Application for Nomination to the Fifth District Court of Appeal

Eric J. Netcher

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: __Eric J. Netcher______________________ **Social Security No.:** ____

Florida Bar No.: _106530__________ **Date Admitted to Practice in Florida:** 10/3/2013

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.

Ninth Circuit Court of Florida
Circuit Judge
425 N. Orange Ave., Ste. 1745
Orlando, Florida 32801
407-836-4576

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.

I have resided at this address since March 15, 2016. I have lived in Florida essentially my whole life. I was born and raised in Jacksonville. I lived in Gainesville while attending the University of Florida for undergrad and law school. I lived in Washington, DC briefly from January 2010 to May 2010 and again from May 2011 to August 2011. After law school, I clerked for a federal judge in West Virginia. I lived just over the border in Virginia (August 2013 to August 2014). Otherwise, I have resided in Florida.

3. State your birthdate and place of birth.

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

Yes.

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

Florida Bar – Admitted October 3, 2013
U.S. Court of Appeals for the Eleventh Circuit – Admitted September 22, 2015
U.S. District Court for the Northern District of Florida – Admitted January 27, 2017
U.S. District Court for the Middle District of Florida – Admitted February 5, 2015
U.S. District Court for the Southern District of Florida – Admitted December 3, 2014

I have never been suspended or resigned from any of these courts. As a member of the judiciary, I do not plan to renew membership in the federal courts listed above if and when the membership lapses.

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 Levin College of Law, Gainesville, FL

- August 2010 – May 2013
- Juris Doctor, *cum laude*, received on May 10, 2013
- Class rank: 67/343 (top 20%)
- GPA 3.55

University of Florida**,** Gainesville, FL

- July 2006 – December 2009
- Bachelor of Arts, *cum laude*, received on December 20, 2009
    - Major: Political Science; Minor: History
- GPA: 3.88 (rank not provided after request)

Samuel W. Wolfson High School, Jacksonville, FL

- August 2002 – May 2006
- High School diploma received in May 2006
- Class Rank: #1 (Valedictorian)
- GPA: 4.58

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.

The Federalist Society, UF Chapter

- August 2010 – May 2013
- Events Chair (August 2012 – May 2013)

Journal of Technology Law & Policy

- August 2011 – May 2013
- Managing Editor (August 2012 – May 2013)

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.

Ninth Circuit Court of Florida
Circuit Judge
425 N. Orange Ave., Ste. 1745
Orlando, Florida 32801
October 11, 2021 – present

Walker, Revels, Greninger & Netcher, PLLC
Shareholder
189 S. Orange Ave., Ste. 1600
Orlando, FL 32801
January 24, 2020 – October 10, 2021

Dean, Ringers, Morgan & Lawton, P.A.
Partner (January 1, 2019 – January 24, 2020)
Associate (March 23, 2015 – December 31, 2018)
201 E. Pine St., Ste. 1200
Orlando, FL 32801

Boyd & Jenerette, P.A.
Associate
201 N. Hogan St. #400
Jacksonville, FL 32202
September 1, 2014 – March 15, 2015

Judge David A. Faber, U.S. District Court for the Southern District of Florida
Judicial Law Clerk
2303 Elizabeth Kee Federal Building

601 Federal Street
Bluefield, WV 24701
August 19, 2013 – August 20, 2014

Judge Anne C. Conway, U.S. District Court for the Middle District of Florida
Judicial Extern
George C. Young Federal Annex Courthouse
401 West Central Boulevard
Orlando, FL 32801
August 2012 – December 2012

Dean, Ringers, Morgan & Lawton, P.A.
Summer Associate
201 E. Pine St., Ste. 1200
Orlando, FL 32801
May 2012 – August 2012

Salter Feiber, P.A.
Law Clerk
3940 N.W. 16th Blvd., Bldg. B
Gainesville, FL 32605
August 2011 – February 2012

Institute for Justice
Law Clerk
901 N. Glebe Rd #900
Arlington, VA 22203
May 2011 – August 2011

University of Florida Levin College of Law
Video Technician
309 Village Dr.
Gainesville, FL
February 2011 – March 2012

- During my 1L and 2L years, I worked for the University to film certain courses and seminars. Typically, I filmed the trial practice course for the students to watch and progress. I also filmed special seminars and other events at the law school. It was a part-time job, typically less than 10 hours per week.
- I worked under Robin Boyd who I believe is still at the University of Florida. She can be reached at 352-273-0915 or boydr@ufl.edu.

United States Congress, Office of U.S. Representative Cliff Stearns
Congressional Intern
Rayburn House Office Building
45 Independence Ave SW
Washington, DC 20515

January 2010 – May 2010

- As a congressional intern, I researched and analyzed legislation; attended legislative hearings and briefings; drafted constituent correspondence; communicated with constituents; and provided other support to Congressman Stearns and his staff. I previously served as an intern in Congressman Stearns' Gainesville district office from January 2009 until May 2009. A separate entry for this internship is not included as I was under 21.
- Congressman Stearns is no longer a congressman.

Cox Radio Jacksonville
Promotions Assistant
11700 Central Pkwy #1
Jacksonville, FL 32224
May 2009 – August 2009

- During the summers of 2008 and 2009, I worked at Cox Radio in my hometown of Jacksonville. As a promotions assistant, I worked at promotional events throughout Jacksonville. I set up equipment and sound at the events and greeted the public. At the time, Cox's stations included four popular music stations and a new/talk station.
- I worked under Allison Misora who is no longer employed with Cox.

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.

Because I am a circuit judge, I am not currently practicing. Before becoming a judge, I was a founding shareholder of Walker, Revels, Greninger & Netcher, PLLC. I was (and remain) board-certified by the Florida Bar in Appellate Practice. My practice focused on appeals, insurance coverage, and civil litigation. Within these realms, I litigated and advised on claims involving a diverse spectrum of subject matters including construction law, employment law, civil rights, premises liability, products liability, commercial litigation, and others.

As a lawyer, I tried cases in state and federal court. I have tried inverse condemnation, section 1983 unlawful search, premises liability, and medical malpractice cases. I have handled appeals in a wide range of areas, including federal civil rights, medical malpractice, employment law, workers' compensation, personal injury, and others.

The majority of my practice was defense based. That is, I was retained by insurance carriers to represent policy holders or retained directly by self-insured clients to defend claims at the trial level or handle appeals. A significant portion of my practice concerned insurance coverage issues. When acting as coverage counsel, I represented the insurance carriers directly. This involved providing coverage opinions to insurance carriers and filing declaratory judgment actions concerning coverage.

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:

Since October 11, 2021, I have not been in practice. I have been on the bench. For the last 5 years of my practice (October 2016 – October 2021), the percentage was approximately the following:

Court			Area of Practice		
Federal Appellate	15	%	Civil	98	%
Federal Trial	20	%	Criminal		%
Federal Other		%	Family	2	%
State Appellate	20	%	Probate		%
State Trial	45	%	Other		%
State Administrative		%			
State Other		%			
TOTAL	100	%	TOTAL	100	%

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

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

Jury?	2	Non-jury?	1
Arbitration?	1	Administrative Bodies?	
Appellate?	30		

*** I also tried a case before a jury that was to be a two-week trial but concluded in a mistrial after the first week. I have not included that case because it did not go to verdict.

*** Regarding appeals, I interpret "final decision" to mean that the court issued a decision on the merits. I have handled a number of appeals that resulted in a dismissal after a settlement or otherwise came to a premature conclusion before an opinion was issued. If appeals that were briefed but did not result in a decision on the merits were included, the number would be higher.

*** My responses refer to trials or appeals handled as a lawyer. As a circuit judge, I have presided over nearly 50 jury trials and dozens of nonjury trials. I also sat as an associate judge on the Sixth District Court of Appeal in April 2025, presiding over two appeals. And I am again sitting as an associate judge on the Sixth DCA in June 2026.

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.

1. *Scholz v. Operation Par, Inc.*, 315 So. 3d 649 (Fla. 2d DCA 2021)
   a. Court: Second District Court of Appeal
   b. Case No: 2D20-3061
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Dane C. Heptner (dane@salterhealy.com; 727-323-5848)

2. *Pollack v. Henderson Behavioral Health, Inc.*
   a. Court: Florida Supreme Court
   b. Case No: SC20-897
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Joel S. Perwin (jperwin@perwinlaw.com; 305-779-6090)

3. *Bryant v. Geoghagan*, 302 So. 3d 510 (Fla. 5th DCA 2020)
   a. Court: Fifth District Court of Appeal
   b. Case No: 5D19-3254
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Rhonda Boggess (RBoggess@marksgray.com; 904-398-0900)

4. *Henderson Behavioral Health, Inc. v. Cortes*, 296 So. 3d 923 (Fla. 4th DCA 2020)
   a. Court: Fourth District Court of Appeal
   b. Case No: 4D20-0650
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Alberto E. Lugo-Janer (lugojaner@earthlink.net; 407-342-3122)

5. *Pollack v. Cruz*, 296 So. 3d 453 (Fla. 4th DCA 2020)
   a. Court: Fourth District Court of Appeal
   b. Case No: 4D19-1512
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Joel S. Perwin (jperwin@perwinlaw.com; 305-779-6090)

6. *Borges v. Cruz*, 294 So. 3d 952 (Fla. 4th DCA 2020)
   a. Court: Fourth District Court of Appeal
   b. Case No: 4D19-1513
   c. Date of Oral Argument: No oral argument
   d. Opposing Counsel: Joel S. Perwin (jperwin@perwinlaw.com; 305-779-6090)

7. *Brown v. Orange County Corrections CCMSI*, 284 So. 3d 983 (Fla. 1st DCA 2019)
    a. Court: First District Court of Appeal
    b. Case No: 1D19-1910
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Brian C. Dowling (bdowling@bcdoffice.com; 321-407-6320)

8. *Aerotek/Allegis Group, Inc. and ESIS v. Gable*
    a. Court: First District Court of Appeal
    b. Case No: 1D19-1968
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Richard Ervin, III (deceased)

9. *K.O. v. Florida Department of Children and Families*
    a. Court: Fifth District Court of Appeal
    b. Case No.: 5D19-157
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Ryan Truskoski (rtrusk1@aol.com; 407-841-7676)

10. *Chiddister v. Children's Network of Southwest Florida, LLC*, 302 So. 3d 836 (Fla. 2d DCA 2020)
    a. Court: Second District Court of Appeal
    b. Case No: 2D19-1193
    c. Date of Oral Argument: August 11, 2020
    d. Opposing Counsel: Richard A. Filson (filsonlawfirm@gmail.com; 941-952-0771)

11. *In re: Patricia Hannah, as plenary guardian of Darryl Vaugh Hanna, Jr.*
    a. Court: United States Court of Appeals for the Eleventh Circuit
    b. Case No: 19-10939-D
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Jordan Redavid (jordan@yourchampions.com; 954-860-8434)

12. *Bussey-Morrice v. Kennedy, et. al.*, 775 F. App'x 1003 (11th Cir. 2019)
    a. Court: United States Court of Appeals for the Eleventh Circuit
    b. Case No: 18-13627
    c. Date of Oral Argument: August 22, 2019
    d. Opposing Counsel: Wendell T. Locke (wendell@lockefirm.com; 954-382-8858)

13. *Graulau-Maldanado v. Orange County Library System*, 273 So. 3d 278 (Fla. 5th DCA 2019)
    a. Court: Fifth District Court of Appeal
    b. Case No: 5D18-2800

c. Date of Oral Argument: No oral argument
d. Opposing Counsel: N/A – pro se appellant

14. *Gillett v. Pittman*
    a. Court: Second District Court of Appeal
    b. Case No: 2D18-3841
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Matthew A. Crist (matt@mcyintirefirm.com; 813-530-1000)

15. *Citizens Property Insurance Corporation v. Burgos*
    a. Court: Third District Court of Appeal
    b. Case No: 3D18-0956
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Alex Stern (alex@lrlc.legal; 305-900-5489)

16. *Foley v. Orange County, et al.*, 257 So. 3d 1134 (Fla. 5th DCA 2018)
    a. Court: Fifth District Court of Appeal
    b. Case No: 5D18-0145
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: N/A – pro se appellant

17. *Normandy Insurance Company v. Sorto*, 276 So. 3d 337 (Fla. 1st DCA 2018)
    a. Court: First District Court of Appeal
    b. Case No: 1D17-5259
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Richard Stoudemire (rstoudemire@saalfieldlaw.com; 904-355-4401)

18. *Hyatt Corporation v. Richardson*
    a. Court: Fifth District Court of Appeal
    b. Case No: 5D17-3863
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Elizabeth H. Faiella (justice@faiella.com; 407-647-6111)

19. *St. Lucie FCRD and PGCS v. FMIT*, 259 So. 3d 992 (Fla. 1st DCA 2018)
    a. Court: First District Court of Appeal
    b. Case No: 1D17-4794
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: George A. Helm, III (ghelm@pelsusa.com; 321-832-1700)

20. *Rowley v. City of Fort Pierce*, 745 F. App'x 325 (11th Cir. 2018)
    a. Court: United States Court of Appeals for the Eleventh Circuit

b. Case No: 17-14816
c. Date of Oral Argument: No oral argument
d. Opposing Counsel: J. Steven Warner (swarner@mcgivneyandkluger.com; 786-696-9851)

21. *Skyles v. City of Altamonte Springs*, 730 F. App'x 769 (11th Cir. 2018)
    a. Court: United States Court of Appeals for the Eleventh Circuit
    b. Case No: 17-12775
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Brandon Stewart (brandon@stewartlegalteam.com; 321-248-4889)

22. *Greer v. Ivey*, 767 F. App'x 706 (11th Cir. 2019)
    a. Court: United States Court of Appeals for the Eleventh Circuit
    b. Case No: 17-14048
    c. Date of Oral Argument: December 11, 2018
    d. Opposing Counsel: Benedict Kuehne (ben.kuehne@kuehnelaw.com; 305-789-5989) and Michael T. Davis (mdavis@kdlawyerspa.com; 305-789-5989)

23. *Velez v. CoAdvantage*, 220 So. 3d 1253 (Fla. 1st DCA 2017)
    a. Court: First District Court of Appeal
    b. Case No: 1D16-5496
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Nicholas Shannin (nshannin@shanninlaw.com; 407-985-2222)

24. *Orange County v. Willis*, 2039 So. 3d 1257 (Fla. 5th DCA 2017)
    a. Court: Fifth District Court of Appeal
    b. Case No: 5D16-3523
    c. Date of Oral Argument: December 7, 2017
    d. Opposing Counsel: Nicholas Shannin (nshannin@shanninlaw.com; 407-985-2222)

25. *Letzo v. Orange County Public Schools*
    a. Court: First District Court of Appeal
    b. Case No: 1D16-3163
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: Richard Ervin, III (deceased)

26. *Letzo v. Orange County Public Schools*
    a. Court: First District Court of Appeal
    b. Case No: 1D16-3164

c. Date of Oral Argument: No oral argument
d. Opposing Counsel: Richard Ervin, III (deceased)

27. *Denham v. Corizon Health*, 675 F. App'x 935 (11th Cir. 2017)
    a. Court: United States Court of Appeals for the Eleventh Circuit
    b. Case No: 15-12974
    c. Date of Oral Argument: December 13, 2016 (presented by my partner at that time – Lamar Oxford)
    d. Opposing Counsel: Mikel Carpenter (mike@mikelwcarpenterpa.com; 386-804-8012)

28. *Central Florida Expressway Authority v. Tropical Trailer Leasing*
    a. Court: Fifth District Court of Appeal
    b. Case No. 5D16-0549
    c. Date of Oral Argument: No oral argument
    d. Opposing Counsel: A. Rodger Traynor, Jr. (r_traynor@msn.com; 305-510-8374)

29. *MBM Corp. v. Wilson*, 186 So. 3d 574 (Fla. 1st DCA 2016)
    a. Court: First District Court of Appeal
    b. Case No: 1D15-2398
    c. Date of Oral Argument: January 13, 2016 (presented by my partner at that time – Lamar Oxford). I prepared and worked to finalize the briefs. Mr. Oxford reviewed the briefs, provided edits and comments, and signed the briefs.
    d. Opposing Counsel: William McCabe (billjmccabe@earthlink.net; 407-403-6111)

30. *Gonzalez v. St. Lucie County Fire District*, 186 So. 3d 1106 (Fla. 1st DCA 2016)
    a. Court: First District Court of Appeal
    b. Case No: 1D15-3185
    c. Date of Oral Argument: No oral argument. I prepared and worked to finalize the brief. My partner Lamar Oxford reviewed the brief, provided edits and comments, and signed the brief.
    d. Opposing Counsel: William McCabe (billjmccabe@earthlink.net; 407-403-6111)

31. *Alvarez v. Fort Pierce Police Department*, 186 So. 3d 581 (Fla. 1st DCA 2016)
    a. Court: First District Court of Appeal
    b. Case No: 1D15-2115
    c. Date of Oral Argument:. January 21, 2016 (presented by my partner at that time). I prepared and worked to finalize the brief. My partner Lamar Oxford reviewed the brief, provided edits and comments, and signed the brief.
    d. Opposing Counsel: William McCabe (billjmccabe@earthlink.net; 407-403-6111)

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.

No

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? If so, please explain full.

No

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

1. *Bryant v. Geoghagan*, 302 So. 3d 510 (Fla. 5th DCA 2020)
   Case No. 5D19-3254 (Fifth District Court of Appeal)
   Rhonda Boggess (opposing counsel) – RBoggess@marksgray.com; 904-398-0900

2. *Henderson Behavioral Health, Inc. v. Cortes*, 296 So. 3d 923 (Fla. 4th DCA 2020)
   Case No. 4D20-0650 (Fourth District Court of Appeal)
   Alberto E. Lugo-Janer (opposing counsel) – lugojaner@earthlink.net; 407-342-3122
   Eric D. Freedman (co-petitioner's counsel) – efreedman88@gmail.com; 678-637-3254
   Joshua B. Walker (co-counsel and trial counsel) – jwalker@wrg.law; 407-789-1830

3. *Pollack v. Cruz*, 296 So. 3d 453 (Fla. 4th DCA 2020)
   Case No. 4D19-1512 (Fourth District Court of Appeal)
   Joel S. Perwin (opposing counsel) – jperwin@perwinlaw.com; 305-779-6090
   Joshua B. Walker (co-counsel and trial counsel) – jwalker@wrg.law; 407-789-1830

4. *Chiddister v. Children's Network of Southwest Florida, LLC*
   Case No. 2D19-1193 (Second District Court of Appeal)
   Richard A. Filson (opposing counsel) – filsonlawfirm@gmail.com; 941-952-0771
   Stacie J. Schmerling (opposing counsel) – stacie@justiceforkids.com; 754-888-5437
   Kayla A. Riera-Gomez (co-appellee's counsel) – kayla@sunshinestatemediation.com; 786-938-5180
   Andrew M. Feldman (co-appellee's counsel) – feldmana85@gmail.com; 305-929-3008
   Joshua B. Walker (co-counsel and trial counsel) – jwalker@wrg.law; 407-789-1830

5. *Davis v. City of Apopka*
   Case No. 6:15-cv-01631 (U.S. District Court for the Middle District of Florida)

Howard S. Marks (opposing counsel) – Howard.Marks@burr.com; 407-540-6600
Joseph R. Flood, Jr. (co-counsel) – jflood@drml-law.com; 407-422-4310

6. *Bowers v. Orange County*
   Case No. 2013-CA-004568-O (Ninth Judicial Circuit)
   Michael M. Kest (opposing counsel) – michael@kestlaw.com; 407-490-2889
   Jay W. Small (opposing counsel) – jsmall@dinsmore.com; 407-425-6174
   Linda Brehmer-Lanosa (co-counsel) – deceased

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more*.

1. *Frank Winston Crum Insurance Company v. D&K Home Prep Service* (Coverage Declaratory Judgment Action)
   Case No. 2021-CA-001128-NC (Twelfth Judicial Circuit)
   April Stade v. D&K Home Prep Service, LLC (Underlying Action)
   Case No. 2020-CA-1558-NC
   *These two cases are related cases. One is the underlying tort claim and the other is the declaratory judgment action filed by me on behalf of the insurance carrier to determine insurance coverage. They were settled at mediation.
   Ashley M. Long (counsel for underlying plaintiff Stade) – along@leavenlaw.com; 727-327-3328
   Bryan M. Krasinski (counsel for underlying defendant D&K) – bmk@kubickidraper.com; 813-314-1136
   Case settled at mediation

2. *Security First Insurance v. Probuilders Construction, LLC v. Doc Watts Electric, et al.*
   Case No. 2019-CA-00463 (Eighteenth Judicial Circuit)
   Robert A. Carlson (counsel for plaintiff) – rcarlson@carlsonfirm.com; 305-377-2323
   Priscila Bandeira (counsel for plaintiff) – pbandeira@duanemorris.com; 305-960-2200
   Geoffrey R. Lutz (opposing counsel for defendant and third-party plaintiff) – geoff@lutzlawpa.com; 850-607-4173
   Victoria C. Zinn (counsel for co-third-party defendant) – victoria@zinnlegal.com; 386-256-9466
   Lindsay McCormick (counsel for co-third-party defendant) – lgmccormick@mdwcg.com; 813-898-1800
   Case settled at mediation

3. *Yadira Santiago v. AEA Winter Springs, LLC*
   Case No. 2021-CA-001115 (Eighteenth Judicial Circuit)
   Case No. 6:21-cv-0978-CEM-GJK (U.S. District Court for the Middle District of Florida (after removal))
   Kyle J. Lee (opposing counsel) – kyle@kyleleelaw.com; 813-343-2813
   Case settled without mediation

4. *Roy Lee Johnson v. PDR Painting, LLC; et al.*
   Case No. 2018-CA-005830 (Fourth Judicial Circuit)
   Alexander Cvercko (opposing counsel) – alex@cverckolaw.com; 904-821-8700
   Leslie A. Moore (counsel for co-defendant) – Leslie.moore@cna.com; 407-848-8063
   David Terry (counsel for co-defendant) – dterry@mcconnaughhay.com; 850-222-8121
   Case settled at mediation

5. *Barbara Foster v. Destiny Springs Condominium Association, Inc.; et al.*
   Case No. 2020-CA-000718-O (Eighteenth Judicial Circuit)
   Olivia H. Miller (opposing counsel) – olivia@chadbarrlaw.com; 407-599-9036
   Bryan M. Krasinski (co-defendant's counsel) – bmk@kubickidraper.com; 813-314-1136
   Ted N. Butler, Jr. (co-defendant's counsel) – tbutler@wshblaw.com; 407-634-7980
   Case settled without mediation

6. *Weathermaster Building Products, Inc. v. Window Pane of Deltona, Inc., et al.*
   Case No. 2020-CC-013178 (Ninth Judicial Circuit)
   Michael E. Milne (opposing counsel) – mmilne@milnelawgroup.com; 321-558-7700
   Case settled without mediation

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.

During my last five years of practice (2016 – 2021), I appeared in Court approximately four times per month.

As a circuit judge since October 11, 2021, I preside over court proceedings (trials or hearings) on an almost 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.

N/A

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

Most recently before taking the bench, my practice was not greater than 50% personal injury, workers' compensation or professional malpractice. It was mostly appeals, insurance coverage, and construction litigation. The insurance coverage work involved advising carriers through coverage opinions and filing declaratory judgment actions in which I would represent the

plaintiff (even though it was the insurance carrier). Within the appellate, construction litigation, and other general litigation, I represented defendants 95% of the time.

At a prior law firm, my practice was 50% personal injury or professional malpractice. At that time, the percentage was approximately following:

Defendants – 98%

Plaintiffs – 2%

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

1. ***Pollack v. Cruz*, 296 So. 3d 453 (Fla. 4th DCA 2020)**
Companion Case: *Borges v. Cruz*, 294 So. 3d 952 (Fla. 4th DCA 2020)
Fourth District Court of Appeal
4D19-1512
Appeal proceeded in 2019 and 2020
Judges Robert M. Gross, Alan O. Forst, and Jonathan D. Gerber
Joel S. Perwin (opposing counsel) – jperwin@perwinlaw.com; 305-779-6090
Joshua B. Walker (co-counsel and trial counsel) – jwalker@wrg.law; 407-789-1830

This appeal arose from the tragic shooting at Marjory Stoneman Douglas High School on February 14, 2018. I represented Henderson Behavioral Health – a non-profit behavioral health provider that provided services to the teenage shooter (Nikolas Cruz) in the years before the tragic shooting. The families of the victims filed suit against multiple individuals and entities, including Henderson. While many theories of liability were alleged, the essence was that Henderson owed a duty to the school and the school's students to warn them of the potential danger posed by Cruz. The trial court dismissed the claims against Henderson with prejudice. I handled the appeal before the Fourth DCA and the jurisdictional proceedings before the Florida Supreme Court.

I argued that mental health providers have no duty to foresee and prevent horrific criminal acts. I had to address several theories of duty that the plaintiffs were positing, including foreseeable zone of risk, the undertaker's doctrine, the special relationship theory, and an argument that Henderson should have supplanted the Broward County School Board's decision to "mainstream" Cruz. I argued that holes in our mental health system are "not a problem that the judiciary, through the lens of tort law, can rectify." Rather, the "complex issues encountered in the provision of mental health services require solutions with input from all stakeholders" – work that "is for the legislature, not the judiciary."

In an opinion authored by Judge Gross, the Fourth DCA agreed and affirmed the dismissal of Henderson. The court found that no common law duty exists for mental health providers to warn a potential victim or communicate a potential threat to law enforcement. The court concluded:

> In this case, a holding that Henderson owed a legal duty to protect or warn students that attended the same school as one of its patients would not only undermine effective patient-therapist relationships, but it also would discourage mental health professionals from providing mental health services to students. It is difficult to predict any human being's future conduct. Unlike scientific disciplines firmly grounded in mathematics, psychology is not a precise science, so courts should be cautious about expanding liability beyond the therapist-patient relationship.

Pollack v. Cruz, 296 So. 3d 453, 460 (Fla. 4th DCA 2020).

Judge Gerber authored a concurring opinion to emphasize that no Florida statute imposed liability upon mental health providers that failed to take such preemptive actions. However, after the tragedy, a statute was amended to place an obligation on psychiatrists to disclose patient communications to law enforcement. when there is a specific threat. Judge Gerber highlighted this fact to emphasize that "it would be improper for this court to issue an after-the-fact decision imposing a legal duty and potential liability upon Henderson's inactions in this case." *Id.* at 462.

The appellants sought to invoke the Florida Supreme Court's discretionary jurisdiction. After jurisdictional briefing, the Court declined to exercise jurisdiction. This brought the case to a close and resulted in the dismissal of dozens of other claims filed against Henderson in the trial court.

This case is significant for the multiple reasons. There are the obvious ones apparent from the face of the opinion. The opinion affirms the principle that mental health providers have no common law duty to prevent violent acts of their patients. This is an important protection that ensures that mental health providers can freely practice their profession without the fear of unlimited liability.

The case is also significant as a textbook example of judges respecting the proper role of the judiciary. The trial court and the Fourth DCA recognized that no duty existed at common law and that it was for the legislature to create such a duty. The basic notion that the judiciary must leave law-making and law-changing to the Legislature (and the Governor through presentment) is foundational to my judicial philosophy.

Finally, the case is an important reminder that judges must apply the law regardless of the sympathetic nature of the case. There are no plaintiffs more sympathetic than the families of the victims of the horrific shooting at Marjory Stoneman Douglas. But that sympathy did not color the court's sound conclusion.

2. ***Davis v. City of Apopka***
U.S. District Court for the Middle District of Florida
Case No. 6:15-cv-01631
My involvement in the case was from mid-2018 through trial in January 2020.
Judge Roy B. Dalton
Howard S. Marks (opposing counsel) – Howard.Marks@burr.com; 407-540-6600
Joseph R. Flood, Jr. (co-counsel) – jflood@drml-law.com; 407-422-4310

I represented the City of Apopka in this civil rights claim brought under section 1983. The case arose out of an altercation between the Plaintiff and his adult son that resulted in the fatal shooting of the son. Police were called to the scene and officers from the Apopka Police Department arrived to find the Plaintiff still on top of his son. The Plaintiff was arrested and eventually charged with murder. While the Plaintiff was taken to the hospital that night, the officers searched his home before the execution of a search warrant. Plaintiff was eventually acquitted of murder following a criminal trial. After the acquittal, Plaintiff filed suit against the City of Apopka. For present purposes, the two claims that are relevant are the false arrest claim and the unlawful search claim. I will discuss the outcome of each in turn.

Before my involvement in the case, the entire case was dismissed with prejudice. But the Eleventh Circuit reversed as to the false arrest claim and remanded to the District Court to consider a novel issue – the effect of Florida's Stand Your Ground law on the question of whether actual probable cause existed for Plaintiff's arrest. I became involved after remand in 2018. I fully briefed the Stand Your Ground/probable cause issue. Probable cause is a defense to a false arrest claim and to the extent that it existed for the arrest, the state and federal false arrest claims had to be dismissed.

In essence, Plaintiff's position was that the Stand Your Ground law required law enforcement officers to make immunity determinations on the scene of an incident and decline to arrest when the stand your ground self-defense standard was met. There was some support for this view in the broad language of the statute –enough support that the Eleventh Circuit was interested in the issue. I countered Plaintiff's argument with Florida Supreme Court precedent standing for the proposition that "a post-arrest and post-charging immunity determination, made when a defendant's counsel requests that determination, will be the best that we can do – procedurally – considering the well-established body of law detailing the responsibilities of law enforcement officers, prosecutors, and judges." *Kumar v. Patel*, 227 So. 3d 557, 560 (Fla. 2017).

After detailed briefing on the issue, Judge Roy B. Dalton agreed with our position. *Davis v. City of Apopka*, 356 F. Supp. 3d 1366 (M.D. Fla. 2018). Judge Dalton concluded that "while the enactment of Florida's Stand Your Ground law 'substantially altered the law governing justifiable use of force by abrogating the common law duty to retreat before resorting to deadly force in self defense' and granting immunity to those who prove entitlement to the defense by the preponderance of the evidence, this immunity does not negate the existence of probable cause at the time of arrest." *Id.* at 1381.

This ruling left only the Fourth Amendment unconstitutional search claim. This claim went to trial in January 2020. There was no dispute that the officers entered Plaintiff's home before the execution of a warrant. Indeed, the jury was informed that there was an unlawful search. But that is not sufficient to impose municipal liability under § 1983. Rather, § 1983 requires that a City policy or custom be the moving force behind the constitutional violation before liability can be imposed. Plaintiff contended that the police chief (who was present at the scene in the immediate aftermath and came back later while a search was in progress) ordered and participated in the unlawful search. We argued at trial that the chief was unaware that no warrant had been issued and played merely a support role. The trial essentially came down to the chief's credibility. The jury

found no liability on the City, concluding that the chief did not knowingly order an unlawful search.

The case then went on appeal to the Eleventh Circuit. After the trial, I left Dean, Ringers, Morgan & Lawton to start our new firm of Walker, Revels, Greninger & Netcher. This case remained with Dean Ringers. After I took the bench, the Eleventh Circuit issued a detailed opinion affirming the judgment in favor of the City. *See Davis v. City of Apopka*, 78 F.4th 1326 (11th Cir. 2023).

The case is significant because it involved a novel question at the intersection of federal constitutional law, state tort law, and a state statute designed to provide self-defense protections to criminal defendants and suspects. With little to no prior precedent on the issue, I had to navigate the authorities to formulate an argument. The result was a well-reasoned district court opinion accepting our arguments and providing guidance on the issue – guidance for courts and for law enforcement officers. Ultimately, after I took the bench, the Eleventh Circuit agreed with the position I took on behalf of the City at the trial level.

The case is also significant in that it highlights the difficulty of establishing § 1983 municipal liability. Even though there was an admitted unlawful search, that was not enough to create liability. Liability required a knowing act of a final policymaker, like the chief of police. This highlights another point. Namely, juries can be trusted to make difficult factual decisions. Oftentimes juries do not get enough credit. The jurors here were properly instructed on the difficulties of § 1983 liability and concluded that the City was not liable despite the unlawful search. It's an important reminder that the role of the trial judge is to make legal determinations and to generally leave the facts to the jury.

3. ***Velez v. CoAdvantage*, 220 So. 3d 1253 (Fla. 1st DCA 2017)**

First District Court of Appeal
1D16-5496
Appeal proceeded in 2016 and 2017
Judges T. Kent Wetherell, II; Stephanie W. Ray; and Scott Makar
Nicholas Shannin (opposing counsel) – (nshannin@shanninlaw.com; 407-985-2222)

This case was an appeal to the First DCA in a workers' compensation proceeding. I represented the employer/carrier. By statute, workers' compensation claimants can seek a one-time change of their physician. The statute provides that "the carrier shall authorize an alternative physician who shall not be professionally affiliated with *the previous physician* within five days after receipt of the request." § 440.13(2)(f), Fla. Stat. The case – one of first impression – concerned what exactly "the previous physician" meant.

The claimant argued that the new physician could not be professionally affiliated with any prior authorized physician because section 1.01(1), Florida Statutes provides that singular terms in statutes include the plural. Consequently, "the previous physician" would really be "the previous physicians." I argued that the plain language of "the previous physician" meant that the statute only required that the new physician not be professionally affiliated with the physician from whom

the one-time change request was made (i.e., the immediately preceding physician). I emphasized that the legislature's use of the definite article "the" before "previous" mandated that conclusion. I countered the plural argument by emphasizing that section 1.01 only requires the singular to include the plural "when context will permit."

The First DCA agreed with my argument, concluding that the phrase "clearly and unambiguously refers to a singular physician by using the definite article 'the' and the singular noun 'physician.'" *Velez v. CoAdvantage*, 220 So. 3d 1253, 1254-55 (Fla. 1st DCA 2017). Consequently, the employer/carrier's selection of a physician was appropriate.

This case may not seem like much. But it is significant in that it was an issue of first impression that established law. Workers' compensation practitioners and judges now have a straightforward answer to a previously unaddressed question.

The case is also significant as an example of textualism at work. The court assessed the plain language of the statute, concluding that it was clear and unambiguous. The statutory text and context, as they must, dictated the result. The case further highlights that textualism is not literalism. My opposing counsel made a clever argument regarding the singular including the plural. But an ordinary person reading the statutory text, in context, would not reach the conclusion argued by the other side. Textualism is not hyper-technical literalism.

4. ***Greer v. Ivey*, 767 F. App'x 706 (11th Cir. 2019) and 242 F. Supp. 3d 1284 (M.D. Fla. 2017)**
U.S. Court of Appeals for the Eleventh Circuit (Case No. 17-14048)
U.S. District Court for the Middle District of Florida (Case No. 6:15-cv-677)
Case proceeded in the trial court from 2015-2017 and in the appellate court from 2017-2019
Eleventh Circuit Judges: Adalberto Jordan, Britt C. Grant, and Frank M. Hull
Middle District Judge: Carlos Mendoza
Benedict Kuehne (opposing counsel) – ben.kuehne@kuehnelaw.com; 305-789-5989
Michael T. Davis (opposing counsel) – mdavis@kdlawyerspa.com; 305-789-5989
Douglas R. Beam (opposing counsel) – dougbeam@dougbeam.com; 321-723-6591
Thomas W. Poulton (co-defendant's counsel) – poulton@debevoisepoulton.com; 407-673-5000
Bruce R. Bogan (co-defendant's counsel) – bbogan@hilyardlawfirm.com; 407-425-4251
Bruce W. Jolly (co-defendant's counsel) – bruce@purdylaw.com; 954-462-3200
F. Scott Pendley (co-counsel) – spendley@drml-law.com; 407-484-8275

This wrongful death action arose from a police shooting in the Town of Indialantic. We represented the Town of Indialantic through the trial proceedings and on appeal. The case is significant because it involved important questions regarding the tort duties owed by law enforcement officers and sovereign immunity protections from tort claims. Plaintiff Randall Greer brought the action as the personal representative of the estate of his brother Christopher Greer. Christopher was shot and killed by deputies of the Brevard County Sheriff's Office.

A domestic dispute between Randall, Randall's wife, and Christopher resulted in a call to

the police. An officer with the Town of Indialantic arrived on scene. Randall and his wife expressed to the officer that they just wanted to get some help for his brother. A month prior, Randall had gone to the Chief of Police to express concerns regarding his brother's mental health issues. The Town officer tried to make contact with Christopher, but he was not cooperative. The officer called for backup, and the Brevard County Sheriff's deputies arrived. The deputies entered the open garage while the Town officer remained at the foot of the garage. Without getting into the details, Christopher was shot and killed by the deputies after deputies saw him brandishing a knife.

The case was heavily litigated. We represented the Town of Indialantic, the officer that arrived on scene, and the Chief of Police. The officer and Chief were dismissed at the motion to dismiss stage. There were many theories of liability against the Town. But after multiple motions to dismiss, the only one that remained was a negligence theory. Plaintiff claimed that the Town officer breached a duty to relay Christopher's mental illness to the Brevard County Sheriff's deputies; and that the Chief failed to ensure that officers involved in encounters with Christopher would be aware of his mental illness. I prepared a motion for summary judgment making several arguments First, the Town's officer did not owe Plaintiff a duty of care because the alleged omissions involved the performance of a duty owed to the public at large. Second, the facts did not create a special tort duty. Third, a duty was not created by the undertaker's doctrine. Fourth, even if a duty of care was owed, the Town would be protected by sovereign immunity because its officer was performing a discretionary function.

After extensive briefing on these issues, Judge Carlos Mendoza granted the Town's motion for summary judgment. *Greer v. Ivey*, 242 F. Supp. 3d 1284 (M.D. Fla. 2017) (reversed on other grounds). Judge Mendoza adopted our arguments and granted judgment in favor of the Town. On appeal, the Eleventh Circuit affirmed as to the Town. *Greer v. Ivey*, 767 F. App'x 706, 713 (11th Cir. 2019). I handled all briefing on appeal and the oral argument.

This case involved complex issues of duty and sovereign immunity with emotionally charged facts. It is significant for the contribution it makes to the law of negligence with respect to law enforcement officers. And it is personally significant for the years I worked on the case.

5. ***Henderson Behavioral Health, Inc. v. Cortes*, 296 So. 3d 923 (Fla. 4th DCA 2020)**
Fourth District Court of Appeal
Case No. 4D20-0650
Appellate proceedings occurred in 2020
Judges Martha C. Warner, Mark W. Klingensmith, and Jeffrey T. Kuntz
Alberto E. Lugo-Janer (opposing counsel) – lugojaner@earthlink.net; 407-342-3122
Joshua B. Walker (co-counsel and trial counsel) – jwalker@wrg.law; 407-789-1830

In this appellate proceeding, I represented Henderson Behavioral Health, Inc. We were the petitioners, challenging a trial court order denying a motion to dismiss for the failure to comply with the medical malpractice pre-suit notice requirements. The case was a wrongful death claim. The decedent was as a patient at a hospital that was discharged to a residential treatment facility operated by Henderson. The hospital had been administering seven medications to her – medications that the hospital did not provide to the treatment facility. The hospital only provided

prescriptions. The plaintiff alleged that the failure to administer the medications could result in adverse withdrawal symptoms. The decedent spent four days at the treatment facility, during which time she allegedly was not administered the medications. She passed away, allegedly as the result of severe withdrawal syndrome.

The wrongful death action claimed that Henderson breached a duty to procure and administer medications to the decedent. But the plaintiff did not provide presuit notice under the medical malpractice statute. The issue was whether the claim arose "out of the rendering of, or the failure to render, medical care or services" so as to require compliance with the statutory presuit requirements of chapter 766. The plaintiff argued that the case was one of "ordinary institutional negligence." The trial court accepted the argument and denied the motion to dismiss.

I was brought in to handle the appellate proceedings. Because the order denying the motion to dismiss was a nonfinal order, I filed a petition for writ of certiorari on behalf of Henderson. Our petition argued that certiorari was available in this context. I further detailed why the administration of medications is an act that requires specialized knowledge, judgment, and nursing skill. The alleged failure to administer medications is a claim that arises out of "the failure to render, medical care or services."

The Fourth DCA granted the petition. In a written opinion, the court concluded that the claims sounded in medical negligence because proving the claims would require the plaintiff to establish the breach of professional standards of care. Consequently, the "trial court clearly departed from the essential requirements of law in denying the motions to dismiss."

The case is significant to me as an important victory for a client on a petition for writ of certiorari. Success seeking extraordinary writs is not common. They are called extraordinary writs for a reason. But this was a circumstance where the writ was supported and necessary. If the writ were not available, our client would have expended significant sums litigating a case through trial that was not properly brought in the first place. And any time an appellate court writes on an issue, it is significant. This case added to the body of law regarding compliance with statutory presuit investigation requirements in medical malpractice actions.

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.

1. Opinion for the Court and Special Concurrence in *SFR Servs., LLC v. Fla. Dept' of Fin. Servs. o/b/o Avatar Prop. & Cas. Ins. Co.*, 412 So. 3d 179 (Fla. 6th DCA 2025). I sat on the Sixth District Court of Appeal as an associate judge in April 2025. The attached opinion contains my opinion for the court and a special concurrence also authored by me. I authored the opinion and special occurrence without any drafting assistance.

2. Order Granting Defendants' Motion for Summary Judgment, Denying Plaintiff's Motion for Partial Summary Judgment, and Entering Final Judgment in Favor of Defendants in

Hudson v. University of Central Florida Board of Trustees, case no. 2020-CA-10114. The attached Order was prepared exclusively by me.

3. Order Denying Plaintiff's Motion for Partial Summary Judgment on the Economic Loss Rule in *Ravinia at East Park Homeowners' Association, Inc. v. D.R. Horton, Inc.*, case no. 2021-CA-008243-O. The attached Order was prepared exclusively by me.

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.

Yes. Ninth Circuit Court of Florida (October 11, 2021 – present)

I was appointed by Governor DeSantis in 2021, and I won election for a six-year term in August 2024 in an unopposed race.

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

I submitted an application to the Ninth Circuit Judicial Nominating Commission in July 2021. My name was certified to the Governor's office for consideration on August 31, 2021. I was appointed by the Governor to the circuit bench on September 17, 2021. I submitted an application to the Sixth District Court of Appeal Judicial Nominating Commission in August 2025. My name was certified to the Governor's office for consideration on September 8, 2025. I am currently applying to the Fourth District Court of Appeal Judicial Nominating Commission. My interview with the JNC is June 19, 2026.

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

N/A

26. If you have prior judicial or quasi-judicial experience, please list the following information:
(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

Brock Magruder DownsAaron, PLLC 200 S. Orange Ave Ste. 2250 Orlando, FL 32801 407-502-0623 brock.magruder@downsaaron.com	Derek Angell Board Certified in Appellate Practice O'Connor, Haftel & Angell, PLLC 800 N. Magnolia Ave Ste. 1350 Orlando, FL 32803-3259 813-833-7971 dangell@ohalaw.com

Kelsey M. Sandor The Grosshans Group 884 S. Dillard St. Winter Garden, FL 34787-3910 kelsey@ggrouplaw.com	Michele A. Lebron Lebron Law PLLC 15 S. Orlando Ave Kissimmee, FL 34741 321-800-5195 mlebron@mylebronlaw.com
Christian W. Waugh Waugh PLLC 201 E. Pine St. Ste. 315 Orlando, FL 32801-2714 352-262-0618 cwaugh@waugh.legal	Francis E. Pierce, III Dinsmore & Shohl, LLP Suite 225 E. Robinson St. Orlando, FL 32801 407-721-1234 frank.pierce@dinsmore.com

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

From October 11, 2021 through May 15, 2023, I served in a unified family law division in Osceola County. I handled divorce proceedings, paternity actions, adoptions, injunctions for protection (domestic violence, stalking, dating violence, and repeat violence), and other domestic relations matters. During my tenure in the family division, between 2,500 and 3,000 cases were typically assigned to my division at any given time. I presided over approximately 80 domestic (divorce, paternity, etc.) nonjury trials, hundreds of injunction final hearings, and countless evidentiary hearings.

From May 15, 2023 through August 11, 2025, I served in a civil division in Orange County. I presided over civil disputes with an amount in controversy greater than $50,000. When I took over the division in May 2023, 3,436 cases were assigned to the division (the most of any civil division in Orange County). After handling the division for over two years, my case load was down to approximately 1,850 cases when I left the division. The cases covered the gamut of civil disputes including personal injury actions, contract disputes, employment claims, construction defect actions, medical malpractice, foreclosures, among others. I presided over approximately 34 civil jury trials, over 20 nonjury trials, and countless hearings (evidentiary and non-evidentiary) in the civil division.

Presently (since August 11, 2025), I am serving in a criminal felony division in Orange County. I am responsible for felonies and related violation of probation proceedings. To date, I have presided over 15 felony jury trials. My division currently has approximately 550 open cases.

(iii) the citations of any published opinions;

Progressive Exp. Ins. Co. v. Eastman, 2025 WL 4672582 (Fla.Cir.Ct. Aug. 14, 2025)

Johnson-Funny v. Orlando Utilities Com'n, 2025 WL 2855953 (Fla.Cir.Ct. June 25, 2025)

Ansara v. Sabit, 2025 WL 2454713 (Fla.Cir.Ct. June 5, 2025)

Rodriguez v. American Multi-Cinema, Inc., 2025 WL 2491612 (Fla.Cir.Ct. May 27, 2025)

SFR Servs., LLC v. Fla. Dept' of Fin. Servs. o/b/o Avatar Prop. & Cas. Ins. Co., 412 So. 3d 179 (Fla. 6th DCA 2025)

Westley v. Eye, 2025 WL 3422309 (Fla.Cir.Ct. Feb. 21, 2025)

Brierhill Homes, Inc. v. Hamdan, 2025 WL 3532703 (Fla.Cir.Ct. Jan. 27, 2025)

Dubois v. Security First Insurance Company, 32 Fla. L. Weekly Supp. 339 (Fla. 9th Cir. Ct. Sept. 18, 2024). This edition of Florida Law Weekly is available here: https://floridalawweekly.com/00sup67714/sup32_8.pdf

Edminston v. Rees, 2024 WL 5009549 (Fla.Cir.Ct. July 26, 2024)

Axon v. City of Orlando, 2024 WL 7050420 (Fla.Cir.Ct. July 26, 2024)

Silver Pines Ass'n, Inc. v. God Be the Glory Ministries, 2024 WL 6838712 (Fla.Cir.Ct. June 13, 2024)

Londergan v. Wedgefield Homeowners Ass'n, Inc., 2024 WL 6864975 (Fla.Cir.Ct. May 30, 2024)

Citibank, N.A. v. Argueta, 2024 WL 2026978 (Fla.Cir.Ct. May 6, 2024)

Soria v. Montiel, 2023 WL 10473865 (Fla.Cir.Ct. Nov. 22, 2023)

Thorpe v. Memorial Sloan-Kettering Cancer Center, 2023 WL 12099537 (Fla.Cir.Ct. Aug. 15, 2023) (affirmed by *Thorpe v. Mem'l Sloan-Kettering Cancer Ctr.*, 2025 WL 1132219 (Fla. 6th DCA Apr. 17, 2025)).

Medrano Diaz v. Medrano Diaz, 31 F. L. Weekly Supp. 119 (Fla. 9th Cir. Ct. May 8, 2023). This edition of the Florida Law Weekly is available here: https://floridalawweekly.com/00sup67714/sup31_3.pdf

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

1. ***SFR Servs., LLC v. Fla. Dept' of Fin. Servs. o/b/o Avatar Prop. & Cas. Ins. Co.*, 412 So. 3d 179 (Fla. 6th DCA 2025)**

a. Case number: 6D23-1050
b. Appellant's counsel: Melissa Giasi
c. Appellee's counsel: Andrew A. Labbe
d. Dates: Oral argument held on April 17, 2025. The oral argument (along with an oral argument in another appellate proceeding that I presided over) can be viewed here: https://www.youtube.com/watch?v=nNM-BYEU2uY&t=5056s. The opinion was issued on May 16, 2025
e. Significance: For me, the case is significant as an opportunity to serve on the Sixth District Court of Appeal as an associate judge. Beyond that, the case is significant in its own right as it involved the interpretation and application of the offer of judgment statute – an important statute commonly litigated in civil cases. My opinion for the court (attached as a writing sample) demonstrates the requirement of lower appellate and trial courts to apply binding Florida Supreme Court precedent. I also authored a special concurrence, explaining my view that the Florida Supreme Court precedent at issue was inconsistent with the text of the offer of judgment statute. The concurrence demonstrates my commitment to first principles and the need to point out when precedent may be inconsistent with those principles, even when the precedent binds.

2. ***Hudson v. University of Central Florida Board of Trustees, et al.***,
    a. Case number: 2020-CA-10114
    b. Plaintiff's counsel: Jonathan R. Rosenn
    c. Defendants' counsel: Brock Magruder
    d. Dates: Final Judgment issued on December 19, 2024
    e. Significance: This case is significant as it involves questions of state and federal constitutional law. Specifically, the issues before me were whether the University of Central Florida had the legal authority to revoke a degree, whether the process afforded when revoking a degree was constitutionally sufficient, and whether a "substantive due process" right was violated. My Order Granting Defendants' Motion for Summary Judgment, Denying Plaintiff's Motion for Partial Summary Judgment, and Entering Final Judgment in Favor of Defendants is attached as a writing sample.

3. ***Thorpe v. Memorial Sloan-Kettering Cancer Center, et al.***
    a. Case number. 2019-CA-000642-O
    b. Plaintiff's counsel: Carlos R. Diez-Arguelles and Maria D. Tejedor
    c. Defendants' counsel: Christopher E. Brown
    d. Dates: final dismissal Order issued August 15, 2023
    e. Significance: This was a wrongful death medical malpractice action that required me to address personal jurisdiction under the long-arm statute and under the Due Process clause. My Order disposing of the case is available at the following Westlaw cite: 2023 WL 12099537. Among other issues addressed, I had to weigh in on a split amongst the DCAs regarding whether the subsection of the long-arm

statute that permits personal jurisdiction over individuals that "commit[] a tortious act within this state" authorized jurisdiction when the act is committed outside the state but results in injury inside the state. I concluded that "[a]s an original matter, 'committing a tortious act within this state' is more naturally read to mean doing something in the state and not merely doing something that has consequences in the state." The Sixth DCA, Judge Johsua Mize writing, recently affirmed my Order in all respects. *Thorpe v. Mem'l Sloan-Kettering Cancer Ctr.*, 2025 WL 1132219 (Fla. 6th DCA Apr. 17, 2025). In doing so, the court certified conflict with the First DCA. The Florida Supreme Court accepted jurisdiction. Oral argument before the Florida Supreme Court was held on May 7, 2026. The case remains under advisement.

4. *Geise v. Fleck*

a. Case number: 2021-CA-11826-O
b. Plaintiffs' counsel: Ronald D. Edwards
c. Defendants' counsel: James K. Powers
d. Dates: non-jury trial held April 2, 2024 through April 4, 2024; rehearing motion heard December 9, 2024
e. Significance: This action was a riparian rights dispute between neighbors with lakefront property. Plaintiffs claimed that Defendants dock and boathouse interfered with their riparian rights of view and access. The case proceeded to trial over the course of three days. Much of the presentation concerned whether Defendants' dock encroached upon Plaintiffs' "riparian area." I was requested to draw "riparian lines" to apportion territory over which the parties could exercise their rights. In a detailed final judgment, I concluded that such line drawing was not consistent with the nature and history of riparian rights. Rather, I concluded that "the proper inquiry is whether one riparian owner's exercise of his rights unreasonably interferes with another riparian owner's rights." A copy of my Amended Final Judgment can be provided upon request.

In a detailed opinion, the Sixth DCA recently affirmed my decision. The court held "that the applicable test in this case is whether one riparian rights holder's use of the lake . . . unreasonably interferes with the other riparian rights holder's use of the lake . . . ." *Geise v. Fleck*, 2026 WL 904860, *12 (Fla. 6th DCA Apr. 2, 2026). The court concluded that I "was correct to apply the unreasonable interference test." *Id.* at *13. In doing so, the Sixth DCA certified conflict with the Second DCA (based on a Second DCA case decided after my judgment was issued). The Sixth DCA recently denied rehearing, and Florida Supreme Court review may be sought based on the certified conflict.

The case is significant as an example of the need to restore correct legal standards even after years of misapplication of certain precedents. My judgment detailed the authority for the unreasonable interference test and the lack of authority for riparian line drawing. The Sixth DCA's opinion affirming my judgment establishes an

important riparian rights precedent that will properly focus litigation in this area. The case may ultimately prove even more significant if the Florida Supreme Court accepts jurisdiction.

5. ***Ravinia at East Park Homeowners' Association, Inc. v. D.R. Horton, Inc.***
   a. Case number: 2021-CA-008243-O
   b. Plaintiff's counsel: Brett Roth
   c. Defendant's counsel: Josh Grosshans and Kelsey Sandor
   d. Dates: Case was assigned to me May 15, 2023 through settlement and final dismissal in 2025. I issued important Orders on the case on September 8, 2023 and April 8, 2024.
   e. Significance: This was a construction defect action arising from alleged construction defects at the Ravinia at East Park community. The HOA sued the general contractor and many subcontractors. This resulted in numerous crossclaims and third-party claims. The case is significant as I had to address several important and challenging legal questions. My Order Denying Plaintiff's Motion for Partial Summary Judgment on Defendant D.R. Horton, Inc.'s Thirteenth Affirmative Defense (Economic Loss Rule) is attached as a writing sample. I had to consider whether the economic loss rule could operate to bar the HOA's tort claims or whether the Florida Supreme Court's decision in *Tiara Condominium Association v. Marsh & McLennan Companies*, 110 So. 3d 399 (Fla. 2013) foreclosed reliance on the economic loss rule. The Order demonstrates my view of the appropriate way to understand a precedent's holding and how to appropriately dissect a body of case law to derive a principle.

      Earlier in the case (on September 8, 2023), I issued an Order addressing the following important legal questions: whether a general contractor can be held jointly and severally liable in tort or under section 553.84 (the building code), whether a general contractor can be held vicariously liable in *tort* for the negligent acts or omissions of subcontractors, and whether a general contractor owes a nondelegable tort duty. A copy of this Order can be provided upon request.

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.

Since starting on the bench in October 2021, I have been reversed (in part) one time. The citation for the partial reversal is:

PHLster LLC v. Bernstein Firm, LLC, 2025 WL 2827387 (Fla. 6th DCA Oct. 3, 2025) (affirming in part and reversing in part).

Otherwise, none of my decisions have been reversed or affirmed with significant criticism.

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.

Hudson v. University of Central Florida Board of Trustees, et al.
Case no: 2020-CA-10114
A copy of the Order Granting Defendants' Motion for Summary Judgment, Denying Plaintiff's Motion for Partial Summary Judgment, and Entering Final Judgment in Favor of Defendants is attached as a writing sample. The Order addressed whether UCF has the authority to revoke a degree, whether the process afforded when revoking a degree was constitutionally sufficient, and whether a "substantive due process" right was violated.

Thorpe v. Memorial Sloan-Kettering Cancer Center, 2023 WL 12099537 (Fla.Cir.Ct. Aug. 15, 2023) (affirmed by *Thorpe v. Mem'l Sloan-Kettering Cancer Ctr.*, 2025 WL 1132219 (Fla. 6th DCA Apr. 17, 2025)).
This Order can be found at the Westlaw cite provided above (2023 WL 12099537). The Order concerns personal jurisdiction and involved a constitutional issue to the extent that the minimum contacts requirement under the Due Process clause was addressed. The Sixth DCA's opinion affirming my Order did not reach the due process prong of the personal jurisdiction inquiry.

Davis v. I-Drive Thrill Park, LLC, et al.
Case No. 2023-CA-001307-O
A copy of the Order on Defendants' Motions to Dismiss Regarding Personal Jurisdiction is attached. My Order involved a constitutional issue to the extent that the minimum contacts requirement under the Due Process clause was addressed.

Williams v. City of Orlando, Case No. 2022-CA-000421-O
White v. City of Orlando, Case No. 2022-CA-000424
Lawrence v. City of Orlando, Case No. 2022-CA-000426-O
A copy of the Order Granting Defendant's Motions for Summary Judgment and Entering Final Judgment in these partially consolidated cases is attached. The Order addresses the issue of sovereign immunity for planning level or discretionary activities – a doctrine based on the separation of powers.

The following cases each involved motions to suppress seeking to suppress evidence arguably obtained in violation of the Fourth Amendment. My Orders address the arguments regarding searches and seizures under the Fourth Amendment. A copy of the Orders in these cases are attached.

State of Florida v. Andrew Little
Case No. 2025-CF-007176-A-O

State of Florida v. RT Morgan
Case No. 2024-CF-11575

State of Florida v. William Charles Mays
Case No. 2025-CF-004534

State of Florida v. Jesus Santiago Parilla
Case No. 2024-CF-008773-O

State of Florida v. Donald Jermine Dixon
Case No. 2023-CF-000370-O

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

Not to my knowledge.

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.

I have been a Circuit Judge from October 11, 2021 to present after my appointment by Governor DeSantis in September 2021. I was a candidate to retain my seat as a Circuit Judge in 2024. At the close of qualifying, I was unopposed. As a result, I was elected without opposition.

NON-LEGAL BUSINESS INVOLVEMENT

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

N/A

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

Since being admitted to the Florida Bar, my only occupations other than the practice of law have been my current position as a circuit judge (October 11, 2021 to present) and my position as a federal judicial law clerk (August 2013 to August 2014). Other than these roles, I have not engaged in any occupation, business or profession other than the practice of law since my admission to the Bar.

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 or classifications of cases or litigants for which it would be difficult for me to sit as the presiding judge. Since becoming a judge, I have not recused from a significant number of cases. The only cases I have recused from are those where my prior law firm represented one of the parties. I recused from those cases given my proximity to the practice of law with the firm.

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.

Pleading with the Bench and Bar: It's Time to Take Fact Pleading Seriously, The Briefs (publication of the Orange County Bar Association), February 2021. The article can be read online here: https://www.wrgn-law.com/wp-content/uploads/2021/02/EJN-Pleading-with-Bench-and-Bar.pdf

A Primer for Employers on the "Families First Coronavirus Response Act", published on my former law firm's website on March 20, 2020. It can be seen here: https://www.wrgn-law.com/blog/employer-obligations-under-the-families-first-coronavirus-response-act/

Letter to the editor ("Defending Stearns from liberal slant"), The Gainesville Sun, March 28, 2009. This is available online here: https://www.gainesville.com/story/news/2009/03/28/letters-to-the-editor-march-28/31604186007/

Letter to the editor ("A Partisan Attack on Stearns"), The Gainesville Sun, October 29, 2009). This is available online here: https://www.gainesville.com/story/news/2009/10/29/eric-netcher-a-partisan-attack-on-stearns/31727855007/

Letter to the editor ("Rep. Stearns' 911 amendment is justified"), The Gainesville Sun, May 6, 2011. This is available here: https://www.gainesville.com/story/news/2011/05/06/letters-to-the-editor-for-may-6-2011/31802326007/

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.

In March 2021, Chief Judge Kerry Evander of the Fifth District Court of Appeal reached out to me in my capacity as Chair of the OCBA Appellate Practice Committee. He wanted to gauge the attitudes of local appellate lawyers regarding remote oral argument and the right approach to take when courts returned to in-person arguments. To that end, I prepared a brief survey for the Appellate Practice Committee's members. We received responses from 37 members of our committee. I compiled the results in a report that I sent to Chief Judge Evander on April 26, 2021. A copy of the survey report is attached.

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.

1. Title: Tips for Laying the Proper Foundation for Review on Appeal (panel at the OCBA 2026 Bench Bar Conference)

   Role: Panelist

   Date and Location: May 1, 2026 at the Aloft Orlando Lake Nona, 7215 Corner Drive, Orlando, Florida 32827

   Sponsor: Orange County Bar Association held the event. The OCBA had a number of sponsors for the Bench Bar Conference, but I do not have a complete list.

   Summary: I participated as a panelist for the criminal law track. My fellow panelist was Judge Rand Wallis (Fifth DCA). We focused on appellate preservation issues in criminal cases.

2. Title: Florida Judicial College Phase II

   Role: Faculty for Civil Track

   Date and Location: March 10, 11, and 12, 2026 at Embassy Suites Lake Buena Vista South, 4955 Kyngs Heath Road Kissimmee, Florida.

   Summary: I was invited by the Dean of the Florida Judicial College (Judge Gina Beovides) to teach the civil track. Along with Judge Fabienne Fahnestock, Judge Keathan Frink, Judge Bruce Anderson, and Judge Angela Cowden, I taught the civil track for phase II of the Florida Judicial College. The course

is designed for new judges and judges switching into the civil division. The specific topics that I addressed over the course of three days were: civil case management, summary judgment, *Daubert* motions, post-trial motions, punitive damages, and property insurance claims.

3. Title: Barry Law Externship Class

Role: Guest Speaker

Date and Location: February 13, 2026 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I gave a presentation to the externship class at Barry Law School (taught by Professor Bob Bonner). The presentation focused on general career advice for students soon to be entering the profession.

4. Title: Florida New Appellate Judges Program

Role: Instructor

Date and Location: February 3, 2026 at First District Court of Appeal, 2000 Drayton Drive, Tallahassee, Florida 32311

Summary: I participated as an instructor for the judicial education of new appellate judges. New appellate judges from the Second, Fourth, and Sixth DCAs attended a multi-day program to receive training. Along with Judge Diego Madrigal, I taught the family law portion of the program. We covered a wide variety of topics for the new appellate judges, including parentage, equitable distribution, alimony, child support, attorney's fees, and more.

5. Title: The Art of Objecting: A Trial Lawyer's Guide to Preserving Error for Appeal

Role: Co-Chair of the CLE along with Daniel Nordby, Presenter, and Panelist

Date and Location: October 7, 2025 and November 4, 2025 (virtual)

Summary: The Florida Bar Appellate Practice Section presented a two-part CLE regarding the "Art of Objecting." I co-chaired the CLE along with attorney Daniel Nordby. We set the agenda and organized the speakers. The CLE consisted of two half-days. On day two (November 4, 2025), I also presented on the topic of preservation of error in the context of evidentiary issues. I also participated on a judicial panel on day two along with Judge Kansas Gooden (Third DCA), Judge Drew Atkinson (Second DCA), and Judge Dan Traver (Sixth DCA).

6. Title: The Rules Process & How Recent FRCP Changes Affect Appellate Practice

Role: Panelist

Date and Location: September 16, 2025 (virtual)

Summary: I participated on a CLE panel for the Florida Bar Appellate Practice Section. We discussed how recent changes to the Florida Rules of Civil Procedure

impact appellate practice. My fellow panelists were attorneys Elaine Walter and Maegan Luka.

7. Title: The Statutory Antidote to Foreclosure Surplus Fraud

Role: Presenter

Date and Location: July 23, 2025 at the Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

Summary: The Ninth Circuit has a lunch and learn series where judges teach courses to other judges in the circuit to stay up to date on the law. I presented a course to other judges (in the Ninth Circuit and throughout the state) on the statutory process for handling claims for surplus following foreclosure sales and how to spot fraudulent claims.

8. Title: What Every Litigator Needs to Know About the Amendments to the Florida Rules of Civil Procedure

Role: Panelist

Date and Location: June 27, 2025 at The Boca Raton, 501 E. Camino Real, Boca Raton, FL 33432

Summary: I participated on a panel at the 2025 Florida Bar Convention. My fellow panelists were Judge Bronwyn Miller (Third DCA), Judge Gina Beovides (Eleventh Circuit), Judge Bradley Harper (Fifteenth Circuit), and Judge Keathan Frink (Seventeenth Circuit). We discussed the recent amendments to the Florida Rules of Civil Procedure.

9. Title: The Doctrine of Stare Decisis: Its Scope and Limits

Role: Panelist

Date and Location: June 19, 2025 at Disney Yacht Club Resort, 1700 Epcot Resorts Blvd., Lake Buena Vista, FL 32830

Sponsor: Florida Defense Lawyers Association

Summary: I participated on a panel at the annual conference put on by the Florida Defense Lawyers Association (an organization for civil defense lawyers). The panel addressed the doctrine of stare decisis. My fellow panelists were Judge Kansas Gooden (Third DCA) and Judge James Sherman (Fifteenth Circuit). We discussed a broad array of topics concerning the doctrine of stare decisis.

10. Title: Casual but Professional

Role: Presenter

Date and Location: May 20, 2025 at The Azalea Lodge at Mead Botanical Garden, 1300 S. Denning Dr., Winter Park, FL 32789

Sponsor: George C. Young American Inn of Court

Summary: I am a member of the George C. Young Inn of Court. I presented as part of a pupilage group. Our overall topic was "Casual But Professional" My portion of the presentation was part of a judicial perspectives panel.

11. Title: UCF Knights Pre-Law Association Presentation

    Role: Speaker

    Date and Location: March 27, 2025 at the University of Central Florida, 4000 Central Florida Blvd, Orlando, FL 32816

    Summary: I was asked to speak with UCF students involved with the Knights Pre-Law Association. My presentation focused on my background, my path to the bench, my role as a judge, and other general topics concerning the law.

12. Title: Appellate Practice Section Board Certification Town Hall Webinar

    Role: Moderator

    Date and Location: January 9, 2025 (virtual)

    Summary: I moderated a panel of Board Certified appellate lawyers to discuss the board certification process and answer questions for lawyers interested in appellate board certification. My fellow panelists were attorneys Duane Daiker, Elaine Walter, Nick Shannin, and Christine Davis. We discussed the certification requirements, the application, the exam, and other topics concerning certification in appellate practice.

13. Title: Family Law Course for New Appellate Judges

    Role: Instructor

    Date and Location: November 5, 2024 (virtual)

    Summary: When new appellate judges are appointed, the Florida Judicial College organizes training and instruction. The Dean of the appellate college (Judge Josh Mize of the Sixth DCA) asked that I teach the family law course. I taught the course along with Judge Diego Madrigal (Ninth Circuit). The new judge taking the course was Kansas Gooden of the Third DCA. We covered a wide variety of topics in family law.

14. Title: Coffee with the Court

    Role: Panelist

Date and Location: September 16, 2024 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I participated on a panel attended by Barry Law Students. My fellow judicial panelists were Craig McCarthy (Ninth Circuit), Tanya Davis Wilson (Ninth Circuit), Dan Traver (Sixth DCA), and Celia Thacker Dorn (Osceola County). We discussed our roles as judges, our path to the bench, and provided general advice to the students.

15. Title: Holy Judgment: Balancing the Scales with a Halo (Catholic Lawyers Guild)

Role: Panelist

Date and Location: September 16, 2024 at Rumberger Kirk law office, 300 S. Orange Avenue, Ste. 1400, Orlando, FL 32801

Sponsor: Catholic Lawyers Guild

Summary: I participated on a lunch and learn panel along with fellow Ninth Circuit judges (Diego Madrigal and Brian Sandor). We addressed issues of faith and the role faith plays in judging.

16. Title: Masters Seminar on Ethics (Florida Bar Convention)

Role: Panelist

Date and Location: June 21, 2024 at the Hilton Orlando Bonnet Creek, 14100 Bonnet Creek Resort Lane, Orlando, Florida 32821

Summary: I participated on a judicial panel regarding ethics at the 2024 Florida Bar Convention. My fellow panelists were Judge Wendy Berger (U.S. District Court for the Middle District of Florida), Judge Michael Bagge-Hernandez (Hillsborough County Court), Judge Charles R. Wilson (U.S. Court of Appeals for the Eleventh Circuit).

17. Title: Psychology in Family Law Cases

Role: Speaker

Date and Location: May 24, 2024 at Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

Sponsor: OCBA Family Law Committee

Summary: I presented at a seminar put on by the Orange County Bar Association Family Law Committee. My presentation covered HIPPA, medical record confidentiality, and the psychotherapist-patient privilege.

18. Title: Speech to Lake Nona High School Law Club

Role: Speaker

Date and Location: April 25, 2024 at 12500 Narcoosee Road, Orlando, FL 32832

Summary: I gave a speech and presentation to high school students involved in the Law Club at Lake Nona High School. My presentation covered an overview of the judicial system, my role as a judge, my path to the bench, and other basic legal topics.

19. Title: Barry Law – Conflict of Laws Course

Role: Guest Lecturer

Date and Location: April 16, 2024 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I was invited by a professor at Barry Law to guest lecture for her Conflict of Laws course. My lecture focused on the origins and authority for general conflict of laws rules. I discussed the general law and the common law history. In addition, my lecture provided practical examples of how conflicts affects my role as a circuit judge.

20. Title: Civil Motion Practice Tips (panel at the OCBA 2024 Bench Bar Conference)

Role: Panelist

Date and Location: April 2, 2024 at the Rosen Shingle Creek, 9939 Universal Blvd., Orlando, FL 32819.

Sponsor: Orange County Bar Association held the event. I believe that OCBA had a number of sponsors for the Bench Bar Conference, but I do not have a complete list.

Summary: I participated as a panelist, discussing tips for motion practice in civil cases. My fellow panelists were attorney Michael Brownlee, Judge Brian Sandor, and Judge Heather Pinder Rodriguez.

21. Title: Paternity Games: Navigating the New Law, Birth Certificates, Affidavits and More (panel at the OCBA 2024 Bench Bar Conference)

Role: Panelist

Date and Location: April 2, 2024 at the Rosen Shingle Creek, 9939 Universal Blvd., Orlando, FL 32819.

Sponsor: Orange County Bar Association held the event. I believe that OCBA had a number of sponsors for the Bench Bar Conference, but I do not have a complete list.

Summary: I participated as a panelist, discussing a recent change to the paternity statute and general issues arising in the context of paternity cases.. My fellow panelists were Judge Holly Derenthal, attorney Mark O'Mara, and attorney John Foster.

22. Title: Serving Clients with Mental Health Challenges: Ethical and Professional Considerations

Role: Presenter

Date and Location: March 19, 2024 at The Azalea Lodge at Mead Botanical Garden, 1300 S. Denning Dr., Winter Park, FL 32789

Sponsor: George C. Young American Inn of Court

Summary: I am a member of the George C. Young Inn of Court. I presented as part of a pupilage group. Our overall topic was "Serving Clients with Mental Health Challenges." My portion of the presentation was part of a judicial perspectives panel.

23. Title: Ninth Unplugged Podcast

Role: Podcast Guest

Date and Location: March 13, 2024 at Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

Summary: The Ninth Circuit has a podcast called "Ninth Unplugged." It is hosted by Judge Alicia Latimore. I was a guest on the podcast and addressed questions regarding my interests and hobbies outside the courtroom. Audio of the podcast is not currently available, but a transcript of the podcast is available at the following link:
https://ninthcircuit.org/sites/default/files/9th-unplugged/transcripts/Transcript-EricNetcher.pdf

24. Title: Open Ninth: Conversations Beyond the Courtroom (Podcast)

Role: Podcast Guest

Date and Location: January 8, 2024 at Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

Summary: The Ninth Circuit has a podcast called "Open Ninth." It is hosted by Chief Judge Lisa T. Munyon. I was a guest on the podcast and addressed questions regarding my background and path to the bench. Audio of the podcast is not

currently available, but a transcript of the podcast episode is available at the following link: https://ninthcircuit.org/sites/default/files/openninth/transcripts/Transcript-Episode-186.pdf

25. Title: Barry Law – Motions and Depositions Course

    Role: Guest Lecturer

    Date and Location: August 31, 2023 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

    Summary: A fellow judge taught a course at Barry Law School called Motions and Depositions. I was asked to present on the topic of motions to dismiss. I provided a brief lecture and also participated in an exercise involving the students arguing their motions to dismiss.

26. Title: Evidence

    Role: Presenter

    Date and Location: July 27, 2023 at the Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

    Summary: Internally, the Ninth Circuit has a lunch and learn series where judges teach courses to other judges in the circuit to stay up to date on the law. I was asked to present on evidence. I presented a course to other judges on evidence, including recent statutory and case law updates.

27. Title: Seven Habits of Highly Ethical/Professional Trial Lawyers

    Role: Presenter

    Date and Location: May 16, 2023 at The Tap Room at Dubsdread, 549 W. Par St. Orlando, FL 32804

    Sponsor: George C. Young American Inn of Court

    Summary: I am a member of the George C. Young Inn of Court. I presented as part of a pupilage group. My portion of the presentation addressed stipulations, concessions, and preparedness.

28. Title: OCBA Family Law Committee Seminar

    Role: Panelist

    Date and Location: April 21, 2023 at Orange County Bar Association, 880 N. Orange Ave, Orlando, FL 32801

    Sponsor: Orange County Bar Association Family Law Committee

Summary: The Family Law Committee of the OCBA put on a seminar. I participated on a panel along with Magistrate Erin Duncan and Magistrate Lisa Bedwell. We discussed the law and practice surrounding family law final judgments, marital settlement agreements, and parenting plans.

29. Title: Speech to Junior Reserve Law Enforcement Program at Lake Nona High School

Role: Speaker

Date and Location: March 27, 2023 at 12500 Narcoosee Road, Orlando, FL 32832

Summary: I gave a speech and presentation to high school students involved in the Junior Reserve Law Enforcement Program at Lake Nona High School. The presentation was part of the program's Mock Trial Week. Students were planning a mock trial. My presentation covered an overview of the judicial system, my role as a judge, my path to the bench, and other basic legal topics.

30. Title: Barry Law – Family Law class panel

Role: Panelist

Date and Location: July 5, 2022 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I participated on a panel with one other judge for students in the Family Law course at Barry Law School. The course was taught by Judge Gisela Laurent. She invited me to participate in the panel after previously doing a similar panel in April 2022. We discussed our role as judges, our path to the bench, particular issues arising in family law cases, and general advice for law students.

31. Title: Keep Calm and Carry On: The Supreme Court and the Right to Carry a Gun

Role: Presenter

Date and Location: May 5, 2022 at the University Club of Orlando, 150 E. Central Blvd, Orland, FL 32801

Sponsor: The Federalist Society (Orlando Lawyers Chapter)

Summary: I provided commentary, along with Jordan Pratt (then counsel at First Liberty Institute and now U.S. District Judge), regarding Second Amendment jurisprudence, the *Bruen* case (at the time it had not been decided), and the future of Second Amendment jurisprudence. Information regarding the event is available at the following link:

https://fedsoc.org/events/keep-calm-and-carry-on-the-supreme-court-and-the-right-to-carry-a-gun

32. Title: Barry Law School First Year Moot Court Competition

Role: Moot Court Judge

Date and Location: April 21, 2022 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I participated as a moot court judge at the Barry Law School First Year Moot Court Competition. I was a moot court judge along with Judge Paetra Brownlee and Judge Jay Cohen.

33. Title: Barry Law – Family Law class panel

Role: Panelist

Date and Location: April 20, 2022 at Barry Law School, 6441 E. Colonial Dr., Orlando, FL 32807

Summary: I participated on a panel with two other judges for students in the Family Law course at Barry Law School. The course was taught by Judge Gisela Laurent. She invited me to participate in the panel. The panel consisted of myself and two other judges discussing our role as judges, our path to the bench, particular issues arising in family law cases, and general advice to the students.

34. Title: Tips, Tricks, and Traps: Trying Family Law Cases with an Eye to Appeal (panel at the OCBA 2022 Bench Bar Conference

Role: Panelist

Date and Location: April 8, 2022 in Orlando, Florida

Sponsor: Orange County Bar Association held the event. I believe that OCBA had a number of sponsors for the Bench Bar Conference, but I do not have a complete list.

Summary: I participated as a panelist, discussing appellate issues in the context of family law cases. My fellow panelists were Judge Dan Traver (Sixth DCA) and attorney Jamie Moses.

35. Title: Osceola County Bar Association Meet and Greet

Role: Panelist

Date and Location: March 18, 2022 at the Osceola County Courthouse, 2 Courthouse Sq., Kissimmee, Florida 34741

Sponsor: Osceola County Bar Association

Summary: I participated on a "meet and greet" panel for newer judges assigned to Osceola County. I was on the panel along with Judge Michael Snure, Judge Tom Young, Judge Mikaela Nix-Walker, and Judge Gabby Sanders-Morency. We discussed general topics and answered questions for the members of the Osceola County Bar.

36. Title: Master Class for Discovery

Role: Presenter

Date and Location: February 18, 2022 (virtual)

Sponsor: Orange County Bar Association Family Law Committee

Summary: The Family Law Committee of the OCBA put on a seminar regarding discovery. I prepared and presented a session regarding evidentiary privileges and protective orders. I presented virtually, and my session lasted approximately an hour. I detailed the statutory authority and precedents on the various evidentiary privileges.

37. Title: Ninth Circuit Investiture Ceremony

Role: Judge being invested

Date and Location: January 28, 2022 at the Orange County Courthouse, 425 N. Orange Ave, Orlando, FL 32801

Summary: I was invested as a circuit judge on the Ninth Circuit. The ceremony occurred along with the investiture of Judge Tarlika Nunez-Navarro. I was sworn in by Judge David A. Faber of the U.S. District Court for the Southern District of West Virginia (for whom I clerked). Judge Faber made introductory remarks, and I gave an investiture speech. Video of the investiture ceremony is available at the following link:

https://9thnow.lightcast.com/player/23077/432504

38. Title: A Conversation with the Judiciary: Challenges and Opportunities in the Changing Landscape of Appellate Practice

Role: Panelist

Date and Location: January 26, 2022 (virtual)

Sponsor: The Guardian ad Litem Program and the Pro Bono Committee of the Florida Bar's Appellate Practice Section.

Summary: I participated in a panel along with Judge Eric Eisnaugle (Fifth DCA), Judge Carrie Ann Wozniak (then Fifth DCA and now Sixth DCA), and Judge Tarlika Nunez-Navarro (then Ninth Circuit). We discussed a variety of topics including remote appearances, judicial pet peeves, the impact of

COVID on judicial proceedings, professionalism issues, and other topics. The virtual panel is available on YouTube at this link:

https://www.youtube.com/watch?v=YBX35lzKUlI

39. Title: Meet the New Judges

Role: Panelist

Date and Location: November 15, 2021 (virtual)

Sponsor: Orange County Bar Association Solo & Small Firm Committee

Summary: I participated on a panel along with Judge Michael Snure (Ninth Circuit, Judge Brian Sandor (Ninth Circuit, and Judge Tarlika Nunez-Navarro (then Ninth Circuit). This was a virtual lunch and learn event put on by the OCBA Solo & Small Firm committee. We discussed our pathways to the bench, the preparation to take the bench, and other topics.

40. Title: Your Questions Answered: Appellate Motions

Role: Presenter

Date and Location: December 2, 2020 on YouTube

Sponsor: Free Florida CLE– a YouTube channel created by the GAL Program to provide free CLE material to pro bono lawyers

Summary: I was asked to prepare a short YouTube video explaining post-opinion appellate motions – a subset of a broader topic I presented at the Florida Bar Winter Meeting (item 3 below). The brief YouTube video can be viewed here: https://www.youtube.com/watch?v=tw5Rt6FJW9I

41. Title: OCBA 2020 Bench Bar Conference: Distance Learning Edition (Appellate Track)

Role: Panelist on the "Anatomy of an Oral Argument."

Date and Location: October 2, 2020 (virtual)

Sponsor: Orange County Bar Association held the event. I believe that OCBA had a number of sponsors for the Bench Bar Conference, but I do not have a complete list.

Summary: I participated as a panelist, discussing appellate oral argument on the Appellate Track of the OCBA's 2020 Bench Bar Conference. My fellow panelists were Judge Paetra Brownlee (then of the Ninth Circuit) and Judge Meredith Sasso (then of the Fifth District Court of Appeal). The discussion covered a variety of issues ranging from oral argument preparation, the importance of oral argument in the decision-making process, improving oral

argument performance, and the ways that judges and lawyers alike can make the most of oral argument.

42. Title: Appeals for the Pro Bono Practitioner

Role: Presented on the topic "Appellate Motions Practice"

Date and Location: February 5, 2020 at the Hyatt Regency Orlando, 9801 International Drive, Orlando, FL

Sponsor: Presented by the Florida Guardian ad Litem Program and the Florida Bar Appellate Practice Section at the Florida Bar Winter Meeting

Summary: The CLE program covered the appeals process for pro bono attorneys. I co-presented, along with attorney Jared Krukar, on the section titled "Appellate Motions Practice." And a link of the presentation can be seen here: https://www.youtube.com/watch?v=ABZWHJ5zgTE

43. Title: Appeals: A View from the Trial Bench

Role: Organizer, host, and presenter on Appellate Hot Topics

Date and Location: January 24, 2020 at the OCBA's Headquarters, 880 N Orange Ave, Orlando, FL 32801

Sponsor: Orange County Bar Association's Appellate Practice Committee

Summary: As the Chair of the OCBA Appellate Practice Committee, I organized this seminar entitled "Appeals: A View from the Trial Bench." I also presented during the first hour on Appellate Hot Topics. I discussed recent developments in appellate practice. The second hour consisted of a panel of trial judges who discussed their views on the appellate process. The panel consisted of Judge Kevin Weiss, Judge Tom Young, and Judge of Compensation Claims Thomas Sculco.

44. Title: "An Evidentiary Conundrum – How to Satisfy *Daubert* Without Improperly Bolstering Expert Testimony"

Role: Presenter

Date and Location: November 13, 2019 (telephonic CLE)

Sponsor: The Workers' Compensation Section of the Florida Bar

Summary: I presented as part of the Workers' Compensation Section's telephonic CLE series. I co-presented along with my former partner Frank Wesighan, B.C.S. We were also joined by two Judges of Compensation Claims – Neal Pitts and Thomas Sculco. Our presentation addressed the intersection between *Daubert's* requirements and the prohibition on bolstering an expert's testimony.

45. Title: South Atlantic Regional Moot Court Tournament for the American Moot Court Association

Role: Moot Court Judge

Date and Location: November 10, 2019 at UCF Downtown Campus, 500 W. Livingston St., Orlando, FL 32801

Sponsor: American Moot Court Association (hosted by UCF)

Summary: I participated as a moot court judge at the South Atlantic Regional Moot Court Tournament. The competition was amongst ten different undergraduate colleges and universities throughout the nation (and even a group from Canada). I was a judge for the semi-final and final rounds along with U.S. District Court Judge Paul Byron and Judge Christine Arendas.

46. Title: "GAL Appeals – The Final Frontier"

Role: Presented on pro bono appeals

Date and Location: October 22, 2019 at Bay Equity, 100 W. Lucerne Circle, Sutie 502, Orlando, FL 32801

Sponsor: Legal Aid Society of the Orange County Bar Association

Summary: I was asked to speak by Kavita Sookrajh – the GAL Program Staff Attorney for the OCBA Legal Aid Society. The program was set up for lawyers interested in handling GAL appeals. I presented along with Judge James Edwards of the Fifth District Court of Appeal and his law clerk at the time, Samuel Alexander. My focus was on pro bono appeals in light of my role as Vice Chair of the Appellate Practice Section's Pro Bono Committee.

47. Title: Premises Liability Case Law Update

Role: Presented to insurance adjusters regarding new case law effecting premises liability

Date and Location: September 11, 2019 at Conifer Insurance, 550 W. Merrill St. #200, Birmingham, MI 48009

Sponsor: Dean, Ringers, Morgan & Lawton, P.A.

Summary: While with my former law firm, I traveled to Michigan to present a continuing education course to insurance claims adjusters with Conifer Insurance. I prepared and presented a brief discussion of case law updates effecting premises liability in Florida.

48. Title: Difficult Appeals

Role: Presented on the topic of preservation of error

Date and Location: May 21, 2019 at The Tap Room at Dubsdread, 549 W. Par St. Orlando, FL 32804

Sponsor: George C. Young American Inn of Court

Summary: I am a member of the George C. Young Inn of Court. I presented as part of a pupilage group. Our overall topic was "Difficult Appeals." I addressed the issue of preservation of error.

49. Title: Anatomy of a Trial

Role: Presented a continuing education course

Date and Location: March 7, 2019 at Embassy Suites, 191 E. Pine St., Orlando, FL 32801

Sponsor: Dean, Ringers, Morgan & Lawton, P.A.

Summary: As part of my prior law firm's "Annual Liability and Workers' Compensation Seminar," I presented to insurance adjusters and other risk professionals regarding the "Anatomy of a Trial." The presentation was a broad overview of the pre-trial and trial process. We discussed trial strategy, legal authority governing various aspects of trial, and common legal and strategic missteps to avoid. The course was approved for continuing education credit for claims adjusters.

50. Title: FLGISA Winter Conference – Panel on Accessibility of Local Government Websites to People with Disabilities

Role: Panelist

Date and Location: January 30, 2019 at Embassy Suites, 4955 Kyngs Heath Rd, Kissimmee, FL 34746

Sponsor: Florida Local Government Information Systems Association

Summary: I participated on a panel regarding accessibility of local government websites. At the time, there was significant ADA litigation involving local government websites. I was defending many of those claims and was asked to speak on the panel from a legal perspective. The conference was attended by IT managers and technology decision makers from local governments.

51. Title: Differences Between State and Federal Appeals

Role: Presenter

Date and Location: November 16, 2018 at the OCBA's Headquarters, 880 N Orange Ave, Orlando, FL 32801

Sponsor: Orange County Bar Association's Appellate Practice Committee

Summary: I participated in the OCBA Appellate Practice Committee's seminar entitled "Practicing in the Eleventh Circuit Court of Appeals." My presentation covered critical differences between state and federal appeals.

52. Title: Appellate Advocacy – Moot Court

Role: Moot Court Judge

Date and Location: April 17, 2018 at FAMU College of Law, 201 Beggs Ave, Orlando, FL 32801

Sponsor: FAMU College of Law

Summary: I was asked by Judge of Compensation Claims Tom Sculco to act as a moot court judge for his appellate advocacy class taught at the FAMU College of Law. As part of his students' examination process, they had to present oral argument. I acted as a judge in the competition and provided feedback to the students on their arguments.

53. Title: Combatting the Reptile

Role: Presenter of a continuing education course

Date and Location: March 1, 2018 at Embassy Suites, 191 E. Pine St., Orlando, FL 32801

Sponsor: Dean, Ringers, Morgan & Lawton, P.A.

Summary: As part of my prior law firm's "Annual Liability and Workers' Compensation Seminar," I presented to insurance adjusters and other risk professionals regarding the "reptile theory" in litigation. The "reptile theory" is a tactic amongst attorneys in personal injury litigation to attempt to inflame jurors' sentiments against defendants. The presentation explained the theory, analyzed various trial and discovery strategies to address the theory, and discussed legal authority relevant to the theory. The course was approved for continuing education credit for claims adjusters.

54. Title: Social Media in Litigation

Role: Presenter of a continuing education course

Date and Location: March 2, 2017 at Embassy Suites, 191 E. Pine St., Orlando, FL 32801

Sponsor: Dean, Ringers, Morgan & Lawton, P.A.

Summary: As part of my prior law firm's "Annual Liability and Workers' Compensation Seminar," I presented to insurance adjusters and other risk professionals regarding the latest developments in the law with respect to social media. We provided a refresher and an update from our 2016 edition

of the social media presentation. The course was approved for continuing education credit for claims adjusters.

55. Title: Social Media in Litigation

Role: Presenter of a continuing education course

Date and Location: March 10, 2016 at Embassy Suites, 191 E. Pine St., Orlando, FL 32801

Sponsor: Dean, Ringers, Morgan & Lawton, P.A.

Summary: As part of my prior law firm's "Annual Liability and Workers' Compensation Seminar," I presented to insurance adjusters and other risk professionals regarding the latest developments in the law with respect to social media. We discussed social media discovery, preservation of evidence, and other developments in the law with respect to social media. The course was approved for continuing education credit for claims adjusters.

56. Title: Marshall M. Criser Distinguished Lecture in Law with Justice Clarence Thomas

Role: Panelist

Date and Location: September 21, 2012, University of Florida Levin College of Law, Gainesville, Florida

Sponsor: University of Florida Levin College of Law

Summary: I was selected via a competitive process as one of four UF Law students to act as a panelist to question Justice Clarence Thomas during his visit to the University of Florida. My fellow panelists were Zack Smith, David Maass, and Lauren Humphries. A video of the panel discussion is available here: https://mediasite.video.ufl.edu/Mediasite/Play/2b954b0b758447ac855a7b19730e5dad1d

Press reports of the event are available here:

https://www.law.ufl.edu/about-uf-law/supreme-court-justice-clarence-thomas-visits-uf-law

https://www.wuft.org/news/2012/09/21/clarence-thomas-uf-law-school-conversation/

57. Title: Valedictory Address

Role: I gave a speech at my high school graduation as the valedictorian

Date and Location: May 2006 in Jacksonville, Florida

Sponsor: Samuel W. Wolfson High School

Summary: I cannot recall the details of my speech. But trust that it was sufficiently cliché.

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.

See my responses to question 37. The presentations identified above as #1, 5, 6, 8, 9, 10, 12, 16, 17, 20, 21, 22, 27, 28, 34, 36, 41, 42, 43, 44, 48, and 51 were each approved by the Florida Bar for CLE credit. The presentations identified above as #2, 4, 7, 13, and 26 were approved for continuing judicial education credit. The presentations identified above as #47, 49, 53, 54, and 55 were each approved for continuing education credits for claims adjusters. I have not taught a full course at an institution of higher learning. However, I have guest lectured for law school classes as demonstrated by the presentations identified as #3, 19, 25, 30, and 33 in response to question 37 above.

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.

Board Certified by the Florida Bar in Appellate Practice (June 2021 – present)

Book Awards (highest grade in class)

- Florida Constitutional Law (Spring 2012)
- Federal Courts (Spring 2013)
- Supreme Court Workshop (Spring 2013)
- Comparative Law (Spring 2013)

Marshall M. Criser Distinguished Lecture in Law with Justice Clarence Thomas

- Selected to act as one of four student panelists to question Justice Clarence Thomas on September 21, 2012 during his visit to the University of Florida Levin College of Law.

University of Florida Levin College of Law Dean's List

- Every Semester (2010 – 2013)

James F. Bailey, Jr. Scholarship Award

- 2011 recipient of the scholarship award presented by the Jacksonville Bar Association to law students with ties to Jacksonville.

Florida Bright Futures Scholarship

- 100% undergraduate tuition scholarship based on high school GPA and SAT Scores (Awarded 2006)

Valedictorian, Samuel W. Wolfson High School (2006)

- I finished number one in the 2006 graduating class of Wolfson High School in Jacksonville.

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.

Federalist Society (2010 – 2014, 2021 – present)
- Events Chair, UF Chapter (August 2012 – May 2013)

Florida Bar Appellate Practice Certification Committee (August 2023 – present)

Judicial Advisory Council to the Pro Bono Legal Services Committee of the Florida Bar (June 2023 – present)

Florida Bar Standard Jury Instructions Committee – Contract and Business Cases (June 2023 – present)

Florida Bar Appellate Practice Section (2016 – present)
- Chair, Pro Bono Committee (June 2021 – October 2021)
- Co-Chair, Pro Bono Committee (June 2020 – June 2021)
- Vice Chair, Pro Bono Committee (June 2018 – June 2020)

Orange County Bar Association (2015 – present)
- Chair, Appellate Practice Committee (June 2019 – June 2021)
- Vice Chair, Appellate Practice Committee (June 2018 – June 2019)
- Member, Lawyers Literary Society (January 2021 – present)

Osceola County Bar Association (2021 – present)

George C. Young American Inn of Court (2018 – present)

Central Florida Family Law Inn of Court (2021 – present)

Florida Defense Lawyers Association (2016-2018, 2021)

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.

Selden Society (June 2020 – present)
- The Selden Society is a global organization devoted to the study and promotion of English legal history.

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.

Before taking the bench, I served as the Chair of the Florida Bar Appellate Practice Section's Pro Bono Committee from June 2021 to October 2021. Before that, I was the Co-Chair of the Committee from June 2020 to June 2021 and the Vice Chair of the Committee from June 2018 to June 2020. In these roles, I devoted significant time and effort to furthering the Pro Bono Committee's goals. The committee actively pursues and disseminates pro bono appellate opportunities throughout the state. I fielded calls and inquiries from legal aid organizations, appellate courts, and pro se litigants regarding potential pro bono appeals. For those litigants that qualified for the committee's assistance, I distributed their case information to a list of volunteer lawyers (which numbered over 225 lawyers). As Vice Chair, Co-Chair, and Chair of the Committee, I played an instrumental role in connecting pro bono clients with volunteer lawyers. I also worked to get the message out about the Pro Bono Committee to add to the pool of volunteer lawyers.

As a leader in the Pro Bono Committee, I was also fortunate to continue the partnership the committee had with the Florida Statewide Guardian ad Litem Office. The Defending Best Interests Project is a statewide initiative to protect the best interests of children by recruiting pro bono lawyers to prepare answer briefs in appeals where a judge has determined that a termination of parental rights is in the child's best interests. Since the project began the Pro Bono Committee has found over 100 appellate lawyers to handle hundreds of appeals. Much of that success was the product of the efforts of my predecessors. But I was fortunate to continue that partnership. I distributed multiple pro bono appellate opportunities from the GAL Program per week. The Pro Bono Committee also partnered with the Injunction for Protection Project – an effort to provide pro bono appellate counsel to victims of domestic violence.

I have also personally acted as pro bono appellate counsel in GAL cases. I handled the *K.O. v. Florida Department of Children and Families* (5D19-157) appeal in 2019. I prepared the answer brief on behalf of the GAL. The appeal resulted in an affirmance of the trial court's termination of parental rights – the result advocated by me on behalf of the GAL. Similarly, I acted as pro bono appellate counsel in *R.W. v. Florida Department of Children and Families* (5D20-2517) in 2020-2021. This appeal likewise resulted in an affirmance of the trial court's termination of parental rights. I have also participated as the guardian ad litem for children in trial proceedings.

One of the important components of leadership in the Pro Bono Committee has been the educational components. The committee works to provide CLE training to practitioners interested in

taking on pro bono appeals. As part of that training, I presented at the "Appeals for the Pro Bono Practitioner" all-day CLE at the 2020 Winter Meeting of the Florida Bar. I co-presented a CLE on Appellate Motions Practice. And I was subsequently asked to provide a quick YouTube video for the Free Florida CLE YouTube page (a page created by the GAL Program to further the commitment to pro bono attorneys) which addressed post-opinion appellate motions.

Since joining the bench, I have continued to be involved in pro bono. Since June of 2023, I have served on Judicial Advisory Council for the Florida Bar's Pro Bono Legal Services Committee. The Council consists of state and federal judges throughout the state. We provide advisory information to the Pro Bono Legal Services Committee regarding pro bono needs and issues in our respective jurisdictions.

45. Please describe any hobbies or other vocational interests.

I am a devoted Gator sports fan, particularly the football team. I enjoy history of all sorts, from ancient to modern. And I am particularly interested in legal history. I am an avid reader, both fiction and non-fiction. I played baseball through high school and still have a passion for America's pastime (and its history). My wife and I enjoy the beach, traveling (although we do not have the time to do as much as we'd like), food, and movies.

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

I have not served in the military.

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

FAMILY BACKGROUND

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

I am married to Andrea Netcher. She is a civil and environmental engineer with Black & Veatch. Her title is Florida Process Leader. We were married on April 18, 2015. I have never been divorced.

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

CRIMINAL AND MISCELLANEOUS ACTIONS

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

No

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

No

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

No

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

Yes, I have been sued twice in federal court by pro se litigants that had cases before me. Those cases are the following:

Griffin v. Calderon, et al.
Case No. 6:24-cv-1432
U.S. District Court for the Middle District of Florida
Dathan Griffin (a pro se litigant that previously had a case before me) filed suit against me, three other Ninth Circuit judges, and others. Griffin, pro se, alleges a number of various claims. The claims against me were dismissed with prejudice on November 3, 2025.

Payne v. Munyon, et al.
Case No. 6:25-cv-615
U.S. District Court for the Middle District of Florida
Rayon Payne (a pro se litigant that previously had a case before me) filed suit in federal court against me, a lengthy list of other judges (including most Sixth DCA judges), attorneys, and others. Suit was filed in April 2025, and I do not believe Payne obtained service of process.

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. I’ve filed my taxes every year. I’ve never had to pay a tax penalty, and a tax lien has never been filed against me.

HEALTH

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

No

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] Please describe such treatment or diagnosis.

No

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity. If yes, please explain.

No

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed.

No

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

No

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

No

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged

consumption of alcohol, prescription drugs, or illegal drugs? If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action

No

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

No

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

No

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

While some experiences age out on a resume, it is important to note that I have been working since I legally could. From the age of 14 and throughout high school, I worked at the local Winn-Dixie as a bag boy and cashier. While in undergrad, I worked at the University of Florida Bookstore and later as a radio DJ at WRUF-FM (Rock 104).

Throughout my time in private practice, I made sure to never be outworked. I made partner at Dean, Ringers, Morgan & Lawton faster than any lawyer in the history of the firm (dating back to 1976). From there, I started a law firm with three partners. This experience gave me a more in-depth understanding of the practice of law and the practical realities of managing a business. Managing an upstart law firm with three partners involved responsibilities that many lawyers never have to address: meeting payroll, securing office space, hiring, firing, budgeting, and more. By the time I was appointed to the circuit bench (less than two years from the start of the firm), the firm had grown from four lawyers to fifteen lawyers. That success was the product of hard work and the trust of clients.

Hard work and the understanding that no job or task is below my pay grade are core values that I have carried onto the bench. Having a pedigree, a legal acumen, or even the right judicial philosophy will only move the needle in so far as one is willing to put the work in. I am no stranger to hard work. I will maintain that ethos on the Fifth District Court of Appeal.

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.

When I became a circuit judge, I took an oath to support, protect, and defend the Constitutions of the United States and Florida. I swore to faithfully perform the duties of circuit judge. I strive every day to live up to this oath. If I am so fortunate to take the oath to serve on the Fifth District Court of Appeal, I will approach my duties with the same faithfulness. Doing so, in my view, requires a strong intellect, a strong work ethic, and a principled judicial philosophy. My selection will bring several critical contributions to the court.

First, I have a principled judicial philosophy grounded in a deep understanding of the proper role of the judiciary in a representative republic. In my view, law is an objective enterprise. There are right and wrong answers to legal questions. To derive the right answers (when there is a governing text), we must determine the meaning of the words at the time they were adopted. That is, we say what the law *is* and not what it should be. And we say what the law is only in the context of adjudicating real disputes between real parties. This basic philosophy ensures that the judiciary remains the "least dangerous branch." *The Federalist No. 78* (A. Hamilton). I understand that judges exercise "neither force nor will, but merely judgment." *Id.*

But it is not enough to understand the proper role of the judiciary. Understanding is half (and the easiest part) of the battle. To protect the rule of law, a judge must follow through when he personally disagrees with an outcome or when the outcome is not popular with public opinion. I will never waiver from my principles. I will not violate the oath that I take. Some call this judicial "courage." But "courage" is the wrong word. Upholding the oath should be the bare minimum expected of a judge. Not doing so is cowardice. And the absence of cowardice is not "courage."

Second, I am a Board Certified Appellate Specialist. My experience as an appellate lawyer has prepared me to dissect legal issues and to communicate complex subjects in a plain manner. As a practicing lawyer, my office was always the one that my colleagues came to for the most challenging legal questions. Being the resident legal expert is a role I relished. As an appellate specialist, I combined the knowledge of a generalist with the skills of a specialist. Those traits have proven critical as a trial judge. And they will prove invaluable as an appellate judge. I will not require on-the-job training in matters of appellate procedure or jurisdiction. I will be prepared on day one to protect the rule of law.

Third, my service over the better part of the last five years on the circuit court has prepared me to serve on the appellate bench. I understand the pace of the trial court. I understand challenges with case management. I understand the day-to-day operations of a circuit court. I have served in a domestic division, a civil division, and a criminal division. I have presided over nearly 50 jury trials, more than a hundred nonjury trials, and countless hearings. This on-the-ground understanding will provide a useful perspective when reviewing lower court decisions. Apart from the practical benefits, my time on the circuit court is evidence of my faithfulness to my oath. In every case, I have worked to the best of my ability to reach the correct legal answer. No judge is perfect. But my track record over the last five years demonstrates a commitment to faithfully upholding my oath by applying the law, as written.

Fourth, perhaps because of my appellate background, I write more than many of my colleagues on the trial bench. The writing process is how I rule on hard cases. Writing ensures that

the parties have a reasoned explanation for my conclusions. As an appellate judge, I understand that writing will be the bulk of my job. And I will be prepared to take on that task. I, of course, will write to decide cases when I am in the majority. But I will not hesitate to write separately when I believe an issue is worth expounding for purposes of the case before me or for future cases. My service as an associate judge on the Sixth DCA is a prime example. *See SFR Servs., LLC v. Fla. Dept' of Fin. Servs. o/b/o Avatar Prop. & Cas. Ins. Co.*, 412 So. 3d 179 (Fla. 6th DCA 2025) (authoring the opinion for the court and a special concurrence).

Much has been done over the last eight years to right-size Florida's judicial ship. Our judiciary has rightly become more focused on protecting the rule of law and restoring basic legal principles. But there is much work to be done. To further these ends, we need judges who understand first principles, who will not require on-the-job training, and who will not coward before their oath. My intellectual rigor and strong work ethic, informed by my appellate background and judicial experience, will be utilized on the Fifth DCA to further this project of jurisprudential restoration.

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.

The Honorable Kansas R. Gooden
Third District Court of Appeal
2001 S.W. 117th Ave
Miami, FL 33175-1716

The Honorable Joshua A. Mize
Sixth District Court of Appeal
811 E. Main St.
Lakeland, FL 33801-5126

The Honorable Mary Alice Nardella
Sixth District Court of Appeal
811 E. Main St.
Lakeland, FL 33801-5126

Zack Smith
Senior Legal Fellow
Manager, Supreme Court and Appellate Advocacy Program
The Heritage Foundation
214 Massachusetts Ave NE
Washington, DC 20002-4958

The Honorable Roger K. Gannam
Sixth District Court of Appeal
811 E. Main St.
Lakeland, FL 33801-5126

Joshua Grosshans
The Grosshans Group
884 S. Dillard St.
Winter Garden, FL 34787-3910

The Honorable David A. Faber
Senior U.S. District Judge
United States District Court for the Southern District of West Virginia
2303 Elizabeth Kee Federal Building, 601 Federal Street
Bluefield, WV 24701

Stephen Kenny
White House Office of Counsel to the President
Deputy White House Counsel for Nominations
Eisenhower Executive Office Building
1650 17th St. NW
Washington, DC 20006

The Honorable Johnathan D. Lott
Fourth District Court of Appeal
110 S. Tamarind Ave.
West Palm Beach, FL 33401-4610

Michael Kelley
Lawson Huck Gonzalez, PLLC
4705 S. Apopka Vineland Rd, Ste. 210
Orlando, FL 32819-3150
michael@lawsonhuckgonzalez.com

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 28th day of May, 20 26.

Eric Netcher

Printed Name

Signature

State of Florida
County of ORANGE

Sworn to (or affirmed) and subscribed before me by means of
☒physical presence OR ☐online notarization
this 28 day of May, 2026

By Eric Netcher

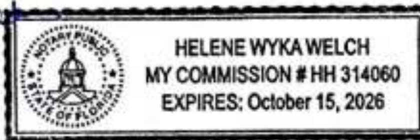
☒Personally known ___

☐Produced ID___

Type of Identification ___

Helene Wyka Welch

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.

   Current Year-To-Date: _$0_______

   Last Three Years: ___$0 __$0_ ___$0_______

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: ___$0____

   Last Three Years: _$0______ __$0____ ___$0_________

3. State the gross amount of income or loses 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: ___$83,681.70

   Last Three Years: $214,255.24_ __$228,705.54 $205,780.52________

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: ___$83,681.70____________

   Last Three Years: __$214,255.24_ __$228,705.54 $205,780.52________

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: _$64,188______________

   Last Three Years: $176,250_______ __$196,500______ _$171,062___________

   * As a circuit judge, I have earned no income "from the practice of law." My primary income source other than the practice of law is my judicial salary. For all above years, I also received interest and dividend income from accounts and investments. The responses to #5 are approximations after subtracting taxes.

FORM 6
FULL AND PUBLIC

DISCLOSURE OF
FINANCIAL INTEREST

PART A – NET WORTH

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

My net worth as of May 11, 2026 was $1,914,090.86 .

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

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

The aggregate value of my household goods and personal effects (described above) is $ 90,000

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
Personal Residence	$800,000.00
Navy Federal Credit Union (Checking and Savings Accounts)	$27,956.24
Schwab Prime Advantage Money Fund	$221,572.79
Schwab S&P 500 Index Fund	$452,287.51
US Treasury Series I Savings Bond	$11,660.00
Vanguard Total Stock Market Index Fund	$111,051.75
T Rowe Price Retirement 2055 Trust B Fund – Florida Deferred Compensation Plan	$357,929.20

PART C - LIABILITIES

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

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SoFi Lending Corp. (mortgage on residence) – 2750 E. Cottonwood Parkway, Ste. 300, Cottonwood Heights, UT 84121	$158,366.63

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
N/A	

PART D - INCOME

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

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

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

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
State of Florida (Judicial Salary, amount included is annual salary)	200 E. Gaines Street, Tallahassee, Florida 32399	$200,836.00
Charles Schwab & Co, Inc. (ordinary dividend income for 2025)	3000 Schwab Way, Westlake, Texas 76262	$13,280.70
Vanguard Brokerage (ordinary dividend income for 2025)	PO Box 982902, El Paso, Texas 79998-2902	$1,128.07

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

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

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

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

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

OATH

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

[signature]

SIGNATURE

STATE OF FLORIDA

COUNTY OF ORANGE

Sworn to (or affirmed) and subscribed before me this 28 day of May, 2026 by Eric Netcher

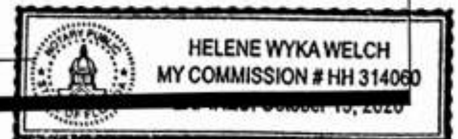
Helene Wyka Welch

(Signature of Notary Public—State of Florida)

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

Personally Known X *OR* Produced Identification _____

Type of Identification Produced _____



JUDICIAL APPLICATION DATA RECORD

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

(Please Type or Print)

Date: May 27, 2026

JNC Submitting To: Fifth District Court of Appeal

Name (please print): Eric J. Netcher

Current Occupation: Judge

Telephone Number: 407-242-1381 Attorney No.: 106530

Gender (check one): [x] Male [ ] Female

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

County of Residence: Orange

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.

Eric Netcher

Printed Name of Applicant

Signature of Applicant

Date: 5/28/2026

Question 22 - Writing Sample #1

SFR Servs., LLC v. Fla. Dept' of Fin. Servs. o/b/o Avatar Prop. & Cas. Ins. Co., 412 So. 3d 179 (Fla. 6th DCA 2025)

Opinion for the Court and Special Concurrence

SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D2023-1050
Lower Tribunal No. 19-CA-001630

SFR SERVICES, LLC a/a/o JOHN & ROSE ZAPISEK,

Appellant,

v.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES o/b/o AVATAR PROPERTY AND CASUALTY INSURANCE COMPANY,

Appellee.

Appeal from the Circuit Court for Lee County.
Leigh Frizzell Hayes, Judge.

May 16, 2025

NETCHER, E.J., Associate Judge.

In civil actions for damages, the offer of judgment statute establishes a fee-shifting regime designed to encourage settlements.[1] When a plaintiff rejects an offer of judgment, a defendant may recover its post-offer attorney's fees and costs when "the judgment obtained by the plaintiff is at least 25 percent less than the amount of

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[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

the offer." § 768.79(7)(a), Fla. Stat. (2024).[2] This appeal concerns the meaning of "judgment obtained." The statute defines it as "the net judgment entered." *Id.* § 768.79(7). The Florida Supreme Court has construed the phrase to mean "the net judgment for damages and any attorneys' fees and taxable costs that could have been included in a final judgment if such final judgment was entered on the date of the offer." *White v. Steak & Ale of Fla., Inc.*, 816 So. 2d 546, 551 (Fla. 2002). Because the trial court did not apply the Florida Supreme Court's binding construction of "judgment obtained," we reverse.

I.

This case arises from a homeowners' insurance claim following Hurricane Irma. Appellant SFR Services, LLC performed repairs for the homeowners in exchange for an assignment of insurance benefits. SFR filed suit against the insurance company, seeking payment of its invoices. SFR sought recovery of "damages, together with interest, costs and attorney's fees" under section 627.428, Florida Statutes.

The insurance company served a proposal for settlement to SFR for $15,000, which included the language "exclusive of all taxable costs and attorneys' fees." SFR did not accept the proposal. The action proceeded to trial. The jury found in

[2] This case was decided below under the prior version of section 768.79. In the prior version, subsection (7) was numbered as subsection (6). However, the text of this provision was identical.

favor of SFR, concluding that the insurance company owed $20,000 in damages. The trial court subsequently reduced the damages amount to $9,000 to account for a $6,000 hurricane deductible and a judgment in accordance with a prior directed verdict motion regarding $5,000 of interior damages. No party challenges the $9,000 damages amount.

After resolution of the remittitur motions, both parties filed competing motions for attorney's fees and costs. SFR sought fees and costs under section 627.428, Florida Statutes (2020).[3] The insurance company sought fees and costs under section 768.79(1) based on the rejected $15,000 proposal for settlement. The insurance company argued that the damages amount ($9,000) plus SFR's pre-offer interest ($1,364.93) was 25% less than the $15,000 offer. Relying on *White*, SFR argued that its pre-offer attorney's fees and costs had to be included to derive the correct "judgment obtained." Doing so, SFR observed, would place the "judgment obtained" above the $11,250 threshold.

After a hearing on the issue of entitlement, the trial court sided with the insurance company. That is, the trial court concluded that "[t]he judgment obtained by [SFR], exclusive of taxable costs and attorneys' fees, is $9,000.00." And because this amount was over 25% less than the $15,000 offer, the trial court determined that

[3] The Florida Legislature has since repealed this statute. Ch. 2023-15, § 11, Laws of Fla. (eff. Mar. 24, 2023).

the insurance company was entitled to recover its attorney's fees and costs incurred from the date of the proposal for settlement.

After an evidentiary hearing to determine the amount of the insurance company's fees and costs, the trial court issued a final judgment, awarding the insurance company $60,936.50 in fees, $38,599.07 in costs, and $4,800 for expert costs. This total amount was offset by the $9,000 damages amount, resulting in a total award to the insurance company of $95,335.57.

This appeal followed. We agree with SFR that the trial court erred by not applying the Florida Supreme Court's *White* decision in calculating the "judgment obtained."[4]

II.

When a defendant serves a legally sufficient offer of judgment that "is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25

---

[4] We dismiss the appeal as it relates to SFR's contention that the trial court erred in denying its fee entitlement motion. The insurance company is now insolvent, and the Florida Department of Financial Services has placed it into receivership. SFR's counsel represented that the Florida Insurance Guaranty Association ("FIGA") has been substituted for the insurance company below. On remand, we anticipate that a judgment in favor of SFR will be entered. If there is a basis for SFR to seek attorney's fees or costs against FIGA, it may do so. That said, at oral argument, SFR conceded it was unaware of any basis for it to recover attorney's fees against FIGA. Indeed, the attorney's fees provisions of section 627.428 are not "applicable to any claim presented to [FIGA]," with a limited exception. § 631.70, Fla. Stat. We leave this issue to the trial court. Additionally, SFR's dispute concerning individual costs awarded to the insurance company is mooted by our reversal.

percent less than the amount of the offer, the defendant" is entitled to reasonable attorney's fees and costs "incurred from the date the offer was served." § 768.79(7)(a), Fla. Stat. In the context of offers from defendants, "the term 'judgment obtained' means the amount of the net judgment entered, plus any postoffer collateral source payments received or due as of the date of the judgment, plus any postoffer settlement amounts by which the verdict was reduced." *Id.* § 768.79(7).

In *White*, the Florida Supreme Court held "that the 'judgment obtained' . . . includes the net judgment for damages and any attorneys' fees and taxable costs that could have been included in a final judgment if such final judgment was entered on the date of the offer." 816 So. 2d at 551. The judgment calculation that includes pre-offer attorney's fees and costs as of the date of the offer has become known as the *White* formula. Application of the formula does not turn on whether the offer includes attorney's fees or costs. *Id.* at 552 (Harding, J., concurring in part and dissenting in part) ("In the present case, Steak and Ale's offer did not include costs.").

The Legislature has not seen fit to clarify its intent since *White*. And the Florida Supreme Court, recently presented with the opportunity to recede from the *White* formula, declined to do so. *CCM Condo. Ass'n v. Petri Positive Pest Control, Inc.*, 330 So. 3d 1 (Fla. 2021). The *CCM* court could not "conclude that [its] prior

interpretation of section 768.79 is clearly erroneous." *Id.* at 6. As a result, the court "decline[d] to recede from the formula [it] set forth in *White*." *Id.* We remain bound by *White*.

Thus, the trial court erred in failing to apply *White*'s formulation of the "judgment obtained." The trial court determined that the net damages amount ($9,000) was the "judgment obtained" threshold without including any pre-offer costs or attorney's fees incurred by SFR. Per *White*, pre-offer costs and attorney's fees (when part of the claim) must be included to derive the threshold "judgment obtained."

The parties do not dispute that the inclusion of SFR's pre-offer costs alone puts the "judgment obtained" over the $11,250 threshold amount. As of the date of the offer, SFR had incurred $2,384.90 in costs. Adding this amount to the $9,000 damages amount, as *White* requires, "the judgment obtained" was not "at least 25 percent less than the amount of the [$15,000] offer." § 768.79(7)(a), Fla. Stat. Thus, the insurance company was not entitled to attorney's fees and costs under the offer of judgment statute.

III.

In sum, the trial court erred by not applying the Florida Supreme Court's binding construction of "judgment obtained" in the offer of judgment statute. Applying *White*, the insurance company was not entitled to an award of attorney's

fees and costs under the offer of judgment statute. The final judgment in favor of the insurance company is reversed. We remand to the trial court for proceedings consistent with this opinion.

REVERSED in part; DISMISSED in part; and REMANDED.

TRAVER, C.J., and SMITH, J., concur.
NETCHER, E.J., Associate Judge, concurs specially, with opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

NETCHER, E.J., Associate Judge, concurring specially.

I write separately to explain my view that the *White* formula is inconsistent with the text of the offer of judgment statute. In my view, "the net judgment entered" refers to the amount of an actual judgment that awards damages for the claim adjudicated.

When interpreting a statute, we follow the supremacy-of-the-text principle. *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020). That is, "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Id.* (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)).

The governing text here is the offer of judgment statute—section 768.79. It provides that when a defendant serves an offer of judgment that "is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant" is entitled to reasonable attorney's fees and costs "incurred from the date the offer was served." § 768.79(7)(a), Fla. Stat. The statute defines "judgment obtained." *Id.* § 768.79(7). In the context of offers from defendants, "the term 'judgment obtained' means the amount of the net judgment entered, plus any postoffer collateral source payments received or due as of the date of the judgment, plus any postoffer settlement amounts by which the verdict was reduced." *Id.*

The statutory text and context point to the conclusion that the "net judgment entered" refers to the amount of an actual judgment that awards damages for the claim adjudicated. There are two components of this conclusion: 1) "the net judgment entered" refers to an actual, entered judgment; and 2) "the net judgment entered" is the judgment awarding damages and not a separate judgment that awards attorney's fees and costs incidental to the main claim. If writing on a clean slate, the text and the context of the statute would lead me to this result for multiple reasons.

First, the statute uses the past tense "judgment *obtained*." In defining "judgment obtained," the statute doubles down on the past tense by using "judgment

entered." The past tense signals a reference to a discreet judgment that the court has, in fact, entered.

Second, the statute's use of the definitive article "the" throughout indicates reference to a specific judgment. The statute identifies "*the* judgment," "*the* judgment obtained," and "*the* net judgment." § 768.79(1), (7), Fla Stat. (emphasis added). The use of the definitive article "'the' limits that to which it refers to only one, to the exclusion of all others." *Golf Scoring Sys. Unlimited, Inc. v. Remedio*, 877 So. 2d 827, 829 (Fla. 4th DCA 2004). It would seem, then, that "the judgment entered" refers to a specific judgment and not a hypothetical judgment comprised of multiple potential judgments.

Third, the statute's focus is on "damages." It applies to "any civil action for damages." § 768.79(1), Fla. Stat. After detailing the specifics that an offer must contain, the statute provides that "[t]he offer shall be construed as including all *damages* which may be awarded in a final judgment." § 768.79(2), Fla. Stat. (emphasis added). "Attorney's fees and costs are not damages." *CCM Condo. Ass'n v. Petri Positive Pest Control, Inc.*, 330 So. 3d 1, 6 (Fla. 2021). It has long been recognized that "[c]osts properly incurred are an incident to the judicial proceeding, and are no part of the damages claimed or demand or penalty being adjudicate[d]." *Louisville & N.R. Co. v. Sutton*, 44 So. 946, 948 (Fla. 1907).

Fourth, and relatedly, attorney's fees and costs are generally addressed after entry of the damages judgment. Florida Rule of Civil Procedure 1.525 provides that motions for attorney's fees and costs must be filed "no later than 30 days after filing of the judgment." This same 30-day deadline is included in the offer of judgment statute. Attorney's fees and costs under the statute may be awarded "[u]pon motion made by the offeror within 30 days after the entry of judgment." § 768.79(7), Fla. Stat. Again, the statute references the entry of an actual judgment. And the context points to the damages judgment. Post-judgment fees and costs motions involve "collateral and independent" claims. *Finkelstein v. N. Broward Hosp. Dist.*, 484 So. 2d 1241, 1243 (Fla. 1986) (holding that "a post-judgment motion for attorney's fees raises a 'collateral and independent claim' which the trial court has continuing jurisdiction to entertain . . . .").

Lastly, the Legislature knows how to include pre-offer attorney's fees and costs when defining a judgment. In the statute applying to offers of settlement for claims that accrued before 1990, "the amount of the judgment" is defined as "the total amount of money damages awarded plus the amount of costs and expenses reasonably incurred by the plaintiff or counter-plaintiff prior to the making of the offer." § 45.061(2)(b), Fla. Stat. Such precise language is absent from section 768.79. The absence of such language, in conjunction with the other textual clues,

suggests a meaning of "the net judgment entered" that does not include pre-offer attorney's fees and costs.

That said, the Florida Supreme Court has not seen it this way. In *White*, the court held "that the 'judgment obtained' . . . includes the net judgment for damages and any attorneys' fees and taxable costs that could have been included in a final judgment if such final judgment was entered on the date of the offer." *White v. Steak & Ale of Fla., Inc.*, 816 So. 2d 546, 551 (Fla. 2002). The *White* court rejected the holding of *Williams v. Brochu*, 578 So. 2d 491 (Fla. 5th DCA 1991). There, the Fifth DCA reached a result consistent with the conclusion I see as the best reading of the statute. That is, the court held "that the statutory term 'judgment obtained' means the amount of the judgment for damages awarded by the jury . . . and does not include taxable costs or attorney's fees . . . which are taxable by the court incidental to the jury's consideration of an award for damages." *Id.* at 493; *see also Mincin v. Short*, 662 So. 2d 1323, 1325 (Fla. 2d DCA 1995) (abrogated by *White*).

Oddly, the *White* court relied on a case that construed a different statute with distinct statutory text. Namely, the court relied on *Danis Industries Corp. v. Ground Improvement Techniques, Inc.*, which concerned section 627.428. Applying the logic of *Danis*, the *White* court explained that "any offer of settlement shall be construed to include all damages, attorney fees, taxable costs, and prejudgment interest which would be included in a final judgment if the final judgment was

entered on the date of the offer of settlement." *White*, 816 So. 2d at 551 (quoting *Danis Indus. Corp. v. Ground Improvement Techs., Inc.*, 645 So. 2d 420, 421-22 (Fla. 1994)). This construction was smuggled into section 768.79, without regard to an explicit statutory directive in section 768.79. Specifically, section 768.79(2) directs that "[t]he offer shall be construed as including all damages which may be awarded in a final judgment," full stop. This provision is uncited in the *White* opinion.

In part, "common sense, fairness, and the purpose of the offer-of-judgment statute" led the *White* court to its conclusion. *White*, 816 So. 2d at 550. But fairness concerns cut in both directions. Take, for example, the facts of this case. The insurance company served an offer of judgment for $15,000 that expressly excluded attorney's fees and costs. The offer was "made in an attempt to resolve all claims (excluding claims for attorneys' fees and costs) . . . ." Had SFR accepted the offer, it likely still could have sought attorney's fees under section 627.428 (now repealed). In that context, SFR would recover the $15,000 offer amount plus any fees or costs it may be entitled to as a prevailing party under section 627.428. In rejecting the offer, however, SFR is able to roll the trial dice and then later include pre-offer attorney's fees and costs in the hypothetical "judgment obtained" to compare with the insurance company's offer that expressly excluded such fees and costs. All the while, the insurance company is out six figures in fees and costs that it cannot

recover despite offering $6,000 more in damages than SFR ultimately was entitled to recover. If one of the primary purposes of the offer of judgment statute is to encourage settlements, it is not clear how the application of the *White* formula here supports "the purpose of the offer-of-judgment statute." *White*, 816 So. 2d at 550.

In any event, we generally leave "common sense, fairness, and the purpose of" statutes to the Legislature. These considerations cannot overcome the plain and ordinary meaning of the text. Rather, these considerations are reflected in the text. Whether fair or commonsensical, the text of the offer of judgment statute does not lend itself to *White*'s construction of "judgment obtained."

My concerns notwithstanding, the *White* formula remains good law. And we are in no position to undo the formula here. As recently as 2021, the Florida Supreme Court stood by *White*. *See CCM.*, 330 So. 3d 1. While *CCM* was no ringing endorsement of *White*, the court could not conclude that *White*'s interpretation of section 768.79 was clearly erroneous. *Id.* at 6. Justice Canady, joined by Justice Lawson, dissented. For them, there was "no path from the statutory language of section 768.79—'net judgment entered'—to the meaning adopted by the majority—a hypothetical judgment equivalent to 'what would be included in judgments if the judgments were entered on the date of the settlement offers.'" *Id.* at 7-8 (Canady, J., dissenting). I, for one, am inclined to see things Justice Canady's way. But we remain bound by *White*. So too was the trial court below.

Though consistent with the best reading of the offer of judgment statute, the trial court's award of attorney's fees and costs to the insurance company was not consistent with the Florida Supreme Court's reading in *White*. With doubt that *White* represents the best reading of the offer of judgment statute, I concur.

Melissa A. Giasi and Albert A. Zakarian, of Giasi Law, P.A., Tampa, for Appellant.

Andrew A. Labbe, of Groelle & Salmon, P.A., Tampa, for Appellee.

Question 22 - Writing Sample #2

Hudson v. University of Central Florida, Board of Trustees, et al.

Case No. 2020-CA-10114-O

Order Granting Defendants' Motion for Summary Judgment, Denying Plaintiff's Motion for Partial Summary Judgment, and Entering Final Judgment in Favor of Defendants

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

IRWIN L. HUDSON,

Plaintiff,

v. CASE NO. 2020-CA-10114-O

UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES; and MICHAEL D. JOHNSON; ALEXANDER CARTWRIGHT; JANA JASINSKI; ROSS WOLF; ELIZABETH KLONOFF; SHERRY ANDREWS; YOUNDY COOK; SCOTT COLE; and BRIAN C. BOYD, in their official Capacity,

Defendants.
_______________________________/

Order Granting Defendants' Motion for Summary Judgment, Denying Plaintiff's Motion for Partial Summary Judgment, and Entering Final Judgment in Favor of Defendants

This action comes before the Court on Defendants' Motion for Summary Judgment (filed 4/5/2024) and Plaintiff's Motion for Partial Summary Judgment (filed 4/3/2023). A hearing on the motions was held on August 22, 2024. An additional hearing was held on December 10, 2024 per the Court's Order. The Court has reviewed the motions, responses, and the summary judgment evidence. Having considered the issues, the Court grants Defendants' motion and denies Plaintiff's motion for the reasons that follow.

1. Factual and Procedural Background

This action arises from the University of Central Florida's revocation of Plaintiff Irwin L. Hudson's doctoral degree due to allegations of plagiarism. Hudson – a Department of Defense (DOD) employee since 2004 – became a UCF student in 2011, enrolling in a Ph.D. modeling and simulation program offered through UCF's

Institute for Simulation and Training (IST). After completing his coursework and passing a qualifying examination in the Fall 2015 semester, Hudson enrolled in one semester of dissertation course work in August 2016. He defended his dissertation in November 2016, and he received his Ph.D. on December 16, 2016.

In March of 2016, an allegation was made (immaterial to this action) that there were conflicts of interest involving IST students that were also DOD employees. On October 1, 2018, UCF retained the a law firm to investigate these and other allegations. The law firm issued its initial report on December 23, 2019 and a supplemental report on January 23, 2020.

While not the subject of the report, the report contained information that indicated to UCF that Hudson did not complete his dissertation on his own and plagiarized a portion of his dissertation from Dr. Grace Teo's dissertation. Though not ultimately material to the Court's determination here, UCF understands the report to show that nearly a quarter of Hudson's dissertation was a verbatim copy of Dr. Teo's prior publication.

This revelation prompted action from UCF. Dr. Elizabeth Klonoff – the Vice President for Research and Dean of the College of Graduate Studies – called Hudson and sent him a letter on January 27, 2020. The letter advised Hudson of Dr. Klonoff's decision to pursue degree revocation. Dr. Klonoff further advised Hudson of the allegations. She stated that "the investigation revealed that your dissertation was not based on your own work and was not an original work of scholarship; and that you misrepresented the work of others as your own in the presentation of your dissertation." (Exhibit D to Defendants' MSJ). A redacted version of the law firm's report was attached, and Hudson was advised of the opportunity to request additional materials in writing.

Dr. Klonoff's letter was followed by another letter on January 30, 2020. Dr. Jana Jasinski – Vice Provost for Faculty Excellence – wrote to Hudson after receipt of Dr. Klonoff's recommendation to pursue revocation. Dr. Jasinski advised Hudson of the right to request a "predetermination conference" at which he would "have the opportunity to show cause why his degree should not be revoked and to otherwise

respond orally or in writing to the charges in order to refute them or to explain the reasons for your actions." (Exhibit N to Defendants' MSJ). While the process would be "informal" and "[d]iscovery, cross-examination, and similar legal procedures" would not be permitted; Hudson was given the opportunity to "bring witnesses, submit written statements or other documents, and provide other information that you deem appropriate or relevant." *Id.*

The predetermination conference was held on June 19, 2020 via Zoom. Hudson attended the conference with his lawyer. Also present were Dr. Jasinski, Dr. Teresa Dorman, UCF's in-house lawyer, and Dr. Ross Wolf (Interim Assistant Provost). Hudson's lawyer gave a presentation that included a 68-slide PowerPoint presentation. (Exhibit O to Defendants' MSJ).

Nearly two months after the conference, Dr. Wolf issued a written recommendation to Dr. Jasinski that UCF should revoke Hudson's PhD. Then, on August 18, 2020, Dr. Jasinski recommended to Interim Provost Michael Johnson that "the reasons for revoking [Hudson's] degree provided by Dr. Klonoff [were] substantiated and that his PhD. should be revoked effective immediately." (Exhibit P to Defendants' MSJ).

The process did not stop there. UCF subsequently conducted a research misconduct process under the Research Misconduct Policy and associated Research Misconduct Assurance Compliance. UCF asserted the process was not applicable because Hudson's dissertation was not part of work paid for by outside funding such as federal grants. Nonetheless, UCF initiated a research misconduct investigation. Dr. Douglas Backman – UCF's Director of Compliance and Research Integrity Officer – reviewed the allegations and found they were sufficiently credible to notify the Vice President of Research and Dean of the College of Graduate Studies to appoint an inquiry committee. The Inquiry Committee consisted of Dr. Alvin Wang, Dr. Annie Wu, and Dr. Edgard Maboudou. After the Inquiry Committee's review, including a comparison of Hudson's and Dr. Teo's dissertations, the Committee determined there was a sufficient basis to warrant a formal investigation.

The Inquiry Committee's conclusion resulted in another committee – the Investigation Committee (consisting of Dr. Reza Abdolvand, Dr. Jeffrey S. Bedwell, and Dr. Nancy A. Stanlick, and Dr. Ali Gordon). The Investigation Committee reviewed the dissertations; reports generated from online plagiarism review platforms; and interviews with members of Hudson's dissertation committee, a former PhD. student in Hudson's program, and faculty members. The Investigation Committee issued its Final Research Misconduct Investigation Report on January 14, 2022. It reached the following conclusions:

> 1. The Investigative Committee unanimously agreed the Respondent, Irwin Hudson, intentionally and knowingly plagiarized contents of his Dissertation and that such plagiarized content was a significant departure from accepted practices of the relevant research community as outlined in the Investigation Committee Report.
>
> 2. The Investigation Committee found that the Respondent violated the standards of scholarly conduct and ethical behavior in scientific research as outlined in the Investigation Committee Report.

(Exhibit R to Defendants' MSJ).

The Committee recommended that "the contents and facts presented in this Investigation Committee Report [be used] as evidence toward degree revocation." *Id.* at pg. 11. Finally, on March 31, 2022, UCF formally revoked Hudson's PhD. The letter came from Michael D. Johnson, the Provost and Executive Vice President for Academic Affairs. And the decision was made "in consultation with the President." (Exhibit T to Defendants' MSJ).

By the time of revocation, this action had already been filed. Hudson brings this action against the University of Central Florida Board of Trustees (UCF) and multiple members of UCF administration. The operative pleading – the Third Amended Complaint – asserts four claims. Count I seeks declaratory relief that UCF did not have legal authority to revoke Hudson's degree, that UCF Policy 4-406.1 did not confer authority to revoke Hudson's degree, that the policy violated substantive due process, that Hudson was denied procedural due process, and that UCF had not

complied with UCF Policy 4-406.1. (Third Amended Complaint at pg. 18). Count II seeks a mandatory injunction (based on the same theories) that requires UCF to "reverse its prior action and add Dr. Hudson's Ph.D. award to his transcript once again." *Id.* at pg. 19. Counts III and IV are claims under 42 U.S.C. § 1983 (against the individual defendants) for alleged violations of procedural due process and substantive due process, respectively. Both of the constitutional claims seek injunctive relief that requires Hudson's Ph.D. to be reinstated.

Hudson seeks partial summary judgment on the declaratory and injunctive relief claims. Defendants seek summary judgment on all claims. At bottom, resolving the motions requires the Court to answer three questions: 1) did UCF have the legal authority to revoke Hudson's degree?; 2) was the process afforded to Hudson prior to revocation constitutionally sufficient?; and 3) does Hudson have a "substantive due process" right that was violated?

To be clear, the Court is making no determination regarding whether Hudson did or did not commit plagiarism. That question is best left to the academics who made it. With the exception of the factual circumstances regarding the process afforded to Hudson, much of the facts discussed by the parties are not ultimately material to the disposition of the motions. The Court is only addressing whether the authority existed to revoke, the constitutional propriety of the process, and whether any substantive due process right was violated. On these dispositive issues, the Court agrees that Defendants are entitled to summary judgment.

2. UCF had the legal authority to revoke Hudson's Ph.D.

Hudson's primary contention is that UCF lacks the authority to revoke his degree. That is, he contends that the revocation of his Ph.D is unlawful because UCF Policy 4-406.1 (addressing revocation) is a "policy" and not a "regulation." And, the argument goes, Florida statutes require sanctions against students to be imposed by regulation. In making this argument, Hudson presents an ultra-cabined view of university authority. In focusing on sanctions for misconduct and the policy at issue, Hudson misses the fundamental point. Namely, UCF has the authority to confer degrees. And with this power comes the corollary power to revoke degrees.

Article IX, section 7(d) of the Florida Constitution establishes a statewide board of governors that "shall operate, regulate, control, and be fully responsible for the management of the whole university system." "Each local constituent university shall be administered by a board of trustees;" and the "board of governors shall establish the powers and duties of the board of trustees." Fla. Const. art. IX, § 7(c). Exercising this constitutional grant of authority, the Board of Governors enacted regulations. Under "Regulation 1.001, the Board of Governors delegated broad constitutional authority to the university boards of trustees to administer their respective universities." *Couchman v. Univ. of Cent. Fla.*, 84 So. 3d 445, 449 (Fla. 5th DCA 2012) (*en banc*). Regulation 1.001(4)(a)(4) delegates authority to the board of trustees to "adopt university regulations or policies, as appropriate" concerning the "minimum academic performance standards for the award of a degree." Fla. Bd. of Govs. Reg. 1.001(4)(a)(4).

That said, the Board of Governor's delegation does not itself "delegate any authority directly to the *individual universities*." *Fla. Carry, Inc. v. Univ. of N. Fla.*, 133 So. 3d 966, 979 (Fla. 1st DCA 2013) (Wetherell, J., specially concurring). And the actions at issue here occurred at the university level by university administration and ultimately the president. The Board of Trustees has, in fact, delegated much of its broad authority to the university president. *See* (Resolution on Presidential Authority, attached as Exhibit 5 to Plaintiff's Second Request for Judicial Notice (filed 4/3/2023)).[1] Among the significant authority delegated to the President is the authority to "[a]ward degrees and certificates." *Id.* at pg. 4.

UCF – not this Court – is tasked with determining the performance standards necessary for the award of a degree. "When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment." *Regents of Univ. of Michigan v. Ewing*, 474 U.S.

[1] The Board of Trustees current policy on presidential authority and delegation is available here: https://bot.ucf.edu/wp-content/uploads/sites/5/2022/10/BOT-Policy-Presidential-Authority-and-Delegation-approved-10_20_2022.pdf

214, 225 (1985). Courts generally should not "set aside decisions of school administrators which the court may view as lacking basis in wisdom or compassion." *Woods v. Strickland*, 420 U.S. 308, 326 (1975).

Hudson's argument fails because it is based on several faulty premises. Hudson is under the impression that there must be an express grant of authority to revoke degrees. But the power to confer a degree implies the power to revoke it. For example, it has been "held that the authority to issue a certificate includes the authority to revoke the certificate." *Cirnigliaro v. Fla. Police Standards & Training Comm'n*, 409 So. 2d 80, 83 (Fla. 1st DCA 1982). The power to revoke is "necessarily or reasonably incident to the powers expressly granted." *Hall v. Career Serv. Comm'n*, 478 So. 2d 1111, 1112 (Fla. 1st DCA 1985).

This conclusion is consistent with every case cited that addresses the overarching question of whether a university has the authority to revoke a degree. *See Waliga v. Bd. of Trustees of Kent State Univ.*, 488 N.E.2d 850 (Ohio 1986); *Hand v. Marchett*, 957 F.2d 791 (10th Cir. 1992) ("Implicit in that power [to confer degrees] must be the authority to revoke degrees."); *Crook v. Baker*, 813 F.2d 88 (6th Cir. 1987) (concluding that Michigan universities have the power to revoke degrees where there was "nothing in Michigan constitutional, statutory or case law that indicates that the Regents do not have the power to rescind the grant of a degree."); *Hartzell v. S.O.*, 672 S.W.3d 304 (Tex. 2023) (holding that "the Boards' broad statutory authority to govern and administer the Systems and their component institutions, to determine the conditions for the award of degrees, and to award degrees necessarily encompasses the authority to determine that a student did not meet those conditions, and thus did not in fact earn a degree, because of academic misconduct."); *see also Gati v. Univ. of Pittsburgh of Com. Sys. of Higher Educ.*, 91 A. 3d 723, 736 (Wecht, J., concurring) ("It can hardly be disputed that the authority given to an institution of higher learning to confer a degree carries with it the concomitant authority to revoke a degree, provided the institution shows good cause and follows lawful procedure.").

The Court appreciates that these cases arose in the particular statutory and constitutional frameworks of the universities involved. But one principle is

consistent: "the power to confer degrees necessarily implies the power to revoke degrees erroneously granted." *Waliga*, 488 N.E.2d at 852; *see also Hartzell*, 672 S.W.3d at 316-17 (collecting cases for the proposition that the power to confer implies the power to revoke). Hudson has not identified a single case in the country that supports his view that a university cannot revoke a degree conferred.

Hudson's hyper-focus on UCF Policy 4-406.1 misses the mark. Hudson is correct that this policy does not provide UCF the legal authority to revoke a degree. But that does not mean that the authority does not exist. In other words, the power would exist even in the absence of Policy 4-406.1. This is apparent from the policy's language that UCF "reserves the right to revoke any UCF degree awarded to any student." It does not purport to create that authority.

Hudson's primary contention that a regulation (as opposed to a policy) was required is based on section 1006.60(1). It provides that "the Board of Governors . . . shall require each . . . state university to adopt, by regulation, codes of conduct and appropriate penalties for violations of rules or regulations by students, to be administered by the institution." But section 1006.60 contains a potentially more apt subsection.

Section 1006.60(5) provides that "each state university *may* establish and adopt, by regulation, codes of appropriate penalties for violations of rules or regulations governing student academic honesty." These penalties may include "invalidation of university credit or of the degree based upon such credit." § 1006.60(5), Fla. Stat. Subsection (5) concerns academic honesty while subsection (1) concerns codes of conduct. This indicates that the mandatory adoption of codes of conduct by regulation would not cover issues of academic honesty such as degree revocation. That said, Hudson still contends that exercising the degree revocation authority in subsection (5) would also require a regulation.

If Hudson were correct regarding the requirement for a regulation before a degree may be revoked, a constitutional problem may arise. As discussed above, the authority that the Court concludes is sufficient to revoke a degree flows from the Florida Constitution. It affords the Board of Governors broad discretion to "operate,

regulate, control, and be fully responsible for the management of the whole university system . . . ." Fla. Const. art. IX, § 7(d). Constitutionally, this authority is subject only "to the powers of the legislature to appropriate for the expenditure of funds . . . ." *Id.*; *see also Fla. Carry, Inc.*, 133 So. 3d at 974 (discussing the issue and collecting cases where the scope of BOG's authority has been broadly interpreted in areas when the "matters directly related to education."); *NAACP, Inc. v. Fla. Bd. of Regents*, 876 So. 2d 636, 640 (Fla. 1st DCA 2004) (Board of Governors' power "regarding university admissions flows directly from the Florida Constitution" and "is not dependent on any delegation from the Florida Legislature."). Reading section 1006.60(5) to require a regulation before a degree may be revoked could create a conflict with the Board of Governor's broad constitutional authority in matters related to education.

The Court "has a duty, if reasonably possible, to construe a statute so as not to conflict with the Florida Constitution." *State Dept. of Rev. v. Markham*, 426 So. 2d 555, 560 (Fla. 4th DCA 1982). Exercising this duty, section 1006.60(5) can be reasonably construed to avoid any constitutional conflict in at least two ways. First, the statute provides only that state universities "*may* establish and adopt, by regulation" the academic honesty penalties. § 1006.60(5), Fla. Stat. (emphasis added). It does not say "must" or "shall." Thus, the statute provides discretion to universities. It is one way that a university may go about exercising its authority. But it does not limit the authority otherwise granted by the Constitution.[2] Second, section 1006.60(5) concerns "student academic honesty." Hudson was not a student at the time of the degree revocation. As applied to Hudson, the statute can be construed to avoid a constitutional problem.

At bottom, the authority at issue here flows from the Florida Constitution. The Board of Governors has delegated its authority to the Board of Trustees who, in turn, have delegated authority to the UCF President. UCF's implied power to revoke a

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[2] Notably, the subsection now codified as 1006.60(5) predates the adoption of Article IX, section 7 of the Florida Constitution. *See* § 240.261, Fla. Stat. (2001). It is possible that this provision was required at one point but that the constitutionalization of university administration rendered it mostly useless. It may simply be a vestige of a prior regime. But the Court need not delve that deep because the statute can be reasonably construed to avoid a conflict with the Florida Constitution.

degree resolves the bulk of Hudson's declaratory and injunctive relief claims. Both claims assert that UCF lacks authority to revoke a previously conferred degree. It does not lack the authority. Both claims assert that UCF Policy 4-406.1 does not confer authority to revoke a former student's degree. It does not confer authority, but that does not matter because the authority is not derived from the policy.

3. The process afforded to Hudson was constitutionally sufficient under the Due Process Clause of the Fourteenth Amendment

In the declaratory and injunctive relief counts, Hudson asserts that the process afforded to him denied him "procedural due process." Hudson's counsel confirmed at the second hearing that this assertion is made under the Fourteenth Amendment. Likewise, Count III is a federal constitutional claim under 42 U.S.C. § 1983 that asserts a violation of procedural due process. In response to Defendants' summary judgment motion and at the summary judgment hearing, Hudson asserts the following two bases for a denial of due process: 1) he was precluded from engaging in discovery; and 2) he was precluded from examining witnesses.

Under the Fourteenth Amendment to the United States Constitution, no state may "deprive any person of life, liberty, or property, without due process of law." A due process claim requires 1) a deprivation of a constitutionally protected liberty or property interest; 2) state action; and 3) constitutionally inadequate process. *Bradsheer v. Fla. Dep't of Highway Safety & Motor Vehicles*, 20 So. 3d 915, 918 (Fla. 1st DCA 2009).

As to the first element – a constitutionally protected liberty or property interest – Defendants do not assert in their motion that a doctoral degree is not constitutionally protected as either a liberty or property interest. They instead assert that Hudson received constitutionally adequate process. Thus, for present purposes, the Court will assume (without deciding) that a college degree is a constitutionally protected interest that gives rise to the requirements of the Due Process clause. *See Crook v. Baker*, 813 F.2d 88, 97 (6th Cir. 1987) (assuming *arguendo* that a master's degree was a constitutionally protected interest).

The Court concludes that, as a matter of law, the process afforded to Hudson was not constitutionally inadequate. Depending on the context, the process that is "due" changes. The due process cases illustrate a distinction between university academic decisions and university disciplinary decisions. This distinction is found in Florida jurisprudence dating back to 1966. In *Woody v. Burns*, 188 So. 2d 56, 58 (Fla. 1st DCA 1966), the court (addressing a disciplinary decision) stated that "a charge of misconduct, as opposed to failure to meet the scholastic standards of the college, depends upon a collection of the facts which are easily colored by the point of view of the witness." More informality and leeway is afforded in the context of academic or scholastic decisions. Courts "have recognized that there are distinct differences between decisions to suspend or dismiss a student for disciplinary purposes and similar actions taken for academic reasons which may call for hearings in connection with the former but not the latter." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 87 (1978).

Here, Hudson claims he should have been given the opportunity to engage in discovery and examine witnesses. In the context of academic decisions, such process is not required. The "fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). "When depriving a student of a property or liberty interest for academic reasons, however, a university need not hold a hearing." *Dudley v. Boise State Univ.*, 2024 WL 1973596, at * 9 (D. Idaho May 3, 2024). "A university meets the requirements of procedural due process in that circumstance so long as the academic decision is 'careful and deliberate.'" *Id.* (quoting *Horowitz*, 435 U.S. at 85).

On this summary judgment record, the process afforded satisfied due process. UCF advised Hudson of the allegations in at least four letters. On January 27, 2020, Hudson was advised of the decision to pursue degree revocation based on the "significant irregularities and improprieties with regard to your Ph.D. candidacy. This letter provided the investigation report that prompted the decision. This letter was followed by another on January 30, 2020 that advised Hudson of his right to a predetermination conference at which he would "have the opportunity to show cause

why his degree should not be revoked and to otherwise respond orally or in writing to the charges in order to refute them or to explain the reasons for your actions." (Exhibit N to Defendants' MSJ). Hudson was advised of his opportunity to "bring witnesses, submit written statements or other documents, and provide other information that you deem appropriate or relevant." *Id.*

The conference went forward, and Hudson appeared with counsel who gave a presentation that included a 68-slide PowerPoint presentation.[3] Hudson knew what he was being accused of and was given a chance to be heard on those issues. (Exhibit A to MSJ at 263:2 – 264:3). This was notice and an opportunity to be heard. After this process, UCF then conducted a three-tiered review under UCF's Research Misconduct policy. Overall, the process afforded went beyond the "careful and deliberate" and deliberate standard. And, even if UCF's actions were not appropriately characterized as academic decisions, the notice and opportunity to be heard would still be constitutionally adequate. The absence of a formal discovery process or cross-examination does not render the academic proceedings inadequate.

The cases relied upon by Hudson (cited in Plaintiff's response on page 21) do not change this result. In *Florida International University v. Ramos*, 335 So. 3d 1221 (Fla. 3d DCA 2021), the court merely concluded that "the circuit court did not run afoul of clearly established law" by concluding that there was a due process violation in a student disciplinary proceeding when the student was deprived of opportunity to elicit evidence of bias and motive of a critical witness. The case illustrates the limited scope of second-tier certiorari review more than anything else. That is, the court was not concluding that the circuit court was correct. Rather, "mindful of the narrow scope

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[3] Hudson has objected to the admissibility of UCF Provost Ross Wolf's August 14, 2020 letter describing what occurred at the predetermination conference. But "evidence does not have to be authenticated or otherwise presented in an admissible form to be considered at the summary judgment stage, 'as long as the evidence could ultimately be presented in an admissible form.'" *Smith v. Marcus & Millichap, Inc.*, 991 F.3d 1145, 1156 n.2 (11th Cir. 2021) (citation omitted); *see also Jacoby v. Keers*, 779 F. App'x 676, 679 (11th Cir. 2019) (it is within trial court's discretion to determine what evidence is capable of being presented in an admissible form). The substance of the letter could be presented in an admissible form. That said, even if the Court does not consider the letter, there is other sufficient summary judgment evidence to conclude that the process afforded was constitutionally adequate.

of [the court's] review, [the court] conclude[d] certiorari relief is improvident." *Id.* at 1225.

Tellingly, the *Ramos* court cited as "pertinent to this case," the protections afforded by section 1006.60, Florida Statutes. *Id.* at 1225. Hudson has not made any argument here that those procedural protections apply to him. He has only asserted a constitutional due process claim. And, as addressed above, the disciplinary/academic distinction appears to be baked into section 1006.60. That is, the procedural protections listed in subsection (3) follow subsections (1) and (2) concerning the adoption of "codes of conduct and appropriate penalties for violations of rules or regulations by students" and student organizations. § 1006.60(1), (2), Fla. Stat. The due process protections are directed to the "codes of conduct" to protect "students and student organizations." § 1006.60(3), Fla. Stat. Those same protections would not apply to the "codes of appropriate penalties for violations of rules or regulations governing student academic honesty" that are identified in subsection (5). § 1006.60(3), Fla. Stat. In any event, section 1006.60 does not apply here. The due process protections at issue here come from the Constitution, not from the statute.

Likewise, the other cases cited by Hudson arose in administrative and disciplinary contexts that shed little light on the constitutional question presented here. *See Morfit v. Univ. of S. Fla.*, 794 So. 2d 655 (Fla. 2d DCA 2001) (decided before adoption of Article IX, section 7 and concluding that student due process rights as provided for in the Student Code of Conduct were not followed in a student misconduct hearing); *Alpha Eta Chapter of Pi Kappa Alpha Fraternity v. Univ. of Fla.*, 982 So. 2d 55 (Fla. 1st DCA 2008) (concluding that fraternity appearing before the Greek Judicial Board was deprived of the right to question adverse witnesses as provided for in the Florida Administrative Code); *Morris v. Fla. Agric. & Mech. Univ.*, 23 So. 3d 167 (Fla. 5th DCA 2009) (student accused of fraudulent misconduct "rather than poor academic performance," was deprived of a statutory right to a hearing and right to notice under the Administrative Code).[4]

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[4] The *Morris* court's holding that FAMU is subject to the provisions of the Administrative Procedures Act has been receded from. *See Couchman*, 23 So. 3d 167.

In sum, the process afforded to Hudson satisfied the due process requirements of the Fourteenth Amendment. Defendants are entitled to summary judgment on Count III and the due process components of Counts I and II.

4. There is no "substantive due process" right to a doctoral degree.

While the Fourteenth Amendment, plainly by its text, only protects procedural rights. It has been held that there is a "substantive" component to the right that protects certain unremunerated rights. This "substantive due process" doctrine generally "guarantee[s] some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

This doctrine has been criticized as lacking any real basis in law. "A constitutional doctrine that lacks foundation in text or history must draw its content from another source, and substantive due process has offered judges little more than 'scarce and open-ended' platitudes." *Eknes-Tucker v. Governor of Alabama*, 114 F.4th 1241, 1245 (11th Cir. 2024). Of course, this Court must apply the doctrine on its own terms.

Doing so here reveals that no "substantive due process" right has been violated by Defendants. The right to a doctoral degree is nowhere in the Constitution. And the Court is not aware of, nor has Hudson cited, any cases standing for the proposition that the right to a doctoral degree is deeply rooted in this nation's history and implicit in the concept of ordered liberty. That said, "even when no fundamental interest is at stake, the doctrine bars *any* 'arbitrary and oppressive exercise of government power' and *all* government conduct that 'shocks the conscience.'" *Id.* (quoting *Waldman v. Conway*, 871 F.3d 1283, 1292 (11th Cir. 2017)). This doctrine acts as a backstop to the most egregious governmental conduct. Hudson relies on this backstop.

"Only the most egregious conduct is sufficiently arbitrary to constitute a substantive due process violation." *Waldman*, 871 F.3d at 1292. Viewed in this lens, the Defendants conduct here is rather innocuous. Nothing about the conduct at issue

"shocks the conscience." It simply does not rise to the high level of an arbitrary or oppressive exercise of government power. This is not to say that the Defendants were correct in their determination. But their conduct is not the type that the Constitution concerns itself with. Defendants are entitled to summary judgment on the "substantive due process" claim asserted in Count IV.

5. Conclusion

In closing, the Court concludes that UCF had the legal authority to revoke Hudson's degree; the process afforded to Hudson prior to revocation was constitutionally sufficient; and no "substantive due process" right was violated. Plaintiff's Motion for Partial Summary Judgment (filed 4/3/2023) is **denied**. Defendants' Motion for Summary Judgment (filed 4/5/2024) is **granted**.

Final Judgment is entered in favor of all Defendants on Plaintiff's claims. Plaintiff shall take nothing by this action, and Defendants shall go hence without day. The Clerk is **directed** to close this case.

DONE AND ORDERED in Orange County, Florida on December 19, 2024.

eSigned by Eric J Netcher 12/19/2024 16:31:20 2X9i8gSJ

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on December 19, 2024.

Question 22 - Writing Sample #3

Ravinia at East Park Homeowners' Association v. D.R. Horton, Inc.

Case No. 2021-CA-008243-O

Order Denying Plaintiff's Motion for Partial Summary Judgment on the Economic Loss Rule

Filing # 195658446 E-Filed 04/08/2024 09:39:56 AM

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

CASE NO. 2021-CA-008243

RAVINA AT EAST PARK
HOMEOWNERS' ASSOCIATION,
INC.

Plaintiff,

v.

D.R. HORTON, INC.; A.B. DESIGN
GROUP, INC.; ADVANCED WRAPPING
AND CONCRETE SOLUTIONS OF
CENTRAL FLORIDA, INC.; BRAVEN
PAINTING INC.; C & M CONCRETE
CONSTRUCTION, INC.; COLLIS
ROOFING, INC.; CR CONSTRUCTION,
INC.; ODC CONSTRUCTION, LLC;
RICHARD AND RICE CONSTRUCTION
COMPANY, INC.; SOLAR-TITE, INC.

Defendants.

_________________________________/

And the related Crossclaims and
Third Party Claims

_________________________________/

Order Denying Plaintiff's Motion for Partial Summary Judgment on Defendant D.R. Horton, Inc.'s Thirteenth Affirmative Defense (Economic Loss Rule)

This action comes before the Court on Plaintiff's Motion for Partial Summary Judgment on Defendant D.R. Horton, Inc.'s Thirteenth Affirmative Defense (Economic Loss Rule) (filed 5/10/2023). A hearing on the motion was held on January

29, 2024. The Court has carefully considered the motion and response.[1] For the reasons that follow, the Court **denies** the motion.

This is a construction defect action arising from the construction of 15 buildings known as the Ravina Townhomes. Ravina at East Park Homeowners' Association, Inc. filed suit against the general contractor D.R. Horton, Inc. and nine of its subcontractors based on alleged construction defects. The Association asserts two claims against D.R. Horton – negligence and violation of the Florida Building Code under section 553.84. There are no contractual claims.

DR. Horton raised a number of affirmative defenses, one of which is at issue. The Thirteenth Affirmative Defense alleges that "[t]he economic loss rule bars Plaintiff's claim because there is no damage to any property other than the Townhomes." Relying on *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc.*, 110 So. 3d 399 (Fla. 2013), the Association's principle argument is that the economic loss rule does not apply because this is not a "products liability action." D.R. Horton responds that the rule continues to apply to construction defect claims even after *Tiara* because the buildings are "products" as contemplated by the rule.

1. Pre-*Tiara* Cases Involving Homes and Buildings

Pre-*Tiara*, it is clear the Association's negligence claim would be barred by the economic loss rule. Pre-*Tiara* cases made short shrift of claims similar to those asserted here. The one-paragraph opinion in *Greens of Town'n Country Condominium Association, Inc. v. Greens of Tampa, Inc.*, 653 So. 2d 1136 (Fla. 2d DCA 1995) illustrates the point. The court affirmed dismissal of claims brought by a condominium association against the developer based on alleged negligent "design, construction, inspection, repair and maintenance of the condominium's roof and electrical wiring." *Id.* at 1137. The court agreed with the trial court "that the economic loss rule bars these negligence claims." *Id.*

[1] As detailed in the Court's prior Order on Plaintiff's other partial summary judgment motions, the Court has considered D.R. Horton's response despite the timeliness argument raised in Plaintiff's reply. The Court adopts the same analysis for purposes of this Order.

Similarly, *Fishman v. Boldt*, 666 So. 2d 273 (Fla. 4th DCA 1996) illustrates the rule's application. The case involved the purchase of a home on a canal, a failed seawall, and claims against the builder for negligent construction. *Id.* at 274. The economic loss rule barred the claim because recovery is prohibited "where a product damages itself, causing economic loss, but does not cause personal injury or damage to any property other than itself." *Id.* The "'product' purchased by the appellants was the home with all of its component parts, including the seawall, pool, and patio." *Id.* Thus, the economic loss rule barred recovery. *Id.*

These cases relied on *Casa Clara Condominium Association v. Charley Toppino & Sons, Inc.*, 620 So. 2d 1244 (Fla. 1993). There, the Florida Supreme Court applied the economic loss rule to bar a homeowners' claim for purely economic losses against a concrete supplier under a negligence theory. The court held "that the economic loss rule applies to the purchase of houses." *Id.* at 1248. In doing so, the court emphasized that "one must look to the product purchased by the plaintiff, not the product sold by the defendant." *Id.* at 1247. And that product was the home itself, not its individual components. *Id.*

2. *Tiara's* Holding

How, if at all, does *Tiara* affect these holdings? Answering this question requires an understanding of *Tiara's* holding and the genesis of the reasoning adopted in *Tiara*.

Tiara arose in the context of a certified question from the U.S. Court of Appeals for the Eleventh Circuit. The claim was brought by a condominium association against an insurance broker. *Tiara*, 110 So. 3d at 400. The association alleged that the broker negligently advised the association of its insurance needs, resulting in significant uninsured hurricane damage. *Id.* The question certified from the Eleventh Circuit was whether an insurance broker provided a "professional service" such that the broker would be "unable to successfully assert the economic loss rule as a bar to tort claims seeking economic damages that arise from the contractual relationship between the insurance broker and the insured." *Id.* at 400. Because the case involved, "the economic loss rule in cases involving contractual privity," the Florida Supreme

Court restated the certified question. *Id.* That is, the court broadened the question's scope to ask whether "the economic loss rule bar[s] an insured's suit against an insurance broker where the parties are in contractual privity with one another and the damages sought are solely for economic losses." *Id.*

With this restated question, the court launched into an analysis of the history of the economic loss rule. The court described two versions of the rule: the "contractual privity economic loss rule" and the "products liability economic loss rule." *Id.* at 402-03. The court bemoaned the "legacy of unprincipled expansion" of the economic loss rule into the contractual privity context. *Id.* at 406. Citing a prior case, the court reiterated that the rule "should generally be limited to those contexts or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis." *Id.* (quoting *Moransais v. Heathman*, 744 So. 2d 973 at 983 (Fla. 1999)). The court concluded "that the economic loss rule applies only in the products liability context." *Id.* at 407.

At bottom, the *Tiara* court decided that the economic loss rule did not bar an insured's suit against an insurance broker where the parties are in contractual privity. To reach that result, the court did away with the "contractual privity economic loss rule." And the provision of insurance brokerage services was obviously not a "product." The court had no occasion to wrestle with the scope of what it described as the "products liability economic loss rule."

Critically, none of the pre-*Tiara* cases discussed above (*Casa Clara*, *Greens of Town'n Country*, and *Fishman*) turned on whether the parties were or were not in contractual privity. On the contrary, the focus was on the product. *Casa Clara* emphasized that homeowners buy "finished products – dwellings – not the individual components of those dwellings." 620 So. 2d at 1247. The court went on to note that builders "produce the finished product, i.e., a house." *Id.* The *Casa Clara* majority does not even use the word "privity." *Fishman* made clear that "the 'product' purchased by the appellants was the home with all of its component parts, including the seawall, pool, and patio." *Fishman*, 666 So. 2d at 274.

The Court cannot conclude that *Tiara* – a case about insurance brokerage services and the abandonment of the "contractual privity economic loss rule" – overruled *Casa Clara*'s principle holding and the cases that followed like *Fishman* and *Greens Town'n Country*. That is, *Tiara* has nothing binding to say about whether a building is a product that comes within the "products liability economic loss rule." That's so because *Tiara* was a contractual privity case addressing that receded from the "contractual privity economic loss rule."

3. The Origins of the "Products Liability" and "Contractual Privity" Economic Loss Rule Categories

Tracing the origins of the *Tiara* vernacular ("contractual privity economic loss rule" and "products liability economic loss rule") is instructive. The exercise reveals that claims of defective construction of a home or building fall under the "products liability economic loss rule" that survived *Tiara*.

As far as the Court can tell, the phrase "products liability economic loss rule" was first used by Judge Altenbernd's dissenting opinion in *Woodson v. Martin*, 663 So. 2d 1327 (Fla. 2d DCA 1995). There, Judge Altenbernd described "at least three distinct, but often overlapping, economic loss rules." *Id.* at 1331. Critically, Judge Altenbernd placed *Casa Clara* "arguably" within the "products liability economic loss rule" category. He stated: "First, there is the products liability economic loss rule: If the defendant's product physically damages only itself, causing additional economic loss, no recovery is permitted in 'tort.' This is arguably the rule controlling *Casa Clara* and *Prevost*." *Id.* Even at its first mention, the "products liability economic loss rule" – the rule that survives *Tiara* – was being associated with *Casa Clara*.

From there, critiques of the expansion of the economic loss rule were made in several concurrences and dissents at the Florida Supreme Court. A careful assessment of these critiques is important because they represent the view that ultimately prevailed in *Tiara*.

In *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999), Justice Wells expressed his view in a concurring opinion that "the economic loss rule should be limited to cases

involving a product which damages itself by reason of a defect in the product." [2] *Id.* at 984. He would have "reced[ed] from *AFM Corp. v. Southern Bell Telephone & Telegraph Co.*, 515 So. 2d 180 (Fla. 1987), because that opinion erroneously applies the economic loss rule and has given rise to confusion as to the rule's applicability."[3] *Id.* Notably, *Casa Clara* was not in Justice Wells' crosshairs. Justice Wells' view garnered two additional adherents in *Comptech Intern., Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219 (Fla. 1999).

Then came *Indem. Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532 (Fla. 2004). There, the court held that tort claims against a company that serviced an aircraft were not barred by the economic loss rule because the company was not the manufacturer or distributor of the aircraft nor was the company in contractual privity with the plaintiffs. *Id.* at 534. This was the Florida Supreme Court's first use of the "contractual privity" and "products liability" economic loss rule distinction. Justice Wells' view had essentially prevailed as the court "recede[d] from *AFM Corp.*" to the extent that it relied on the economic loss rule. *Id.* at 542.

Justice Cantero, joined by Justice Wells, wrote separately to emphasize that the court was bringing "Florida more into line with the majority of jurisdictions that have adopted such a rule." *Id.* at 544 (Cantero, J., concurring). He emphasized that the "vast majority of states restrict the rule to product cases, at least in the absence of a contract." *Id.* at 545. Footnote 9 of his concurrence contains citations to cases throughout the country to illustrate the states that "implicitly restrict the rule to products liability cases." *Id.* at 545 n. 9. Included within the citation string is the following citation and parenthetical: "*Berish v. Bornstein*, 437 Mass. 252, 770 N.E. 2d 961, 975 (2002) (holding that the rule applies "to the purchase and sale of products

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[2] *Morransais*' holding was that the economic loss rule did not bar a claim against a professional for his or her negligence even though the parties were in privity. In that sense, it is a case that is properly placed in the "contractual liability economic loss rule" bucket.

[3] *AFM Corp.* was squarely placed in the "contractual privity economic loss rule" category by the Florida Supreme Court in *Tiara*. *Tiara*, 110 So. 3d at 402 ("The contractual privity application of the economic loss rule is best exemplified by our decision in *AFM Corp.*")

[and] also to claims of negligent design and installation in a newly constructed home")." *Id.*

Justice Cantero (joined by Justice Wells), expressing a view that ultimately won the day in *Tiara*, cites a case stating that the rule applies in cases involving the negligent design and installation in a newly constructed home. To be sure, the parenthetical references "the purchase and sale of products" *and* "claims of negligent design and installation." Thus, it could be argued that negligent design and installation in a newly constructed home are distinct from the purchase and sale of products. And colloquially, they are. But the question is the scope of the "products liability economic loss rule" that survives *Tiara*. And it is telling that the Justices whose views most influenced *Tiara* recognized at least one case from another jurisdiction that properly included negligent construction claims within the scope of the economic loss rule they thought should survive. It is likewise telling that these Justices never called for *Casa Clara's* overruling. Their ire was directed at *AFM Corp.* – a "contractual privity economic loss rule" case.

4. Post-*Tiara* Cases Involving Homes and Buildings

Post-*Tiara*, courts have continued to conclude that the economic loss rule applies in cases involving homes or other buildings. For example, *2711 Hollywood Beach Condominium Association, Inc. v. TRG Holiday, Ltd.*, 307 So. 3d 869 (Fla. 3d DCA) involved claims by a condominium association against a manufacturers of component parts of fire suppression system that leaked resulting in damages to the buildings purchased by the association from the developer. The Third DCA affirmed summary judgment as to one of the manufacturers based on the economic loss rule. "Applying the rule set forth in *Casa Clara*, the Association purchased a completed building from the developer." *Id.* at 870. That is, the building was the product. And "[i]njury to the building itself is not injury to 'other' property because the product purchased by the Association was the building." *Id.*

The Third DCA's opinion in *2711 Hollywood* confirms the continuing vitality of *Casa Clara*'s view of a finished home or building as a "product" in the economic loss rule lexicon. *See also CDO Invs., LLC v. Knauf Gips*, 2024 WL 832074, at *5 (M.D.

Fla. Feb. 28, 2024) ("As in *2711 Hollywood Beach Condo. Ass'n, Inc.* and *Casa Clara*, injury to the home is not injury to 'other property' because the product purchased by Plaintiff was the home.") To be sure, the case involves a manufacturer of a component part and not the builder itself. But that did not matter in *Fishman* (a claim against a builder) or *Greens Town'n Country* (a claim against the developer).

Nor did it matter in *Gazarra v. Pulte Home Corp.*, 207 F. Supp. 3d 1306 (M.D. Fla. 2016). There, homeowners who purchased homes constructed by Pulte brought claims contending stucco siding was defectively installed. *Id.* at 1308. The operative complaint was "silent as to whether the Plaintiffs bought directly from Pulte." *Id.* Judge Presnell of the Middle District of Florida dismissed the negligence claim with prejudice, applying the economic loss rule. *Id.* at 1309. "Florida's economic loss rule bars tort claims by owners of defective products who suffer solely economic losses, which is the harm that the Plaintiffs are actually complaining about in this case." *Id.* Judge Presnell relied on *Casa Clara* and cited *Tiara* as "reaffirming application of economic loss rule in products liability cases." *Id.*

While not a case ultimately about the economic loss rule, *D.R. Horton, Inc. – Jacksonville v. Heron's Landing Condo. Ass'n of Jacksonville, Inc.*, 266 So. 3d 1201 (Fla. 1st DCA 2018) provides one hint about the continuing vitality of the economic loss rule as a bar against negligent construction claims against builders. Like here, the association brought a negligence claim against the general contractor for the project that consisted of 240 residential units in twenty buildings. *Id.* at 1203. The jury had returned a verdict for the association on the negligence claim, building code claim, and a breach of implied warranty claim. But "[t]he trial court granted [D.R. Horton's] motion to set aside the verdict as to the negligence claim based on the economic loss rule." *Id.* at 1206. D.R. Horton appealed the judgment as it relates to the other counts, and there is no indication that the association cross-appealed the economic loss rule issue. The issues decided on appeal involved expert testimony, damages, and the building code claim. In that sense, *Heron's Landing* obviously does not control the issue before the Court. But it does provide another helpful clue to suggest that *Tiara* did not undo the economic loss rule in this context.

5. Conclusion

To summarize, *Casa Clara* establishes that the economic loss rule applies to the purchase of houses and that the product is the home itself. Its progeny (like *Green Town'n Country* and *Fishman*) illustrate that the rule applies equally when the allegedly negligent party is a builder. *Tiara* holds that the economic loss rule does not bar an insured's suit against an insurance broker where the parties are in contractual privity because the court receded from the "contractual privity economic loss rule." Despite limiting the rule to the "products liability context," *Tiara* is not a case that addresses the scope of that rule. And post-*Tiara* cases have continued to apply the economic loss rule where the product at issue is a home.

In short, the Court is bound by *Casa Clara*, *Greens Town'n Country*, and *Fishman*. None of these cases were expressly overruled in *Tiara*. Given this assessment of the relevant authorities, the Association is not entitled to summary judgment on D.R. Horton's Thirteenth Affirmative Defense. The Court rejects the Association's other arguments, including the argument that the "professional negligence exception" to the economic loss rule applies. The Court is aware of no authority applying that exception (which is more naturally associated with contractual privity cases) in this context.

Plaintiff's Motion for Partial Summary Judgment on Defendant D.R. Horton, Inc.'s Thirteenth Affirmative Defense (Economic Loss Rule) (filed 5/10/2023) is **denied**.[4]

DONE AND ORDERED in Orange County, Florida on April 8, 2024.

eSigned by Eric J Netcher 04/08/2024 09:38:06 Berh7FNz

Eric J. Netcher
Circuit Judge

[4] Of course, the economic loss rule may only be invoked as to the negligence claim. As the Association points out (and D.R. Horton concedes), the rule would not bar the statutory building code claim.

Certificate of Service

The Court certifies that this Order was electronically filed and served to all parties receiving electronic service via the Florida Court's e-Filing Portal on April 8, 2024.

Question 28 – Constitutional Issues

Davis v. I-Drive Thrill Park, LLC, et al.
Case No. 2023-CA-001307-O
Order on Defendants' Motions to Dismiss Regarding Personal Jurisdiction

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

STEPHANIA DAVIS, individually and
as Parent and Legal Guardian of K.D.,
a minor,

Plaintiff,

v. CASE NO. 2023-CA-001307-O

I-DRIVE THRILL PARK, LLC;
AMERICAN KART MANUFACTURING,
LLC; SHALLER INVESTMENTS, LLC;
FLAMBEAU, INC.; ROGER SHALLER;
KURT VEDDER and TRACY KIRCHER,

Defendants.
_________________________________/

Order on Defendants' Motions to Dismiss
Regarding Personal Jurisdiction

This action comes before the Court on Defendants American Kart Holdings, Inc. and American Kart Manufacturing, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (filed 1/30/2024) and Defendant Kurt Vedder's Motion to Dismiss Plaintiff's Amended Complaint (filed 2/7/2024). An evidentiary hearing was held on the motions on August 20, 2024. The Court has carefully considered the motions, Plaintiff's responses, and the evidentiary materials. Having considered the issues, the Court concludes as follows.

This is a products liability action arising from a March 2021 incident at the "Magical Midway" amusement park in Orlando where the Plaintiff's minor child was burned following a go-kart accident. Plaintiff alleges the incident was the result of a defective fuel tank rollover valve assembly. Plaintiff brings claims against multiple entities – I-Drive Thrill Park, LLC (the owner and operator of the amusement park); American Kart Holdings, Inc.; American Kart Manufacturing, LLC; Shaller Investments, Inc.; Flambeau, Inc.; Kurt Vedder; Roger Shaller; and Tracy Kircher.

Defendants American Kart Holdings (AKH), American Kart Manufacturing (AKM), and Kurt Vedder. AKH and AKM are Texas entities, and Vedder is a Texas resident. Each of these Defendants challenge personal jurisdiction.

The personal jurisdiction analysis is governed by the two-step inquiry detailed in *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989). That is, the Court must first determine whether the complaint contains sufficient jurisdictional facts to bring the action within the long-arm statute. *Id.* at 502. If so, then the Court must assess whether sufficient minimum contacts exist between Florida and the defendants to satisfy the due process requirements of the Fourteenth Amendment. *Id.*

Plaintiff relies only on the specific jurisdiction provisions of the long-arm statute. Namely, Plaintiff asserts that the Court can exercise personal jurisdiction over AKH, AKM, and Vedder under section 48.193(1)(a)1, 2, and 6. "Specific jurisdiction requires a showing that the alleged activities or actions of the defendant are directly connected to the forum state." *Guarino v. Mandel*, 327 So. 3d 853, 861 (Fla. 4th DCA 2021) (cleaned up). In other words, the claim must arise out of the conduct that establishes jurisdiction. Thus, for specific jurisdiction purposes, the Court must assess each count separately. *Id.* at 866 (concluding that trial court erred as to denial of dismissal of one count but reversing for evidentiary hearing on two other counts); *see also Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245 (Fla. 4th DCA 2011) (assessing counts separately and concluding that court had "specific jurisdiction over all three counts."). The Court will address each Defendant in turn.

1. American Kart Manufacturing

Plaintiff asserts four claims against AKM – strict liability (as seller), strict liability (post-sale failure to warn), negligence (as seller), and negligence (post sale failure to warn/undertaking). It is undisputed that the subject go-kart was manufactured by Shaller Investments and sold to I-Drive Thrill Park in 2015. At that time, AKM did not exist as an entity. But AKM and Shaller Invesements entered into an asset purchase agreement in January 2017. After this agreement, AKM issued a "Safety Alert" on June 12, 2017. The claims seeking to hold AKM liable as the seller

do so under a theory that AKM can be responsible as a successor-in-interest to Shaller Investments. The other claims seek to hold AKM liable based on the Safety Alert issued in June 2017.

With respect to the counts arising from the Safety Alert (Counts VII and IX), the Court concludes that there is a sufficient basis to exercise personal jurisdiction. However, with respect to the counts that seek to hold AKM liable as the seller of the go-kart (Counts VI and VIII), the Court lacks personal jurisdiction.

a. Counts VII and IX – Post-Sale Failure to Warn

The Court concludes that section 48.193(1)(a)6 supports personal jurisdiction under the long-arm statute as it relates to Counts VII and IX.[1] Before reaching that conclusion, the Court explains why jurisdiction is not appropriate under section 48.193(1)(a)2 for committing "a tortious act within this state."

i. Section 48.193(1)(a)2

The long-arm statute may be satisfied where a defendant commits "a tortious act within this state." § 48.193(1)(a)2, Fla. Stat. The Florida Supreme Court has held "that telephonic, electronic, or written communications into Florida may form the basis for personal jurisdiction under section [48.193(1)(a)2] if the alleged cause of action arises from those communications . . . ." *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002). Plaintiff contends that the strict liability and negligence cause of actions in Counts VII and IX arise out of the 2017 Safety Alert – a communication into Florida. Thus, the argument goes, there is a sufficient basis to support jurisdiction based on an alleged "tortious act within this state" under *Wendt*.

However, later DCA cases have cabined the *Wendt* holding to apply "when the tort 'involves some sort of communication directed into Florida for purpose of fraud, slander, or other intentional tort.'" *Stonepeak Partners, LP v. Tall Tower Capital, LLC*, 231 So. 3d 548, 554 (Fla. 2d DCA 2017) (quoting *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 86 (Fla. 2d DCA 2014)). Plaintiff argues these later cases represent a

[1] Given the Court's conclusion regarding section 48.193(1)(a)6, the Court declines to address whether jurisdiction is supported under section 48.193(1)(a)1 for "[o]perating, conducting, engaging in, or carrying on a business or business venture in this state . . . ."

distortion of *Wendt's* holding and that the cabining of the *Wendt* rule is based on *dicta* in *Kountze v. Kountze*, 996 So. 2d 246 (Fla. 2d DCA 2008). But the *Wendt* rule's limitation to fraud, slander or intentional torts is binding on the Court.

Indeed, the Sixth DCA has also recognized that the *Wendt* rule is applied to communications made for the purpose of fraud, slander, or other intentional tort. *Harrison v. NC3 Systems, Inc.*, 2024 WL 4481229, at *3 (Fla. 6th DCA Oct. 14, 2024). And this limitation on *Wendt* has been applied in products liability cases. The First DCA has not applied *Wendt* where the plaintiff's "cause of action against [the defendant] is for strict products liability, which does not fall into this recognized class." *Samsung SDI Co., Ltd. v. Fields*, 346 So. 3d 102, 107 (Fla. 1st DCA 2022) (citing *Stonepeak*, 231 So.d 3d at 554)). And, in a products liability case, the Second DCA did not apply *Wendt* where "the proffered basis for jurisdiction . . . is a claim sounding in ordinary negligence." *Robinson Helicopter Co., Inc. v. Gangapersaud*, 346 So. 3d 134, 140 (Fla. 2d DCA 2022).

The Court appreciates that these later cases do not involve allegations (like those made here) of a post-sale warning made into the state. But the cases focus on the nature of the claim being asserted. And, here, the claims against AKM sound in strict liability and negligence. Thus, the claims do not involve "some sort of communication directed into Florida for purpose of fraud, slander, or other intentional tort." *Stonepeak*, 231 So. 3d at 554. Section 48.193(1)(a)2 does not apply.

ii. Section 48.193(1)(a)6

However, section 48.193(1)(a)6 supports jurisdiction. It provides that jurisdiction is appropriate over a claim arising out of the following act:

> 6. Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
>
> > a. The defendant was engaged in solicitation or service activities within this state; or
> >
> > b. Products, material, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed

> within this state in the ordinary course of commerce, trade, or use.

Plaintiff has asserted that the post-sale warnings (made outside of Florida) caused injury to the minor in Florida. And, "at the time of the injury," AKM "was engaged in solicitation or service activities" in Florida. Plus, "[p]roducts . . . serviced or manufactured by [AKM] anywhere were used or consumed within" Florida.

Notably, the timeframe for when the Court looks to whether a defendant is engaged in activities in the state or whether products manufactured by the defendant are being used within the state is at "the time of the injury." Here, the injury occurred in March 2021. AKM has admitted that it has "regularly sold go-karts and go-kart parts to Florida-based amusement parks from 2017 to 2021." (AKM's Responses to RFAs at ¶ 18). This is a "solicitation" activity. And the record supports the conclusion that AKM's go-karts that it manufactured and serviced were being used in Florida.[2]

To the extent that there needs to be a connection between the particular product manufactured or serviced and the injury, the Safety Alert is an example of a "service" activity under 6(a); and the go-kart itself is being "serviced" by AKM under 6(b) when the Safety Alert was issued. Thus, despite the fact that the alleged tortious act did not occur "within this state" under section 48.193(1)(a)2, the requirements of the long-arm statute are satisfied under section 48.193(1)(a)6 as they relate to Counts VII and IX.

iii. Due Process

The Court has no trouble concluding that the due process requirements of the Fourteenth Amendment do not pose a barrier to personal jurisdiction over these claims. "The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). To be constitutionally subjected to personal jurisdiction, a nonresident defendant must have certain "minimum

[2] Even if the Court were to look to the 2017 timeframe when warnings were issued, jurisdiction would still be appropriate because AKM was regularly selling go-karts and go-kart parts to Florida at that time.

contacts" with the forum state such that the exercise of jurisdiction "does not 'offend traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The contacts needed to establish specific jurisdiction are referred to as "purposeful availment." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). That is, the defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Again, AKM has admitted that it has "regularly sold go-karts and go-kart parts to Florida-based amusement parks from 2017 to 2021." (AKM's Responses to RFAs at ¶ 18). This consistent level of business activity with Florida is sufficient to demonstrate that AKM has sufficient "minimum contacts" with Florida such that jurisdiction "does not 'offend traditional notions of fair play and substantial justice.'" *Int'l Shoe*, 326 U.S. at 316. Having regularly engaged in business with Florida entities, AKM has "purposely avail[ed] itself of the privilege of conducting activities" in Florida. *Hanson*, 357 U.S. at 253.

As to the post-sale failure to warn claims (Counts VII and IX), AKM's motion is denied.

b. Counts VI and VIII – Negligence and Strict Liability (As Seller)

While the long-arm statute reaches the claims against AKM arising out of the Safety Alert, the negligence and strict liability claims seeking to hold AKM responsible for the 2015 sale of the subject go-kart present a different question. Again, AKM did not exist in 2015 at the time of the conduct giving rise to the claims against AKM as "seller" of the go-kart. Thus, the claims against AKM as a "seller" of the go-kart do not fall within any of the provisions of the long-arm statute relied upon by Plaintiff. That is, those claims cannot "aris[e] from any of" the acts relied upon by Plaintiff because AKM did not exist when that act (manufacture and sell) occurred. § 48.193(1)(a), Fla. Stat. And Plaintiff has not alleged any of the four exceptions necessary to attribute Shaller Investment's actions to AKM as a successor entity.

"Florida law does not impose the liabilities of a predecessor corporation on a successor corporation unless" one of four exceptions is established. *Laboratory Corp. of Am. v. Professional Recovery Network*, 813 So. 2d 266, 269 (Fla. 5th DCA 2002). The liabilities of a predecessor can be imposed on a successor only when: "(1) the successor expressly or impliedly assumes obligations of the predecessor, (2) the transaction is a de facto merger, (3) the successor is a mere continuation of the predecessor, or (4) the transaction is a fraudulent effort to avoid the liabilities of the predecessor." *Bernard v. Kee Mfg. Co., Inc.*, 409 So. 2d 1047, 1049 (Fla. 1982) (declining to create an additional exception "to extend products liability to the successor corporation.").

For purposes of jurisdictional facts and contacts, the same exceptions must be satisfied. In *Viking Acoustical Corp. v. Monco Sales Corp.*, 767 So. 2d 632 (Fla. 5th DCA 2000), the court addressed the issue of "whether [a plaintiff] properly alleged that a *de facto* merger occurred between [a predecessor and successor entity] sufficient to provide the trial court with *in personam* jurisdiction over [the successor]." *Id.* at 633. The Fifth DCA emphasized the general rule that a successor "is not liable for the liabilities of the corporation which it is buying." *Id.* at 635. Ultimately, the Fifth DCA agreed with the trial court that a *de facto* merger did not occur. *Id.* Thus, the court affirmed the dismissal based on lack of personal jurisdiction over the successor.

The import of *Viking Acoustical* is clear: to permit personal jurisdiction over a successor based on the acts or jurisdictional contacts of a predecessor, one of the four exceptions to the general rule of no liability for successors must be pleaded and proven. Plaintiff has not done so as it relates to AKM.

Critical to the Court's conclusion is the burden shifting scheme that courts apply when assessing personal jurisdiction under the long-arm statute. A "plaintiff must initially allege in the complaint sufficient jurisdictional facts to show compliance with the statute." *Holton v. Prosperity Bank of St. Augustine*, 602 So. 2d 659, 660 (Fla. 5th DCA 1992). At that point, the burden "shifts to the defendant to make a prima facie showing of the inapplicability of the long arm statue." *Id.* The

burden then shifts back to the plaintiff "to supply affidavits or other proof to substantiate the jurisdictional allegations." *Id.* If the plaintiff fails to do so, the motion to "dismiss for lack of jurisdiction should be granted." *Id.*

Plaintiff has not met its initial burden to plead sufficient jurisdictional facts. None of the exceptions to the general rule of no liability are pleaded. Plaintiff alleges that AKM is a "successor-in-interest of Shaller Investments." (Amended Complaint at ¶¶ 122 and 133. But that just brings AKM within the general rule of no liability. Again, "the traditional corporate law rule . . . does not impose the liabilities of the selling predecessor upon the buying successor company unless" one of the four exceptions applies. *Bernard*, 409 So. 2d at 1049. Indeed, Plaintiff's Amended Complaint indicates that Plaintiff is seeking "an unredacted copy of the asset purchase agreement between AKM and Shaller to determine the issue." (Amended Complaint at ¶ 19).

Under these circumstances, Plaintiff has not alleged facts establishing the applicability of the long-arm statute to AKM with respect to Counts VI and VIII. As to these claims, AKM's motion is granted. However, given that the Court's conclusion is based on the failure to plead jurisdictional facts, leave to amend will be afforded. *See World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 800 (Fla. 4th DCA 1999) (where dismissal is based on first prong of *Venetian Salami* test, leave to amend should be afforded).

2. American Kart Holdings

AKH did not exist at the time of the March 2021 incident giving rise to this action. But Plaintiff alleges that AKH "was created to siphon assets from American Kart Manufacturing LLC, or was created as American Kart Manufacturing LLC's successor-in-interest." (Amended Complaint at ¶ 118 and 120). Two claims are brought against AKH. Count IV (strict liability) seeks to hold AKH responsible for the claims against AKM asserted in Counts VI and VII. Count V (negligence) seeks to hold AKH responsible for the claims against AKM asserted in Counts VIII and IX.

As with AKM, the Court concludes that Plaintiff failed to plead facts sufficient to bring AKH within the exception to the general rule of no liability for successors. It

is true that Plaintiff alleges that AKM was created to "siphon assets from" AKM. This may be trying to plead some sort of fraud theory. But it is not clear which exception Plaintiff seeks to plead into. Thus, the Amended Complaint does not plead sufficient jurisdictional facts to permit the Court to impute AKM's actions to AKH. AKH's motion is granted as to Counts IV and V. Leave to amend will likewise be granted as to these counts.

3. Kurt Vedder

Lastly, individual Defendant Kurt Vedder asserts that the Court has no personal jurisdiction over him. Plaintiff brings one negligence claim against Vedder (Count XVI) based on the fact that he is the AKM employee that transmitted the post-sale warnings. The Court agrees with Vedder that none of the long-arm bases proffered by Plaintiff apply.

As discussed above, section 48.193(1)(a)2 regarding the commission of a "tortious act within this state" does not apply. Nor can (1)(a)1 or 6 be applied to Vedder. Vedder is not operating a business venture in Florida in his individual capacity. He is not (in his personal capacity) engaged in solicitation or service activities. And no products serviced or manufactured by Vedder (in his personal capacity) are used in Florida.

"Under the corporate shield doctrine, the actions of a corporate employee in a representative capacity do not form the basis for jurisdiction over the corporate employee in their individual capacity." *Harrison*, 2024 WL 4481229, at *4. Plaintiff relies on *Kitroser v. Hurt*, 85 So. 3d 1084 (Fla. 2012). There, the Florida Supreme Court held that when "an individual, nonresident defendant commits negligent acts in Florida, whether on behalf of a corporate employer or not, the corporate shield doctrine does not operate as a bar to personal jurisdiction in Florida over the individual defendant." *Id.* at 1090. But the Sixth DCA very recently had occasion to address *Kirtroser*. *See Harrison.*, 2024 WL 4481229. The Sixth DCA's conclusion demonstrates the absence of personal jurisdiction over Vedder.

The Sixth DCA stated that the *Kitroser* "court's analysis of the jurisdictional question reflect its holding was limited to situations where the defendant commits

the alleged tortious act while physically present within the state." *Id.* at *4. Moreover, this is on top of the fact that the exception to the corporate shield doctrine requires "the defendant to have personally and intentionally engaged in tortious conduct that was 'calculated to inflict a direct injury upon a resident of Florida.'" *Id.* (quoting *Rensin v. State, Off. Of Atty. Gen.*, 18 So. 3d 572, 576 (Fla. 1st DCA 2009)). Synthesizing this, the *Harrison* court emphasized that no evidence established that the individual at issue "was doing business in Florida in his personal capacity as opposed to his corporate capacity;" and no evidence established that he "committed any of the tortious acts . . . *while he was physically present* in the State of Florida." *Harrison*, 2024 WL 4481229 at *5 (emphasis added).

And so it is here. It is undisputed that Vedder was not physically present in Florida when he issued the 2017 warnings. Likewise, there is no evidentiary basis to conclude that Vedder was doing business in his personal capacity. Thus, the "corporate shield doctrine bars the exercise of personal jurisdiction" unless Plaintiff can show that Vedder "engaged in intentional tortious conduct 'expressly aimed at' Florida." *Id.* Plaintiff does not allege any intentional tortious conduct on Vedder's part.

Under these circumstances, there is no basis under the long-arm statue to exercise jurisdiction over Vedder. And, even if there were a basis, Plaintiff has not shown that personal jurisdiction over Vedder would be consistent with the requirements of the Due Process clause. The Court has no basis to impute AKM's contacts to Vedder. And Vedder's only contact with Florida identified in the record is the post-sale warnings issued on behalf of AKM. This is not sufficient "minimum contacts" with Florida nor does it establish the requisite "purposeful availment" necessary to satisfy the Due Process requirements of the Fourteenth Amendment. Vedder's motion is granted.

4. Conclusion

Defendant Kurt Vedder's Motion to Dismiss Plaintiff's Amended Complaint (filed 2/7/2024) is **granted**. Count XVI is **dismissed without prejudice** based on the lack of personal jurisdiction over Vedder. Defendants American Kart Holdings,

Inc. and American Kart Manufacturing, LLC's Motion to Dismiss Plaintiff's First Amended Complaint (filed 1/30/2024) is **granted in part** and **denied in part** as follows:

a. American Kart Manufacturing's motion is denied as to Counts VII and IX.

b. American Kart Manufacturing's motion is granted as to Counts VI and VIII. Counts VI and VIII are **dismissed without prejudice**.

c. American Kart Holdings' motion is granted as to Counts IV and V. Counts IV and V are **dismissed without prejudice**.

Within 14 days of the date of this Order, Plaintiff may file a second amended complaint. If Plaintiff files a second amended complaint, Defendants must file a response within 14 days of service. If Plaintiff does not timely file a second amended complaint, American Kart Manufacturing must file an answer to the remaining counts (Count VII and IX) of the Amended Complaint within 28 days of the date of this Order.

DONE AND ORDERED in Orange County, Florida on October 18, 2024.

eSigned by Eric J Netcher 10/18/2024 14:40:21 Fh1A9MSH

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all parties receiving electronic service via the Florida Court's e-Filing Portal on October 18, 2024.

Question 28 – Constitutional Issues

Williams v. City of Orlando
Case No. 2022-CA-000421-O (and the related cases)
Order Granting Defendant's Motions for Summary Judgment and Entering Final Judgment

Filing # 226870109 E-Filed 07/09/2025 11:02:12 AM

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

TAMARA WILLIAMS, as Parent
and Legal Guardian of T.L.,

Plaintiff,

v. CASE NO. 2022-CA-000421-O

CITY OF ORLANDO,

Defendant.
_________________________________/

EBONY WHITE, as Parent
and Legal Guardian of A.B.,

Plaintiff,

v. CASE NO. 2022-CA-000424-O

CITY OF ORLANDO,

Defendant.
_________________________________/

PATRICIA LAWRENCE, as Parent
and Legal Guardian of T.S.,

Plaintiff,

v. CASE NO. 2022-CA-000426-O

CITY OF ORLANDO,

Defendant.
_________________________________/

Order Granting Defendant's Motions for Summary Judgment and Entering Final Judgment

In these partially consolidated actions, the City of Orlando has moved for summary judgment. The motions in all three cases raise identical issues, and the

Court disposes of the motions in this single Order. A hearing on the motions was held on May 29, 2025. The Court has carefully considered the motions, Plaintiff's responses, and the cited summary judgment evidence. Having considered the issues raised, the Court **grants** the motions for the reasons that follow.

This action arises from an unfortunate shooting that occurred at Willows Park in January 2018. The minors on whose behalf these actions are brought were at the park. As they were leaving, an individual at the park began to shoot in the direction of the three minor girls. Each of the minors sustained non-fatal gunshot wounds. The parents of the minors filed suit against the City of Orlando. The Complaints allege that the City knew or should of known of the risk of criminal attacks at the park. Count I alleges the City was negligent in failing to 1) "properly evaluate criminal activity and address criminal activity at the subject premises;" 2) "warn its invitees . . . of foreseeable criminal activity on the subject premises;" and 3) "maintain the subject premises in a reasonably safe condition." (Complaints at ¶ 18). Count II alleges various other failures under an undertaking theory.

The City moves for summary judgment on a number of grounds, one of which is sufficient to dispose of the motions.[1] Namely, the City contends that it is entitled to sovereign immunity. The Court agrees. The issue of duty of care and sovereign immunity are distinct. Even if the City owed a duty of care to prevent the shooting at issue, tort liability may not be imposed under well-settled sovereign immunity principles.

While section 768.28 waives sovereign immunity to an extent, "certain 'discretionary' governmental functions remain immune from tort liability." *Commercial Carrier Corp. v. Indian River Cnty.*, 371 So. 2d 1010, 1022 (Fla. 1979). The principle derives from "the constitutional doctrine of separation of powers" and prohibits the judiciary from interfering "with the discretionary functions of the

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[1] The City has demonstrated an entitlement to summary judgment based on sovereign immunity. The City has raised other, likely meritorious, arguments regarding duty, breach, and causation. Given the sufficiency of the sovereign immunity issue to resolve the cases, the Court declines to address those other arguments here.

legislative or executive branches of government absent a violation of constitutional or statutory rights." *Trianon Park Condo. Ass'n v. City of Hialeah*, 468 So. 2d 912, 918 (Fla. 1985). Thus, discretionary or planning level governmental functions are protected. "On the other hand, decisions made at the operational level – decisions or actions implementing policy, planning, or judgmental governmental functions – generally do not enjoy sovereign immunity." *Sanchez v. City of Miami-Dade Cnty.*, 245 So. 3d 933, 936 (Fla. 3d DCA 2018).

The alleged negligent acts and omissions complained of here fall squarely on the discretionary or planning level side of the line. Plaintiffs are claiming that the City failed to adequately protect individuals from a criminal attack in one of the many public parks located in the City. "Florida Supreme Court and intermediate appellate courts have long held that a municipality's decision on where to allocate its police resources is a planning level decision that is not subject to civil liability." *Id.* at 940 (collecting cases). Whether and how the City allocates its finite resources cannot subject the City to liability.

Plaintiffs' claims necessarily involve the City's allocation of manpower. Plaintiffs have not asserted that the City did not follow a particular security policy in place that resulted in the shooting, that any individual City personnel were negligent, or that there was negligence in the performance of any operational activity. On the contrary, Plaintiffs are claiming that the City should have assigned police officers or security personnel at the public park at the time of the incident. Plaintiffs allege the City failed "to properly evaluate criminal activity and address criminal activity . . . ." (Complaint at ¶ 18). Count II claims the City failed to "hire and retain appropriately trained security guards", "provide adequate and reasonable physical security", "evaluate criminal activity in an effort to curtail criminal activity," "employ and deploy guards in sufficient numbers," "evaluate criminal activity and address criminal activity," "develop and employ reporting procedures," "develop[] and update security post orders," among other plainly planning level activities. *Id.* at ¶ 31.

Even assuming a duty in this context, Plaintiffs' claims do not jump the sovereign immunity hurdle. *See Sanchez*, 245 So. 3d 933 (affirming summary

judgment based on sovereign immunity where two teenagers were shot at a county park during a birthday party permitted by the city); *Delgado v. City of Miami Beach*, 518 So. 3d 968 (Fla. 3d DCA 1988) (affirming summary judgment on sovereign immunity grounds when plaintiff injured by fireworks while attending a concert and fireworks display sponsored by the city); *Sch. Bd. of Broward Cnty. v. McCall*, 322 So. 3d 655, 659 (Fla. 4th DCA 2021) ("The School Boards' security plan for the basketball game was a planning level function protected by sovereign immunity.").

To avoid this result, Plaintiffs attempt to frame the claim as being based on an operational level activity. They rely on the "Families, Park & Recreation Parks Division and Recreation Division Policy and Procedural Manual." The manual provides that the City has a mission to provide "safe" and "drug-free environment[s]" for citizens. Plaintiffs also rely on the testimony of the City's corporate representative. He generally testified that the City "tries to prevent the crime," and that "we don't want children shot at playgrounds." (Depo. of David Wagg at 28:2-3; 29: 11-24).

These generic goals that any governmental entity would certainly share do not transform the planning level activity of allocating security resources into an operational activity. The general goal to provide a safe environment and prevent crimes does not mean that any decision made to effectuate that goal is operational. Rather, that goal may be achieved through planning level and discretionary decisions regarding when, where, and how to allocate resources. If such a planning level decision is made and then an agent of the City is negligent in fulfilling it on the operational level, tort liability may be possible. Say, for example, the City in fact did allocate an officer to this park during the hours when the shooting occurred. If that officer fell asleep in his patrol car when the shooting occurred, that may constitute negligence in the performance of an operational activity. But the decision to assign the officer to the park (or not to assign the officer to the park) is a planning level, discretionary decision protected by sovereign immunity.

At bottom, Plaintiffs' claims against the City arising from this unfortunate shooting at a public park challenge quintessential planning level activities. How,

where, and when to allocate security personnel throughout a municipality to protect the public is left to the discretion of planning level officials. Under settled principles of sovereign immunity, grounded in the separation of powers, tort liability cannot be imposed in this context. The Court concludes as follows:

a. Defendant's Motion for Final Summary Judgment (filed 11/1/2024) in case number 2022-CA-000421-O is **granted**. Final Judgment is entered in favor of the City of Orlando and against Tamara Williams, as Parent and Legal Guardian of T.L. Plaintiff shall take nothing by this action, and Defendant shall go hence without day.
b. Defendant's Motion for Final Summary Judgment (filed 11/22/2024) in case number 2022-CA-000424-O is **granted**. Final Judgment is entered in favor of the City of Orlando and against Ebony White, as Parent and Legal Guardian of A.B. Plaintiff shall take nothing by this action, and Defendant shall go hence without day.
c. Defendant's Motion for Final Summary Judgment (filed 11/22/2024) in case number 2022-CA-000426-O is **granted**. Final Judgment is entered in favor of the City of Orlando and against Patricia Lawrence, as Parent and Legal Guardian of T.S. Plaintiff shall take nothing by this action, and Defendant shall go hence without day.
d. The Clerk is **directed** to close all three cases.
e. The Court reserves jurisdiction to consider any timely filed motions for attorney's fees or costs under Florida Rule of Civil Procedure 1.525. Untimely motions will not be considered.

DONE AND ORDERED in Orange County, Florida on July 9, 2025.

eSigned by Eric J Netcher 07/09/2025 11:01:12 AEEZEv4L

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on July 9, 2025.

Question 28 – Constitutional Issues

State of Florida v. Andrew Little
Case No. 2025-CF-007176-A-O
Order Granting Defendant's Motion to Suppress

Filing # 246614835 E-Filed 04/22/2026 04:05:21 PM

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

STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 2025-CF-007176-A-O

ANDREW LITTLE,

Defendant.
_________________________________/

Order Granting Defendant's Motion to Suppress

This case comes before the Court on Defendant's Motion to Suppress (filed 2/3/2026). A hearing on the motion was held on April 9, 2026. The State stipulated that the motion was sufficient to place the burden on the State to prove the lawfulness of the warrantless search and seizure. The Court heard testimony from one witness – John Cute from the Orlando Police Department. Having considered and weighed the testimony, the Court **grants** the motion for the reasons that follow.

Defendant Andrew Little is charged with possession of substituted cathinones. The charge stems from an interaction with law enforcement on June 4, 2025. There is apparently video of the interaction, but the State did not introduce it into evidence. Officer John Cute was patrolling the Parramore area when he observed Little commit the pedestrian violation of failing to use a crosswalk (jaywalking). Cute activated his lights and sirens on his unmarked patrol vehicle and directed Little to stop. Cute smelled the odor of burnt cannabis. Cute asked Little when was the last time he smoked. Little responded that he had smoked approximately fifteen to twenty minutes prior to the interaction. Cute then handcuffed and searched Little, finding the substance that resulted in the present charge. Little challenges the warrantless search and seizure.

"The most basic rule under the Fourth Amendment to the United States Constitution 'is that searches conducted outside the judicial process, without

approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Jean v. State*, 369 So. 3d 1235, 1238-39 (Fla. 6th DCA 2023). Here, though not expressly stated, the State appears to be relying on the "plain smell" doctrine. On this record, the State has not met its burden to prove that this exception (or any other) applies to render the warrantless search lawful.[1]

The "'plain smell' doctrine can trace its roots to the 'plain view' doctrine." *Baxter v. State*, 389 So. 3d 803, 809 (Fla. 5th DCA 2024). "For an object in plain view – and by extension plain smell – to be subject to an exception to the warrant requirement, its incriminating character must be 'immediately apparent' meaning 'without conducting some further search of the object.'" *Id.* (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993)).[2] This doctrine "operates as an exception to the warrant requirement . . . ." *Baxter*, 389 So. 3d at 811 n. 5. Because the incriminating nature of the smell of cannabis is no longer "immediately apparent," the smell of cannabis alone is no longer sufficient to support a warrantless search or seizure under the plain smell doctrine. *Id.* at 813 (holding that the smell of cannabis "cannot be the sole basis supporting reasonable suspicion for an investigatory detention."); *Williams*

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[1] The exact standard of proof that the State must meet is not frequently addressed in the cases, and there appears to be some confusion about the proper standard. On the one hand, it has been said that the State must "'produce clear and convincing evidence that the warrantless search was legal.'" *State v. J.R.D.*, 311 So. 3d 84, 89 (Fla. 2d DCA 2019) (quoting *Palmer v. State*, 753 So. 2d 679, 680 (Fla. 2d DCA 2000)). On the other, it has been said that "[g]enerally, the controlling burden of proof at suppression hearings is by a preponderance of the evidence." *State v. T.L.W.*, 783 So. 2d 314, 316 (Fla. 1st DCA 2001) (Polston, J.). Here, the Court need not decide the proper standard because the Court concludes that the State's proof fails both the clear and convincing and the preponderance standards.

[2] It is not clear that the plain smell doctrine logically follows from the plain view doctrine. As noted, the incriminating nature must be immediately apparent without the need for a further search. By definition, smelling marijuana on a person would require an additional search of the person even if the smell were immediately apparent. Indeed, the Sixth DCA appears to have pegged the cases involving the smell of cannabis to the automobile exception (not the plain smell doctrine). "For decades, the smell of cannabis alone has provided law enforcement with probable cause to conduct warrantless searches under the *automobile exception*." *State v. Simpson*, 414 So. 3d 291, 297 (Fla. 6th DCA 2025) (emphasis added). That said, the plain smell doctrine has been applied to both persons and vehicles. *See State v. T.T.*, 594 So. 2d 839, 840 (Fla. 5th DCA 1992) ("A person who is trained to recognize the odor of marijuana and who is familiar with it and can recognize it has probable caused, based on the smell alone, to search a person or a vehicle for contraband."). Thus, the Court addresses it here.

v. State, 421 So. 3d 809, 819 (Fla. 2d DCA 2025) (holding that "the mere odor of cannabis standing alone no longer can make it clearly or immediately apparent that the substance is contraband without conducting some further search.").

Seeking to overcome *Williams* and *Baxter*, the State asserts that this case does not involve smell alone. Relying on *State v. Simpson*, 414 So. 3d 291 (Fla. 6th DCA 2025), the State claims that the police interaction occurred in a high-crime area. In *Simpson*, the Sixth DCA avoided the question of whether the smell of cannabis alone is sufficient because the facts involved more than just plain smell. Namely, the officers in *Simpson* had specialized training and experience in narcotics investigations, the area was a high-crime area (specifically being well-known for narcotics crimes); and the officers immediately smelled fresh marijuana upon the defendant opening his car door. *Id.* at 297.[3]

To support the argument that the area where Little was stopped is a high-crime area, the State elicited brief and conclusory testimony. Namely, Cute testified that the area was a high-crime area based on him having responded to shootings, burglaries, narcotics investigations, and sexual batteries in the area. The testimony elicited was not sufficient for the State to meet its burden to show that the area was a high-crime area.

Proving that an area is a high-crime area does not necessarily require "empirical studies or statistical data." *D.R. v. State*, 941 So. 2d 536, 538 n. 2 (Fla. 2d DCA 2006). However, more is required than non-specific and vague statements regarding calls for service. For example, testimony that an area is high-crime "'based on the multiple, multiple calls for service for crime and violent crime in that area' and that the officers were in the area at the time of the incident because of the 'recent spike in the report of violent crimes in that area'" is not sufficient. *State v. Winter*, 108 So. 3d 729, 729-30 (Fla. 5th DCA 2013). Because "[t]here were no specifics given as to the number or types of crimes or where, within this quite large area designated as a high-crime area, the crimes occurred", the *Winter* court concluded the testimony

[3] To reiterate another difference with *Simpson*, the court there was expressly applying the automobile exception. The automobile exception is not at issue here because Little was not in a car.

was insufficient. *Id.* at 730; *see also D.R. v. State*, 941 So. 2d at 537-538 (generalized testimony that there are "multiple narcotic complaints that go out there," does not satisfy the State's burden).

Here, the State's proof likewise does not support a finding that Little's arrest occurred in a high-crime area. This is not to say that the area is not, in fact, a high-crime area. It may very well be. But, on this record, the State has not met its burden to prove that it is a high-crime area. "The burden of proof rests with the State, and the officer's testimony suggests strongly that more detailed evidence about the current status of the neighborhood could have been provided." *Id.* at 539. Thus, unlike in *Simpson*, the Court will not make a finding that Little's arrest occurred in a high-crime area.[4]

Without the plus factors identified in *Simpson*, we are left with plain smell alone as a basis to justify the seizure and search. And under *Baxter* and *Williams*, plain smell alone is not good enough. To be sure, Little was also asked the last time he smoked; and he responded that he had done so fifteen or twenty minutes before. But he was not asked what he smoked. And even if it were marijuana, there's no indication that smoking such marijuana would be incriminating given the rationale of *Baxter* and *Williams*. If the "incremental legalization of certain types of cannabis . . . has reached the point that its plain smell does not immediately indicate the presence of an illegal substance," an admission to recently smoking marijuana would likewise not demonstrate illegality. *Baxter*, 389 So. 3d at 810-11. In other words, Cute's question and Little's response did not "eliminate[] the only lawful explanations for the smell prior to [the] search." *Aldama v. State*, 394 So. 3d 148, 151 (Fla. 3d DCA 2024) (not reaching the issue of whether plain smell alone supports probable cause to search a vehicle because responses to the officers' questions dispelled "any lawful explanations" for the smell); *Hoehaver v. State*, 389 So. 3d 766, 769 (Fla. 5th DCA

[4] Another notable distinction from *Simpson* is that Cute did not testify regarding any specialized training in narcotics investigations. Rather, he testified regarding his training in gang activity. Again, that is not to say that Cute does not have narcotics training. The Court suspects that he does. But the obligation is on the State to demonstrate that he does through evidence.

2024) (Kilbane, J., concurring) ("Upon eliminating the only lawful explanations for the smell, Detective Bridge had probable cause to search the vehicle for illegal cannabis where, as here, the stop was not prolonged.").

Indeed, the officers in *Baxter* asked much more probing questions than whether the defendant had smoked. They "asked [the defendant] if he had a medical marijuana card, if he smoked marijuana, or if he smoked hemp products" and relied on the defendant's responses to search the vehicle. *Baxter*, 389 So. 3d at 807. Yet, *Baxter* is still considered a smell alone case. So too is the case before the Court. Under *Baxter* and *Williams*, the search and seizure here cannot be justified under the plain smell exception to the warrant requirement.

The State did not put forth any other exception to the warrant requirement. One possibility, though not plainly raised, is the search-incident-to-arrest exception. This exception permits officers to search an arrestees's person and the area within his immediate control when the officer has "probable cause to arrest." *State v. Brookins*, 290 So. 3d 1100, 1104 (Fla. 2d DCA 2020). Here, Little could not have been arrested for the pedestrian violation. And the State conceded in response to questioning from the Court that probable cause to arrest Little arose only after the search. Thus, the search-incident-to-arrest exception (even if raised) is not a basis to justify the warrantless search.[5] Nor could the search be considered a lawful *Terry* search even if Little put his hands in his pockets. *D.B.P. v. State*, 31 So. 3d 883 (Fla. 5th DCA 2010) (holding that a juvenile's act of putting his hands in his pockets during a stop for jaywalking in a high crime area was insufficient to provide requisite reasonable suspicion for a *Terry* stop search).

On this record, the State has not met its burden to prove that an exception to the warrant requirement applies. Without an exception, the search of Little was "*per se* unreasonable under the Fourth Amendment." *Jean*, 369 So. 3d at 1238-39. Thus,

[5] This concession regarding probable cause essentially dooms the State's plain smell argument as well. If there was not probable cause to believe that Little possessed marijuana (as required to support an arrest), there would not be probable cause to believe that a plain smell search would reveal marijuana.

Defendant's Motion to Suppress (filed 2/3/2026) is **granted**. The evidence obtained from the search of Little's person is excluded.

DONE AND ORDERED in Orange County, Florida on April 22, 2026.

eSigned by Eric J Netcher 04/22/2026 16:04:20 PQnJMLuE

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on April 22, 2026.

Question 28 – Constitutional Issues

State of Florida v. RT Morgan
Case No. 2024-CF-11575-A-O
Order Denying Defendant's Motion to Suppress

Filing # 241534057 E-Filed 02/11/2026 01:40:13 PM

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

STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 2024-CF-011575-O

RT MORGAN,

Defendant.
_________________________________/

Order Denying Motion to Suppress

This action comes before the Court on Defendant's Motion to Suppress (filed 7/18/2025). A hearing on the motion was held on February 5, 2026. The Court heard testimony from Detective David Wilkes. The Court further considered the search warrant issued on August 22, 2024. Having considered the evidence and argument of counsel, the Court **denies** the motion.

After receiving a tip that the residence located at 1828 Blossom Terrace, Orlando, Florida 32839 was being used for narcotics trafficking, Detective David Wilkes began surveillance on the property. He surveilled the property for approximately three months. His observations were consistent with the tip that he received. A controlled purchase was also conducted during this period. Ultimately, Wilkes authored an affidavit for a search warrant. The affidavit detailed the information obtained from Wilke's investigation thus far. The warrant was issued by a circuit judge, authorizing a search of the residence. Specifically, the warrant authorized a search of the "premises together with the yard and curtilage thereof . . . and any persons thereon reasonably believed to be connected with the said illegal activity." (Search Warrant at pg. 2-3). While Defendant RT Morgan was not specifically identified in the warrant, Wilkes had observed Morgan at the residence approximately four or five times. He had just not been identified at the time the warrant was issued.

The day the warrant was executed, Wilkes conducted surveillance for over an hour. Wilkes observed the same operations as he usually did. Wilkes observed Morgan standing on the second story, walking individuals inside of the residence, and the individuals would leave in under ten minutes. Some individuals that were leaving would be looking in their hands at small items, suggesting they were looking at the drugs purchased inside the home. Detective Wilkes was "very" confident that Morgan was engaged in the sale of narcotics inside the home on August 23, 2024 based on his three months of surveillance and specific observations on that date. Officers eventually executed the search warrant when Morgan was exiting the residence and walking to a vehicle. A search of Morgan revealed ten grams of fentanyl, two jewelry bags, and a key to the apartment.

On this record, the Court has no trouble concluding that the search warrant issued on August 22, 2024 authorized the search of Morgan's person on August 23, 2024. Specifically, Morgan was a "person[on the property] reasonably believed to be connected with the said illegal activity." (Search Warrant at pg. 3). And he was searched on the "premises together with the yard and curtilage thereof." *Id.* at pg. 2-3. The search of Morgan's person was lawful as it was expressly authorized by the search warrant. *See Terhune v. State*, 470 So. 2d 840 (Fla. 2d DCA 1985) (warrant for the search of residence believed to be used for narcotics trafficking authorized the search of a suspected drug courier two blocks away from the residence after he exited the house and was followed); *Merriel v. State*, 7 So. 3d 587 (Fla. 1st DCA 2009) (stopping defendant's vehicle immediately after it left his home did not exceed the scope of a search warrant for the premises); *Lassiter v. State*, 959 So. 2d 360 (Fla. 5th DCA 2007) (officers waiting until defendant had left residence and was five miles away before stopping and searching vehicle was permissible under a search warrant for the premises that included authorization to search vehicles on the premises).

For these reasons, Defendant's Motion to Suppress (filed 7/18/2025) is **denied**.[1]

DONE AND ORDERED in Orange County, Florida on February 11, 2026.

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on February 11, 2026.

[1] The State also contends that the search of Morgan was a search incident to a lawful arrest. On this record, that may very well be the case. However, the Court does not reach the question given the plain authorization from the search warrant.

Question 28 – Constitutional Issues

State of Florida v. William Charles Mays
Case No. 2025-CF-004534-A-O
Order Denying Defendant's Motion to Suppress

Filing # 236970151 E-Filed 12/03/2025 05:15:11 PM

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

STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 2025-CF-004534-A-O

WILLIAM CHARLES MAYS,

Defendant.
_________________________________/

Order Denying Defendant's Motion to Suppress

This case comes before the Court on Defendant's Motion to Suppress (filed 8/29/2025). A hearing on the motion was held on November 17, 2025. The Court heard testimony from Officer Christopher Zastawney. The Court further received and considered State's Exhibit 1 (the body-worn camera footage of the stop). Having considered the issues raised, in light of the evidence, the Court **denies** the motion.

Defendant William Charles Mays is charged with one count of possession of substituted cathinones and one count of resisting an officer without violence. The charges stem from a stop that occurred on April 13, 2025. Officer Christopher Zastawney, while on patrol, observed Mays riding northbound in the center of Terry Avenue. He also observed Mays ride through a stop sign without stopping. Officer Zastawney initiated a stop.

By the time of the stop, Mays was riding his bicycle on the sidewalk. Mays is instructed to stop and asked whether he has identification. Mays does not give his identification card, questions why officers are "bothering" him, and backs up on his bicycle (with his feet on the ground). Mays is instructed to stop again. The officers then grab Mays and take him to the ground after some struggle. All the while, Mays is questioning what is happening.

As Officer Zastawney initially grabbed Mays' wrist, Mays pulled his right arm back towards his body and threw two objects onto the ground in front of him.

Zastawney recognized the objects to be crack cocaine based on the shape, color, and consistency. Mays was detained in handcuffs while Zastawney field tested the rocks that Mays threw. They tested presumptive positive for cocaine. While Zastawney was testing the rocks, Mays was searched by another officer.

Mays seeks to suppress evidence obtained during the seizure and search. His motion argues that the stop was not legal because the officers did not have probable cause or reasonable suspicion to stop him. Having considered and weighed the evidence, the Court concludes the State met its burden to demonstrate the legality of the seizure and subsequent search.

A "traffic stop is considered reasonable under the Fourth Amendment to the United States Constitution 'where the police have probable cause to believe that a traffic violation has occurred.'" *State v. Parker*, 311 So. 3d 1029, 1032 (Fla. 5th DCA 2021) (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). The question is not whether a violation actually occurred. *State v. Wimberly*, 988 So. 2d 116, 119 (Fla. 5th DCA 2008) ("[T]he issue in this case is whether the officers had probable cause to believe that the windows of the car . . . were illegally tinted, not whether the windows were actually illegally tinted."). Rather, the Court must consider "whether, viewed under an objective lens, the 'totality of the facts known to the officer at the time would cause a reasonable person to believe that an offense has been committed.'" *State v. Crume*, 393 So. 3d 802, 804 (Fla. 6th DCA 2024) (quoting *State v. Hebert*, 8 So. 3d 393, 395 (Fla. 4th DCA 2009)).

The State presented the unrebutted testimony of Officer Zastawney that he observed Mays riding his bicycle northbound in the center of Terry Avenue and observed him ride through a stop sign. There is no evidence to the contrary, and the Court finds that Zastawney's testimony is credible. His testimony is sufficient to demonstrate that there was probable cause to believe that Mays committed a traffic offense.

Specifically, section 316.2065 contains certain bicycle regulations.[1] Bicyclists have "all of the rights and all of the duties applicable to the driver of any other vehicle . . . ." § 316.2065(1), Fla. Stat. That includes the requirement to stop at stop signs. Section 316.2065(5)(a) generally requires bicyclists to ride "as close as practicable to the right-hand curb or edge of the roadway" when "there is no bicycle lane on the roadway." Officer Zastawney had probable cause to believe that Mays committed these traffic offenses.

It is true that section 316.2065(5)(a) contains certain exceptions, including when the bicyclist is "preparing for a left turn . . . ." § 316.2065(5)(a)2, Fla. Stat. But Officer Zastawney testified that he observed Mays riding in the middle of Terry Avenue when he was south of Washington Street. That is over a block from Robinson Street where Mays eventually turned left. And Mays would first have to pass Jefferson Street to get to Robinson. From an objective lens, a reasonable person would have a basis to believe that Mays was not preparing for a left turn when Zastawney first observed Mays riding in the middle of the road given that he did not turn left until he reached Robinson Street.[2]

It always may be the case that an officer has subjective motivations other than enforcing traffic laws. But "the United States Supreme Court has made clear that the constitutional reasonableness of a traffic stop is not dependent on the subjective motivations of the individual officers involved." *State v. Parker*, 311 So. 3d 1029, 1032 (Fla. 5th DCA 2021). Whether Officer Zastawney was truly concerned with a violation of section 316.2065 is not the question before the Court.

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[1] The fact that Officer Zastawney's narrative report listed the wrong statute is of no import. Probable cause is an objective inquiry.

[2] Moreover, the exceptions in section 316.2065(5)(a) may be defenses. *See State v. Robarge*, 450 So. 2d 855 (Fla. 1984) (a statutory exception constitutes a defense (not an element) when it is "in a clause subsequent to the enacting clause of a statute."). Affirmative defenses generally do not enter the probable cause analysis. And, in any event, Mays has not identified any exception to the stop sign violation.

Because the stop was legal, the officers were engaged in the lawful execution of their duties when they instructed Mays to stop and requested identification.[3] Based on Mays backing away from the officers and not complying with the request for identification, the officers had probable cause to arrest Mays for resisting without violence under section 843.02. *See N.H. v. State*, 890 So. 2d 514, 516 (Fla. 3d DCA 2005) (second element of resisting is that "the defendant's action, be it words, conduct or a combination thereof, must constitute obstruction or resistance of [a] lawful duty."). Granted, the interaction was swift and escalated quickly. But Mays' movement away from the officers after being told to stop and hostility at the request to provide identification gave the officers probable cause to arrest Mays for "resist[ing], obstruct[ing] or oppos[ing]" the officers who were "in the lawful execution of any legal duty." § 843.02, Fla. Stat. Whether the State can prove this crime beyond a reasonable doubt is not the question. Rather, the Court is only concluding that the evidence presented was sufficient to demonstrate probable cause to arrest for the crime of resisting.

And because there was probable cause to arrest Mays, the subsequent search was a lawful search incident to arrest. "The United States Supreme Court has held that searches incident to a lawful arrest are constitutionally permissible and reasonable under the Fourth Amendment." *Jenkins v. State*, 978 So. 2d 116, 125 (Fla. 2008). "It is settled law that a search incident to arrest can occur before the arrest so long as the officer has probable cause to arrest the defendant." *State v. Brookins*, 290

[3] Notably, the motion only directly challenges the legality of the initial stop. Florida Rule of Criminal Procedure 3.190(g)(2) provides that motions to suppress must "state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based." In the motion, Defendant argues only that the interaction between Defendant and the officers was not consensual and that the officers did not "have reasonable suspicion or probable cause to stop Mr. Mays." (Motion at pg. 3). There is no argument at all regarding any alleged defect with the subsequent search. It is not clear that the State was on notice that anything other than the legality of the stop was being challenged. To be sure, the motion does state that Defendant seeks to suppress evidence "that resulted from the unlawful stop, seizure, search, detention and arrest of the Defendant . . . ." But such generic language is generally not sufficient. *See State v. Christmas*, 133 So. 3d 1093 (Fla. 4th DCA 2014) (motion to suppress failed to provide the state notice that it would make reliability of a drug sniffing dog an issue, and generic terms describing search being performed "illegally" and "improperly and unlawfully" were not sufficient to satisfy the particularity requirement). That said, the Court has assessed the legality of the subsequent conduct.

So. 3d 1100, 1105 (Fla. 2d DCA 2020). Having had probable cause to arrest Mays for resisting without violence, the officers' subsequent search was a lawful search incident to arrest.

For these reasons, Defendant's Motion to Suppress (filed 8/29/2025) is **denied**.

DONE AND ORDERED in Orange County, Florida on December 3, 2025.

eSigned by Eric J Netcher 12/03/2025 17:14:34 MrdI8HiJ

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on December 3, 2025.

Question 28 – Constitutional Issues

State of Florida v. Jesus Santiago Parilla
Case No. 2024-CF-008773-A-O
Order Denying Defendant's Motion to Suppress

Filing # 232497372 E-Filed 09/29/2025 08:34:44 AM

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

STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 2024-CF-008773-O

JESUS SANTIAGO PARILLA,

Defendant.
_______________________________/

Order Denying Defendant's Motion to Suppress

This action comes before the Court on Defendant's Motion to Suppress (filed 7/21/2025). A hearing was held on the motion on September 4, 2025. The Court heard testimony from Deputy Anthony Mingari and Corporal Ryan Matacale, both from the Orange County Sheriff's Office. The Court also received and considered State's Exhibit 1 depicting the officer body-worn footage. Having considered the evidence and the arguments of counsel, the Court **denies** the motion.

Defendant is charged with one count of trafficking in a controlled substance (morphine) and one count of possession of drug paraphernalia. On June 26, 2024, Deputy Anthony Mingari observed Defendant driving a moped that had an altered license plate. Mingari observed Defendant enter a parking lot, park the moped, and enter a pawn shop. There was a backpack hanging on the handlebar of the moped. Defendant was not wearing the backpack, and he did not bring the backpack into the pawn shop. The deputy entered the store and requested that Defendant come with him outside. The Defendant obliged.

Once outside, Deputy Mingari removed a sticker that was covering the license plate on the moped and then returned to his vehicle to run the Defendant's license. While he did this, Defendant was standing by the moped with other deputies that arrived. Deputy Mingari requested one of his colleagues to give him the VIN number of the moped. Corporal Ryan Matacale walked over to the moped to check the VIN.

Matacale knelt down to see the VIN number. In the process of doing so, he saw burnt foil and a straw with residue in plain view on the moped. Matacale, in his experience, recognized the materials as those commonly used as drug paraphernalia. Matacale also smelled marijuana. And the Defendant told Matacale that he smoked marijuana. Matacale returned to Deputy Mingari's vehicle to give him the VIN number. Because of the presence of possible drug paraphernalia and the smell of marijuana, he also requested gloves from Mingari to search the moped. While this was happening, Defendant was secured by two deputies and searched.

Matacale and Mingari searched the moped. Mingari searched the backpack that was hanging on the handlebar. The search revealed the drugs for which Defendant is charged in this case. Specifically, Mingari unzipped the backpack and found two pill bottles that contained morphine. Defendant contends the search was not lawful.

The Fourth Amendment (as applied to the states through the Fourteenth Amendment) protects "against unreasonable searches and seizures." U.S. Cons. amend. IV. Warrantless searches "'are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One such exception applies here. Specifically, the automobile exception renders this search lawful.

"The Supreme Court has held that 'officers may search an automobile without having obtained a warrant so long as they have probable cause to do so.'" *Wright-Johnson v. State*, 405 So. 3d 501, 505 (Fla. 3d DCA 2025) (quoting *Collins v. Virginia*, 584 U.S. 586, 592 (Fla. 2018)). This exception derives from the ready mobility of automobiles and the reduced expectation of privacy due to the pervasive regulation of automobiles. *See California v. Carney*, 471 U.S. 386 (1985). "The automobile exception allows the police to conduct a search of a vehicle if (1) the vehicle is readily mobile; and (2) the police have probable cause for the search." *United States v. Lindsey*, 482 F.3d 1285, 1293 (11th Cir. 2007).

The twin rationales for the exception (ready mobility and pervasive regulation) apply to mopeds just as they do to other vehicles. The moped at issue here certainly was readily mobile. And like other vehicles, mopeds are extensively regulated. Indeed, the basis for the stop of Defendant concerned such a regulation. The automobile exception extends to mopeds like the one at issue here.

Further, the automobile exception extends to closed containers within a vehicle when there is probable cause to search the entire vehicle. *United States v. Ross*, 456 U.S. 798 (1982); *see also California v. Acevedo*, 500 U.S. 565, 568 (1991) (when "there is probable cause to search a car, then the entire car – including any closed container found therein – may be searched without a warrant . . . ."). The backpack hanging on the moped's handlebars was subject to being searched if the deputies had probable cause to search the moped itself. *See People v. Needham*, 93 Cal. Rptr. 2d 899, 904 (Cal. App. 2000) ("[C]ontainers [temporarily] attached to a vehicle, whether a motorcycle or a car, are considered 'in' the vehicle for purposes of the Fourth Amendment."); *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999) ("A passenger's personal belongings, just like the driver's belongings or containers attached to the car like a glove compartment, are 'in' the car, and the officer has probable cause to search for contraband *in* the car.").

To that end, the deputies had probable cause to search the moped and any containers on it. "Probable cause 'requires only a probability or substantial chance of criminal activity'; it 'is not a high bar.'" *Wright-Johnson*, 405 So. 3d at 506 (quoting *Dist. Of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)). Corporal Matacale saw drug paraphernalia (burnt foil and a straw) in plain view. He also smelled marijuana and was told by Defendant that he smoked. Seeing drug paraphernalia, it became probable that the backpack on the moped contained drugs. And, critically, the backpack was on the moped at the time probable cause was formed. *See Idaho v. Maloney*, 489 P.3d 847 (Idaho 2021) (critical point for determining whether a container can be searched under automobile exception is when probable cause arises); *Hawley v. State*, 913 So. 2d 98 (Fla. 5th DCA 2005) (though applying search incident to arrest exception, officer could search purse that was inside a vehicle when probable

cause was formed). Under the totality of the circumstances, there was probable cause to search the moped (and the backpack hanging on it) for contraband.[1]

The search of Defendant's moped and backpack on the moped was lawful based on the automobile exception to the warrant requirement. Defendant's Motion to Suppress (filed 7/21/2025) is **denied**.

DONE AND ORDERED in Orange County, Florida on September 29, 2025.

eSigned by Eric J Netcher 09/29/2025 08:34:19 PD5dtXdU

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on September 29, 2025.

[1] Notably, neither *Jean v. State*, 369 So. 3d 1235 (Fla. 6th DCA 2023) nor *Harris v. State*, 238 So. 3d 396 (Fla. 2018) apply. Neither case involved the automobile exception. Both cases addressed the search-incident-to-arrest exception and the offshoot of that exception involving vehicles of an arrestee (as addressed in *Arizona v. Gant*).

Question 28 – Constitutional Issues

State of Florida v. Donald Jermine Dixon
Case No. 2023-CF-000370-A-O
Order Granting Defendant's Motion to Suppress

Filing # 231865983 E-Filed 09/18/2025 02:54:48 PM

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

STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 2023-CF-000370-A-O

DONALD JERMINE DIXON,

Defendant.
_________________________________/

Order Granting Defendant's Motion to Suppress

This action comes before the Court on Defendant's Motion to Suppress (filed 7/21/2025). A hearing was held on the motion on September 4, 2025. The Court heard testimony from Detective David Wilks and Detective Christopher Hutchinson, both from the Orlando Police Department. The Court also received and considered State's Exhibit 1 depicting the officer body-worn footage. Having considered the evidence and the arguments of counsel, the Court **grants** the motion.

Donald Dixon is charged with one count of possession of dimethypentylone. In the early morning hours of January 10, 2023, Dixon was pulled over because his vehicle tag was expired. Dixon was driving, and a passenger was in the car. Officers conducting the stop went to the driver's side and passenger's side windows. Officer Wilks could smell the odor of burnt cannabis. He also saw cannabis in the center console of the vehicle. Dixon and the passenger were removed from the vehicle so that the vehicle could be searched. Dixon was advised that he was not under arrest and only being detained due to driving without a license and because the officers saw "some stuff in the car that concerned" them. (State's Exhibit B).

Dixon, when removed, had a small backpack on him. Dixon was placed in handcuffs, and the backpack was removed from his person. The backpack was placed on top of the vehicle. Dixon was then taken away from his vehicle by an officer. Dixon had no way of getting to the vehicle or the backpack left on top of the car. One of the

officers then unzipped the backpack and searched its contents. The warrantless search revealed the drugs for which Dixon is charged in this case.

The Fourth Amendment (as applied to the states through the Fourteenth Amendment) protects "against unreasonable searches and seizures." U.S. Cons. amend. IV. Warrantless searches, like the one at issue here, "'are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). The State has identified two potential exceptions here, neither of which justifies the warrantless search.

First, the State contends the search was lawful as a search incident to a lawful arrest. This "exception derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Gant*, 556 U.S. at 338. Thus, the exception is limited to "the arrestee's person and the area within his immediate control, i.e., the area into which he may reach to acquire a weapon or destroy evidence." *Smallwood v. State*, 113 So. 3d 724, 734 (Fla. 2013). And when "there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply." *Id.* at 735 (quoting *Gant*, 556 U.S. at 339).

To summarize, "where an arrestee has been secured by police officers and separated from the thing that the officers wish to search, neither of the rationales for the search incident to arrest exception apply and, accordingly, a search of that thing cannot be conducted as a search incident to arrest." *Jean v. State*, 369 So. 3d 1235, 1239 (Fla. 6th DCA 2023). Because Dixon was in handcuffs with no access to the backpack that was searched, the search incident to arrest exception does not render the warrantless search lawful.

Second, the State relies on the "automobile exception." This label is a bit overbroad. But the exception refers to two potential scenarios: 1) "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search [of the vehicle];" and 2) "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Gant*, 556 U.S at 343

(quoting *Thornton v. United States*, 541 U.S. 615,632 (2004) (Scalia, J., concurring in judgment)). The first circumstance is not present here as Dixon was secured at the time of the search of the backpack. And the problem with the State's position regarding the second circumstance is that the backpack was not in the vehicle when it was searched. "[N]either the United States Supreme Court nor the Florida Supreme Court have ever applied this exception to searches of something other than a vehicle or containers located within a vehicle." *Jean*, 369 So. 3d at 1240.

Again, the backpack was not located in the vehicle at the time of the search. It was removed from Dixon and placed on top of the vehicle. This is similar in all material respects to *Harris v. State*, 238 So. 3d 396, 403 (Fla. 3d DCA 2018). There, "the backpack was worn by Harris, and after Harris and the dirt bike were separated, Officer Blanco separated Harris from his backpack." *Id.* at 403. Thus, the court concluded that the "backpack could not be searched as part of the vehicle of the arrestee exception established in *Gant*." *Id.* And so it is here. Dixon's backpack could not be searched without a warrant as part of a search of the arrestee's vehicle.[1]

Neither the search incident to arrest exception nor the "automobile exception" apply. At the hearing, the State made a brief argument regarding the potential applicability of the inevitable discovery doctrine. But the evidence presented at the hearing did not establish the doctrine. And such a finding would have to be based on competent evidence. *Jean*, 369 So. 3d at 1242 (concluding that "the *evidence* presented at the hearing on the motion to suppress did not establish the applicability of the inevitable discovery doctrine.").

Because no exceptions to the warrant requirement apply, the warrantless search of Dixon's backpack was not lawful. Defendant's Motion to Suppress (filed

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[1] Notably, the exception applies "when it is 'reasonable to believe evidence relevant to the *crime of arrest* might be found in the vehicle.'" *Gant*, 556 U.S. at 343 (emphasis added). It is not clear that Dixon was under arrest at the time of the search. The stop was for an expired tag. The subsequent search was presumably due to the smell of burnt cannabis. But there is no indication that Dixon was under arrest at the time of the search. *See Engle v. State*, 391 So. 2d 245, 247 (Fla. 5th DCA 1980) (noting that "the arrest was not made until *after* the search."). Indeed, at the time that Dixon was handcuffed, he was advised that he was "not under arrest" and was just being "detained for now." (State's Exhibit B). This fact undermines both exceptions asserted by the State.

7/21/2025) is **granted**. "[T]he exclusionary rule makes evidence obtained either during or as a direct result of an unlawful invasion inadmissible." *Rodriguez v. State*, 187 So. 3d 841, 845 (Fla. 2015). Thus, the Court suppresses any evidence obtained from the search of Dixon's backpack.

DONE AND ORDERED in Orange County, Florida on September 18, 2025.

eSigned by Eric J Netcher 09/18/2025 14:54:03

Eric J. Netcher
Circuit Judge

Certificate of Service

The Court certifies that this Order was electronically filed and served to all counsel of record via the Florida Court's e-Filing Portal on September 18, 2025.

Question 36

OCBA Appellate Practice Committee
Oral Argument Survey

WALKER
REVELS
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April 26, 2021

Via email
Chief Judge Kerry Evander
Fifth District Court of Appeal
300 S. Beach St.
Daytona Beach, FL 32114-5002
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RE: OCBA Appellate Practice Committee Oral Argument Survey

Dear Chief Judge Evander:

Last month, you contacted me in my capacity as Chair of the OCBA Appellate Practice Committee to gauge the general views and opinions of the local appellate bar regarding the future of oral argument in the Fifth DCA. To that end, I prepared a brief survey for our members to express their views. We received responses from 37 members of our committee. Attached is a report detailing the results of the brief survey.

On the primary issue – whether respondents favor in-person or remote – 68% of respondents favor in-person arguments. And when asked which path appellate courts should take when it is safe to return to in-person arguments, only 8% favored staying remote for all arguments. Thirty percent preferred returning in-person for all arguments, and 59% were in favor of allowing remote oral arguments only upon agreement of the parties or by motion. Respondents were provided the opportunity to provide comments explaining their preferences. Those comments are included in their entirety in the attached report.

We hope that this information is helpful to you and your colleagues as you determine the best path forward. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Eric J. Netcher

Results of the Orange County Bar Association Appellate Practice Committee's Oral Argument Survey

A link to an electronic survey was e-mailed to members of the Orange County Bar Association's Appellate Practice Committee on April 5, 2021. The data shown below is based on responses submitted by 37 members and was collected by the April 20, 2021 survey completion deadline. Respondents were made aware that their submissions would be anonymous.

In reporting the results, please refer to the raw data shown below. For each question, majority responses have been highlighted (if applicable). All percentages have been rounded up to the nearest whole percent. Additionally, some of the questions below required a written response. The responses are included in their entirety.

1. What is your legal occupation or classification?

o Sole Practitioner	9	**24%**
o Partner/Shareholder	19	**52%**
o Associate	9	**24%**
o Government Attorney	0	
o Legal Aid Attorney	0	
o Other	0	

2. What is your age?

o 35 years of age or younger	8	**22%**
o 36 to 49	13	**35%**
o 50 to 65	12	**32%**
o Over 65	4	**11%**

3. Have you presented oral argument to any appellate court remotely via Zoom or other video conference platform?

o Yes	17	**46%**
o No	20	**54%**

4. **If you answered "yes" to the previous question, before which court(s) have you presented oral argument via Zoom or other videoconferencing platforms?** *(Written response)*

Of the respondents who answered "yes" in some capacity, the results are as follows:

	1st DCA	2nd DCA	3rd DCA	4th DCA	5th DCA	11th Circuit	Florida Supreme Court	Notes/Comments
1.		X			X			
2.		X						
3.		X	X	X	X			
4.	X				X			
5.			X		X	X		By phone only, no video component
6.					X			
7.	X	X			X			
8.		X						
9.	X	X						
10.							X	
11.		X						
12.					X			
13.		X						
14.					X			
15.					X			
16.					X			(3 arguments)
TOTAL	**3**	**8**	**2**	**1**	**10**	**1**	**1**	

Of the respondents who answered "no" in some capacity (21 of the 37), the following responses were submitted:

Response	Count	Percent
N/A; I have not presented oral argument; I did not answer "yes"	18	49%
I have only watched them – at the 5th	1	3%
I have delegated all Zoom oral arguments to younger associates. I have attended second chair. I have appeared via Zoom for trial court hearings.	1	3%
I have not presented oral argument. I have done trial proceedings via Zoom and Teams and participated in many video conferences using Zoom, Teams, and WebEx. I have had technical difficulties arise in Zoom and Teams. WebEx seems to be the most stable, but I don't have a WebEx account.	1	3%

5. **Have you experienced difficulties while utilizing a video conferencing platform for oral argument?**

○ No issues	14	**38%**
○ Yes, but minor	3	**8%**
○ Yes, and these difficulties were significant	1	**3%**
○ I have not presented oral argument via a remote platform	19	**51%**

6. **If you answered "yes" to the previous question (for either minor or significant difficulties) please describe the difficulties:** *(Written response)*

Of the respondents who answered "yes" in some capacity, the following responses were submitted:

○ No difficulties	6	**16%**
○ One judge could not get his/her audio to work and therefore could not ask questions though they were clearly trying. Some lawyers have had issues with feedback or other audio disturbances. Nothing major, but these are all distractions.	1	**3%**
○ Lost internet in the middle of oral argument. Quickly switched to phone, and dialed in to resume argument without video.	1	**3%**
○ I have had 4 virtual oral arguments. Three of the arguments were fine. In the fourth argument, which was before the Second DCA, the judges seemed confused and unorganized, and interrupted each other during the argument. All of the judges' questions and the time allotted to the parties ended up being devoted to a minor issue in the case. The argument did not promote a discussion of the most important issues in the case. It appeared that the oral argument was negatively affected because the judges had not discussed the case beforehand, and because they were not in the same room during the argument.	1	**3%**

Of the respondents who answered "no" in some capacity, the following responses were submitted:

○ N/A; I have not presented oral argument; I did not answer "yes"	24	**65%**
○ I have only participated in trial court level oral argument of motions and have not experienced any difficulties. I practice primarily in the area of commercial litigation. In that area, motion hearings work well in a virtual setting. For the reasons expressed in response to question 9 below, I do not		

believe virtual settings are usually appropriate for oral arguments.	1	**3%**
○ I have done remote hearings, but not remote oral arguments. I have watched several. It is less formal and less professional.	1	**3%**
○ Not applicable for appellate argument. Once with trial court motion argument when our building internet connection went down entirely.	1	**3%**

7. What is your preferred video conferencing platform?

○ Zoom	35	**95%**
○ Microsoft Teams	2	**5%**
○ Cisco WebEx	0	
○ Other	0	

8. Do you prefer in-person oral arguments or remote oral arguments via video conferencing?

○ In-Person	25	**68%**
○ Remote	12	**32%**

9. Please explain why you prefer either in-person or remote oral argument. *(Written response)*

- Time and money saved for attorneys and clients

- In remote oral argument settings, streaming video of opposing counsel (and yourself) are on the screen, which is often distracting, when the focus should be on the judges. Additionally, it is easier to interpret non-verbal communication by the judge(s).

- Communication encompasses many things. Zoom is far better than telephonic argument (and I participated in one in the 4th DCA very early in the pandemic that was practically useless), but looking into a camera is not the same as looking into the eye of a human. It is close, and it has been a nice substitution while we all figure out what we are doing in the world, but it is not a permanent replacement.

- I don't think Oral Arguments are that important. In general, I think that they are a waste of time, and that if the court wants OA, they should tell us what they want us to be prepared to discuss in particular.

- Beyond the difficulties that can be presented to the Court and advocates from technical issues, there is no substitute for the in-person interaction of the oral argument presented in a courtroom. In addition, from time to time, there are

meaningful resolution discussions that sometimes result as a consequence of opposing sides meeting for OA.

- Oral argument in the Third DCA would have taken almost two full days of travel (to and from central Florida), overnight in a hotel, travel to and from the court house from the hotel – a total waste of time and money. Same with the Fourth DCA or First DCA.

- While I believe recent advances in video technology are beneficial overall to the justice system, I continue to prefer in-person appearance for oral arguments at the district courts of appeal. There is a significant benefit to sharing physical space, including the ability to read other participants - both the opponent and the court. I do not think video conferencing is an adequate alternative - the inability for direct eye contact being part of that. I also think there are potential distractions with remote oral argument - whether minor circumstances, like a doorbell or lawn care to more significant issues in connection, transmission, etc. I question whether remote oral argument is as feasible for attorneys with hearing or visual disabilities, as well, although I do not have personal experience with that issue. Because oral arguments are generally reserved for important cases, and include discussions to clarify an issue of fact or discuss the implications of an issue of law, I would prefer the court arrange for in-person appearances in these instances.

- Expense and travel time

- There is no possibility of electronic equipment failure with in-person oral argument.

- Safety and efficiency.

- While both in-person and remote arguments have distinct advantages, the convenience and simplicity of remote arguments tips the scale in favor of remote arguments. I have found the judges seem to be more prepared. Not sure whether that's a function of judges or clerks working remotely, but it's very reassuring to have judges with a thorough command of the record and the issues on appeal.

- In a perfect world, OA's would be in-person. But Zoom does the trick. Most importantly, it keeps the cost of appeals down for the client. I think remote OA's are worth the trade-off for the minor advantages associated with in-person arguments.

- It is more difficult to feel fully engaged with the panel in a virtual format.

- Technology sometimes has glitches. I just think you get a better sense of the room when you are in person, and you know nothing technical is going to interfere.

- No travel time and opportunity to observe opposing counsel as they argue.

- In many professional and personal settings, I have participated in group interactions virtually in the last 12 months. Appellate courts are intended to benefit from the perspectives of multiple judges and, particularly in the 5th DCA, from an active bench. The interplay of participants, in any setting, is diminished when the forum is virtual. That will, in my opinion, negatively impact appellate oral arguments.

- Zoom oral arguments deprive parties of the full benefits of oral argument. The judges are hesitant to ask questions and, thus, ask fewer questions. There is an obvious awkwardness because of the inability to observe body language which affects inquisitiveness and attention to the presentation. All of this is attributable to the technical aspects which make "conversation" difficult. There is an additional layer of stress associated with concerns about the technical aspects of navigating the Zoom proceeding that detracts from the attorney's ability to focus on the presentation of the oral argument. Overall it is a second-rate proceeding.

- The cost to the client is reduced due to no time spent traveling to/from and sitting through earlier OAs. It may also be easier to have all relevant materials at your fingertips if appearing remotely from your office.

- I've only presented oral argument in person, never remotely. However, I find video conferencing generally disrupts the pace and flow of natural conversation, especially with multiple participants. In the oral argument context, I can see this challenge making it unnecessarily difficult for the panel and parties to cohesively discuss and debate an appeal's merits. I also worry about technical difficulties hindering my presentation, although I have no rational reason to expect such problems.

- I strongly prefer in-person oral argument.

  My concerns are not necessarily technical but with the judges not being together in one place and in the presence of the attorneys making arguments to them. I think it is easier for the judges to be unprepared and to not be as engaged as they would be in person. I also think it is more difficult for them to play off each other's questions and the answers of the attorneys. I don't like the idea that they won't see each other before and after the arguments. I think it is easier for judges to be dismissive over video and for lawyers to make frivolous and disingenuous arguments by video than it is in person.

  In short, I think switching to video increases the possibility that the judges will spend less time preparing for oral argument and less time discussing the cases that come before them for oral argument. Even with live oral argument, I have concerns about how much time judges spend discussing cases. I don't think it is too much to ask for judges and attorneys to appear in person a single time in cases where oral argument is requested and deemed appropriate.

- If a switch is made to remote argument, the judges will become more isolated and will have even less interaction with attorneys than they do now. I don't think that

results in them feeling accountable for the decisions they make and the process they are using to make those decisions.

- Because of the interaction with judges it's easier to do the oral arguments in person.

- I prefer the in-person interaction with the panel. I prefer being in a courtroom as opposed to being on camera in my office.

- I prefer face to face interaction with the judges and opposing counsel.

- The interaction is better amongst the judges and lawyers in-person. It is easier for judges to play off each other's thoughts and questions. The lawyers can read the body language much better. Additionally, the open and public process of oral arguments adds value to the justice system. To be sure, there are costs savings with remote argument. But the positives of in-person argument outweigh those costs savings.

- In person advocacy gives the advocate a better ability to see and respond to the verbal and non-verbal questions and/or answers to their arguments.

- Less stress to worry about technical issues and I believe the Court will pay more attention to the argument. It's much easier to be distracted via a remote platform.

- You can read the room and observe more in person. It is a better experience.

- Eliminates travel time; Convenience of office setting.

- I have trouble keeping my thoughts organized via video conference for oral arguments. For some reason, the interaction just feels different and it is less smooth and more "blocky" -- best word I can use to describe it.

- There is a level of engagement that occurs during in person oral arguments that is lacking in remote oral arguments

- I have found it more difficult to be persuasive in a remote setting. Technical issues create breaks in people's concentration, it can be distracting to be looking at yourself, and presentation of documents has challenges. It is also easier to read body language in person.

- Reduced billing and cost for travel to appear and attend oral argument and less time consumed

- Better ability to engage with judges while in-person; avoid added stress of dealing with possible technology issues.

- I prefer in-person oral argument because it's easier to pick up on a judge's body language and other nonverbal cues, and it eliminates the potential for a technical difficulty to interrupt or terminate the oral argument.

- In-person arguments permit better opportunities for communication both verbal and non-verbal. Also, in-person arguments have more gravitas than zoom. The convenience of zoom is outweighed by the missing in-person connection.

- Thus far, I have not had the opportunity to present oral argument virtually. I imagine that a virtual oral argument would result in more of a cold bench or a greater occurrence of incidental talking over each other. At least, that has been my experience with other hearings that have occurred virtually.

- I have done 3 with no issues, and I thought they were effective. In some cases, the savings to the client in travel time, hotel room, etc. I believe make remote arguments a good option.

10. When it is safe to return to in-person oral arguments, which of the following paths would you prefer that appellate courts take: *(Written response)*

Return to in-person oral arguments for all arguments	11	**30%**
Continue remote oral arguments for all arguments	3	**8%**
Allow remote oral arguments upon agreement of the parties or by motion	22	**59%**
Other	1	**3%**

11. Please provide any additional comments regarding your experience with remote oral arguments and your position regarding how oral arguments should proceed in the future. *(Written response)*

- Oral arguments should resume in-person for all oral arguments.

- Going to court involves more than just the hearing. You talk with the other side before and after. You chat with court personnel. In the Fifth, we have coffee with the court between cases. All of these seemingly innocuous interactions are ultimately what build the local bar. Zoom is a nice tool to avoid two-hour drives for fifteen-minute hearings, but it cannot replace the substance of interpersonal interaction five days a week. If oral arguments mean anything, the default should be in-person attendance.

- I think it is a time-saver.

- Remote oral arguments may make sense for some matters in which the law is settled, or when the appellate budget of the parties is accommodated by permitting the advocates to appear remotely, saving travel expenses, etc. I would prefer to always have OA in person, however, so I would hope that remote

appearance would be limited to a complete agreement of all of the parties. Thanks for asking!

- Requiring in-person oral argument would be like ending e-filing and requiring service by mail again.

- With regard to the response to #10, I am in favor of returning to in-person oral argument for most arguments, but allowing for remote technology in perhaps unusual or compelling circumstances. I think this may fall under allowing remote oral argument by agreement of the parties or by motion, but I was hesitant to choose that response, because I believe the standard should be significant to prevail on a motion.

- Allow remote attendance at appellate mediations too

- I have no experience with remote oral argument

- Because of the inherent benefits of in-person arguments, and the optics of the public having access to the higher courts, in person arguments must return. Not sure how difficult it will be for the court to maintain both a live and a remote oral argument docket, but where client costs are an issue, it would be nice to have a remote option.

- See #9.

- The process of remote OA has been surprisingly smooth in my firm's experience. Still, the slight time delays and temporary muting when two speakers speak at the same time make the argument more hesitant or awkward than it would be if it were live.

- Remote preferred.

- See response to question number nine. Because in certain cases, the parties may prefer not to incur the expense of in-person oral argument or prefer it for other reasons, it should be available upon agreement of the parties.

- Much of the work of appellate specialists and appellate judges is performed in seclusion. We enjoy long hours of reading, researching and writing. Oral argument is a highlight of the practice. Florida appellate courts have a long history of respecting the importance of oral argument and considering it an integral part of the appellate process. It involves an important legal conversation that needs to occur in many cases and can occur safely following standard COVID guidelines. Our large appellate courthouses were built to accommodate many more citizens than those who actually enter the buildings on a day-to-day basis. There is ample space for social distancing during oral arguments. As society reopens, and it will, justice for all requires that courthouses reopen.

- Because my primary reason for preferring remote oral argument is the cost-savings to the client, I believe offering remote or in-person on a case-by-case basis is ideal. The clients can decide whether they are willing to pay the additional cost of in-person for any perceived or actual advantages of in-person.

- Moving forward, only live oral argument should be permitted absent extraordinary circumstances. Both litigants and the public at large should have an opportunity to convene in the same physical space to participate in or observe this uniquely important part of the appellate process. Engaging in a live discussion before an audience of stakeholders, advocates, and other members of the community adds to the occasion gravity that simply cannot be captured on a computer screen.

- I believe that oral argument should all be in-person as soon as it is safe. I believe better legal arguments are made, better questions are asked, and better decisions result from attorneys and judges all being in a formal courtroom during oral argument.

- Although I prefer in-person oral argument, I recognize the benefits of avoiding travel. My practice involves all DCAs. I would prefer the flexibility of attending certain oral arguments remotely, especially in Miami and Tallahassee. However, because the majority of my practice is in the Second and the Fifth DCAs, I would like to attend those oral arguments in person.

- I do not oppose remote arguments. I just prefer in person ones.

- There is no substitute for in-person oral argument. If we still believe that oral argument is a useful feature of appellate practice, we should keep arguments in-person. And when special circumstances exist to justify remote arguments, we should allow the parties to agree to that or have the party seeking remote file a motion.

- I look forward to in person oral arguments when it is safe.

- I believe one positive aspect of remote oral arguments is that it has the potential to save clients thousands of dollars and therefore it opens up the oppotunity for oral argument to more litigants.

- Remote arguments are less effective and too informal.

- They are convenient. The downside is no coffee with the judges after the argument which did not always happen anyway.

- I definitely think that remote arguments should be allowed if all parties and the Court agree to it. But, I think that people who have difficulty presenting through electronic means should be afforded the opportunity to argue in person if they request it.

- Ideally, we will return to in person proceedings sooner than later

- Eventually, we may need to look to larger video screens or "Video rooms" in courthouses which will permit parties to have an "in-person" experience while appearing remotely and avoiding the technical issues that can arise to ensure seamless proceedings.

- I thought the remote oral argument process (at which I accompanied a firm partner) was seamless, professional and efficient. I would highly recommend continuing oral arguments in this setting

- By default, oral arguments should be in-person unless otherwise agreed to by the parties or one party is able to demonstrate good cause for conducting oral argument virtually. Even then, the non-moving party should still have the opportunity to present his or her argument in person.

- Zoom arguments may be more convenient but they are lacking in many ways. They performed a useful function, but as the pandemic recedes in-person oral arguments should resume.

- I would not ever attend remotely if the other side was appearing in person, and I do not know if that option is being considered. Having never had an issue with a remote OA, I think they are a great option if ordered by the court, or if the parties agree to proceed that way.

- N/A (6 respondents answered this in some capacity)