a requirement that the computation of time ceases when a Motion for Sanctions is filed.

Inordinate amount of unnecessary correspondence

33. Mr. Elkind also disallowed time for an "inordinate amount of correspondence, also referred to as unnecessary "back and forth" or "bicker[ing]," but no specific entries were identified.

34. In *State Farm v. Palma*, 555 So. 2d 836 (Fla. 1990), the Supreme Court recognized that a party's choice to "go to the mat" in litigating a case may have potential consequences for the party should it not prevail. However, *Palma* also recognized that the choice of the parties to rigorously litigate is not a bar to a party recovering attorney's fees and costs for time spent sparring, notwithstanding the fact that another set of attorneys may have resolved the matter more amicably and timely.

35. Thus, as set forth in *Palma*, the question is not whether another set of attorneys may have resolved the matter more amicably resulting in less time, but instead, the question is the necessity of the work on the part of the Butler Firm in defense of State Farm.

Time for Two Attorneys

36. During his testimony, Mr. Elkind indicated that he disallowed time for two attorneys appearing at the same hearing on behalf of State Farm, but again no specific entries were identified, nor was testimony provided as Mr. Elkind's understanding of the services performed by each of the attorneys present. Therefore, in order to accept Plaintiff's argument, the Court would essentially be required to adopt a blanket rule that any hearing at which two attorneys appeared, the time of one those attorneys would *per se* not be compensable.

37. To adopt such a *per se* rule would require the Court to abandon its

obligation to make a determination by the court, “as to reasonable hours expended based on more than the court’s own ideas of reasonableness . . . there must be a basis in the record to support the court’s findings.”⁶

38. Thus, the question is not about the number of attorneys present, instead the question is whether the actual services of each of those attorneys were required and did not constitute a duplication of services, which will necessarily be considered as a part of the Court’s overall obligation to evaluate the necessity for the work in relation to the reasonableness of the fee.

Travel Time

39. The general rule is that attorney travel time is not compensable.

40. In this case, the Court considered two exceptions to that general rule under which attorney travel time would be compensable.

41. The first exception requires a showing by the party seeking fees that counsel could not be found in the relevant market area with competency in the subject matter of this case.

42. As to the first exception, Mr. Elkind stated that although he did not know whether there are any attorneys in this area that performed first party work for State Farm Florida, the Defendant in this case, he does know there are attorneys that do first party work for insurance companies.

⁶ *Sunset Park Church of God, Inc. v. Gay*, 916 So. 2d 918 (Fla. 5th DCA 2005) (Judge Sharp concurring specially).

43. Additionally, some testimony was elicited from both Ms. Brown and Mr. Elkind with regard to whether there are attorneys in the area that handle cases involving 57.105 or fraudulent claims, but this testimony was very limited.

44. The question is not whether there are attorneys in a market that perform work for a specific party; instead the question is whether there are in fact attorneys in the relevant market area that are competent in the subject matter.

45. As it relates to the first exception, State Farm has not met its burden to establish the absence of competent counsel in the relevant market area sufficient to support the award of travel time.

46. The second exception to the general bar against the award of attorney travel time the Court considered is whether travel time should be awarded as a sanction.

47. In *Eve's Garden, Inc. v. Upshaw & Upshaw, Inc.*, 801 So. 2d 976 (Fla. 2nd DCA 2001), the appellate court affirmed the trial court's award of travel time reimbursement, which was imposed as a sanction after the defendant failed to comply with the trial court's discovery order, necessitating an additional, and otherwise unnecessary hearing. Similarly, in *Palm Beach Polo Holdings, Inc., v. Stewart Title Guaranty Company* 132 So. 3d 858 (Fla. 4th DCA) the Court acknowledged that travel time is generally not compensable, but found that an award of attorney fees against a party that unreasonably rejects a settlement offer is

a sanction that may include travel time.

48. Admittedly, the holdings in *Eve's Garden* and *Palm Beach Polo* do not specifically address the award of travel time as a sanction under section 57.105 in connection with a finding that a claim was not supported in fact or law when initially presented. However, the plain language of section 57.105(a) and the cases interpreting it, clearly and unambiguously identify as a "sanction," the right of the party to recover reasonable attorney's fees.

49. In the context of the facts of this case, the Court finds that attorney travel time is compensable as a sanction.

Fees for Fees

50. The general rule is that, after a finding of entitlement to attorney fees, attorney time spent litigating the amount of fees ("fees for fees") is not compensable. However, there are exceptions to that general rule. One of those exceptions is that fees for fees may be compensable as a "sanction."

51. In support its argument that the Court may award fees for fees as a sanction, State Farm relied upon the cases of *Bennet v. Berges*, 50 So. 3d 1154 (Fla. 4th DCA 2010) and *Condren v. Bell*, 853 So. 2d 609 (Fla. 4th DCA 2003). Both *Bennett* and *Condren* approved the award of fees for fees as a sanction.

52. The Morgan Group countered that in *Austin & Laurata, P.A.v. State Farm Florida Insurance Company*, 229 So. 3d 911 (Fla. 5th DCA 2017), the

District Court specifically prohibited the award of fees for fees when the basis of the fee is 57.105.⁷ For its part, *Laurata* cited to *Wood v. Haack*, 54 So. 3d 1082, 1074 (Fla. 4th DCA 2011), wherein the Fourth District held that fees for fees were not compensable under 57.105.

53. In *Condren*, the basis for the sanction was not made clear, but in *Cox v. Great American Ins. Co.*, 88 So. 3d 1048 (Fla. 4th DCA 2012), the Fourth DCA expounded upon its decision and addressed the distinction between fees for fees as a sanction under *Condren* versus the prohibition of fees for fees in *Wood*.

54. The Court explained that in *Condren*, the fees for fees were awarded as a sanction under the inherent authority of the court, pursuant to “the inequitable conduct doctrine.” In *Cox*, however, the court was considering fees pursuant to Rule 1.730(c), which it analogized to section 57.105. While acknowledging that the rule, the statute, and the inequitable conduct doctrine could all be classified as sanctions, the Court explained that, “when it comes to awarding fees for fees, not all sanctions are created equal.” *Cox*, 88 So. 3d at 1050. *Cox* concluded that since sanctions are not recoverable under section 57.105, and Rule 1.730(c) appears to allow for sanctions after relatively mild transgressions, pursuant to *Wood*, fees for fees are not justified under rule 1.730(c) for conduct that does not come close to triggering entitlement under the inequitable conduct doctrine.

⁷ The *Laurata* Court made this pronouncement in a footnote as an advisory to the trial court.

55. Since State Farm's claim arises from section 57.105, Florida Statutes, this Court is constrained to agree with the Morgan Group that, based upon the above-referenced cases, fees for fees may not be properly awarded in the instant case.

56. In reaching this conclusion, the Court is mindful that State Farm was prepared to deal with the issue of entitlement and the amount of fees in one hearing, and that, at the initial hearing on entitlement, it was State Farm that called to the Court's attention that the interests of Kidwell and its attorneys had become adverse.

57. Moreover, the Morgan Group spent the majority of its time during the hearings on the amount of fees rearguing issues related to entitlement and eliciting testimony that was irrelevant, inadmissible, or of little value to the Court in determining the amount of fees. At the conclusion of the hearing on the proper amount of fees, the Morgan Group tendered to the Court a 25-page memorandum of law raising arguments not raised in open court and citing facts not supported by the record.

58. Thus, if not for the case law prohibiting the Court from awarding fees for fees under 57.105 once entitlement is determined, the Court would find that as a "sanction," fees for fees should be awarded to State Farm in this action for the conduct of the opposing party.

Overall Amount of Fees

59. This court recognizes that, even though it rejected arguments related to disallowing fees under the four buckets identified by Mr. Elkind, the court still has an independent obligation to review billing entries to determine whether the work was reasonable and necessary to move the case forward. This independent review is not unfettered and there must be a basis in the record to support the court's findings.⁸

60. In *Centex-Rooney Const. Co. Inc. v. Martin County*, 725 So. [space] 2d 1255 (Fla. 4th DCA 1999), the Court explained that the party moving for fees bears the initial burden of establishing the fee to be awarded. The Court finds that State Farm met this initial burden through the testimony of Ms. Brown.

61. Once the party seeking fees has met its initial burden, *Centex* provides that it is the obligation of the opponent of the fee to point out with specificity which hours should be deducted with reasonable precision.

62. The issue in this case is that, while Kidwell and the Morgan Group raised a number of general legal issues, with very limited exception, there was a failure by both parties to present any evidence as to the specific entries that were not compensable.

63. The court has reviewed each and every entry on the invoices

⁸ *Sunset Park Church of God, Inc., v. Gay*, 916 So. 2d 918 (Fla. 5th DCA 2005) (Judge Sharp concurring specially with opinion).

submitted into evidence by State Farm, and in conformity with and in consideration of the evidence presented, and all factors enumerated both in the Florida Bar Code of Ethics 4-1.5, and in the case of *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), the Court finds that:

- A. The number of hours reasonably expended by Attorney Curt Allen on behalf of State Farm is 124.2 hours and a reasonable hourly rate for the services performed is \$220.00 per hour, and, therefore the total sum of \$ 27,324.00 is a reasonable fee for the services of Attorney Curt Allen in this action.
- B. The number of hours reasonably expended by Attorney Brian Hohman on behalf of State Farm is 80.5 hours and a reasonable hourly rate for the services performed is \$195.00 per hour, and, therefore the total sum of \$15,697.50 is a reasonable fee for the services of Attorney Brian Hohman in this action.
- C. The number of hours reasonably expended by Attorney Alex Cayer on behalf of State Farm is 17.7 hours and a reasonable hourly rate for the services performed is \$195.00 per hour, and, therefore the total sum of \$3,451.50 is a reasonable fee for the services of Attorney Alex Cayer in this action.
- D. The number of hours reasonably expended by Attorney Sean Hernandez behalf of State Farm is 55.7 hours and a reasonable hourly rate for the services performed is \$195.00 per hour, and, therefore the total sum of \$10,861.50 is a reasonable fee for the services of Attorney Sean Hernandez in this action.
- E. The number of hours reasonably expended by Attorney Mohammad Mubarak on behalf of State Farm is 4.7 hours and a reasonable hourly rate for the services performed is \$195.00 per hour, and, therefore the total sum of \$916.50 is a reasonable fee for the services of Attorney Alex Cayer in this action.
- F. The number of hours reasonably expended by Paralegal Melissa Lopretto on behalf of State Farm is 18 hours and a reasonable hourly

rate for the work performed by the paralegal is \$95.00 per hour, and, therefore the total sum of \$1,710.00 is a reasonable fee for the paralegal services performed on behalf of State Farm.

- G. State Farm's expert, Attorney Janet Brown was necessary to render an opinion relating to the reasonable number of hours reviewing file materials, preparing for and providing expert testimony and is entitled to expert fee of \$9,720.00.
- H. Total taxable costs in this action inclusive of the expert fee are \$18,734.18.

IT IS THEREFORE ORDERED AND ADJUDGED that pursuant to section 57.105, Florida Statutes, Defendant, State Farm Florida Insurance Company recover attorney fees, in equal halves, from The Morgan Law Group, P.A., 55 Merrick Way, Suite 404, Coral Gables, Florida 33134, and The Kidwell Group, LLC, 941 West Morse Boulevard, Suite 100, Winter Park, Florida 32789, in the total sum of \$59,961.00 which shall bear interest at the applicable statutory rate, for which let execution issue.

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to section 57.041, Florida Statutes, and, Florida Rule of Civil Procedure 1.420(c), Defendant, State Farm Florida Insurance Company recover costs of this action from The Kidwell Group, LLC, 941 West Morse Boulevard, Suite 100, Winter Park, Florida 32789 in the total sum of \$18,734.18 which shall bear interest at the applicable statutory rate, for which let execution issue.

DONE AND ORDERED in Chambers, Volusia County, Florida.

7/28/2020 12:04 PM 2015
12056 CODL



e-Signed 7/28/2020 12:04 PM 2015 12056 CODL

CHRISTOPHER KELLY
County Court Judge

Conformed copies to:
Curt Allen, Attorney for State Farm
Thomas J. Morgan, Sr., Attorney for the Morgan Group
Chad Barr, Attorney for the Kidwell Group
Kimberly Simoes, Attorney for the Kidwell Group

EXHIBIT

3

IN THE COUNTY COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2014 20479 CONS
DIVISION: 71

CENTRAL FLORIDA MEDICAL
AND CHIROPRACTIC CENTER
a/a/o RONALD SEALEY,

Plaintiff,

vs.

PROGRESSIVE AMERICAN
INSURANCE COMPANY,

Defendant.



**ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY FINAL DISPOSITION AND DENYING PLAINTIFF'S
MOTION FOR FINAL SUMMARY DISPOSITION**

THIS MATTER having come before the Court on Plaintiff's and Defendant's competing motions for Summary Final Disposition and this Court having heard arguments of counsel, and being otherwise fully advised, finds as follows:

UNDISPUTED FACTS

1. On August 21, 2013, Defendant, Progressive American Insurance Company's ("Progressive"), insured, Ronald Sealey ("Mr. Sealey"), was involved in a motor vehicle accident.

2. At the time of the accident, Mr. Sealey was insured for \$10,000.00 in Personal Injury Protection benefits with Progressive.

3. Mr. Sealey reported the accident to Progressive on September 3, 2013, and upon reporting the claim advised Progressive that he had pain in his right shoulder, left knee, and left wrist.

4. Mr. Sealey ultimately sought medical care with the Plaintiff, Central Florida Chiropractic and Medical Center's ("CFMC") facility eighteen (18) days after the motor vehicle accident.

5. On September 9, 2013, Mr. Sealey first sought medical care from CFMC and that bill was submitted to Progressive.

In response to the medical bill for September 9, 2013, Progressive placed the bill in "pending" until Progressive completed its coverage investigation.

6. Mr. Sealey continued to seek medical care and attention for his injuries at CFMC and was also evaluated by Dr. Harold Pearson, a board certified orthopedic surgeon on October 25, 2013.

7. Dr. Pearson diagnosed Mr. Sealey with a partial tear of the supraspinatus, Grade 1-2 AC tear and impingement secondary to inflammation of the rotator cuff.

8. In addition, Dr. Pearson diagnosed Mr. Sealey with multiple tears of the medial and lateral menisci of the left knee and determined that Mr. Sealey's

condition constituted an “emergency medical condition.”

9. Dr. Pearson also attested that it was not uncommon for individuals that have an acute injury to the rotator cuff or menisci of the knees to not seek medical treatment for an extended period of time.

10. Further, Dr. Pearson had observed patients who have suffered these injuries and not sought medical intervention for many months, as many patients believe the pain and soreness will resolve.

11. Progressive denied payment for all medical bills submitted for Mr. Sealey because Mr. Sealey did not seek initial services “within 14 days after the motor vehicle accident” as required §627.736(1)(a), Florida Statutes (2013) and the terms of Progressive’s policy.

PLAINTIFF’S ARGUMENT

Plaintiff argues that the fourteen (14) day treatment requirement is unconstitutional facially and as applied to Mr. Sealey as a violation of his rights to due process and equal protection. Plaintiff further argued that Mr. Sealey was denied his right to access the courts and that Defendant waived the fourteen day requirement by failing to certify coverage to Mr. Sealey.

DEFENDANT’S ARGUMENT

Defendant moved for Summary Disposition and requested that the Court find that Plaintiff was not entitled to payment of Personal Injury Protection

benefits because Mr. Sealey did not seek treatment for initial services and care within fourteen days after the motor vehicle accident, as required under Florida Statute 627.736 (1)(a) (2013) and the subject policy of insurance.

ANALYSIS AND CONCLUSIONS OF LAW

The section of Florida Statutes at issue in this case is §627.736(1)(a), which provides:

(1) Required benefits.--An insurance policy complying with the security requirements of s. 627.733 must provide personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle, subject to subsection (2) and paragraph (4)(e), to a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits resulting from bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle as follows:

(a) Medical benefits.--Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devices and medically necessary ambulance, hospital, and nursing services *if the individual receives initial services and care pursuant to subparagraph 1. within 14 days after the motor vehicle accident.* (Emphasis added).

Standard of Review- Constitutional Challenge

A legislative act carries a strong presumption in favor of validity. *Ellis v. Hunter*, 3 So.2d 373 (Fla. 5th DCA 2009). A party challenging the constitutionality of a statute carries a heavy burden of establishing that the statute bears no reasonable relation to a permissible legislative objective. *State v. Powell*, 497 So.2d 1188 (Fla. 1986). It is the Court's obligation to resolve all doubt as to the validity of the Statute in favor of its constitutionality. *State v. Lick*, 390 So.2d 52

(Fla. 1980). Thus, "the 'unconstitutionality must appear beyond all reasonable doubt before a statute is condemned.' In addition, Courts will not declare a statute unconstitutional where the statute is capable of being construed in a constitutional manner." *Ellis* at 379.

Due Process

Plaintiff challenges the requirement that an individual receive treatment within fourteen days of a motor vehicle accident as being a violation of substantive due process. Specifically, Plaintiff alleged that the fourteen day treatment requirement is an arbitrary, discriminatory, and oppressive limitation that bears no rational relationship to a permissible legislative objective.

In determining whether a permissible legislative objective exists, the Court must look to the evidence arising from the record of the case. *Powell* at 1190.

At the summary judgment hearing, the Defendant presented evidence in the form of *Florida Office of Insurance Regulation Report on Review of 2011-Personal Injury Protection Data Call- April 11, 2011, Office of the Insurance Consumer Advocate Report on Florida Motor Vehicle No-Fault Insurance (Personal Injury Protection) – December 2011, Florida Office of Insurance Regulation Report on Review of the Data Call to House Bill 119 – Motor Vehicle*

Personal Injury Protection- January 1, 2015 and House of Representatives Final Bill analysis for CS/CS/HB119 dates May 7, 2012.

A review of the record before the Court reflects that in enacting the current PIP legislation, the legislature was seeking to curtail fraud and abuses associated with No-Fault Insurance coverage and pass the savings on to consumers through reduced premiums. The Court finds this to be a permissible legislative objective.

Further, the record before the Court also demonstrates, that although by no means overwhelming, the statutory amendments appear to be furthering the stated legislative objective. The Office of Insurance Regulation announced on January 22, 2014 that in 2013 overall premiums were down on average 13.2%. In addition, on January 1, 2015 the Office of Insurance Regulation published the results of an independent consultant's study showing that the fourteen day treatment requirement specifically provided a -0.8% impact to total savings. Admittedly, it is not clear from the report how the -0.8% was arrived at, notwithstanding, it is the only evidence before the Court. Plaintiff produced no evidence to refute that the requirement that an injured party seek treatment within fourteen days of a motor vehicle accident bears some relationship to the stated and permissible legislative objective.¹

¹ The Court notes that the specific statistical support for these objectives is derived from post enactment analysis.

Equal Protection

Plaintiff also challenges the requirement that an individual receive treatment within fourteen days of a motor vehicle accident as being a violation of equal protection. Plaintiff contends that the creation of two classes of individuals; those who are eligible for PIP benefits based on treatment within fourteen days of the motor vehicle accident, and those that do not seek treatment within the fourteen days and are not eligible for PIP benefits, bears no rational relationship to a legitimate governmental interest.

The classification at issue does not involve a fundamental right or suspect class, and because of this, the statute is subject to the rational relationship test. *Warren v. State Farm*, 899 So.2d 1090 (Fla. 2005). In applying the rational relationship test, this Court is required to determine (1) whether the challenged statute serves a legitimate governmental purpose and (2) whether it was reasonable for the legislature to believe that the challenged classification would promote that purpose.

As set forth previously, the legislative purposes in enacting this statute was to curtail fraud and abuse associated with No-Fault Insurance coverage and pass the savings on to consumers through reduced premiums. Based on the record before the Court, the 14 day treatment requirement has in fact had an impact on

total savings and therefore it was reasonable for the Legislature to believe that the challenged classification would promote the stated governmental purposes.

As Applied Challenge-

The Plaintiff also contends that the requirement that an individual receive treatment within fourteen days of a motor vehicle accident is violation of substantive due process and equal protection as applied to Mr. Sealey.

In undertaking an as-applied challenge, the court must consider the facts specific to this case to determine whether the 14 day requirement can be fairly used to deny Mr. Sealey coverage. *State v. Kahn* 718 So.2d 893 (Fla. 1st DCA 1998).

In support of the as-applied challenge, the Plaintiff provided evidence through the Affidavits of Mr. Sealey and Harold Pearson, M.D. that Mr. Sealey suffered significant injuries as a result of the motor vehicle accident of August 21, 2013. The Affidavit of Dr. Pearson also established that it would not be uncommon for someone in Mr. Sealey's position to know that he had suffered an injury that required medical care and attention within fourteen (14) days.

However, Mr. Sealey admitted in his affidavit that he had pain the day of the accident and continual pain over the next two weeks. It appears from the record that Mr. Sealey had a reasonable belief that he was injured, yet, Mr. Sealey chose not to seek any medical treatment within 14 days of his motor vehicle accident.

The Statute and Progressive Policy in effect at the time of Mr. Sealey's motor vehicle accident clearly set forth that he was required to seek medical treatment within 14 days of the accident. "[E]very one person is presumed to know the law...and ignorance of the law is no excuse." *Ellis* at 379. "[S]ome inequality in result is not enough to vitiate on due process grounds a legislative classification ground in reason". *Lasky*, 296 So.2d 9 at 18. The Court is not persuaded that the facts of this case render the statute as applied to Mr. Sealey.

Right of Access to Courts

No person is denied access to the courts pursuant to the fourteen day eligibility requirement. Rather, access is regulated by the requirement that treatment be sought within fourteen days following a motor vehicle accident. Assuming that this requirement is met, the injured person has full access to the courts which is consistent with the intent of the Legislature in enacting the amendments to the PIP statute.

Further, in the case at hand, Mr. Sealey has a reasonable alternative to access courts through a cause of action against the tortfeasor if he so chooses. While the act may result in some inequality, the right to access courts has not been completely abolished.

Waiver

Regarding Plaintiff's argument that Defendant waived the fourteen day requirement by failing to "certify coverage" to Mr. Sealey. There is no requirement in the PIP Statute that an insurer has a duty to "certify" PIP coverage.

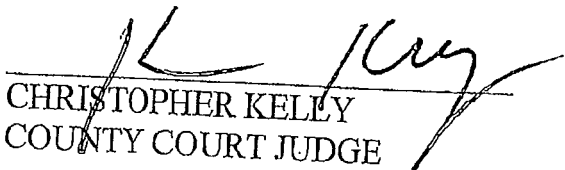
The plain language of the statute does require an insured to treat within fourteen days after the motor vehicle accident to be entitled to coverage. The premise that he did not seek treatment within the fourteen days because coverage had not been certified, but sought treatment on the eighteenth day, when coverage had still not been certified, is not a persuasive argument for waiver. The Court finds Defendant did not waive the fourteen day requirement.

Accordingly, it is hereby ORDERED and ADJUDGED that:

- A. Defendant's Motion for Summary Final Disposition is GRANTED; and
- B. Plaintiff's Motion for Summary Final Disposition is DENIED; and
- C. Plaintiff shall take nothing by this action and Defendant shall go hence without day; and
- D. The Court reserve jurisdiction to enter such further Orders, including a determination as to entitlement to and amount of attorney's fees and taxable costs.

DONE and ORDERED in Volusia County, Deland, Florida, this 8th day of

May, 2015.


CHRISTOPHER KELLY
COUNTY COURT JUDGE

Copies to:

Kimberly Simoes, Esquire, 919 Biscayne Blvd. Suite 12, Deland, FL 32724

Eric Biernacki and Robert Adams, Esquire, 1 S. Orange Ave., Suite 403, Orlando,
FL 32801;