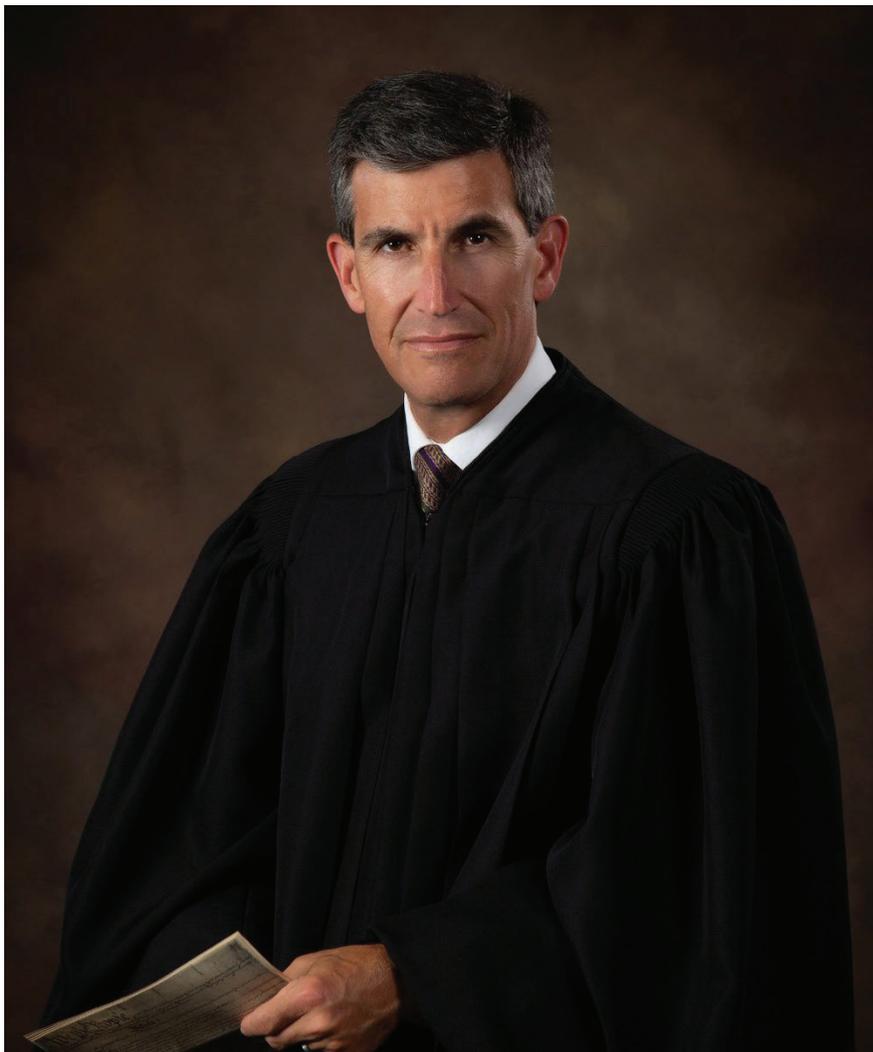


Judge Adam Tanenbaum
Application for Nomination to the
Supreme Court of Florida



**APPLICATION FOR NOMINATION TO THE
SUPREME COURT OF FLORIDA**

Full Name: ADAM SCOTT TANENBAUM

Social Security Number: [REDACTED]

Florida Bar Number: 0117498

Date Admitted to Practice in Florida: 9/26/1997

- 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.**

Judge
District Court of Appeal, First District
2000 Drayton Drive
Tallahassee, Florida 32399-1050
(850) 717-8000

- 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 lived at the following address since December 2016:

[REDACTED]

I have resided in Florida for 49 years, non-consecutive (D.C. 1993–96; N.Y. 2002).

Contact information: [REDACTED] (cell phone)
AdamTanenbaum1@gmail.com (e-mail)

- 3. State your birthdate and place of birth.**

[REDACTED], in Springfield, Massachusetts

- 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	09/26/1997
Supreme Court of the United States	03/21/2011
U.S. Court of Appeals, Eleventh Circuit	01/06/1998*
U.S. District Court, Northern District of Florida	07/17/1998
U.S. District Court, Southern District of Florida	07/17/1998
U.S. District Court, Middle District of Florida	12/19/1997*

**Membership non-renewed because of judicial service (ineligibility to practice law).*

- 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).**

Georgetown University Law Center, Washington, DC (1993–1996)
Juris Doctor, May 27, 1996
Top Third, G.P.A.: 10.412 B+

University of Florida, Gainesville, FL (1989–1993)
Bachelor of Arts, May 1, 1993
Tied for First in Class, G.P.A.: 4.00 A

Seminole High School, Pinellas County, FL (1985–1989)
Diploma, June 8, 1989
Tied for First in Class, G.P.A. 4.00 (unweighted) A

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.

Georgetown University Law Center:

- Federalist Society for Law and Public Policy (1993–1996)
- Republican Law Students Association (1993–1996)
- Georgetown Law Journal (1994–1996)
- Jewish Law Students Association, President (1993–1996)

University of Florida:

- Student Senate, President, Majority Leader (1989–1991)
- Preview '91 (Spring/Summer 1991)
- Alpha Epsilon Pi Fraternity (1989–1993)
- Florida Blue Key (1992–1993)
- Reitz Union Board of Managers (approx. 1992)
- Student Conduct Board (approx. 1992–1993)

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.

Judge	District Court of Appeal, First District 2000 Drayton Drive Tallahassee, Florida 32399-1050	November 1, 2019– Present
General Counsel	Florida House of Representatives 418 The Capitol 402 South Monroe Street Tallahassee, Florida 32399-1300	November 15, 2016– October 31, 2019
General Counsel	Florida Department of State R.A. Gray Building, Suite 100 500 South Bronough Street Tallahassee, Florida 32399-0250	April 6, 2015–November 14, 2016

Chief Deputy Solicitor General	Florida Department of Legal Affairs The Capitol – PL01 Tallahassee, Florida 32399-1050	March 3, 2014–April 3, 2015
Assistant Federal Public Defender	Federal Public Defender’s Office Park Tower, Suite 2700 400 North Tampa Street Tampa, Florida 33602	September 10, 2012– February 28, 2014
Assistant Federal Public Defender	Federal Public Defender’s Office Seaside Plaza – Suite 300 201 South Orange Avenue Orlando, Florida 32801	March 26, 2012– September 9, 2012
Sole Practitioner (Criminal Appeals)	Adam S. Tanenbaum, Attorney 19046 Bruce B. Downs Blvd. #165 Tampa, Florida 33647	October 19, 2011–March 25, 2012
Attorney at Law	Cohen & Foster, P.A. 201 East Kennedy Blvd., Suite 1000 Tampa, Florida 33602	September 28, 2011– October 17, 2011
Of Counsel (White Collar Criminal Defense Practice Group)	Carlton Fields, P.A. 4221 W. Boy Scout Blvd., Ste. 1000 Tampa, Florida 33607	May 24, 2010–October 19, 2011
Assistant Federal Public Defender	Federal Public Defender’s Office Park Tower, Suite 2700 400 North Tampa Street Tampa, Florida 33602	September 9, 2008–May 19, 2010
Sole Practitioner (Criminal Appeals and Defense and General Civil)	Tanenbaum Law Group, P.A. 118 South Rome Avenue Tampa, Florida 33606	July 2008–September 2008

Senior Counsel (White Collar Criminal Defense)	John F. Lauro, P.A. 101 East Kennedy Blvd., Suite 3100 Tampa, Florida 33602	May 2008–July 2008
Counsel (Criminal Defense and Civil Practice)	Winkles Law Group, P.A. 707 North Franklin Street, 2d Floor Tampa, Florida 33602	March 2008–May 2008
Adjunct Professor (Complex Litigation)	Stetson University College of Law 1401 61st Street South Gulfport, Florida 33707	August 2007–November 2007
Sole Practitioner (Criminal Appeals and Defense and General Civil)	Tanenbaum Law Group, P.A. 118 South Rome Avenue Tampa, Florida 33606	June 2006–March 2008
Assistant Public Defender	Public Defender Ninth Judicial Circuit of Florida 435 North Orange Avenue Orlando, Florida 32801	June 17, 2005–July 4, 2006
Associate and Of Counsel	Carlton Fields, P.A. 450 South Orange Avenue, Ste. 500 Orlando, Florida 32801	January 2003–June 2005
Associate	Kaye Scholer LLP 250 West 55th Street New York, New York 10019-9710	August 2002–January 2003
Associate	Carlton Fields, P.A. 777 South Harbour Island Blvd. Tampa, Florida 33602	June 2001–August 2002

Counsel	Republican Party of Florida 420 East Jefferson Street Tallahassee, Florida 32301	March 2001–June 2001
Adjunct Professor (Complex Litigation)	Stetson University College of Law 1401 61st Street South Gulfport, Florida 33707	January 2001–May 2001
Associate	Carlton Fields, P.A. 777 South Harbour Island Blvd. Tampa, Florida 33602	September 1997–March 2001
Law Clerk	Hon. Stanley Marcus United States District Court Southern District of Florida 301 North Miami Avenue Miami, Florida 33128	July 1996–June 1997
Summer Associate	Holland & Knight LLP 800 17th Street NW, Suite 1100 Washington, DC 20006	May 1995–August 1995
Intern—Correspondence and Bill Research	Senator Connie Mack 517 Hart Senate Office Building Washington, DC 20510	Spring 1995
Research Assistant	Professor Anita Allen Georgetown University Law Center 600 New Jersey Avenue NW Washington, DC 20001	Summer 1994
Intern—Data Input for GOPAC/Shadowed Rep. Gingrich	GOPAC/Representative Newt Gingrich 1201 Wilson Boulevard, Suite 2110 Arlington, VA 22209 (current address)	Summer 1994

Box Office Cashier	AMC Theatres—Seminole 8 Seminole Mall Seminole, FL 33772 (no longer exists)	Summer 1993
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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 currently serve as a judge, I am unable to practice law. Below is a description of the various types of law practice that I have engaged in during my career.

Government Service

Serving at the pleasure of the Speaker of the House, I provided legal advice to him and House members and staff regarding matters of legislative interest. I had primary responsibility for litigation affecting the House, retained primary responsibility for coordinating strategy and drafting court filings in litigation, supervised outside counsel, and appeared in court myself at both the trial and appellate levels on behalf of the Speaker, the House, and its individual members. I also consulted with House members and staff regarding ethics laws and prepared advisory ethics opinions upon request. Beyond litigation, I advised the Speaker and senior staff regarding House rules, constitutional matters, and statutory interpretation. I also conducted contract review and advised the Speaker and House Administration on employment issues. Finally, I supervised the House Office of Open Government and its handling of searches for electronic and paper records in response to public records requests.

Previously, as general counsel for the Florida Department of State, I similarly retained primary responsibility for litigation that affected the Department and the Secretary, but I also spent significant time in the areas of public administration, administrative law, governmental processes, and public records. I served as the Department’s chief ethics officer and chief public records officer, was part of its senior management team, and was the Department’s liaison to the Governor’s general counsel. I managed a team of lawyers and staff and was responsible for overseeing (through a program director whom I directly supervise) the Florida Administrative Register and Code section. I routinely dealt with government contracting and employment matters, provided statutory and rule interpretation and analysis, supervised rulemaking and ensured compliance with Florida’s Administrative Procedure Act, provided guidance and counsel on Florida’s election code, worked with the Department’s legislative affairs director to provide bill analysis and address inquiries from legislators, and managed outside legal services contracts for the Department when I hired outside lawyers to represent the Department in litigation. I also helped develop my office’s budget to be included in the Department’s annual budget request, and I was responsible for my office’s fiscal matters (e.g., reviewing and approving expenditure requests and invoice payments and budget monitoring).

Prior to that position, I was chief deputy solicitor general in an office that regularly handled significant civil and criminal matters of statewide impact or constitutional magnitude in the state

and federal appellate courts, including the Supreme Court of Florida and the Supreme Court of the United States. I reviewed records and drafted and filed motions and briefs in state and federal appellate courts, participated in oral arguments and mooted others, and researched and drafted emergency federal appellate stay applications. I also assisted the Solicitor General in advising the Attorney General and her chief of staff on significant legal matters, and I was on the Attorney General Opinion review committee. I represented the State and its agencies in appeals involving issues of statewide impact, frequently in coordination with the Governor's Executive Office. I also evaluated amicus joinder requests from other attorneys general.

Criminal Defense Practice

Before I moved to Tallahassee, I had primarily a criminal defense practice for close to nine years. I served as an assistant federal public defender in the Middle District of Florida for two terms (2008–2010 and 2012–2014). Before my first term as an AFPD and later between my two terms, I handled federal criminal defense cases as a Criminal Justice Act panel lawyer, and I handled state criminal appeals on appointment as a special assistant public defender in the First and Second District Courts of Appeal. I left the FPD in 2010 for an unexpected opportunity to help a shareholder at my former firm (and former deputy independent counsel and former major crimes chief in the local U.S. Attorney's Office) try a complex Medicare fraud case.

As an AFPD, my clients were indigent and facing serious federal charges. I had frequent involvement in every stage of the federal criminal justice process, including initial appearances, detention and probable cause hearings, substantial assistance debriefings, jail visits, jury selection, trial, presentence interviews, and appeal. I also was one of the only AFPDs with broad enough experience and ability to be trusted to handle, on my own, both trial and appellate segments of a case. I also spent significant amounts of time traveling to other counties to meet with incarcerated clients. I was in federal court two to three days a week.

Before I was an AFPD, I spent a year as a state public defender in Orlando. I had left my large firm practice in search of trial experience. As a state PD, I primarily represented clients classified as sexually violent predators for whom the state attorney sought involuntary civil commitment. These were very difficult, complex cases, tried before civil juries using the Florida civil rules. I took expert witness depositions, prepared defense experts, conducted extensive legal research and drafted motions and memoranda, and met with clients at the Florida Civil Commitment Center. At trial, I conducted voir dire and selected juries, conducted direct and cross-examination of witnesses, made closing argument, and participated in charging conferences. I had never conducted a jury trial before becoming a state PD, and I won my first two with unanimous verdicts.

Private Law Firm Practice

The first eight years of my practice chiefly involved complex litigation at large firms. I engaged in significant amounts of legal research, drafting of legal memoranda and briefs, and advising senior partners as to creative approaches to defense of large-scale suits. Our clients were typically large insurance and financial companies. It was here that I learned the importance of high quality legal work, client service, and professionalism in all aspects of a lawyer's practice.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates) was: [These percentages are based on my last five years of practice: 2015–2019.]

	Court		Area of Practice
Federal Appellate	_____ 5 %	Civil	_____ 100 %
Federal Trial	_____ 15 %	Criminal	_____ %
Federal Other	_____ %	Family	_____ %
State Appellate	_____ 45 %	Probate	_____ %
State Trial	_____ 35 %	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:

I appeared in federal court with much more frequency (status conferences, evidentiary hearings, pleas, trials, and sentencings) when I was an assistant federal public defender. I left that position in 2014 when I moved to Tallahassee to work as the chief deputy solicitor general (see above for description).

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

Jury?	_____ 9 _____	Non-jury?	_____ 3 _____
Arbitration?	_____ 1 _____	Administrative Bodies?	_____ 0 _____
Appellate?	_____ 41 _____		

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.

Attwood v. Clemons
 U.S. Court of Appeals for the Eleventh Circuit
 No. 18-12172
 O/A: June 11, 2019

Opposing counsel: Eric Lindstrom, elindstrom@l2c2p.com, (916) 648-2570
Unpublished opinion at 818 F. App'x 863 (11th Cir. 2020)

United States v. Renegifo

U.S. Court of Appeals for the Eleventh Circuit

No. 09-14329

O/A: January 13, 2011

Opposing counsel: Yvette Rhodes, yvette.rhodes@usdoj.gov, (813) 274-6000

Opinion *sub nom.* at *United States v. Saac*, 632 F.3d 1203 (11th Cir. 2011)

United States v. Forte (as student counsel)

U.S. Court of Appeals for the D.C. Circuit

No. 95-3076

O/A: February 23, 1996

Opposing counsel: Andrew J. Kline, akline@perkinscoie.com, (303) 291-2307

Opinion at *United States v. Forte*, 81 F.3d 215, 216 (D.C. Cir. 1996)

In re: Advisory Op. to Attorney Gen. re Right to Competitive Energy Mkt. for Customers of Inv'r-Owned Utilities

Supreme Court of Florida

No. SC19-328

O/A: August 28, 2019

Opposing counsel: Kenneth W. Sukhia, ksukhia@sukhialawfirm.com, (850) 383-9111

Opposing counsel: Warren L. Rhea, wlrhea@gmail.com, (352) 231-2579

Opinion at 287 So. 3d 1256 (Fla. 2020)

Fla. House of Representatives v. Florigrown, LLC

First District Court of Appeal

No. 1D18-4994

O/A: July 16, 2019

Opposing counsel: Katherine E. Giddings, katherine.giddings@akerman.com, (850) 425-1626

Opinion at 278 So. 3d 935 (Fla. 1st DCA 2019)

Rep. Larry Metz v. MAT Media, LLC

First District Court of Appeal

No. 1D18-0687

O/A: July 15, 2019

Opposing counsel: Mark Herron, mherron@lawfla.com, (850) 222-0720

Opinion at 290 So. 3d 622 (Fla. 1st DCA 2020)

Northwood Assocs., LLC v. Detzner

First District Court of Appeal

No. 1D18-0010

O/A: October 29, 2018

Opposing counsel: J. Michael Huey, mike.huey@gray-robinson.com, (850) 577-9090

Opinion *sub nom. Northwood Assocs., LLC v. Ertel*, 265 So. 3d 665 (Fla. 1st DCA 2019)

McCoy v. State

Second District Court of Appeal

No. 2D10-5734

O/A: January 25, 2012

Opposing counsel: Tonja Vickers Rook, tonja.rook@myfloridalegal.com, (813) 287-7900

Greiwe v. Clarendon Nat'l Ins. Co.

Second District Court of Appeal

No. 2D07-3708

O/A: April 22, 2008

Opposing counsel: Anthony J. Russo, arusso@butler.legal, (813) 281-1900

State v. Fla. Workers' Advocates

Third District Court of Appeal

No. 3D14-2062

O/A: March 30, 2015

Opposing counsel: Mark L. Zientz, mzlzaw440@aol.com, (786) 367-0148

Opinion at 167 So. 3d 500 (Fla. 3d DCA 2015)

- 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.***

To ensure that I answer this question fully, I first list the last six cases that I tried to final judgment and identify the case numbers of any appeals that followed, even if I did not participate

in the appeal. I then include two cases that I litigated fully on appeal after final disposition.

1. *MAT Media, LLC & Charles “Pat” Roberts*, Case No. 2017-CA-002284, Circuit Court of the Second Judicial Circuit, Leon County, Florida.

***Speaker Richard Corcoran v. MAT Media, LLC & Charles “Pat” Roberts*, Case No. 2017-CA-002368, Circuit Court of the Second Judicial Circuit, Leon County, Florida.**

Cases consolidated. Bench trial. On appeal, Case No. 1D18-0687, First District Court of Appeal. Oral argument held on July 15, 2019.

Party Represented: Florida House of Representatives &
Speaker of the House

Opposing Counsel: Mark Herron, Esquire
Messer Caparello, P.A.
(850) 222-0720
mherron@lawfla.com

R. Timothy Jansen, Esquire
Jansen & Davis, P.A.
(850) 224-1440
jansen@jansenanddavis.com

Adam J. Komisar
Spicola-Komisar, PA
(850) 328-4447
adam@komisarspicola.com

2. *Speaker Richard Corcoran v. Secretary of the Florida Lottery*, Case No. 2017-CA-000365, Circuit Court of the Second Judicial Circuit, Leon County, Florida. Bench trial. On appeal, Case No. 1D17-1247, First District Court of Appeal. Appeal voluntarily dismissed before briefing.

Party Represented: Speaker of the House

Opposing Counsel: Barry Richard, Esquire
Greenberg Traurig, LLP
(850) 425-8503
richardb@gtlaw.com

3. *United States v. Willie Sanders*, Case No. 6:12-cr-00053-31GAK, United States District Court for the Middle District of Florida. Jury trial. On appeal, Case No. 13-10663, United States Court of Appeals, Eleventh Circuit. Opinion at 551 F. App’x 558 (11th Cir. 2014).

Party Represented: Willie Sanders

Co-counsel (Appeal): Rosemary T. Cakmis
(407) 600-3508
rcakmis@gmail.com

Opposing Counsel: AUSA Robert E. Bodnar, Jr. (Trial)
United States Attorney's Office
(352) 547-3600
robert.bodnar@usdoj.gov

Hon. Susan H. Rothstein-Youakim (Appeal)
Second District Court of Appeal
(813) 272-3430
youakims@flcourts.org

4. *United States v. Ben Bane et al.*, Case No. 8:09-cr-352-T-33MAP, United States District Court for the Middle District of Florida. Six-week Medicare fraud jury trial. Appeal handled by other counsel, Case No. 11-14158, United States Court of Appeals, Eleventh Circuit. Opinion at 720 F.3d 818 (11th Cir. 2013).

Party Represented: Ben Bane

First-chair Co-counsel: Edward J. Page, Esquire
Carlton Fields, P.A.
(813) 229-4308
epage@carltonfields.com

Counsel for Co-defendants: Ronald K. Cacciatore (Tracy Bane)
(813) 545-9595
cacciatorer@aol.com

Norman S. Canella, Sr., Esquire (Gregory Bane)
Rywant Alvarez Jones Russo and Guyton
(813) 229-7007
nc@rywantalvarez.com

Opposing Counsel: Hon. Thomas N. Palermo
Thirteenth Judicial Circuit of Florida
(813) 276-2968
famlawdivi@fljud13.org

Hon. Christopher P. Tuite
United States District Court, Middle District of Florida
(813) 301-5550

chambers_flmd_tuite@flmd.uscourts.gov

5. *United States v. Victor Q. Vu*, Case No. 8:09-cr-85-T-23EAJ, United States District Court, Middle District of Florida. Appeal handled by co-counsel, Case No. 09-14067, United States Court of Appeals, Eleventh Circuit. Opinion at 378 Fed. App'x 908 (11th Cir. 2010).

Party Represented: Victor Q. Vu

Second-chair Co-counsel: Maria Guzman, Esquire
United States Attorney's Office
(813) 274-6000
maria.guzman@usdoj.gov

Opposing Counsel: Shauna S. Hale, Esquire
U.S. Department of Justice
(813) 274-6000
shauna.hale@usdoj.gov

A. Brian Albritton, Esquire
Phelps Dunbar LLP
(813) 472-7557
brian.albritton@phelps.com

6. *United States v. Joseph N. Sweet and Jack Malone*, Case No. 8:08-cr-381-T-24EAJ, United States District Court for the Middle District of Florida. Appeals handled by other counsel, Case Nos. 10-12885, 10-15069, United States Court of Appeals, Eleventh Circuit. Opinion at 454 Fed. App'x 711 (11th Cir. 2011).

Party Represented: Joseph N. Sweet

First-chair Co-counsel: Dionja L. Dyer, Esquire
(813) 482-8305
deefender2@yahoo.com

Counsel for Co-defendant: Patrick D. Doherty
(727) 299-0099
pat@brownanddoherty.com

Opposing Counsel: AUSA Cherie L. Krigsman
United States Attorney's Office
(813) 274-6156
cherie.krigsman@usdoj.gov

Todd Ellinwood, Esquire
U.S. Department of Justice
(202) 616-9330

todd.ellinwood@usdoj.gov

ADDITIONAL CASES FULLY LITIGATED AT APPELLATE LEVEL:

***Northwood Associates, LLC v. Fla. Sec’y of State*, Case No. 2016-CA-000823, Circuit Court of the Second Judicial Circuit, Leon County, Florida. Summary judgment granted in favor state defendants and the House. On appeal, Case No. 1D18-0010, First District Court of Appeal. Opinion at 265 So. 3d 665 (Fla. 1st DCA 2019).**

Party Represented: Florida House of Representatives (Intervenor)

Counsel for Northwood: J. Michael Huey, Esquire
mike.huey@gray-robinson.com
George T. Levesque, Esquire
george.levesque@gray-robinson.com
D. Ty Jackson, Esquire
ty.jackson@gray-robinson.com
GrayRobinson, P.A.
(850) 577-9090

Counsel for State Agencies: Jonathan A. Glogau, Esquire
(850) 491-6649
jkglogau@comcast.net

Joseph A. Spejenkowski, Esquire
(850) 414-6867
joseph.spejenkowski@myfloridalicense.com

Ashley E. Davis, Esquire
(850) 245-6531
ashley.davis@dos.myflorida.com

Counsel for Sec’y of State: David A. Fugett, Esquire
(941) 487-4877
dfugett@ncf.edu

Carlos A. Rey, Esquire
850-487-5828
rey.carlos@flsenate.gov

Counsel for Comm’r of Ed.: Steven S. Ferst, Esquire
(850) 459-4155
ssfsteven@gmail.com

Counsel for Sec’y, DMS: Hon. J. Andrew Atkinson
(863) 499-2290

atkinsoj@flcourts.org

Bradley R. McVay, Esquire
(850) 245-6536
brad.mcvay@dos.myflorida.com

Timothy L. Newhall, Esquire
(850) 414-3633
timothy.newhall@myfloridalegal.com

Counsel for Intervenor-Pl.: Michael P. Woodbury, Esquire
(305) 670-9580
michael.woodbury@woodbury-santiago.com

Appellate Counsel for
State Agencies: Amit Agarwal, Esquire
(850) 425-5611
amit.agarwal@hkllaw.com

Edward M. Wenger, Esquire
(202) 737-8808
emwenger@holtzmanvogel.com

Hon. Rachel E. Nordby
(850) 487-1000
nordbyr@ldca.org

***State v. Fla. Workers' Advocates et al.*, Case No. 3D14-2062, Third District Court of Appeal. Summary judgment granted for plaintiffs, declaring worker compensation system unconstitutional, even though there was no defendant left in the case before the trial court. Opinion at 167 So. 3d 500 (Fla. 3d DCA 2015).**

Party Represented: State of Florida (Attorney General)

Co-counsel: Hon. Allen C. Winsor
(850) 521-3645
allen.winsor@flnd.uscourts.gov

Oswaldo Vasquez, Esquire
(617) 393-5620
oz@fairworklaw.com

Opposing Counsel: Mark L. Zientz, Esquire
(786) 367-0148
mzlaw440@aol.com

Richard A. Sicking, Esquire
(305) 442-2318
richard.sicking@fortheworkers.com

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. *Congresswoman Corrine Brown v. Fla. Sec’y of State et al.*, Case No. 4:15-cv-000398-MW/CAS, United States District Court, Northern District of Florida. On appeal, Case No. 16-10587, United States Court of Appeals, Eleventh Circuit.

I represented Secretary Detzner in this federal challenge to redistricting before a three-judge district court panel. I appealed the court’s denial of the Secretary’s motion to dismiss on Eleventh Amendment sovereign immunity grounds and fully briefed the appeal before the entire case settled.

Counsel for U.S. Rep. Brown: William J. Sheppard, Esquire (deceased)
Bryan E. DeMaggio, Esquire
Jesse B. Wilkison, Esquire
(904) 356-9661

Counsel for Florida Senate: George T. Levesque, Esquire
(850) 577-9090

Raoul G. Cantero, III, Esquire
Jesse L. Green, Esquire
(850) 371-2700

Counsel for the Florida House: Jason N. Zakia, Esquire
(312) 881-5403

Matthew J. Carson, Esquire
(850) 205-1996

George N. Meros, Jr., Esquire
(850) 241-1717

Andre V. Bardos, Esquire
(850) 577-9090

Counsel for Intervenors: David B. King, Esquire (deceased)
Thomas A. Zehnder, Esquire
Frederick S. Wermuth, Esquire
(407) 422-2472

2. Gov. Rick Scott et al. v. Steven R. Andrews et al., Case No. 1D14-3694, First District Court of Appeal. Trial court: Steven R. Andrews v. Gov. Rick Scott et al., Case No. 2012-CA-000859; Board of the Internal Improvement Trust Fund v. Grove Properties Ltd. and John K. Aurell, Case No. 2012-CA-003416, Circuit Court of the Second Judicial Circuit, Leon County, Florida.

I handled the appeal on behalf of Gov. Scott and the IITF in this document-intensive, highly litigious case. I reviewed over 10,000 pages of record and fully briefed the case before it settled as part of a larger deal between Gov. Scott and Mr. Andrews.

Counsel for Mr. Andrews: Steven R. Andrews, Esquire
(850) 681-6416

Brian O. Finnerty, Esquire
(850) 228-6366

Counsel for GPL and
Mr. Aurell: James P. Judkins, Esquire
(850) 556-7678

Counsel for State
Parties in Trial Court: James A. Peters, Esquire
(850) 893-5350

Joseph A. Spejenkowski, Esquire
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Teresa L. Mussetto, Esquire
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Benjamin M. Melnick, Esquire
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Frederick L. Aschauer, Jr., Esquire
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3. United States v. Ronald M. Nixon, Jr., Case No. 8:13-cr-200-T-23TBM, United States District Court, Northern District of Florida.

Young client with cognitive deficits and difficult childhood agreed to plead guilty to possession of a firearm in connection with a drug offense (18 U.S.C. § 924(c)), which carries a mandatory minimum sentence of five years in prison. Because of the client's extensive criminal history, however, his guidelines called for a sentence of between 22 and 27 years in prison. I presented evidence and argument in support of a significant downward departure that accounted for his

My client initially was very difficult, and she was reticent to communicate with me about the case at all. I hand-picked one of our investigators who I felt was best-suited to deal with this type of client. Together, we were able to discover that the client had been the victim of years of serious physical and emotional abuse at the hands of her husband and others, and that the alleged offenses with which she was charged likely had that abuse as a central component. We further developed those facts, convinced our client to come down (she lived outside the state) with her child to meet with the prosecutor and IRS investigators. She ended up giving a proffer, and the prosecutor and agents ultimately helped us help the client. We worked with the Government so that at sentencing, we were able to provide a detailed sentencing presentation and convince the judge to significantly depart downward and sentence the client to probation rather than years in prison.

Counsel for Gov't:

AUSA Robert E. Bodnar, Jr.
(352) 547-3600

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.

One to two times a month from 2014 to 2019, before I became a judge. I appeared in court with greater frequency before 2014, as I explain below.

From 1997 to 2005, 70% of my practice was in federal court, and 30% was in state court. I appeared in court only occasionally. 100% of my practice was civil.

From 2005 to 2008, 15% of my practice was in federal court, and 85% was in state court. I appeared in court frequently. 75% of my practice was criminal, 25% was civil.

From 2008 to 2014, 95% of my practice was in federal court, and 10% was in state court. I appeared in court frequently. 90% of my practice was criminal, 10% civil.

From 2008 to 2010 and 2012 to 2014, as an assistant federal public defender, I was primarily responsible for 30 to 40 cases at a time, and I appeared in federal court, on average, two to three times *per week* (eight to 12 times per month). Those appearances would include status conferences, suppression hearings, plea and sentencing hearings, release revocation hearings, trials, and other evidentiary hearings. I also was duty attorney once or twice a month, and as duty attorney, I was solely responsible for handling initial appearances, bail hearings, and probable cause hearings for clients arrested on my duty day.

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

N/A

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

N/A

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

1. ***Attwood v. Clemons*, Case No. 1:18-cv-00038-MW-GRJ, United States District Court, Northern District of Florida. On interlocutory appeal, Case No. 18-12172, United States Court of Appeals, Eleventh Circuit.** I represented Rep. Chuck Clemons in this federal civil rights suit brought against him by the ACLU. I was the primary lawyer for him, and I drafted the motions, memoranda, and briefs, and developed all trial and appellate strategy on his behalf. The litigation was significant because it occurred in the context of various federal suits being litigated around the country regarding the nature of social media when operated by individuals who happen to be elected officials. This case presented an important question whether a disgruntled constituent can target his state legislator with a civil rights suit and use federal judicial power to gain access to that legislator's personal social media pages, all under the auspices of First Amendment free speech rights. Hearing on motion for preliminary injunction held on May 3, 2018. Order denying preliminary injunction entered May 8, 2018. Order denying motion to dismiss on Eleventh Amendment sovereign immunity and legislative immunity grounds entered May 20, 2018. Oral argument in appeal regarding sovereign and legislative immunity held June 11, 2019. U.S. District Judge Mark Walker. U.S. Circuit Judges Joel Dubina, Adalberto Jordan, and Britt Grant. Counsel for the plaintiff: Eric Lindstrom, Jimmy Midyette, Nancy Abudu, Daniel B. Tilley. The details and disposition of this case were referenced above.

2. ***Florigrown LLC v. Fla. Dep't of Health*, Case No. 2017-CA-002549, Circuit Court for the Second Judicial Circuit, Leon County, Florida. On interlocutory appeal regarding denial of intervention, Case No. 1D18-4994, District Court of Appeal of Florida, First District.** I was primary counsel representing the Florida House of Representatives in its effort to intervene in this case's constitutional challenge to the Legislature's caps and vertical integration requirements for licensure of entities seeking to operate as medical marijuana treatment centers. The immediate intervention appeal was significant because it asserted that a single legislative chamber is entitled

to participate in a public law case where a constitutional challenge potentially implicates separation of powers limitations. The underlying suit was significant because it would have serious implications both for division of power between a statutory agency and the Legislature, and for the power of the Legislature to exercise its police power to control the manufacture and distribution of a Schedule I, federally prohibited drug within the State's borders. Hearing on House's motion to intervene held on November 19, 2018. Oral argument in appeal regarding denial of House's intervention held on July 16, 2018. Circuit Judge Charles Dodson. District Judges B.L. Thomas, Scott Makar, and Timothy Osterhaus. Counsel for Florigrown: Luke Lirot, Katherine E. Giddings, Ari H. Gerstin, and Jonathan S. Robbins. Counsel for the Department of Health and related defendants: Jason B. Gonzalez, Rachel Nordby, Amber Stoner Nunnally, and Louise Wilhite-St. Laurent. The details and disposition of this case were referenced above.

3. *Speaker of the House v. City of Tampa, Case No. 2017-CA-009785, Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida.* I was the litigation manager, on behalf of the Speaker, for this *quo warranto* suit challenging the City's effort at imposing what purported to be a special assessment but in fact was an unauthorized tourism development tax. We had local counsel to represent the Speaker in court, but I was primarily responsible for strategy, research, drafting, and editing. I retained most control over how the litigation was to proceed and how discovery was to be conducted. The litigation was significant because non-ad valorem taxation is preempted to the Legislature, and the City's purported assessment, if upheld, could seriously impact the ability of the Legislature to maintain its authority and control over local non-ad valorem taxation. It also was significant because of the relatively novel use of a *quo warranto* action to assert legislative authority at the local level. Hearing on all motions for summary judgment before Circuit Judge Rex M. Barbas was held on September 10, 2019. The court ultimately granted judgment to the Speaker and determined that the assessment was preempted and invalid. Local Counsel for the Speaker: J. Carter Andersen and Harold Holder of Bush Ross. Counsel for City of Tampa: David L. Smith and Robert E. Johnson of Gray Robinson.

4. *MAT Media, LLC & Charles "Pat" Roberts v. Rep. Larry Metz, Case No. 2017-CA-002284, Circuit Court of the Second Judicial Circuit, Leon County, Florida.*

Speaker Richard Corcoran v. MAT Media, LLC & Charles "Pat" Roberts, Case No. 2017-CA-002368, Circuit Court of the Second Judicial Circuit, Leon County, Florida.

Charles "Pat" Roberts v. Fla. House of Representatives, Case No. 4:18-cv-00031-MW-CAS, U.S. District Court, Northern District of Florida.

Rep. Larry Metz v. MAT Media, LLC, Case No. 1D18-0687, District Court of Appeal of Florida, First District.

I was primary counsel for the Florida House of Representatives, the Speaker, and members of the House committee investigating how VISIT FLORIDA negotiated a series of contracts with Mr. Roberts and MAT Media for the production of the television show *Emeril's Florida*. I was responsible for drafting of all court filings on behalf of the House parties, for development of all strategy, and for participation in all proceedings. In the state suits, Mr. Roberts and MAT Media

challenged the validity of the committee’s legislative subpoenas, and the Speaker sought judicial enforcement of those subpoenas. In the federal action, Mr. Roberts and MAT Media sought an injunction against the House’s threatened direct enforcement of its subpoenas issued off the floor. The matter is significant because of its potential impact on the scope of legislative subpoena power. The matter also is significant because of the extensive media coverage it produced and because of the short-time frame in which this multi-venue, high-pressure litigation took place while the Legislature was in session. Two-hour hearing on emergency motion for preliminary injunction held before U.S. District Judge Mark Walker on January 19, 2018, at which the judge denied the motion. Case subsequently dismissed voluntarily by the plaintiffs. Final evidentiary hearing/trial held in the consolidated state cases on February 9, 2018, before Circuit Judge Karen Gievers. Final order and judgment rendered on February 14, 2018. Oral argument on state appeal held before District Judges Stephanie Ray, James Wolf, and Timothy Osterhaus on July 15, 2019. Counsel for Mr. Roberts and MAT Media: Mark Herron, S. Denay Brown, R. Timothy Jansen, Adam J. Komisar, Thomas M. Finley. The First DCA ultimately reversed. The details and disposition of this case were referenced above.

5. *Speaker Richard Corcoran v. Lottery Secretary Tom Delacenserie*, Case No. 2017-CA-000365, Circuit Court of the Second Judicial Circuit, Leon County, Florida.

I represented the Speaker as primary counsel in this *quo warranto* suit that challenged the authority of the Lottery Secretary to execute a new contract, worth hundreds of millions of dollars, in contravention of budgetary constraints and policy, and despite existing state procurement and contracting requirements. I developed the litigation strategy and drafted the complaint, worked with the Speaker’s witnesses, drafted the trial memorandum, and handled direct and cross-examination of witnesses at trial. A bench trial/final evidentiary hearing was held on March 6, 2017 (the day before the legislative session started). Circuit Judge Karen Gievers presided at the trial. Lottery voluntarily dismissed its appeal prior to briefing. Counsel for the Lottery: Barry Richard of Greenberg Traurig.

6. *FLORIDA’S MARRIAGE LITIGATION.*

***James Brenner et al. v. Gov. Rick Scott et al.*, Case No. 4:14-cv-00107-RH-CAS, United States District Court, Northern District of Florida.** U.S. District Judge Robert Hinkle.

***Sloan Grimsley et al. v. Gov. Rick Scott et al.*, Case No. 4:14-cv-00138-RH-CAS, United States District Court, Northern District of Florida.** U.S. District Judge Robert Hinkle.

In these consolidated federal suits challenging the constitutionality of Florida’s marriage laws, Solicitor General Allen Winsor and I represented the Governor, Attorney General, State Surgeon General, and Secretary of Management Services. I was primarily responsible for conducting legal research and drafting the memorandum in opposition to the motion for injunctive relief and the motion to dismiss, which made substantive arguments in support of the continued

constitutionality of Florida's law. I also was primarily responsible for drafting a motion asking the Eleventh Circuit to stay the district judge's declaration that the marriage law was unconstitutional. When that motion was denied, I drafted the application for stay to be filed with the Supreme Court of the United States (*Armstrong v. Brenner*, Case No. 14A650). The Court denied the application, but Justices Scalia and Thomas would have granted it. Counsel for the Clerk of Court Defendant: James J. Goodman, Jr. Opposing Counsel: William J. Sheppard, Elizabeth L. White, Bryan E. DeMaggio, and Stephen F. Rosenthal; and ACLU lawyers Maria Kayanan and Daniel B. Tilley.

There were related state cases that were filed in various jurisdictions in which we, on behalf of the Attorney General, intervened to defend Florida's marriage laws. In two cases, we intervened at the trial court level—*Pareto v. Ruvin*, Case No. 2014-1661-CA-01, Eleventh Judicial Circuit, Miami-Dade County, Florida and *Huntsman v. Heavilin*, Case No. 2014-CA-0305-K, Sixteenth Judicial Circuit, Monroe County, Florida. On two different occasions, I flew to South Florida to appear on behalf of the Attorney General in injunction hearings held amidst intense media coverage and public interest. In at least three other cases, we intervened after appeals had been filed—*Brandon-Thomas v. Brandon-Thomas*, Case No. 2D14-761 (opinion at 163 So. 3d 644 (Fla. 2d DCA 2015); *Shaw v. Shaw*, Case No. 2D14-2384 (Fla. 2d DCA); and *Dousset v. Fla. Atlantic Univ.*, Case No. 4D14-480 (memorandum opinion at 184 So. 3d 1133 (Fla. 4th DCA 2015)). In all of these cases, I was primarily responsible for related legal research and drafting of court filings, briefs, and memoranda.

All the cases were significant because of their far-reaching impact and because of the intensity and scope of the litigation throughout the State while similar cases were being litigated in federal courts around the country. They also were significant because of the amount of media coverage and level of political pressure involved in these high-profile cases in a statewide election year.

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

I attach two reply briefs that I personally researched and drafted. One is a reply brief filed in the First District Court of Appeal. The other is a reply brief filed in the Supreme Court of Florida. Proofreading assistance for both briefs was provided by my staff.

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. I currently am a judge on the District Court of Appeal, First District. I took the oath of office on November 1, 2019, and I was retained in the 2020 election with over 65 percent of the vote.

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.

Yes, I have. I submitted an application to the First DCA Judicial Nominating Commission on August 2, 2019. I was certified, and the Governor appointed me to my current position.

I submitted an application to the Florida Supreme Court Judicial Nominating Commission on May 27, 2022 (corrected on May 31, 2022). I was certified to the Governor as a nominee.

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

None.

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

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

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- (ii) the approximate number and nature of the cases you handled during your tenure;**
Roughly 2,900 cases. Our court handles all direct appeals and petitions stemming from cases in courts within our jurisdiction. There is no subject-matter limitation on the type of cases we handle, although we do have exclusive jurisdiction over workers' compensation appeals.

- (iii) the citations of any published opinions;**

Signed Majority Opinions

Castro v. Dep't of Health, No. 1D2023-1550, 2025 WL 3084564 (Fla. 1st DCA Nov. 5, 2025)

City of Gainesville v. Parkwood Alachua Land Investments, Inc., No. 1D2022-3266, 2025 WL 2792459 (Fla. 1st DCA Oct. 1, 2025)

Gonzalez v. Axiom Contracting Group, No. 1D2023-1498, 2025 WL 2712757 (Fla. 1st DCA Sept. 24, 2025)

Murphy v. Polk Cnty. Bd. of Cnty. Commissioners, No. 1D2022-2752, 2025 WL 2527901 (Fla. 1st DCA Sept. 3, 2025)

Palacios v. Agency for Health Care Admin., 418 So. 3d 800 (Fla. 1st DCA 2025)

State v. Powell, 419 So. 3d 155 (Fla. 1st DCA 2025)

Parson v. State, 415 So. 3d 788 (Fla. 1st DCA 2025)

Alexander v. N. Florida Constr. Builders, LLC, 411 So. 3d 549 (Fla. 1st DCA 2025)

Brantley v. State, 408 So. 3d 187 (Fla. 1st DCA 2025)

Gazoombi v. State, 406 So. 3d 371 (Fla. 1st DCA 2025) (en banc)

Glob. Hookah Distributors, Inc. v. Dep't of Bus. & Prof'l Regulation, No. 1D2023-3308, 2025 WL 610433 (Fla. 1st DCA Feb. 26, 2025)

Florida Birth-Related Neurological Injury Comp. Ass'n v. Dudkina, 402 So. 3d 459 (Fla. 1st DCA 2025)

Morris v. Capital City Bank, 403 So. 3d 369 (Fla. 1st DCA 2025)

Swift Response, LLC v. Routt, 401 So. 3d 640 (Fla. 1st DCA 2025)

Ortiz v. Winn-Dixie, Inc., 402 So. 3d 301 (Fla. 1st DCA 2024).

Fogarty v. State, 403 So. 3d 1026 (Fla. 1st DCA 2024), reh'g denied (Mar. 19, 2025)

Nipper v. State, 398 So. 3d 600 (Fla. 1st DCA 2024)

Shands Jacksonville Med. Ctr., Inc. v. Chavez, 49 Fla. L. Weekly D2513 (Fla. 1st DCA Dec. 11, 2024), opinion withdrawn and superseded on denial of reh'g, 416 So. 3d 1226 (Fla. 1st DCA 2025)

Beans v. Beans, 407 So. 3d 483 (Fla. 1st DCA 2024), reh'g denied (Apr. 30, 2025)

Perry v. State, 392 So. 3d 877 (Fla. 1st DCA 2024)

Wells v. Wells, 392 So. 3d 235 (Fla. 1st DCA 2024)

White v. Dep't of Revenue, 390 So. 3d 744 (Fla. 1st DCA 2024)

Jackson v. State, 387 So. 3d 1291 (Fla. 1st DCA 2024)

Smith v. State, 387 So. 3d 495 (Fla. 1st DCA 2024)

Pub. Counsel ex rel. Citizens of Florida v. Florida Pub. Serv. Comm'n, 386 So. 3d 637 (Fla. 1st DCA 2024)

Cooper v. State, 385 So. 3d 683 (Fla. 1st DCA 2024)

Maxwell v. State, 383 So. 3d 892 (Fla. 1st DCA 2024)

Peek v. Florida Comm'n on Offender Review, 383 So. 3d 547 (Fla. 1st DCA 2024)

Knight v. Knight, 383 So. 3d 138 (Fla. 1st DCA 2024)

Morris v. State, 389 So. 3d 690 (Fla. 1st DCA 2024), reh'g denied (July 9, 2024)

Kilcrease v. Brown, 380 So. 3d 1275 (Fla. 1st DCA 2024)

Mack v. State, 380 So. 3d 1248 (Fla. 1st DCA 2024)

Paylan v. Fla. Dep't of Health, 385 So. 3d 160 (Fla. 1st DCA 2024)

State Farm Mut. Auto. Ins. Co. v. Florida Dep't of Revenue, 380 So. 3d 1232 (Fla. 1st DCA 2024)

Sec'y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335 (Fla. 1st DCA 2023) (en banc) (joint opinion with Judge B.L. Thomas), *disposition aff'd but opinion disapproved sub nom. Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec'y, Florida Dep't of State*, 415 So. 3d 180 (Fla. 2025)

Gulf Mgmt., Inc. v. Wall, 375 So. 3d 296 (Fla. 1st DCA 2023)

J.M. v. Dep't of Children & Families, 378 So. 3d 656 (Fla. 1st DCA 2023)

Parson v. State, 386 So. 3d 591 (Fla. 1st DCA 2023)

Whitlow v. Tallahassee Mem'l HealthCare, Inc., 48 Fla. L. Weekly D1647, 421 So.3d 729 (Fla. 1st DCA Aug. 16, 2023), reh'g denied (Sept. 12, 2025)

N. Collier Fire Control & Rescue Dist. v. Harlem, 371 So. 3d 368 (Fla. 1st DCA 2023)

Huck v. Kenmare Commons Homes Ass'n, Inc., 382 So. 3d 759 (Fla. 1st DCA 2023)

Miller v. Gordon, 365 So. 3d 1247 (Fla. 1st DCA 2023)

Williams v. Williams, 365 So. 3d 1235 (Fla. 1st DCA 2023)

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Goeb v. Lunford, 386 So. 3d 588 (Fla. 1st DCA 2023)

Ortiz v. Winn-Dixie, Inc., 361 So. 3d 889 (Fla. 1st DCA 2023), opinion superseded on reh'g, 402 So. 3d 301 (Fla. 1st DCA 2024), reh'g denied (Dec. 30, 2024), reh'g denied (Feb. 13, 2025)

City of Newberry v. Alachua Cnty., 366 So. 3d 1176 (Fla. 1st DCA 2023)

Brown v. State, 359 So. 3d 408 (Fla. 1st DCA 2023), reh'g denied (Apr. 12, 2023)

Folsom v. State, 383 So. 3d 843 (Fla. 1st DCA 2023), review dismissed, No. SC2024-0832, 2024 WL 2838298 (Fla. June 5, 2024)

DeMaria v. Constr. Indus. Licensing Bd., 386 So. 3d 208 (Fla. 1st DCA 2023)

Fla. Dep't of Revenue v. Int'l Bonded Couriers, Inc., 356 So. 3d 320 (Fla. 1st DCA 2023)

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Farmer v. State, 356 So. 3d 316 (Fla. 1st DCA 2023)

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Jessup v. Werner, 354 So. 3d 605 (Fla. 1st DCA 2022)

Hernandez v. Fla. Dep't of Mgmt. Services, Div. of Ret., 355 So. 3d 465 (Fla. 1st DCA 2022)

Utah Power Sys., LLC v. Big Dog II, LLC, 352 So. 3d 504 (Fla. 1st DCA 2022)

Beehler v. Beehler, 351 So. 3d 1257 (Fla. 1st DCA 2022)

Wyatt v. Polk Cnty. Bd. of Cnty. Commissioners, 386 So. 3d 154 (Fla. 1st DCA 2022)

Ford v. State, 350 So. 3d 109 (Fla. 1st DCA 2022)

C. C. v. Agency for Persons with Disabilities, 348 So. 3d 1229 (Fla. 1st DCA 2022)

Bonhomme v. Staff Team Hotels, Corp., 348 So. 3d 614 (Fla. 1st DCA 2022)

Collier v. Collier, 343 So. 3d 183 (Fla. 1st DCA 2022)

Erskine v. Erskine, 344 So. 3d 566 (Fla. 1st DCA 2022)

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Westfall v. State, 348 So. 3d 4 (Fla. 1st DCA 2022)

Weisman v. Justice Admin. Comm'n, 338 So. 3d 436 (Fla. 1st DCA 2022)

DSK Group, Inc. v. Hernandez, 337 So. 3d 814 (Fla. 1st DCA 2022)

P.B. v. Fla. Dep't of Children & Families, 335 So. 3d 804 (Fla. 1st DCA 2022)

Robles v. United Auto. Ins. Co., 333 So. 3d 1204 (Fla. 1st DCA 2022)

LP Graceville, LLC v. Odum Estate of Norton, 335 So. 3d 764 (Fla. 1st DCA 2022)

Alcon v. Collins, 334 So. 3d 717 (Fla. 1st DCA 2022)

Network Commc'ns of Nw. Fla., Inc. v. Dep't of Revenue, 334 So. 3d 707 (Fla. 1st DCA 2022)

Ogle v. Ogle, 334 So. 3d 699 (Fla. 1st DCA 2022)

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Jones v. Grace Healthcare, 320 So. 3d 191 (Fla. 1st DCA 2021)

Winters v. Harper, 322 So. 3d 192 (Fla. 1st DCA 2021)

Green v. Alachua County, 323 So. 3d 246 (Fla. 1st DCA 2021)

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quashed, 376 So. 3d 659 (Fla. 2023) (panel opinion)

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Hunt v. State, 310 So. 3d 1123 (Fla. 1st DCA 2021)

DeSantis v. Fla. Educ. Ass'n, 313 So. 3d 151 (Fla. 1st DCA 2020)

Brown v. State, 306 So. 3d 1228 (Fla. 1st DCA 2020)

B.T. v. Dep't of Children & Families, 300 So. 3d 1273 (Fla. 1st DCA 2020)

Concurring opinions

- Siena v. Orange Cnty. Fire Rescue*, 418 So. 3d 204 (Fla. 1st DCA 2025)
- Shands Jacksonville Med. Ctr., Inc. v. Chavez*, 416 So. 3d 1226 (Fla. 1st DCA 2025)
- Ramcald v. State*, 415 So. 3d 820 (Fla. 1st DCA 2025)
- Miller v. Conney*, 413 So. 3d 306 (Fla. 1st DCA 2025)
- Hosp. Housekeeping Sys., LLC v. Chery*, 413 So. 3d 816 (Fla. 1st DCA 2025)
- Harrison v. Dep't of Mgmt. Services*, 409 So. 3d 1285 (Fla. 1st DCA 2025)
- Harrison v. Dep't of Mgmt. Services*, 412 So. 3d 895 (Fla. 1st DCA 2025)
- Bartholomew v. State*, 412 So. 3d 877 (Fla. 1st DCA 2025), reh'g denied (June 16, 2025)
- Raulerson v. State*, 409 So. 3d 713 (Fla. 1st DCA 2025)
- Hill v. State*, 403 So. 3d 505 (Fla. 1st DCA 2025)
- Ortiz v. Winn-Dixie, Inc.*, 402 So. 3d 301 (Fla. 1st DCA 2024).
- Gessner v. S. Co.*, 396 So. 3d 908 (Fla. 1st DCA 2024), review granted, No. SC2024-1835, 2025 WL 830463 (Fla. Mar. 17, 2025)
- BAM Trading Services, Inc. v. Office of Fin. Regulation*, 395 So. 3d 687 (Fla. 1st DCA 2024)
- Apex Roofing & Restoration LLC v. United Services Auto. Ass'n*, 399 So. 3d 354 (Fla. 1st DCA 2024), reh'g denied (Dec. 26, 2024)
- Whitfield v. State*, 392 So. 3d 1125 (Fla. 1st DCA 2024)
- Harris v. State*, 392 So. 3d 620 (Fla. 1st DCA 2024)
- Pretzer v. Swearingen*, 394 So. 3d 175 (Fla. 1st DCA 2024)
- Aboagye v. State*, 387 So. 3d 397 (Fla. 1st DCA 2024), reh'g denied (June 14, 2024), review granted, No. SC2024-1038, 2025 WL 784326 (Fla. Mar. 11, 2025)
- Brown v. State*, 384 So. 3d 805 (Fla. 1st DCA 2024), reh'g denied (May 6, 2024)
- Scott v. State*, 389 So. 3d 672 (Fla. 1st DCA 2024), reh'g denied (July 15, 2024), review denied, No. SC2024-1193, 2025 WL 817207 (Fla. Mar. 14, 2025)
- Haslauer v. Haslauer*, 381 So. 3d 662 (Fla. 1st DCA 2024)

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Smith v. State, 380 So. 3d 540 (Fla. 1st DCA 2024)

Igou v. Jimmie's Truckstop, Inc., 372 So. 3d 1292 (Fla. 1st DCA 2023)

State v. Berens, 371 So. 3d 423 (Fla. 1st DCA 2023)

Howard v. Howard, 370 So. 3d 1039 (Fla. 1st DCA 2023)

Normandy Ins. Co. v. Bouayad, 372 So. 3d 671 (Fla. 1st DCA 2023), review granted, No. SC2023-1576, 2024 WL 4449458 (Fla. Oct. 9, 2024)

Malone v. Malone, 368 So. 3d 1057 (Fla. 1st DCA 2023)

Silvia v. Castle Key Ins. Co., 362 So. 3d 324 (Fla. 1st DCA 2023)

Oliver v. Florida Comm'n on Offender Review, 386 So. 3d 589 (Fla. 1st DCA 2023)

Statewide Guardian Ad Litem Office v. J.B., 361 So. 3d 419 (Fla. 1st DCA 2023)

Dep't of Health v. Rasul, 386 So. 3d 214 (Fla. 1st DCA 2023)

Estremera v. Florida Comm'n on Offender Review, 360 So. 3d 766 (Fla. 1st DCA 2023), reh'g denied (May 2, 2023)

Shamieh v. HCB Fin. Corp., 355 So. 3d 1050 (Fla. 1st DCA 2023)

Yeary v. Chief Judge of Second Judicial Circuit, 354 So. 3d 581 (Fla. 1st DCA 2022)

Cardon v. Halmaghi, 348 So. 3d 1241 (Fla. 1st DCA 2022)

Khayrallah v. State, 346 So. 3d 711 (Fla. 1st DCA 2022)

Lowe v. State, 338 So. 3d 1122 (Fla. 1st DCA 2022)

Ford Motor Credit Co., LLC v. Parks, 338 So. 3d 1070 (Fla. 1st DCA 2022)

Philip Morris USA Inc. v. Manning, 336 So. 3d 870 (Fla. 1st DCA 2022)

Escambia Cnty. Sch. Bd. v. Warren, 337 So. 3d 496 (Fla. 1st DCA 2022)

Carnes v. Ford, 324 So. 3d 1290 (Fla. 1st DCA 2021)

Cabrera v. Kablelink Communications, LLC, 328 So. 3d 1011 (Fla. 1st DCA 2021)

Ivey v. State, 324 So. 3d 983 (Fla. 1st DCA 2021)

Compass Point Condos. Ass'n, Inc. v. Fla. Office of Ins. Regul., 325 So. 3d 227 (Fla. 1st DCA 2021).

Robles v. United Auto. Ins. Co., 333 So. 3d 735 (Fla. 1st DCA 2021)

Seadler v. Marina Bay Resort Condo. Ass'n, Inc., 341 So. 3d 1146 (Fla. 1st DCA 2021),
quashed, 376 So. 3d 659 (Fla. 2023) (concurring in denial of rehearing)

Holland v. State, 312 So. 3d 205 (Fla. 1st DCA 2021)

Massey v. State, 309 So. 3d 325 (Fla. 1st DCA 2021)

Mills v. State, 310 So. 3d 512 (Fla. 1st DCA 2020)

Vincent v. Vincent, 319 So. 3d 68 (Fla. 1st DCA 2020)

Bailey v. Women's Pelvic Health, LLC, 309 So. 3d 698 (Fla. 1st DCA 2020)

Rogers v. State, 296 So. 3d 500 (Fla. 1st DCA 2020)

State v. Kluttz, 290 So. 3d 1123 (Fla. 1st DCA 2020)

State v. Oppenheimer, 290 So. 3d 1124 (Fla. 1st DCA 2020)

State v. Petagine, 290 So. 3d 1106 (Fla. 1st DCA 2020)

Dissenting Opinions

Roscoe v. S&A Hauling Hilliard, LLC, 417 So. 3d 41 (Fla. 1st DCA 2025)

Coullias v. State, 417 So. 3d 515 (Fla. 1st DCA 2025), as corrected (Aug. 15, 2025),
review dismissed sub nom. *Florida v. Coullias*, No. SC2025-1439, 2025 WL 2661666
(Fla. Sept. 17, 2025), as corrected (Sept. 18, 2025)

McDonald v. Florida Birth-Related Neurological Injury Comp. Ass'n, 396 So. 3d 891
(Fla. 1st DCA 2024)

Meyer v. U-Haul Co of Florida, 395 So. 3d 1140 (Fla. 1st DCA 2024), reh'g denied (Oct.
30, 2024)

Progressive Select Ins. Co. v. Bunsee, 380 So. 3d 1287 (Fla. 1st DCA 2024)

Daniel v. State, 374 So. 3d 864 (Fla. 1st DCA 2023), reh'g denied (Dec. 13, 2023),
review dismissed, No. SC2024-0005, 2024 WL 41511 (Fla. Jan. 4, 2024)

Lopez v. State, 368 So. 3d 1076 (Fla. 1st DCA 2023)

City of Orlando v. Moore, 351 So. 3d 41 (Fla. 1st DCA 2022)

Armstrong v. State, 346 So. 3d 723 (Fla. 1st DCA 2022)

Deshotels v. Stewart, 346 So. 3d 717 (Fla. 1st DCA 2022)

Oyebanji v. Collier, 336 So. 3d 431 (Fla. 1st DCA 2022)

Seaside Town Council, Inc. v. Seaside Cmty. Dev. Corp., 347 So. 3d 89 (Fla. 1st DCA 2021)

Moorer v. State, 330 So. 3d 136 (Fla. 1st DCA 2021)

Reliable Restoration, LLC v. Panama Commons, L.P., 313 So. 3d 1207 (Fla. 1st DCA 2021)

Showntail the Legend, LLC v. Dep't of Bus. & Prof'l Regulation, 302 So. 3d 1085 (Fla. 1st DCA 2020)

Concurring in part and dissenting in part

Guglielmo v. DOC Zephyrhills C I/ Div. of Risk Mgmt., 418 So. 3d 656 (Fla. 1st DCA 2025)

Univ. of Fla. Bd. of Trustees v. Browning, 387 So. 3d 371 (Fla. 1st DCA 2024), reh'g denied (June 14, 2024), review dismissed, No. SC2024-1061, 2024 WL 4372241 (Fla. Oct. 2, 2024)

Baker v. State, 381 So. 3d 1282 (Fla. 1st DCA 2024)

Pitts v. Neptune, 396 So. 3d 619 (Fla. 1st DCA 2024)

Courtney v. Florida Comm'n on Offender Review, 371 So. 3d 418 (Fla. 1st DCA 2023)

Woodward v. State, 346 So. 3d 1260 (Fla. 1st DCA 2022)

Emerson v. State, 412 So. 3d 917 (Fla. 1st DCA 2025), reh'g denied (Aug. 2, 2023)

and

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

Fla. Dep't of Corr. v. Gould, 344 So. 3d 496 (Fla. 1st DCA 2022) (en banc).

En banc decision that I authored, which overturned a prior en-banc decision in order to properly apply statutory text and distinguish between the offense of attempt and a substantive offense.

Also clarified when a trial court order on a complaint for mandamus is reviewed under a writ of certiorari and when it is reviewed via direct appeal.

Counsel: Lance E. Neff, General Counsel, Mark S. Urban, Deputy General Counsel, Florida Department of Corrections, Tallahassee; and Ashley Moody, Attorney General, and Sheron Wells and Kristin J. Lonergan, Assistant Attorneys General, Tallahassee, for Appellant. Terrence E. Kehoe, Orlando, for Appellee.

Sec’y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335, 338 (Fla. 1st DCA 2023) (en banc), *disposition aff’d but op. disapproved sub nom. Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Florida Dep’t of State*, 415 So. 3d 180 (Fla. 2025).

En banc decision that I authored along with Judge B.L. Thomas. Appeal of final declaratory judgment that determined that the State’s statutory boundaries for congressional district five (Chapter 2022-265, Laws of Florida) conflicted with the Fair Districts Amendment (“FDA”)—article III, section 20, of the Florida Constitution by redrawing a supreme court-ordered configuration that ostensibly was a benchmark district. In approximately ninety days, the court heard the case en banc, held oral argument, and produced a dual-authored en banc opinion that reversed the judgment based on the plaintiffs’ failure to meet their burden of proof—in time for the next election to go forward under the new, legislatively drawn configuration. The supreme court later disapproved of our analysis but essentially adopted our approach (just worded differently) and affirmed our judgment.

Counsel included the following: Mohammad O. Jazil, Michael Beato, Ed Wenger, and Gary V. Perko of Holtzman Vogel Baran Torchinsky & Josefiak, PLLC, Tallahassee; and Bradley R. McVay, Joseph S. Van de Bogart, and Ashley E. Davis, Florida Department of State, Tallahassee, for Appellant Secretary of State Byrd.

Andy Bardos of GrayRobinson, P.A., Tallahassee, for Florida House Appellants.

Daniel E. Nordby, George N. Meros, Jr., and Tara R. Price of Shutts & Bowen LLP, Tallahassee; and Carlos Rey and Kyle Gray, Florida Senate, Tallahassee, for Florida Senate Appellants.

Henry C. Whitaker, Solicitor General, Tallahassee; Jeffrey Paul DeSousa and Daniel W. Bell, Chief Deputy Solicitors General, Tallahassee; David M. Costello, Deputy Solicitor General, Tallahassee; and Bilal Ahmed Faruqui, Assistant Attorney General, Tallahassee, for Attorney General Ashley Moody.

Frederick S. Wermuth, Quinn B. Ritter, and Thomas A. Zehnder of King, Blackwell, Zehnder & Wermuth, P.A., Orlando; and Christina A. Ford and Jyoti Jasrasaria of Elias Law Group LLP, Washington, D.C., for Appellees.

Gazoombi v. State, 406 So. 3d 371 (Fla. 1st DCA 2025) (en banc).

En banc decision that I authored that corrected a routine mistake that panels of our were making—dismissing an appeal when a downward departure was challenged, rather than affirming. The opinion highlights the difference between appellate jurisdiction and the burden on an appellant to demonstrate cognizable harm on appeal where jurisdiction otherwise exists. Counsel: Jessica J. Yeary, Public Defender; Megan Long and Justin Karpf, Assistant Public Defenders, Tallahassee, for Appellant; James Uthmeier, Attorney General, and Virginia Chester Harris, Assistant Attorney General, Tallahassee, for Appellee.

Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 339 So. 3d 1070, 1073 (Fla. 1st DCA 2022).

An appeal from a temporary injunction that required a court-approved congressional district map be used in the next election, rather than the legislatively drawn one. In an opinion that I authored, we vacated that injunction and explained the limited use of a temporary injunction as a constitutional writ to preserve the status quo and protect the trial court’s jurisdiction. The injunction on appeal went too far because it granted affirmative relief before there was a judgment rendered.

Counsel: Mohammad O. Jazil, Michael Beato, and Gary V. Perko of Holtzman Vogel Baran Torchinsky & Josefiak, PLLC, Tallahassee; and Bradley R. McVay and Ashley E. Davis, Florida Department of State, Tallahassee, for Appellant Secretary of State Cord Byrd. Daniel E. Nordby, George E. Meros, and Tara R. Price of Shutts & Bowen LLP, Tallahassee; and Carlos Rey and Jason Rojas, Florida Senate, Tallahassee, for Florida Senate Appellants. Andy Bardos of GrayRobinson, P.A., Tallahassee, for Florida House Appellants. Frederick S. Wermuth and Thomas A. Zehnder of King, Blackwell, Zehnder & Wermuth, P.A., Orlando; and Christina A. Ford of Elias Law Group LLP, Washington D.C., for Appellees. Henry C. Whitaker, Solicitor General, Tallahassee; Jeffrey Paul DeSousa and Daniel W. Bell, Chief Deputy Solicitors General, Tallahassee; David M. Costello, Assistant Solicitor General, Tallahassee; and Bilal Ahmed Faruqui, Assistant Attorney General, Tallahassee, for Attorney General Ashley Moody.

Whitlow v. Tallahassee Mem’l HealthCare, Inc., 48 Fla. L. Weekly D1647, 421 So.3d 729 (Fla. 1st DCA Aug. 16, 2023), *reh’g denied* (Sept. 12, 2025).

In an opinion I authored affirming summary judgment for the defendant, we explain in detail the origins of summary judgment and the proper federal standard to apply. Courtney Brewer and Jonathan Anthony Martin, of Bishop & Mills, PLLC; and Jesse F. Suber, Halley M. Stephens, Miriam R. Coles, E. Victoria Penny, and Jacob Salow, of Henry Buchanan, P.A., were counsel.

Silberberg v. Palm Beach Cnty. Sch. Bd., 335 So. 3d 148 (Fla. 1st DCA 2022). This case is significant because it allowed us an opportunity to eliminate some confusion that had arisen in workers’ compensation practice over how to apply the “arising out of” requirement for compensability. Michael Celeste, Bill McCabe, and Diane Tutt were counsel in the case.

Imhof v. Walton County, 328 So. 3d 32 (Fla. 1st DCA 2021). This case involved a very difficult statutory ambiguity regarding the scope of a trial court’s de novo consistency review in a development order challenge. It allowed us an opportunity to demonstrate how grammar and the ordinary tools of statutory construction can be used to solve the ambiguity. Terrell Arline, Sidney Noyes, and Dana Matthews, among others, were counsel involved in the case.

Green v. Alachua County, 323 So. 3d 246 (Fla. 1st DCA 2021). In this case, we explored how the supreme court had developed precedent dealing with temporary injunctions addressing abortion statutes, plus the historical development of the constitutional provision dealing with a citizen’s right to be left alone. We put this together to explain how the constitutional provision addressing privacy, based on how the supreme court had had applied it in the past, was broad enough in scope to render a local government requirement to put a mask on one’s face against his or her will is presumptively unconstitutional. Seldon Childers and Jack Ross were primary counsel in this case.

A.M. v. D.S., 314 So. 3d 747 (Fla. 1st DCA 2021). This case gave rise to a conflict in the operation of two sets of statutory provisions addressing terminations of parental rights and adoption. In order to reconcile the two statutory chapters, we had to explain how each set of provisions worked. These are very detailed statutory provisions, and the case gave us an opportunity to clarify how the provisions operate for the benefit of the bench and bar. Troy Farquhar and Michael Korn were counsel in the case.

P.B. v. Dep’t of Child. and Fams., 335 So. 3d 804 (Fla. 1st DCA 2022). This case allowed us an opportunity to clarify the oft-misunderstood, “least restrictive means” constitutional requirement in termination of parental rights cases. Ryan Truskoski, Sarah Rumph, and Sara Goldfarb were counsel in the case.

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.

Sec’y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335, 338 (Fla. 1st DCA 2023) (en banc), *disposition aff’d but op. disapproved sub nom. Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Florida Dep’t of State*, 415 So. 3d 180 (Fla. 2025). See above for summary.

Seadler v. Marina Bay Resort Condo. Ass’n, Inc., 341 So. 3d 1146 (Fla. 1st DCA 2021), *quashed*, 376 So. 3d 659 (Fla. 2023) (concurring in denial of rehearing). Appeal by plaintiff of civil judgment entered in his favor but for a reduced sum. Plaintiff sought a new trial because he claimed the trial court erroneously refused to strike a potential juror for cause. The opinion I wrote affirmed the judgment because the questionable juror did not serve on the jury after the plaintiff exercised one of his peremptories. Unlike in criminal cases, in civil cases, there is no substantive right to peremptory challenges; they exist by procedural rule alone, and the peremptory served its proper purpose here. We highlighted that the test typically applied by courts in for-cause strike issues in

civil cases copies from the test applied in criminal cases, even though the reason for the test in criminal cases is not applicable in civil cases. We applied the harmless error statute to conclude the plaintiff was not denied a fair trial. The supreme court agreed with the distinction I drew between criminal jury selection and civil jury selection, but quashed based on its very expansive reading of its own harmless error analysis in *Special*—which I maintain is meant to apply only to in-trial errors, not pre- or post-trial errors.

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.

Sec’y of State Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 375 So. 3d 335, 338 (Fla. 1st DCA 2023), *disposition aff’d but op. disapproved. Black Voters Matter Capacity Bldg. Inst., Inc. v. Sec’y, Florida Dep’t of State*, 415 So. 3d 180 (Fla. 2025).

Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 339 So. 3d 1070, 1073 (Fla. 1st DCA 2022)

Green v. Alachua County, 323 So. 3d 246 (Fla. 1st DCA 2021).

P.B. v. Dep’t of Child. and Fams., 335 So. 3d 804 (Fla. 1st DCA 2022).

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

Yes, in April 2024, I received a notice regarding an investigation. By its own protocol, the JQC does not provide a copy of any complaint. The notice stated that it had been alleged that I “did not timely render decisions in cases in which oral argument had occurred or which had been submitted for decision without oral argument.” Certain disclosed details indicated the allegation stemmed from our court’s confidential, internal time-standard reports, which are used by the individual judges—under the chief judge’s supervision—to ensure that the court as a whole meets the supreme court’s standard for “a presumptively reasonable time period” within which to render decisions in “most cases.” Fla. R. Gen. P. & Jud. Admin. 2.250(a). Current Chief Judge Osterhaus and his two immediate predecessor chiefs—Judges Stephanie Ray and Lori Rowe—submitted a joint letter in my defense (and in defense of the chief judge’s prerogative to manage the timeliness of dispositions internally without interference by the JQC). Yes, I appeared before the commission. The matter was dismissed without further action.

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.

Yes. I ran unopposed for and was elected to the Arbor Greene Community Development District Board of Supervisors (Seat 3, Non-Partisan) in Tampa in 2008. I was re-elected in 2012. I served as Chairman of the Board from 2012 to 2014. AGCCD is an independent, special purpose unit of local government established pursuant to Florida law and City of Tampa ordinance. The Board is responsible for developing and managing a budget of more than \$1.6 million in annual non-ad valorem assessments for over 2,000 households. As Chairman, I worked with various managers regarding implementation of policies, contract management, procurement, and expenditure controls, and I rewrote the Board's rules and procedures and the CDD's policy manual. I advocated and ultimately implemented budgeting changes that eliminated baseline budgeting and adopted an alternative zero-based budgeting approach, resulting in flat revenue/expenditure projections and no fee increases for several years. I resigned in 2014 to move to Tallahassee.

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.

No, I have not engaged in another occupation, business, or profession other than the practice of law. But yes, I have received compensation outside the practice of law (as an adjunct law professor and a soccer referee), as disclosed below.

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.

N/A

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.**

Co-editor, THE FLORIDA BAR PRO SE APPELLATE HANDBOOK, Florida Bar Appellate Practice Section (June 2016).

Adkins: Using Bypass Jurisdiction to Keep Chaos at Bay, HCBA LAWYER, February 2012.

Rule 17(c) Subpoenas in Modern Criminal Defense Practice, BLOOMBERG LAW REPORTS' WHITE COLLAR CRIME REPORT (Feb. 7, 2011).

Preserving Future Confrontation Rights in 3.220 Depositions, HCBA LAWYER, April 2007.

Post-Crawford: Fighting VOP Hearings with the Tools We Had Before, HCBA LAWYER, May 2007.

Co-editor, Chapter Six, ABA BUSINESS TORTS LITIGATION MODEL JURY INSTRUCTIONS (4th ed. 2005).

Day v. Holahan: Crossroads in Campaign Finance Jurisprudence, 84 GEO. L.J. 151 (1995).

- 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.**

Supreme Court of Florida
Workgroup on Sanctions for Vexatious and Sham Litigation
June 15, 2022

The report reviewed rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases and made recommendations. They included education that identifies tools that are available to trial judges, litigants, attorneys to address improper litigation; improvements to the E-Filing Portal; and rule and statutory amendments. Report 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.**

Learning from the Best: Secondary Sources to Live By. Panelist. November 18, 2025, Virtual; Sponsor: The Florida Bar Appellate Practice Section.

Guerilla's Guide to Law Clerk Summaries—Spotting Issues and Using Sources. November 19, 2025, First District Court of Appeal, Tallahassee. Sponsor: First District Court of Appeal (Law Clerk Education Seminar).

Why Originalism is Essential to a Republic Governed by a Written Constitution. Presenter. October 22, 2025, Florida State University College of Law, Tallahassee. Sponsor: The Federalist Society, FSU Student Chapter.

Does Prior Panel Precent Rule? Two Judges Debate. Panelist. September 18, 2025, Citrus Club, Orlando. Sponsor: Federalist Society, Orlando Lawyers Chapter.

Appellate Fundamentals: Amicus Curiae – Friend of the Court. Panelist. September 10, 2025, Virtual. Sponsor: American Legal and Financial Network.

Statutory Interpretation in Florida Family Law Cases. Panelist. May 8, 2025, Virtual. Sponsor: The Florida Bar Family Law Section, Appellate Practice Committee.

Judicial Power: Appellate Remedies and Writs. Presenter. December 12, 2024, May 6, 2025, First District Court of Appeal, Tallahassee. Sponsor: New Appellate Judges Program, Florida Court Education Council.

Career Paths. Panelist. February 24, 2025, Florida State University College of Law, Tallahassee. Sponsor: Jewish Law Student Association.

“Take Your Time (Do It Right)”—Effective Legal Writing. Panelist. February 21, 2025, First District Court of Appeal, Tallahassee. Sponsors: Office of the Judges of Compensation Claims and Workers' Compensation Institute (WCI).

The Great Debate: Should the Prior Panel Precedent Rule Apply in Florida's District Courts? Panelist. February 6, 2025, Stetson University College of Law, Tampa. Sponsor: Hillsborough County Bar Association. URL:

https://open.spotify.com/episode/7AgXDayXlQD9s074Szzkcq?si=T2Z6VQieRe6JqatjTUuh_Q&nd=1&dlsi=13606503d57a4050

Putting Originalism and Textualism Into Practice. Moderator. December 10, 2024, Division of Administrative Hearings, Tallahassee. Sponsor: Federalist Society, Tallahassee Lawyers Chapter.

Acquiring Knowledge: Law Terms and Concepts Every Legislator (and Citizen) Should Know. Presenter. December 4, 2024, Florida House of Representatives, Tallahassee. Sponsor: Florida House. URL: <https://thefloridachannel.org/videos/12-4-24-house-legislator-university-training-acquiring-vocabulary-constitutional-and-legal-concepts/>

I Love Writs. Presenter. September 5, 2024, Virtual. Sponsor: The Florida Bar Appellate Practice Section.

Statutory Interpretation. Presenter. July 17, 2024, May 31, 2023, Florida Senate, Tallahassee. Sponsor: Office of General Counsel, Florida Senate.

Bar Induction Ceremony. Speaker. May 6, 2024, First District Court of Appeal, Tallahassee. Sponsor: First District Court of Appeal. URL: <https://www.youtube.com/live/XL4pH0ZZxps?si=2RRqudyJTkO4N4MK>

Coffee Talk with Judge Adam Tanenbaum. Interview. April 2, 2024, Tallahassee. Sponsor: The Florida Bar Appellate Practice Section. URL: <https://flabarappellate.org/join-the-section-for-the-2018-19-monthly-audio-webcast-season/>

Rehabilitating Lochner: Defending Individual Rights Against Progressive Reform. Symposium Presenter. March 21, 2024, Florida State University College of Law, Tallahassee. Sponsor: Federalist Society, FSU Student Chapter.

Extraordinary Writs. Presenter. March 5, 2024, Florida Supreme Court, Tallahassee. Sponsor: New Appellate Judges Program, Florida Court Education Council.

Breaking Eggs: Effecting Change as a DCA Judge. Panel Moderator. University of Florida College of Law, Gainesville. February 22, 2024. Sponsor: Federalist Society, UF Student Chapter.

I Love Writs. Presenter. February 14, 2024, Embassy Suites, Kissimmee. Sponsor: Florida Court Personnel Institute, Florida Court Education Council.

Dissentals, Concurrals & Collegiality. Panelist. January 11, 2024, Education Conference, One Ocean Resort and Spa, Atlantic Beach. Sponsor: Education Committee, Florida Conference of District Court of Appeal Judges.

Bar Induction Ceremony. Speaker. May 3, 2023, First District Court of Appeal, Tallahassee. Sponsor: First District Court of Appeal. URL: <https://www.youtube.com/live/8BrY4E8UJNM?si=9aQSpnfHy7VsEhd9>

Pathways to Practice: Legal Employment and the Differing Areas of Practice. Panelist. September 22, 2022, University of Florida Levin College of Law, Gainesville. Sponsor: Federalist Society, UF Student Chapter.

Practicing Before the First District Court of Appeal. Moderator (Developing Trends) and Panelist (Writing a Better Brief). April 8, 2022. Sponsor: The Florida Bar Appellate Practice Section.

A Peek Behind the Curtain at the First DCA. Presenter. August 18, 2021, Governor's Club, Tallahassee. Sponsors: Federalist Society Tallahassee Lawyers Chapter and Florida Government Bar Association.

An Overview of Public Records and Open Meetings. December 13, 2018, Legislator University, Florida House of Representatives, Tallahassee.

Ethics in the Legislature. Presenter. December 11, 2018, Legislator University, Florida House of Representatives, Tallahassee.

Ethics for New Members. Presenter. November 19, 2018, New Member Orientation, Florida House of Representatives, Tallahassee.

Ethics in the Legislature – Committee Staff Edition. Presenter. February 3, 2017, October 5, 2017, Florida House of Representatives, Tallahassee.

Constitution Overview: Article III—The Legislature. Presenter. September 2017, Florida Constitution Revision Commission (online presentation).

Gift Ban, Open Meetings, and Public Records. Presenter. January 13, 2017, Presentation to Staff, Florida House of Representatives, Tallahassee.

Ethics in the Legislature. Presenter. December 7, 2016, Florida House of Representatives, Tallahassee. Sponsor: Florida House, Legislator University. URL: <https://thefloridachannel.org/videos/12-7-16-house-legislator-university-training-ethics-in-the-legislature/>

Ethics, Open Meetings and Public Records. Presenter. November 16, 2016, Presentation to Members, Florida House of Representatives, Tallahassee.

Ethics in the Legislature—Committee Staff Edition. Presenter. November 2016, Presentation to Staff, Florida House of Representatives (online presentation).

Gift Ban, Open Meetings, and Public Records. Presenter. November 2016, Florida House of Representatives (online presentation).

Open Meetings and Public Records. Presenter. November 2016, Florida House of Representatives (online presentation).

Address. Section Commencement Speaker. May 1996, Georgetown University Law Center,

Washington, D.C.

Commencement Address as Co-Valedictorian. May 1993, University of Florida College of Liberal Arts and Sciences, Gainesville.

Commencement Address as Co-Valedictorian and Student Government President. June 1989, Seminole High School, Seminole.

I also have participated in the following panels and discussions:

Panel, “Overview and Update of Lobbyist Registration and Ethics Provisions,” Florida Bar Annex (November 28, 2016).

Panel of Practitioners and Judges on Ethics and Professionalism, The Florida Bar’s Fall 2015 Practicing with Professionalism Seminar, Florida State University Center, Tallahassee (October 1, 2015).

“Network Nosh” Discussion with Students About Legal Careers, Florida State University College of Law Career Services and Professional Development Center (Fall 2015, Fall 2017).

Panel, “2014 Legislative Session and the Practice of Appellate Law,” Florida Bar Annex (June 3, 2014).

“The New Wave of Drug Smuggling – Defending a Submersible Submarine Drug Case,” 2009 Middle District CJA Panel Seminar (June 2009).

Presentation on *Daubert* and Challenging Government Experts in Federal Trials, Federal Public Defender 2009 District Conference (April 2009).

“Preparing Your Client at Sentencing for Jimmy Ryce Act Civil Commitment Issues,” FACDL Showcase on Sentencing in Florida VI (November 2008)

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.

Yes.

Legislative Power. Florida State University College of Law (Spring 2020, Fall 2021, Fall 2022, Fall 2023, and Spring 2025). Explores the origins and nature of legislative power and how it interacts with the powers of the other two branches. Syllabi from the Spring 2020, Fall 2021, Fall 2023, and Spring 2025 semesters are attached.

Legislative Power. University of Florida College of Law (Compressed inter-semester course, August 2023). Explores the origins and nature of legislative power and how it interacts with the powers of the other two branches. Syllabus attached.

Judicial Power: Role of a Judge. Florida State University College of Law (Spring 2024). Explores the nature and scope of judicial power and how it is exercised by a trial court and an appellate court. Also, considers the differences between a common-law system and a continental, civil-law system; plus what judicial remedies are, how they compare to writs, and the challenges of judicial discretion. Syllabus attached.

Courts and the Legislature. Florida State University College of Law (Fall 2025). Explores the nature and scope of judicial power, the nature of the “law,” how judicial power is exercised by the courts to implement legislatively enacted policy, and the tension arising from the judicial determination and implementation of legislative policy, judicial enforcement of constitutional law, and the application of what is considered judicially developed policy; plus what judicial remedies are, how they differ from writs, and the challenges posed by varying judicial philosophies to the proper implementation of substantive law. Text download of Canvas syllabus page attached.

I also twice taught a course on complex litigation at Stetson University College of Law (2001 and 2007). Syllabus not available. And I have been a guest lecturer several times at the invitation of the Solicitor General in his seminar on separation of powers at Florida State University College of Law.

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.

Florida SuperLawyers Rising Star – Criminal Defense (2012).

Phi Beta Kappa, University of Florida (1992).

Co-Valedictorian, College of Liberal Arts and Sciences, University of Florida (1993).

University of Florida Hall of Fame

University of Florida Four-Year Scholar (4.00 GPA)

University of Florida Outstanding Male Leader

Florida Blue Key Leadership Honor Society

Phi Kappa Phi Honor Society (Scholar Award)

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.

The Federalist Society for Law and Public Policy Studies (current)

Florida Court Education Council (current)

The Florida Bar Appellate Court Rules Committee (current—Original Proceedings Subcommittee Chair)

Legislative Committee, Florida Conference of District Court of Appeal Judges (current)

Education Committee, Florida Conference of District Court of Appeal Judges (current)

First District Court of Appeal Library Committee (current—Chair)

First District Court of Appeal IOP Committee

Chief Justice's Vexation Litigation and Sham Pleading Workgroup

First District Appellate American Inn of Court

Hillsborough County Bar Association

Federal Bar Association

American Bar Association

The Florida Bar Appellate Practice Section (Pro Bono and Publications Committees)

The Florida Bar Criminal Law Section

The Florida Bar Thirteenth Judicial Circuit Grievance Committee

The Florida Bar Thirteenth Judicial Circuit Unlicensed Practice of Law Committee

Herbert G. Goldberg Criminal Law American Inn of Court

Bruce R. Jacob Criminal Appellate American Inn of Court

Florida Association of Criminal Defense Lawyers

- 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.**

Georgetown National Law Alumni Board

Hawks Rise Elementary School Advisory Council

Toastmasters International

Big Brothers Big Sisters of Tampa Bay, Inc.
(Board of Directors – approximately 1998-2000; Big Brother – 1999-2000)

Tampa Interbay Rotary Club

Tampa Bay Sport and Social Club

Coach, YMCA Youth Soccer

Blankner Elementary School, Second Grade Junior Achievement Instructor

Warner Soccer Adult Open League

Tallahassee Soccer Association

Sacred Heart Catholic Church Lector Ministry

Co-Cathedral of St. Thomas More Lector Ministry

- 43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.**

I belonged to Alpha Epsilon Pi Fraternity while at University of Florida. The national policy at the time restricted membership to men, and in practice, membership preference was given to Jewish men. I have not actively participated in any activities of the organization since I graduated from the university.

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

In my last five state and federal positions, laws and rules have precluded me from engaging in any outside practice of law. While back at Carlton Fields from 2010–2011 (in between terms as an assistant federal public defender), I devoted over 300 pro bono hours to indigent criminal matters (more pro bono hours than nearly all the other lawyers at the firm). Those hours included involvement in the following cases:

Thomas Despart v. DCF, Case No. 6:07-cv-737-Orl-31GJK, United States District Court, Middle District of Florida (August 2010–February 2012). At the request of and appointment by the district judge, I represented a habeas petitioner seeking federal relief in an involuntary civil commitment matter. As directed in the appointment order, I prepared a supplemental memorandum in support of the petition for a writ of habeas corpus. After briefing and negotiations, the state prosecutor handling the case ultimately was persuaded to provide the hearing and appointment of a mental health professional that the petitioner had been seeking.

Jason P. Boudreaux v. State, Case No. SC10-2069, Supreme Court of Florida (March 2011–March 2012). Through the Appellate Practice Section of the Bar, I volunteered to take an appointment by the court to represent a petitioner seeking review of the First District Court of Appeal’s decision in a collateral review proceeding. The supreme court initially granted jurisdiction based on express and direct conflict. However, after I fully briefed the matter, the court dismissed the case because it determined jurisdiction had improvidently been granted.

Marco Nordelo v. State, Case No. SC11-23, Supreme Court of Florida (January 2011–October 2011). The court appointed the chief executive officer of the firm to represent a petitioner seeking review of a divided panel decision out of the Third District Court of Appeal affirming denial of a post-conviction motion evidentiary hearing. At the CEO’s request, I did most of the research and drafting for him in the case, with some assistance from a junior associate. The supreme court reversed that decision and ordered the hearing that the petitioner sought. *See Nordelo v. State*, 93 So. 3d 178 (Fla. 2012).

State v. Kenneth R. Young, Case No. 00-CF-14744, Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida (June 2011–October 2011). Following the U.S. Supreme Court’s holding in *Graham v. Florida*, 560 U.S. 48 (2010) that juveniles constitutionally cannot be sentenced to life imprisonment without parole for non-homicide crimes, I worked with former Judge John Blue and a junior associate at our firm to draft and file a motion to correct Mr. Young’s then-illegal life sentence. Once that motion was granted, we researched and prepared a sentencing memorandum and participated in Mr. Young’s new sentencing.

United States v. Victor R. Renegifo, Case No. 09-14329, United States Court of Appeals, Eleventh Circuit. Case No. 10-10382, Supreme Court of the United States (November 2010–October 2011). I handled, on a pro bono basis, this appeal for a client I had represented while an AFPD. When I originally represented the client, he was charged under a new federal law regarding semi-submersible vessels that transported cocaine (18 U.S.C. § 2285). I had researched and drafted the

motion to dismiss that challenged the constitutionality of the new law. Counsel who had represented my client's co-defendants adopted the arguments made in that motion. I then handled the appellate briefing in the same case while I was still at the FPD. The Eleventh Circuit granted oral argument after I had left the FPD, so I agreed to handle the oral argument pro bono. After the Eleventh Circuit upheld the law, I drafted the certiorari petition to the Supreme Court of the United States on behalf of Mr. Renegifo and his co-defendants. The Supreme Court ordered the Solicitor General to respond to the petition, but the court ultimately denied the petition.

Even though I could not engage in the private practice of law while in my government positions, in 2015 and 2016, I did assist in editing The Florida Bar Pro Se Appellate Handbook as a member of the Florida Bar Appellate Practice Section.

From 2008 to 2012, I handled criminal appeals on a contract basis for the public defenders that handle such appeals for the First and Second District Courts of Appeal. While the service cannot be considered *pro bono* technically (because of the fees, albeit minimal, that are paid), the work in its effects (both for the public defenders and for the defendants) closely resembled *pro bono* legal services. Indeed, I obtained reversals in three of those appeals. *See State v. Leland*, 7 So. 3d 616 (Fla. 2d DCA 2009); *Burnette v. State*, 103 So. 3d 1059 (Fla. 1st DCA 2013); *Stewart v. State*, 113 So. 3d 914 (Fla. 2d DCA 2013).

45. Please describe any hobbies or other vocational interests.

Attending as many of my youngest daughter's sporting events as possible. Playing adult pick-up soccer approximately twice a week and serving as a soccer referee during school play and for youth and adult leagues. Strength training and fitness. When I find time to read, I enjoy primarily non-fiction, especially books on political and legal history and philosophy.

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 had the privilege to serve in this capacity.

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

My X (f/k/a Twitter) account (@adamtanenbaum) is not active. My Facebook, Instagram, and LinkedIn accounts are not active either.

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.

Married to [REDACTED] on January 15, 2004. She is a lawyer working at McConnaughay, Coonrod, Weaver & Stern, P.A.

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.

I have three children. They are [REDACTED] (14), [REDACTED] (19; student at UCF), and [REDACTED] (20; student at New College of Florida).

CRIMINAL AND MISCELLANEOUS ACTIONS

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

Yes, I have complied with all tax filing requirements. No, I have not ever had to pay a tax penalty.

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.

The breadth of my experience that I was privileged to enjoy during approximately 23 years of practice would significantly assist me in performing the many duties of a supreme court justice. A

justice has both judicial and administrative duties and must face a myriad of issues on many fronts, involving diverse subject matter and requiring commensurate experience. Litigating at nearly every level of state and federal court systems, I have tried cases to state and federal juries and briefed and argued appeals to state and federal appellate panels. I have worked in big and small firms, run my own practice, done both civil and criminal work at the state and federal levels, and acquired significant experience in both election law and the legislative process. This extensive substantive background will uniquely enable me to hit the ground running as an effective and efficient justice.

Moreover, my experience in large, top-shelf law firms developed in me a commitment to high quality legal work and to hard work and diligence in everything I do. And my service in all three branches of government allows me a deeper appreciation for the importance of the separation of powers, for the dynamics related to the exercise of power by one branch vis-à-vis the other branches, for the the unique administrative challenges involved in government operations, and for the necessity that judicial power in particular be exercised conservatively, with humility.

Finally, my service as general counsel at the Florida Department of State and the Florida House of Representatives has provided real insight into how government staff approach the reading of constitutional, statutory, and regulatory text and the importance of consistently promoting a focus on the text, as opposed to reliance on intent or some other motivation, as the only real limitation on the arbitrary exercise of power.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I would bring a deep-seated, long-standing principled commitment to “original meaning” as a judicial philosophy in the faithful adherence to constitutional and statutory text while deciding cases. I also would bring a non-expansive approach to deciding cases and would seek to limit adjudication of a case, as much as possible, to the facts that are in the record before the court. Moreover, my work as an appellate judge already has demonstrated my deep commitment to understanding the historical origins and context of legal principles. That commitment (which includes a willingness to put in the hard work to uncover those origins) helps support my efforts to ensure that our decisions remain true to the rule of law. My experience and appreciation for language also helps me in my effort to consistently explain and defend, in clear terms, this approach in opinions for the benefit of practitioners and the public.

Moreover, my record reflects a long-standing commitment to taking a fresh look at legal questions from the perspective of foundational principles, and to leading colleagues toward decisions that better comport with those principles. It also reflects my ability to lead, persuade, and work well with colleagues. Collegiality is not the willingness to compromise; it is the willingness to consider others’ points of view. It also is having enough respect for colleagues to believe they will do the same in return—capable and willing to be persuaded by compelling, cogent legal analysis. My ability to get along and work professionally and respectfully with a variety of colleagues can be seen in the three en banc opinions I have been trusted to author or co-author on behalf of my court

and in the large number of majority opinions (when compared to dissents and other dispositions) I have authored in the six years I have been on my court.

My extensive and broad-based experience, my judicial philosophy, my ability to work hard—along with my willingness to perform historical and philosophical research and reduce that work to compelling analyses that routinely persuades colleagues—make me well-suited to promote these ideals.

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.**

Honorable Harvey L. Jay
Chief Judge, District Court of Appeal, Fifth District
300 South Beach Street
Daytona Beach, FL 32114
jayh@flcourts.org
[REDACTED]

Re: my work ethic, values, judicial philosophy and approach, overall judicial performance, and collegial relationships at First DCA and elsewhere.

Honorable Lori Rowe
Judge, District Court of Appeal, First District
2000 Drayton Drive
Tallahassee, Florida 32399-0950
rowel@flcourts.org
[REDACTED]

Re: my work ethic, values, judicial philosophy and approach, overall judicial performance, and collegial relationships at First DCA and elsewhere.

Honorable Stephanie Ray
Judge, District Court of Appeal, First District
2000 Drayton Drive
Tallahassee, Florida 32399-0950
rays@flcourts.org
(850) 717-8162

Re: my work ethic, values, judicial philosophy and approach, overall judicial performance, and collegial relationships at First DCA and elsewhere.

Honorable Bradford L. Thomas (Ret.)
Former Judge, District Court of Appeal, First District



Re: my work ethic, values, judicial philosophy and approach, overall judicial performance, and collegial relationships at First DCA and elsewhere.

Mohammad Jazil, Esquire
Holtzman Vogel Baran Torchinsky & Josefiak PLLC
119 South Monroe Street, Suite 500
Tallahassee, Florida 32301
mjazil@holtzmanvogel.com
(850) 274-1690

Re: my work ethic, values, legal philosophy, working relationships, performance as a litigator, and creative approaches to solving legal problems

Jordan Jones, Esquire
Florida House of Representatives
417 House Office Building
402 South Monroe Street
Tallahassee, Florida 32399-1300
William.jordan.jones@gmail.com
(850) 544-5142

Re: my work ethic, values, legal philosophy, working relationships, performance as a litigator, creative approaches to solving legal problems, and substantive knowledge of Florida Election Code

Jason L. Unger, Esquire
GrayRobinson, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-3189
jason.unger@gray-robinson.com
(850) 577-5489

Re: my work ethic, values, legal philosophy, diligence, persistence, creativity, and consistency in approach to problem-solving (having known me since college)

Honorable John Badalamenti
Judge, United States District Court, Middle District of Florida
Sam M. Gibbons United States Courthouse
801 North Florida Avenue
Tampa, Florida 33602
Chambers_flmd_badalamenti@flmd.uscourts.gov
(813) 301-5125

Re: my work ethic, values, legal philosophy, diligence, persistence, creativity, and consistency in approach to problem-solving as lawyer and judge, and insight into my performance as a law firm lawyer and assistant federal public defender (having known me since we worked together in Tampa at Carlton Fields and the Federal PD's Office).

Honorable Thomas Barber
Judge, United States District Court, Middle District of Florida
Sam M. Gibbons United States Courthouse
801 North Florida Avenue
Tampa, Florida 33602
Chambers_flmd_barber@flmd.uscourts.gov
(813) 301-6160

Re: my work ethic, values, legal philosophy, diligence, persistence, creativity, and consistency in approach to problem-solving as lawyer and judge, and insight into my performance as a law firm lawyer and judge, and insight into my performance as law-firm lawyer (having known me since we worked together in Tampa at Carlton Fields).

Honorable Anne-Leigh Moe
Judge, United States District Court, Middle District of Florida
George C. Young Federal Annex Courthouse
401 West Central Boulevard
Orlando, Florida 32801
Chambers_flmd_moe@flmd.uscourts.gov
[REDACTED]

Re: My knowledge of the law, personality, willingness to serve as a resource for other judges, work ethic, and judicial philosophy.

Honorable Tesha Ballou
Judge, Eighteenth Judicial Circuit
Titusville Courthouse
506 South Palm Avenue
Titusville, Florida 32796
Tesha.ballou@flcourts18.org
[REDACTED]

Re: My ability to write opinions regarding complex areas of the law that provide clear guidance for judges.

John T. Cappelli
14414 Bay Hills Drive
Largo, Florida 33774
John.Cappelli@raymondjames.com
(727) 439-0588

Re: my work ethic, values, philosophy, diligence, persistence, and creativity; as well as perspective on me as a person growing up in the Tampa Bay Area (having known me since we were friends in high school).

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 16th day of December, 2025.

Adam Tanenbaum
Printed Name


Signature

State of Florida
County of Leon

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

physical presence OR online notarization this
16th day of December, 2025

By Adam Tanenbaum

Personally known

Produced ID

Type of Identification FL Driver's License


Signature Notary Public

Jared Kent
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.

[I have been a judge for the preceding three-year period. The gross income listed below is from that employment.]

Current Year-To-Date: \$202,518.72

Last Three Years: 2024: \$215,750.52 2023: \$207,501.00 2022: \$197,272.50

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.

[The following is net income earned as a judge each year. The amounts reflect deductions taken for insurance (but not those taken for retirement contributions).]

Current Year-To-Date: \$197,082.08

Last Three Years: 2024: \$209,819.64 2023: \$201,624.12 2022: \$191,044.46

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

Current Year-To-Date: \$8,661 (soccer referee fees); \$5,775.02 (adjunct law professor); \$1,275.02 (interest)

Last Three Years: 2024: \$6,584 (soccer referee fees); \$1,558.77 (interest) 2023: \$7,922 (soccer referee fees); \$806.86 (interest) 2022: \$1,284 (soccer referee fees); \$128.76 (interest)

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.

No other sources; just what has been disclosed above for the last three years and the current year.

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.

Expenses, other than taxes, were negligible for soccer referee activity from 2022 to date.

General Information

Name: Hon Adam Scott Tanenbaum **CONFIDENTIAL**
PID 222947

AGENCY INFORMATION

Organization	Suborganization	Title
First District Court of Appeal	Elected Constitutional Officer	Appellate Judge

Net Worth

My Net Worth as of December 31, 2024 was \$ 1,336,026.73.

Assets

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

The aggregate value of my household goods and personal effect is \$ 86,780.00.

ASSETS INDIVIDUALLY VALUED AT OVER \$1,000:

2024 Form 6 - Full and Public Disclosure of Financial Interests

Filed with COE: 07/01/2025

Description of Asset	Value of Asset
[REDACTED]	\$ 503,100.00
Checking & Savings (J.P. Morgan Chase Bank)	\$ 28,986.96
Savings (American Express National Bank)	\$ 35,455.63
Checking & Savings (First Florida Credit Union)	\$ 1,834.62
College Savings/529 (My529/Utah Ed. Savings Plan/Age-Based Target-UTADX)	\$ 48,163.89
College Savings/529 (My529/Utah Ed. Savings Plan/Age-Based Target-UTAGX)	\$ 25,137.23
College Savings/529 (My529/Utah Ed. Savings Plan/Total Stock Market Index-UTVTX)	\$ 84,411.07
College Savings/529 (My529/Utah Ed. Savings Plan/Value Index-UTVVX)	\$ 24,129.74
College Savings/529 (My529/Utah Ed. Savings Plan/Institutional Index-UTVLX)	\$ 37,751.87
Retirement Account (Fla. Retirement System ("FRS") 2045 Fund)	\$ 111,990.80
Retirement Account (Fla. Retirement System ("FRS") U.S. Stock Market Index Fund)	\$ 131,804.05
Retirement Account (Thrift Savings Plan (Fed'I)--F Fund)	\$ 1,939.55
Retirement Account (Thrift Savings Plan (Fed'I)--C Fund)	\$ 17,186.46
Retirement Account (Thrift Savings Plan (Fed'I)--S Fund)	\$ 13,295.66
Retirement Account (Thrift Savings Plan (Fed'I)--L2040 Fund)	\$ 67,966.46
Traditional IRA (Vanguard--500 Index Admiral-VFIAX)	\$ 120,885.13
Traditional IRA (Vanguard--Intermediate Bond Index Admiral-VBILX)	\$ 12,270.25
Traditional IRA (Vanguard--Target Retirement 2045-VTIVX)	\$ 232,925.78
Traditional IRA (Vanguard--Total Bond Index Admiral-VBTLX)	\$ 4,245.34
Roth IRA (Vanguard--Mid Cap Index Admiral-VIMAX)	\$ 11,292.37
Roth IRA (Vanguard--Small Cap Index Admiral-VSMAX)	\$ 9,517.39
College Savings/529 (My529/Utah Ed. Savings Plan/Growth Index-UTVGX)	\$ 25,111.65

Liabilities

LIABILITIES IN EXCESS OF \$1,000:

Name of Creditor	Address of Creditor	Amount of Liability
Nationstar Mortgage LLC d/b/a Mr. Cooper	8950 Cypress Waters Blvd Coppell TX 75019	\$ 274,782.97

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

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

Income

Identify each separate source and amount of income which exceeded \$1,000 during the year, including secondary sources of income. Or attach a complete copy of your 2024 federal income tax return, including all W2s, schedules, and attachments. Please redact any social security or account numbers before attaching your returns, as the law requires these documents be posted to the Commission’s website.

I elect to file a copy of my 2024 federal income tax return and all W2s, schedules, and attachments.

PRIMARY SOURCES OF INCOME:

Name of Source of Income Exceeding \$1,000	Address of Source of Income	Amount
State of Florida (State Court System)	200 E Gaines St, Tallahassee FL 32399-0356	\$ 215,750.52
Florida State University	A5600 University Center, Tallahassee FL 32306-2392	\$ 3,000.02
North Florida Referees Association	P O Box 3301 Tallahassee FL 32315	\$ 2,244.50
Tallahassee Tottenham Hotspur FC/Florida Elite Soccer Academy	P.O. Box 15229 Tallahassee, Florida 32317	\$ 1,706.00

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

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

Interests in Specified Businesses

Business Entity # 1
N/A

Training

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

Signature of Reporting Official or Candidate

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

Adam Scott Tanenbaum

Digitally signed: 07/01/2025

Filed with COE: 07/01/2025

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: December 17, 2025

JNC Submitting To: Florida Supreme Court

Name (please print): Adam Tanenbaum

Current Occupation: Judge, First District Court of Appeal

Telephone Number: [REDACTED] Attorney No.: 117498

Gender (check one): Male Female

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

Hispanic

Black

American Indian/Alaskan Native

Asian/Pacific Islander

County of Residence: Leon

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

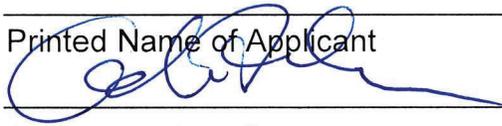
The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or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

Adam Tanenbaum

Printed Name of Applicant



Signature of Applicant

Date:

12/17/2025

Vexatious Litigation Task Force Report

CAROL-LISA PHILLIPS
ADMINISTRATIVE JUDGE
CIRCUIT CIVIL COURT
SEVENTEENTH JUDICIAL CIRCUIT
OF FLORIDA



BROWARD COUNTY COURTHOUSE
201 S.E. 6TH STREET, ROOM 15127
FORT LAUDERDALE, FL 33301
(954) 831-7554

June 13, 2022

The Honorable Charles T. Canady
Chief Justice, Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399

Dear Chief Justice Canady:

Pursuant to Fla. Admin. Order No. AOSC21-62, enclosed please find the final report and recommendations of the Workgroup on Sanctions for Vexatious and Sham Litigation. As directed by your administrative order, the Workgroup reviewed existing rule and statutory provisions on this topic for noncriminal cases and surveyed appellate and trial court judges, appellate and trial court clerks, and trial court administrators on their use of the provisions.

After considering the procedures, laws, and survey results, the members unanimously agreed to recommendations in four areas: 1) Judicial, court and clerk staff, and attorney education; 2) Operational changes; 3) Potential rule amendments; and 4) Potential statutory amendments. Of these recommendations, the development of educational programs is the Workgroup's foremost recommendation due to the complexities of the many relevant procedures and laws. Detail for all the recommendations is provided in the enclosed report and appendices.

Thank you very much for the opportunity to chair this dedicated Workgroup of judges and a clerk of the circuit court. I am happy to address any questions that the Supreme Court may have regarding the report, or the Workgroup's work.

Sincerely,

A handwritten signature in blue ink, appearing to read "CLP", with a long horizontal flourish extending to the right.

Carol-Lisa Phillips
Circuit Court Judge

CLP:tw
Enclosure

cc: Allison (Ali) C. Sackett, State Courts Administrator
Eric W. Maclure, Deputy State Courts Administrator

Workgroup on Sanctions for Vexatious and Sham Litigation

Final Report and Recommendations

June 15, 2022

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MEMBERSHIP OF THE WORKGROUP ON SANCTIONS FOR
VEXATIOUS AND SHAM LITIGATION

Judge Carol-Lisa Phillips, Chair
Circuit Court, Seventeenth Judicial Circuit

Judge Alice L. Blackwell
Circuit Court, Ninth Judicial Circuit

Clerk Jerald D. Bryant
Clerk of Circuit Court, Okeechobee County

Judge Janeice T. Martin
County Court, Collier County

Judge Anne-Leigh Gaylord Moe
Circuit Court, Thirteenth Judicial Circuit

Judge Monique Richardson
County Court, Leon County

Judge Andrea Teves Smith
Second District Court of Appeal

Judge A. S. Tanenbaum
First District Court of Appeal

Staff support was provided by the Office of the State Courts Administrator.

EXECUTIVE SUMMARY

The Workgroup on Sanctions for Vexatious and Sham Litigation was established in Fla. Admin. Order No. AOSC21-62 to review rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases; survey judges, court staff, and clerks on the utilization of the provisions; and recommend rule or statutory amendments that may be warranted to address such improper litigation more effectively.

The workgroup met five times during its approximately six-month term. At these meetings, the members reviewed rules of court procedure and laws addressing frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation, and developed surveys for district court of appeal and trial court judges, trial court administrators, district court of appeal clerks, and trial court clerks of court. Workgroup members reviewed the survey results along with other information provided by members of the public. The findings and recommendations by the workgroup, as set forth in this report, are based on the input received and the members' collective experience.

The workgroup's findings and recommendations address four categories and are briefly summarized below:

- *Education:* A review of the rules of court procedure and laws identified a multitude of tools that may be used by judges, litigants, and attorneys to address improper litigation. These tools, however, are scattered throughout the rules and law, use varying terminology and provide different procedures for similar types of improper litigation, and, due to the potential to infringe on the constitutional right to access courts, are subject to appellate case law restricting their use. The survey results indicated that education in this complex area could be of benefit. Accordingly, the workgroup recommends the development of education programs on specified topics for trial court judges, court staff, clerk staff, and attorneys.
- *Operational Changes:* The survey results and information provided by members of the public indicated, among other things discussed more fully later in the report, that improvements could be made to the Florida Courts E-Filing Portal to stop litigants from improperly designating filings as emergencies and to the processes for addressing the filings of pro se litigants who are subject to court orders prohibiting further pro se filings. As such, the workgroup

Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

recommends that the Florida Courts E-Filing Authority develop modifications to the portal that will facilitate the declaration of a filing as an emergency in appropriate circumstances only, that clerks of court develop certain processes to ensure that prohibited pro se filings are rejected, and that the Florida Courts Technology Commission determine how to automate clerk case management systems and Court Application Processing Systems so that the filings by such pro se litigants are rejected and the identities of these litigants are readily available statewide to judges, clerks, litigants, and attorneys.

- *Potential Rule Amendments:* The rules of court procedure authorize motions to strike redundant, immaterial, impertinent, scandalous, and sham matter in pleadings. These rules do not provide sanctions, however, for litigants and attorneys who file such matter, and do not specify parameters for using the motions. These issues were noted by some survey respondents who suggested amending the rules. Based on this input, the workgroup recommends review of the issues by the relevant bar rules committees and, if determined warranted, the proposal of rule amendments.
- *Potential Statutory Amendments:* Several issues were identified in the survey results and by the workgroup as potential areas in which the Florida Legislature may wish to consider statutory amendments. These are:
 - The creation of a public records exemption for scandalous, sham, and other improper matter stricken from a filing under the rules of court procedure, if such matter would defame and harm a litigant or third party.
 - Improvements to the Vexatious Litigant Law that would expand the provisions to address a wider population of vexatious litigants.
 - Consolidation of the many statutes that address improper litigation in order to improve user awareness and ease of use and ensure more consistency.

The workgroup expresses its sincere appreciation to each appellate and trial court judge, appellate and trial court clerk, and trial court administrator who completed the surveys developed by the workgroup and to each member of the public who voluntarily submitted information for the workgroup's consideration.

BACKGROUND

ADMINISTRATIVE ORDER/WORKGROUP MEETINGS

Chief Justice Charles T. Canady established the Workgroup on Sanctions for Vexatious and Sham Litigation (“workgroup”) in Fla. Admin. Order No. AOSC21-62, issued on December 9, 2021.¹ The order described vexatious and sham litigation as “legal proceedings that are unwarranted, frivolous, inherently false, without good cause, or filed solely to harass the opposing party; are burdensome and costly for the defendant; and abuse the judicial process and waste limited court resources ...”² The workgroup was charged with:

- Reviewing existing rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases;
- Surveying judges, court staff, and clerks on the utilization of these provisions and on the identification of challenges they encounter in the use of the provisions; and
- Recommending any rule or statutory amendments that may be warranted to more effectively address vexatious or sham litigation in noncriminal cases.³

The membership of the workgroup consisted of two appellate court judges, three circuit court judges, two county court judges, and one clerk of court. The workgroup had approximately six months to complete its charges, with its final findings and recommendations due to the Chief Justice by June 15, 2022.⁴

The workgroup met five times. At its initial meeting, the workgroup members discussed challenges they had encountered with frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation (hereinafter referred to as “improper litigation”); developed a work plan for its charges; and

¹ Appendix A.

² *Id.* at 1.

³ *Id.* at 2.

⁴ An extension of the June 1, 2022, deadline specified in the administrative order in Appendix A at 2, was granted by Chief Justice Canady on May 20, 2022, per a request made by staff to the workgroup.

Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

reviewed laws and rules of court that address improper litigation. At its second meeting, the workgroup developed surveys, as directed by its charges, for district court of appeal (“DCA”) and trial court judges, trial court administrators (“TCAs”), DCA clerks, and trial court clerks of court (“trial court clerks”). Thereafter, at its next two meetings, the workgroup reviewed the survey results and developed recommendations for its final report. At its last meeting, the workgroup considered and finalized this report.

OUTREACH

Pursuant to its charges, the workgroup surveyed DCA and trial court judges, TCAs, DCA clerks, and trial court clerks regarding their use of existing rule and statutory provisions relating to improper litigation in noncriminal cases and on the identification of challenges they encounter in the use of the provisions. The results of the surveys have been summarized in Appendix B and Appendix C. This section provides background on the response rates and division assignments of the trial judge respondents and discusses the percentages of workload estimated to be attributable to improper litigation and the case types in which improper litigation most frequently occurs. Other survey results are discussed in the findings and recommendations section of this report where relevant.

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Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

The following chart depicts the response rates for the surveys:⁵

Respondent	Number Who Responded	Number of Potential Respondents Statewide	Statewide Response Rate
DCA Judges (all five DCAs represented)	32	64	50%
Circuit Judges	77	606	12.7%
County Judges ⁶	43	334	12.9%
DCA Clerks	5	5	100%
Trial Court Clerks	24	67	35.8%
Trial Court Administrators	14	20	70%

Trial court judges were asked to identify the divisions to which the greatest percentage of their cases are assigned.

- 36.3% of circuit judges indicated that the circuit civil division is where the greatest percentage of their cases are assigned, while 32.5% selected domestic relations/family, 24.7% selected circuit criminal, and 6.5% selected probate/guardianship.
- 65% of county judges indicated that the county civil division is where the greatest percentage of their cases are assigned, while 25.6% selected county criminal, 4.7% selected circuit criminal, 2.3% selected circuit civil, and 2.3% selected probate/guardianship.⁷

⁵ Appendix B at 1 and 10 and Appendix C at 1.

⁶ Responses were received from circuit and county judges in 18 of the 20 judicial circuits. County judges were not asked to identify the county in which they preside so that responses from judges in small counties could be anonymous.

⁷ Appendix B at 10.

Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

Survey participants were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. Described below are the percentages of respondents indicating that improper litigation comprises more than 10% of workload:

- 3.1% of DCA judges provided the response for their workloads, and 0% of DCA judges provided the response for their judicial assistants' ("JAs") workloads.
- 18.2% of circuit judges provided the response for their workloads and 24.7% of circuit judges provided the response for their JAs' workloads.
- 14% of county judges provided the response for their workloads and 23.3% of county judges provided the response for their JAs' workloads.
- 14.2% of TCAs provided the response for court administration (non-judicial) workload.
- 8.4% of trial court clerks provided the response for clerk staff workload.

For DCA clerk staff workload, 80% of the DCA clerks responded "unknown" to this question, and 20% responded "up to five percent."⁸

Survey respondents, other than TCAs, were also asked to identify the top three noncriminal case types in which improper litigation occurs. The top three case types identified by respondents are:

- Appellate Courts:
 - Appellate judges identified foreclosure and habeas cases, with 3,800, 3,850, pro se family, and dissolution cases tied for third.
 - DCA clerks identified foreclosure, family, and eviction cases.⁹
- Trial Courts:
 - Circuit judges identified domestic relations/family cases generally (with multiple judges noting that pro se litigants are more problematic in these cases), foreclosures, and civil cases generally.
 - County judges identified landlord/tenant, small claims, and personal injury protection ("PIP") cases.
 - Trial court clerks identified circuit civil and county civil cases with foreclosure cases and petitions for mandamus tied for third.¹⁰

⁸ Greater detail for the estimates provided in response to this question may be found in Appendix B at 1 and 11 and Appendix C at 2.

⁹ Appendix B at 6-7 and Appendix C at 5.

¹⁰ Appendix B at 25 and Appendix C at 10.

Based on the responses to the various questions discussed above, the greatest amount of improper litigation is estimated to be occurring in the circuit courts in foreclosure and pro se family law cases, with county courts not far behind with improper litigation in landlord/tenant, small claims, and PIP cases.

LEGAL LANDSCAPE

Various tools are available for DCA and trial court judges who preside over noncriminal court proceedings to address improper litigation. Remedies for these issues have been discussed in case law construing the court's inherent authority, and numerous rules of court procedure and statutes also govern this area. The discussion below provides an overview.¹¹

INHERENT AUTHORITY OF THE COURT

Bad Faith Conduct by Attorneys

A trial court has “the inherent authority to impose attorneys' fees against an attorney for bad faith conduct.”¹² The trial court's exercise of this authority must strike an appropriate balance between condemning as unprofessional or unethical litigation tactics undertaken solely for bad faith purposes, while ensuring that attorneys will not be deterred from pursuing lawful claims, issues, or defenses or from their obligation as an advocate to zealously assert the clients' interests.¹³ As such, the Supreme Court has ruled that:

[T]he trial court's exercise of the inherent authority to assess attorneys' fees against an attorney must be based upon an express finding of bad faith conduct and must be supported by detailed factual findings describing the specific acts of bad faith conduct that resulted in the unnecessary incurrence of attorneys' fees. Thus, a finding of bad faith conduct must be predicated on a high degree of specificity in the factual findings. In addition, the amount

¹¹ A myriad of legal authority addresses improper litigation. This discussion addresses the inherent authority of the court, rules of court procedure, and statutes identified by staff to the workgroup as being most relevant to the workgroup's charges. Other laws and rules exist.

¹² *Moakley v. Smallwood*, 826 So. 2d 221 (Fla. 2002). See also *Diaz v. Diaz*, 826 So. 2d 229, 232 n.2 (Fla. 2002) (declining to determine whether the courts possess the inherent authority to impose attorneys' fees against a party for bad faith litigation).

¹³ *Moakley*, 826 So. 2d at 226.

Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

of the award of attorneys' fees must be directly related to the attorneys' fees and costs that the opposing party has incurred as a result of the specific bad faith conduct of the attorney. Moreover, such a sanction is appropriate only after notice and an opportunity to be heard—including the opportunity to present witnesses and other evidence. Finally, if a specific statute or rule applies, the trial court should rely on the applicable rule or statute rather than on inherent authority.¹⁴

Frivolous or Excessive Pro Se Filings that Interfere with the Timely Administration of Justice

Appellate and trial courts may rely on their “inherent authority to prohibit further pro se filings from a litigant whose frivolous or excessive filings interfere with the timely administration of justice.”¹⁵ Appellate opinions addressing such cases rely on *Spencer v. State*, 751 So. 2d 47 (Fla. 1999), a criminal postconviction case. The typical sanction is that the pro se litigant may file no further cases, or papers in an existing case, unless represented by counsel.¹⁶ A court may also direct that a pro se litigant who has qualified for indigency status no longer be able to file cases without paying the filing fee.¹⁷

In general, “[w]hile it is clear that a litigant's right to access the courts may be restricted upon a showing of egregious abuse of the judicial process, due process requires that courts first provide notice and an opportunity to

¹⁴ *Id.* at 227.

¹⁵ *Ardis v. Pensacola State Coll.*, 128 So. 3d 260, 264 (Fla. 1st DCA 2013) (cutting the pro se appellant off from further pro se filings related to the underlying civil case following “repeated violation of this court's prior warnings against additional post-opinion filings in this case”); *Ardis v. Ardis*, 130 So. 3d 791 (Fla. 1st DCA 2014) (cutting the same pro se appellant off from *any* further pro se appellate filings due to his “incessant meritless filings in this court”); *Graham v. Graham*, 898 So. 2d 210 (Fla. 2d DCA 2005) (affirming the trial court's order prohibiting the appellant from further pro se pleadings in his post-dissolution case).

¹⁶ *See, e.g., Werdell v. State*, 16 So. 3d 875, 877 (Fla. 2d DCA 2009); and *Bolton v. SE Prop. Holdings, LLC*, 127 So. 3d 746, 747-748 (Fla. 1st DCA 2013).

¹⁷ *See, e.g., Martin v. State*, 747 So. 2d 386 (Fla. 2000) (imposing this sanction, noting that the sanction had been imposed against the appellant at the DCA and trial court levels).

respond before imposing this extreme sanction.”¹⁸ The notice is ordinarily in the form of an order to show cause directed to the litigant, and the order must specify the potential sanctions.¹⁹ Although one law review article asserts that the litigant must be afforded an actual hearing,²⁰ the case cited²¹ is not clear on that point. Other cases use such phrasing as “opportunity to respond,”²² implying that a written response would be sufficient. The appellate courts do not hold hearings on their orders to show cause, and it appears unlikely that trial courts would be required to have prisoners transported for hearings in all such cases.

RULES OF COURT PROCEDURE

As discussed below, rules of court procedure enable judges to address certain improper litigation.

¹⁸ *Delgado v. Hearn*, 805 So. 2d 1017, 1018 (Fla. 2d DCA 2002) (citing *Spencer*). The Supreme Court’s Internal Operating Procedures, § II.M., reflect these principles:

Sanctioning Abusive Litigants. When the Court determines that a litigant has repeatedly filed pleadings that are meritless, frivolous, abusive, or inappropriate for review by the Supreme Court or has otherwise abused the process of the Court, the Court disposes of the pleadings before it, retains jurisdiction, and orders the litigant to show cause why the Court should not sanction the litigant for the abusive filings. If the litigant fails to show cause, the Court issues an opinion sanctioning the litigant. When the litigant being sanctioned is a prisoner as defined under section 944.279, Florida Statutes, and the Court finds that the proceedings are frivolous or malicious or otherwise meet the requirements of the statute, the Court directs the Clerk of Court to forward a certified copy of the opinion making the required findings to the appropriate institution or facility to consider initiating disciplinary proceedings against the prisoner pursuant to the rules of the Department of Corrections.

¹⁹ *Brinson v. State*, 215 So.3d 1260, 1261 (Fla. 5th DCA 2017) (reversing because the trial court's order to show cause specified the potential sanction as a bar against making further filings in the instant case where court ultimately barred all future filings in all cases).

²⁰ Lyndsey E. Siara & Andrea K. Holder, *The Pitfalls and Prospects of Managing the Vexing Litigant*, 39 Trial Advoc. (FDLA) 27, 30 n.44 (Oct. 2020).

²¹ *Harris v. Gattie*, 263 So. 3d 829 (Fla. 2d DCA 2019).

²² See, e.g., *Bolton*, 263 So. 3d at 748.

Motion to Strike Redundant, Immaterial, Impertinent, or Scandalous Matter

Florida Rule of Civil Procedure 1.140(f), Florida Probate Rule 5.025(d)(2), and Family Law Rule of Procedure 12.140(f) authorize a party to move to strike or the court to sua sponte strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. According to a treatise:

The striking of even parts of a pleading is generally considered drastic relief to be applied sparingly, with any doubts resolved in favor of the pleading, and subdivision (f) [of rule 1.140] undoubtedly receives relatively little use because of the difficulty in editing pleadings for relevance, particularly at relatively early stages of proceedings. The cases have described that which may appropriately be stricken for lack of relevance as allegations: (a) that are ‘wholly irrelevant’; or (b) that have neither any bearing on the equities nor any influence whatsoever on the ultimate determination of the action.²³

Further, notwithstanding the ability of a court to strike “scandalous” material from a pleading, even libelous statements made in court filings are “absolutely exempted from liability to an action for defamatory words, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry.”²⁴ A “broad standard” is applied in determining whether the statement has “some relation or connection” with the subject matter of the lawsuit.^{25, 26}

²³ Bruce J. Berman & Peter D. Webster, *Berman's Florida Civil Procedure* § 1.140:45. (footnotes omitted).

²⁴ *Gursky Ragan, P.A. v. Ass'n of Poinciana Vills., Inc.*, 314 So. 3d 594, 595 (Fla. 3d DCA 2020)(referring to this concept as the “absolute litigation privilege”); *see also Wright v. Yurko*, 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) (stating that, “Parties, witnesses and counsel are accorded absolute immunity as to civil liability with regard to what is said or written in the course of a lawsuit, providing the statements are relevant to the litigation. The reason for the rule is that although it may bar recovery for bona fide injuries, the chilling effect on free testimony and access to the courts if such suits were allowed would severely hamper our adversary system.”).

²⁵ *Gursky Ragan, P.A.*, 314 So. 3d at 595.

²⁶ The absolute litigation privilege does not protect the person who made the statement from an action for the separate tort of malicious prosecution if that tort would

Motion to Strike Sham Material

Florida Rule of Civil Procedure 1.150(a), Florida Probate Rule 5.025(d)(2), and Family Law Rule of Procedure 12.150(a) authorize a party to move to strike a pleading or part thereof that constitutes a sham. “A pleading is considered a sham only ‘when it is palpably or inherently false, and from the plain or conceded facts in the case, must have been known to the party interposing it to be untrue.’”²⁷ A hearing must be held on the motion to strike to determine whether there are any genuine issues to be tried.²⁸

Appellate Sanctions

Florida Rule of Appellate Procedure 9.410(a) authorizes an appellate court, with 10 days’ notice, to impose sanctions, on its own motion, for any violation of the appellate rules or for the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith. The sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys’ fees, or other sanctions.

FLORIDA STATUTES

The Florida Statutes authorize a variety of sanctions to address improper litigation by all or some types of litigants in various types of noncriminal cases. Most address one-time conduct, while one statute addresses repeated conduct. An overview of these statutes is presented below.

otherwise apply. *Wright*, 446 So. 2d at 1164-65 (Fla. 5th DCA 1984) (so holding and listing the elements of the tort).

²⁷ *Preudhomme v. Bailey*, 211 So. 3d 127, 131 (Fla. 4th DCA 2017) (citation and internal quotation marks omitted). One case distinguishes “sham” and “frivolous” as follows: “A ‘sham’ plea is one good on its face but absolutely false in fact. A ‘frivolous’ plea is one which on its face plainly sets up no defense, although it may be true in fact. One is as objectionable as the other in frustrating the orderly administration of justice.” *Rhea v. Hackney*, 157 So. 190, 194 (Fla. 1934).

²⁸ *Herranz v. Siam*, 2 So. 3d 1105, 1106 (Fla. 3d DCA 2009).

One-Time Conduct

Prevailing Party Attorney’s Fees and Damages for Delay – Civil Proceedings

Subject to specified exceptions,²⁹ section 57.105, Florida Statutes (2021), requires the court in a “civil proceeding or action,”³⁰ to award:

- prevailing party attorney’s fees, including prejudgment interest, on any claim or defense at any time in which the court, on its own or a party’s motion, finds that the losing party or attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts.^{31, 32}
- damages to a moving party who proves by a preponderance of the evidence that any action taken by the opposing party was taken primarily for the purpose of unreasonable delay.^{33, 34}

The statute includes a safe-harbor provision applicable to the types of improper conduct above: the movant must serve a motion on the opposite party

²⁹ § 57.105(3) and (8), Fla. Stat. (2021).

³⁰ Noncriminal categories other than “general civil” (i.e., other than categories governed by the rules of civil procedure) are subject to the statute, e.g., probate and family. See *Casey v. Jensen*, 189 So. 3d 924, 926 (Fla. 2d DCA 2016) (will contest); and *Williams v. Daniel*, 777 So. 2d 1179, 1181 (Fla. 5th DCA 2001) (dissolution of marriage).

³¹ § 57.105(1).

³² Section 57.105(1) also applies at the appellate level, by virtue of section 59.46, Florida Statutes (2021), which provides that “[i]n the absence of an expressed contrary intent, any provision of a statute or of a contract entered into after October 1, 1977, providing for the payment of attorney’s fees to the prevailing party shall be construed to include the payment of attorney’s fees to the prevailing party on appeal.” See also *Waddington v. Baptist Med. Ctr. of Beaches, Inc.*, 78 So. 3d 114, 117 (Fla. 1st DCA 2012) (stating “By now, it is well settled that appellate courts can award appellate attorney’s fees under [section 57.105(1)].”).

³³ § 57.105(2).

³⁴ Although an award under section 57.105(2), for “unreasonab[ly] delay[ing]” an appellate proceeding appears theoretically possible, staff could not locate a case in which an award was granted on that basis.

without filing it and allow 21 days for the matter to be corrected; only if the matter is uncorrected may the movant file the motion with the court.³⁵

To impose sanctions under this statute, the court must make specific findings of bad faith and recite the facts on which it bases its conclusions in the order awarding such fees.³⁶ The court’s findings “must be based upon substantial competent evidence presented to the court at the hearing on attorney’s fees or otherwise before the court and in the trial court record.”³⁷

The sanctions under section 57.105 are “supplemental to other sanctions or remedies available under law or under court rules.”³⁸

Indigent Prisoners – Noncriminal Claims

Prisoners are subject to a separate restriction-on-filing statute. Under section 57.085(6), Florida Statutes (2021), an appellate or trial court must review an indigent prisoner’s³⁹ noncriminal claim⁴⁰ to determine its legal sufficiency. The court must dismiss all or part of a claim that fails to state a claim for which relief may be granted, seeks monetary relief from a defendant who is immune from such relief, seeks relief for mental or emotional injury when there is no related allegation of physical injury, is frivolous or malicious,⁴¹ or reasonably appears to be intended to harass the defendant(s).⁴² Further, at any time in the proceeding, the court may dismiss an indigent prisoner’s action in whole or in part if the court finds that the claim of indigence was false or misleading, the prisoner provided false or misleading information regarding another proceeding in which the prisoner was a party,

³⁵ § 57.105(4).

³⁶ *Lanson v. Reid*, 314 So. 3d 385, 387 (Fla.3d DCA. 2020), *reh’g denied* (Dec. 17, 2020).

³⁷ *Weatherby Assocs., Inc. v. Ballack*, 783 So. 2d 1138, 1141 (Fla. 4th DCA 2001).

³⁸ § 57.105(6).

³⁹ That is, a prisoner determined to be indigent after following the procedures in subdivisions (2) through (5) of the statute.

⁴⁰ Section 57.085 does not apply to criminal or collateral criminal proceedings. § 57.085(10).

⁴¹ Section 57.085(9) lists factors that the court may consider when determining that an action is frivolous or malicious.

⁴² § 57.085(6).

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the prisoner failed to pay costs and fees despite having the ability to pay, or the action or portion thereof is frivolous or malicious.⁴³

Review of Noncriminal Prisoner Actions

Section 944.279(1), Florida Statutes (2021), provides that the court on its own motion or that of a party may “conduct an inquiry into whether any [noncriminal] action or appeal brought by a prisoner was brought in good faith.”⁴⁴ Specifically:

A prisoner who is found by a court to have brought a frivolous or malicious suit, action, claim, proceeding, or appeal in any court of this state or in any federal court, . . . or to have brought a frivolous or malicious collateral criminal proceeding, . . . or who knowingly or with reckless disregard for the truth brought false information or evidence before the court, is subject to disciplinary procedures pursuant to the rules of the Department of Corrections.⁴⁵

If the court makes such finding, it must forward its order to the appropriate facility for disciplinary proceedings pursuant to Department of Corrections rules.⁴⁶

Forfeiture of Gain Time

Section 944.28, Florida Statute (2021), provides that if a prisoner is “found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court,” all or any of his or her gain time is subject to forfeiture.⁴⁷ This statute applies prospectively as well: “A prisoner's right to earn gain-time during all or any part of the remainder of the sentence or sentences under

⁴³ § 57.085(8).

⁴⁴ Section 944.279(2) specifies that the section does not apply to criminal proceedings.

⁴⁵ § 944.279(1).

⁴⁶ *Id.* This statute references section 944.09, Florida Statutes (2021). That statute provides that the Department of Corrections has the authority to adopt rules on various subjects, including “[d]isciplinary procedures and punishment.” § 944.09(1)(c). The rule-based punishment for a court's determination under 944.279(1) is up to 15 days of disciplinary confinement and the loss of up to 30 days of gain time. Fla. Admin. Code R. 33-601.314, § 9-32 (referencing section 944.79(1), Fla. Stat. (2021)).

⁴⁷ § 944.28(2)(a).

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which he or she is imprisoned may be declared forfeited because of the seriousness of a single instance of misconduct or because of the seriousness of an accumulation of instances of misconduct.”⁴⁸

Sanctions in Specific Case Types

The statutes discussed above apply to broad categories of noncriminal cases. Numerous other statutes address mandatory or permissive sanctions for certain types of improper litigation in specific case types. For example, a court:

- may award a defendant in a False Claims Act case reasonable attorney fees and expenses if the defendant prevails and “the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.”⁴⁹
- must impose costs, including attorney's fees, in favor of the prevailing employer against an employee whistle-blower who files a “frivolous action in bad faith.”⁵⁰
- may require a party instituting an action under the Florida Deceptive and Unfair Trade Practices Act to post a bond to indemnify the defendant for “any damages [that may be] incurred, including reasonable attorney’s fees” if the court finds such bond necessary, based on a motion by the defendant alleging the action “is frivolous, without legal or factual merit, or brought for the purpose of harassment.”⁵¹

An overview of the statutes discussed above and nine similar statutes is set forth in Appendix D. Other statutes on this topic exist.

Repeated Conduct

Section 68.093, Florida Statutes (2021), known as the “Florida Vexatious Litigant Law,”⁵² was adopted by the Florida Legislature in 2000.⁵³ The law was

⁴⁸ § 944.28(2)(b).

⁴⁹ § 68.086(2). Fla. Stat. (2021).

⁵⁰ § 112.3187(9), Fla. Stat. (2021).

⁵¹ § 501.211(3), Fla. Stat. (2021).

⁵² § 68.093(1).

⁵³ Ch. 2000-314, § 1, Laws of Fla. The law has not been amended since its enactment.

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based on California’s vexatious litigation law,⁵⁴ originally enacted in 1963.⁵⁵ The Florida Senate staff analysis indicated that pro se litigants are often judgment proof; thus, section 57.105, providing for the recovery of attorney’s fees and costs, does not serve to deter such pro se litigants.⁵⁶

The law defines a “vexatious litigant” as a pro se litigant who in the immediately preceding five-year period has “commenced, prosecuted, or maintained” five or more civil actions in Florida state court,⁵⁷ all of which have been finally and adversely determined⁵⁸ against the litigant.⁵⁹ “Action” means any civil action governed by the Rules of Civil Procedure and the Probate Rules but excludes actions governed by the Family Law Rules and Small Claims Rules.⁶⁰ An action commenced by counsel who then withdraws is not counted as a pro se action for purposes of the statute.⁶¹ A “vexatious litigant” is also defined as “[a]ny person or entity previously found to be a vexatious litigant pursuant to this section.”⁶²

The statute is not self-executing; someone must take action against a “vexatious litigant” on or before his/her sixth or subsequent lawsuit. The statute delineates two remedies.

⁵⁴ Cal. Civ. Proc. Code §§ 391 *et seq.* (2021).

⁵⁵ Deborah L. Neveils, *Florida's Vexatious Litigant Law: An End to the Pro Se Litigant's Courtroom Capers?*, 25 *Nova L. Rev.* 343, 359, n.103 (2000) (citing audio tape of legislative hearing).

⁵⁶ Fla. S. Comm. on Judiciary, CS for SB 154 (1999) Staff Analysis and Economic Impact Statement at 1 (Nov. 3, 1999), *available at* https://flsenate.gov/Session/Bill/2000/154/Analyses/20000154SJU_SB0154.ju.pdf (last visited May 29, 2022).

⁵⁷ The statute applies to the trial courts only, not the appellate courts. *Pflaum v. Pflaum*, 974 So. 2d 579, 581 (Fla. 1st DCA 2008).

⁵⁸ An action is not finally and adversely determined if an appeal is pending. § 68.093(2)(d)1. (flush left language).

⁵⁹ § 68.093(2)(d)1.

⁶⁰ § 68.093(2)(a) and (d)1.

⁶¹ § 68.093(2)(d)1. (flush left language).

⁶² § 68.093(2)(d)2.

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First, “in any action pending in any court of this state, including actions governed by the Florida Small Claims Rules,”⁶³ a defendant may move the court to order the plaintiff to furnish “security,”⁶⁴ defined as “an undertaking by a vexatious litigant to ensure payment to a defendant in an amount reasonably sufficient to cover the defendant’s anticipated, reasonable expenses of litigation, including attorney’s fees and taxable costs.”⁶⁵ Such a motion must demonstrate that the plaintiff: (1) is a vexatious litigant; and (2) is not likely to prevail on the merits.⁶⁶ If, on hearing, the court “determines” the two elements in favor of the defendant, the court must order the plaintiff to furnish appropriate security at a time designated by the court.⁶⁷ If the plaintiff fails to timely provide security, the court must immediately dismiss the action with prejudice as to the moving defendant.⁶⁸

Second, the court, in addition to any other relief under the section, “may, on its own motion or on the motion of any party, enter a prefiling order prohibiting a vexatious litigant from commencing, pro se, any new action in the courts of that circuit without first obtaining leave of the administrative judge of that circuit.”⁶⁹

Disobedience of a prefiling order is punishable by contempt.⁷⁰ The proposed plaintiff may file an action only upon a showing that the proposed action “is meritorious and is not being filed for the purpose of delay or harassment.”⁷¹ The administrative judge of the circuit may condition the filing

⁶³ This wording (“any action in any court . . .”) appears to refer to actions governed by the civil and probate rules, per section 68.093(2)(a), and, exceptionally, actions governed by the small claims rules. In other words, failed small claims actions cannot be counted toward the five actions that would define a person as a vexatious litigant, but a defendant in small claims court may use the statute in a small claims action against a plaintiff who otherwise meets the definition of a “vexatious litigant.”

⁶⁴ § 68.093(3)(a).

⁶⁵ § 68.093(2)(d).

⁶⁶ § 68.093(3)(a).

⁶⁷ § 68.093(3)(b).

⁶⁸ § 68.093(3)(c).

⁶⁹ § 68.093(4).

⁷⁰ *Id.*

⁷¹ *Id.*

of the proposed action upon the furnishing of security.⁷² If the clerk “mistakenly permits a vexatious litigant to file an action pro se in contravention of a prefiling order,” any party may file and serve a notice stating that the plaintiff is a pro se vexatious litigant subject to a prefiling order.⁷³ The notice stays the proceeding.⁷⁴ If the plaintiff fails to file a motion for leave within 10 days after the filing of the notice, the court must dismiss the action with prejudice.⁷⁵

Trial court clerks must provide copies of prefiling orders to the clerk of the Supreme Court, who must maintain a registry of “all vexatious litigants.”⁷⁶ As of May 29, 2022, the registry had 92 total entries since 2003 for 78 individuals (some names appear multiple times). All 20 circuits are represented, and 36 of Florida's 67 counties (53.7%) are represented. Although these figures give the impression that the Vexatious Litigant Law is not being used to great effect, it may be the case that the circuits are not forwarding their prefiling orders to the clerk of the Supreme Court for entry into the registry. For example, a search of the Fourth Judicial Circuit's online administrative orders⁷⁷ discloses numerous orders against vexatious litigants whose names do not appear in the registry.

The relief defined in section 68.093 is cumulative to any relief available “under the laws of this state and the Florida Rules of Civil Procedure.”⁷⁸

Because section 68.093 infringes on a person's right of access to the courts, as otherwise guaranteed by article 1, section 21 of the Florida Constitution — a “fundamental right” — “courts will review the law under a strict scrutiny test and uphold it only when it is narrowly tailored to serve a

⁷² *Id.*

⁷³ § 68.093(5).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ § 68.093(6). The registry is posted by the clerk at this link: https://www.floridasupremecourt.org/content/download/823325/file/Vexatious%20Litigant%20List_Updated%2005-04-2022.xlsx (last visited May 29, 2022).

⁷⁷ The Fourth Judicial Circuit's administrative orders are available at this link: <https://www.duvalclerk.com/adminOrders/#/search/10/1/-2208970800000/1641396137908/frivolous/> (last visited May 29, 2022).

⁷⁸ § 68.093(7).

compelling state interest.”⁷⁹ “The compelling state interest behind section 68.093 is to prevent vexatious litigation from interfering with the business of the court system.”⁸⁰ “Narrowly tailored” means that the method for remedying the asserted malady must be strictly tailored to remedy the problem in the most effective way and must not restrict a person's rights more than absolutely necessary.”⁸¹ Florida courts have concluded that section 68.093 passes constitutional muster.⁸²

FINDINGS AND RECOMMENDATIONS

The workgroup’s findings and recommendations address four categories: 1) judicial, court staff, clerk, and attorney education, including best practices and, for trial court judges, the development of bench cards and template orders; 2) operational changes; 3) potential rule amendments; and 4) potential statutory amendments. These recommendations primarily focus on the trial courts given that the survey results from DCA judges and clerks did not reflect significant workload attributable to improper litigation or notable problems in addressing improper litigation in the appellate courts.

The workgroup notes that its foremost recommendation is education. Although the survey respondents and members of the public provided many suggestions for proposed amendments to rules of court procedure and statutes and other changes, the workgroup believes that some of the suggestions would be subject to a more informed review by the court system and its partners after implementation of the educational programming, best practices, and tools. Suggestions that the workgroup believe are ripe for consideration now are discussed below.

⁷⁹ *Smith v. Fisher*, 965 So. 2d 205, 208 (Fla. 4th DCA 2007) (citation and internal quotation marks omitted).

⁸⁰ *Id.* at 209.

⁸¹ *Id.* at 208–09 (citation and internal quotation marks omitted).

⁸² *See e.g., Id.* at 209–11 (“Significantly, the determination that a plaintiff is a vexatious litigant does not shut the courthouse door.”); *Brown v. Miami-Dade County*, 319 So. 3d 81 (Fla. 3d DCA 2021).

EDUCATION

FINDINGS

As discussed above,⁸³ a multitude of tools that may be used by judges, litigants, and attorneys to address improper litigation are provided pursuant to the inherent authority of the court, statutes, and rules. These tools, however, use different terminology, and they provide different sanctions or other remedies and different procedures to address the same or similar types of improper litigation. These differences result in a complex and frequently overlapping system for enforcement that varies greatly based on the litigant's status as pro se or represented, a prisoner, an indigent prisoner, an attorney, or other status; the case type; whether a statute exists to address the case type and circumstance or whether the court's inherent authority may be used; whether only a litigant may raise the issue or whether the court may sua sponte do so; the case law that has interpreted the statute or the court's inherent authority in the context at hand; and other matters.

For some of the more prominent tools (e.g., motions to strike, sanctions pursuant to five sections of the statutes, and the court's inherent authority under case law), trial court judges were asked in the survey⁸⁴ to evaluate the sufficiency of these tools to effectively address specified types of improper litigation. Their responses are summarized in a chart on page 12 of Appendix B. In multiple instances, 49.2% to 75% of the judges indicated having no opinion or having not used the tool (i.e., sections 57.085(6), 68.093, and 944.279, and inherent authority). Such results could indicate that the tools are not frequently used and that judicial education on these tools may be beneficial.

When responding to the survey questions, trial court judges indicated that:

- they are reluctant to grant motions to strike, impose attorney's fees and costs or damages under section 57.105, and use their inherent authority because their rulings will not be sustained on appeal.⁸⁵ As noted

⁸³ Section titled "Legal Landscape" at 10-22.

⁸⁴ Appendix B at 11-24.

⁸⁵ Appendix B at 13, 15, 16, 18-20, 22, and 24.

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above,⁸⁶ with respect to motions to strike, appellate courts regard such relief as drastic and subject to use in limited situations only. Similarly, as noted above,⁸⁷ the appellate courts generally regard the referenced sanctions under section 57.105 and the use of inherent authority as extreme, thus requiring a high degree of specificity in the court’s factual findings, notice, and an opportunity to be heard. Many judges noted that it takes an exceptional amount of judicial labor to conduct the hearings and draft the orders required to impose sanctions for improper litigation. Some judges suggested that the development of template orders to impose such sanctions could expedite the process and lower the potential for reversal.⁸⁸

- some trial court clerks continue to accept pro se filings from litigants who are subject to a court order prohibiting further pro se filings.⁸⁹ One member of the workgroup stated that her trial court clerk has indicated that filings made through the Florida Courts E-Filing Portal are automatically added to the court file and that a system needs to be developed to prevent this from happening when a court order prohibiting further pro se filings has been entered. This clerk also indicated that such court orders must expressly indicate that the pro se litigant is prohibited from filing pro se in the future because clerks are very mindful of their statutory duty⁹⁰ to store all papers and electronic filings with the related case file.

- self-represented litigants are not aware of the rules and statutes addressing improper litigation and attorneys do not understand how to use these rules and statutes and do not use them when they should.⁹¹

⁸⁶ Section titled “Rules of Court Procedure” at 12-14.

⁸⁷ Sections titled “Inherent Authority of the Court” at 10-12 and “Florida Statutes” at 14-22.

⁸⁸ Appendix B at 13 to 15, 17, 19, and 30.

⁸⁹ Appendix B at 22 and 24.

⁹⁰ See § 28.13, Fla. Stat. (2021) (providing that, “The clerk of the circuit court must maintain all papers and electronic filings in the clerk's office with the utmost care and security, storing them with related case files and affixing a stamp, which may be electronic, to each submission indicating the date and time that the submission was filed.”).

⁹¹ Appendix B at 13-15, 17, 18, and 29.

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Further, survey responses from the trial court clerks indicated that 4.2% of clerks do not have a formal process to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under section 57.085, and that 16.7% may not have such process.⁹² These survey responses also indicated that 25% do not have a process in place to receive prefiling orders from the court and to submit those orders to the clerk of the Supreme Court as required under section 68.093, and that 29.2% may not have a process to ensure submission to the clerk (discussed more fully below).⁹³

Finally, survey responses from trial court clerks and TCAs indicated that clerk and court staff are impacted by improper litigation as follows: 1) clerk staff must spend time reviewing, scanning, docketing, and redacting often lengthy improper filings and must assist such litigants, who are often argumentative, when they call, email, or visit the clerk's office; 2) court counsel and staff attorneys must sometimes review improper filings and provide advice on how to address them; 3) court administration staff must sometimes review such filings and respond; and 4) JAs must sometimes assist these litigants when they call, email, or visit the judge's office.⁹⁴

RECOMMENDATIONS

Taking the complex legal landscape and survey results together, the workgroup's primary recommendation in this report is to develop education and other training tools as described below.

- Educational programs for trial court judges should be developed to instruct on the multitude of tools in the laws and rules and provide best practices for use. Additionally, bench cards with checklists for the requirements and template orders to impose sanctions, under the statutory sections and the court's inherent authority discussed in this report, should be developed where appropriate. For sanctions that prohibit future pro se filing, the template orders should specify language expressly stating that the litigant may not file documents in the future unless signed by an attorney and that the clerk must reject any pro se documents in violation of the order and must remove from a court file any pro se documents that have been filed in violation of the order.

⁹² Appendix C at 11-12.

⁹³ Appendix C at 12-13.

⁹⁴ Appendix C at 9-10 and 16-17.

- Educational programs for court staff should be developed on best practices for addressing filings that constitute improper litigation and, where appropriate, interacting with individuals who file improper litigation.
- Educational programs for clerk staff should be developed to instruct on their statutory duties under sections 57.085 and 68.093 and on the necessity to reject filings from pro se litigants when court orders prohibiting such filings exist. Additionally, best practices for addressing filings that constitute improper litigation and for interacting with individuals who file improper litigation should be included in the programs.
- Educational programs for attorneys should be developed to instruct on the multitude of tools in the laws and rules and provide best practices for use.

The workgroup recommends that the Supreme Court refer the recommendations relating to the development of educational programs for: 1) judges and court staff to the Florida Courts Education Council; 2) trial court clerks to the Florida Court Clerks & Comptrollers (“FCCC”); and 3) attorneys to The Florida Bar.

OPERATIONAL CHANGES

FINDINGS

Florida Courts E-Filing Portal

DCA clerks indicated that filers of improper litigation in noncriminal cases frequently mark non-emergency filings as emergencies in an attempt to prioritize their filings ahead of others.⁹⁵ They also personally serve judges and court staff with their filings. These practices waste judicial, clerk, and JA time. The clerks suggested that: 1) information be added in the Florida Courts E-

⁹⁵ As of May 31, 2022, when filing in the Florida Courts E-Filing Portal, the portal asks the filer, “Do you wish to declare this filing an ‘Emergency Filing?’” A filer can then check a box indicating they wish to make such declaration. The portal may be accessed at this link: <https://www.myflcourtaccess.com/authority/> (last visited May 31, 2022).

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Filing Portal to explain to filers why filings should not be marked as emergencies except when appropriate; 2) the portal should be modified to require filers to provide a specific reason indicating why the filing is an emergency or to select from a pre-defined list of cases or reasons constituting an emergency; and 3) features be added to the portal to discourage personal service on judges and court staff.⁹⁶

Vexatious Litigant Law/Orders Prohibiting Future Pro Se Filings

Section 68.093, the Vexatious Litigant Law, requires trial court clerks to provide prefiling orders to the clerk of the Florida Supreme Court, who must maintain a registry of all vexatious litigants. As discussed above,⁹⁷ not all individuals, who have been declared a vexatious litigant by a court, are listed in the registry. Further, the responses to the trial court clerk surveys indicated that only 33.3% of the responding clerks had a process in place to receive prefiling orders from the court and to submit those orders to the clerk of the Supreme Court, whereas 29.2% of the respondents appeared to be aware of statutory requirement but did not specify whether the orders are sent to the clerk of the Supreme Court, and 25% indicated not having a process or did not appear to be aware of the requirement. Of the remaining clerks who responded, 4.2% said no such orders had been issued in the county, and 8.3% indicated that they would be creating a process for this issue.⁹⁸

Additionally, multiple judges indicated that some trial court clerks continue to accept pro se filings from litigants who are subject to a prefiling order under the Vexatious Litigant Law or to an order prohibiting further pro se filings under the court's inherent authority.⁹⁹

RECOMMENDATIONS

Florida Courts E-Filing Portal

The workgroup recommends that the Supreme Court make a referral to the Florida Courts E-Filing Authority to review the suggestions by the DCA clerks, as noted in the findings above, and to develop modifications for the portal that will facilitate the declaration of a filing as an emergency in

⁹⁶ Appendix C at 4 and 6-7.

⁹⁷ Section titled "Repeated Conduct" at 18-22.

⁹⁸ Appendix C at 8 and 12-13.

⁹⁹ Appendix B at 22 and 24.

appropriate circumstances only and discourage inappropriate personal service on judges and court staff.

Vexatious Litigant Law/Orders Prohibiting Future Pro Se Filings

The workgroup recommends that the Supreme Court make a referral to:

- the FCCC for the development of processes for all trial court clerks to ensure that prefiling orders entered pursuant to section 68.093 and other orders issued by the courts to prohibit future pro se filings are acted upon by the clerk and that filings by litigants subject to the orders are rejected or removed from the court file when improperly filed. Additionally, these processes should ensure that all prefiling orders received are submitted to the clerk of the Supreme Court.

- the Florida Courts Technology Commission (“FCTC”) for it to determine how clerk case maintenance systems and Court Application Processing Systems can be modified so that filings from pro se litigants who are prohibited by court order from further pro se filings are automatically flagged and rejected. Further, the FCTC should determine how to establish a statewide database searchable by judges, clerks, attorneys, and litigants that lists all pro se litigants subject to such court orders and, if feasible, that alerts courts and clerks in other jurisdictions when such litigant files in their jurisdiction. The database will assist in identifying pro se litigants in particular cases who may be subject to section 68.093. The database should be made accessible in the Florida Courts E-Filing Portal as well as on court and trial court clerk websites.

The FCCC and FCTC should work collaboratively with respect to these referrals.

POTENTIAL RULE AMENDMENTS

FINDINGS

In the survey responses, numerous trial court judges indicated that rules 1.140(f) and 1.150(a), rule 5.025(d)(2), and rules 12.140(f) and 12.150(a), addressing motions to strike redundant, immaterial, impertinent, scandalous, or sham matter from a pleading, do not provide consequences other than the removal of the matter from the pleading for purposes of the case. Moreover, the burden is on the aggrieved party to file a motion, schedule a hearing, and draft an order. These two issues incentivize bad behavior. Thus, amending the

rules to provide judges with the discretion to impose sanctions or other remedies when the court strikes such matter may be advisable.^{100, 101}

Some judges also noted that the terminology used in these rules is ambiguous and not understood by attorneys or self-represented litigants, and that parties sometimes improperly use these motions when what they are in fact filing is a response that disagrees with a pleading. Accordingly, suggestions were made to amend the rules to clarify the terminology and to specify parameters for use of the motions. Suggestions were also made to amend: 1) all the motion to strike rules to specify that the filing of such motion does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading; and 2) the rules addressing motions to strike redundant, immaterial, impertinent, or scandalous matter to also reference “harassing” matter.¹⁰²

RECOMMENDATIONS

The workgroup recommends that the Supreme Court refer the suggestions provided by the trial court judges, as outlined in the findings above, to the relevant bar rules committees for review and, if determined warranted, for the proposal of rule amendments to implement the suggestions.

¹⁰⁰ Appendix B at 13 and 15.

¹⁰¹ Note, however, that one judge stated in the survey response that, “[I]t is those litigants that might themselves be described as ‘vexatious’ that would be more inclined to use [rule] 1.150 motions to attack their opponent’s pleadings. Consequently, a rule change that incorporated a more severe remedy could invite additional vexatious litigation. Perhaps a shift away from technical rules of pleading and toward the goal of more rapidly identifying facts and evidence in all cases would be useful. A rule change requiring automatic initial discovery disclosures upon filing a claim, together with firm deadlines and severe consequences for failure to make discovery may be more useful.” *Id.* at 16. In pending Supreme Court Case No. SC22-122 at pages 94, 95, and 99-102 of the rules petition, the Workgroup on Improved Resolution of Civil Cases discusses its proposed rule amendments that establish initial disclosure requirements with deadlines and sanctions for failing to meet the deadlines.

¹⁰² *Id.* at 13-15.

POTENTIAL STATUTORY AMENDMENTS

FINDINGS

Stricken Matter – Public Records

Some trial court judges noted the fact that motions to strike do not remove sham (i.e., palpably or inherently false), scandalous, or other improper matter from the public record.¹⁰³ When such matter is stricken from the court record under rules 1.140(f), 1.150(a), 5.025(d)(2), 12.140(f), and 12.150(a), the improper matter can still be obtained through a public records request or through documents posted in online court dockets. As discussed above,¹⁰⁴ libelous statements, regardless of how false or malicious, that are made in court filings are absolutely exempted from liability for an action for defamation if the statements bear some relation to or connection with the subject of inquiry. Moreover, there are no sanctions for the litigant responsible for the stricken matter. Collectively, these factors fail to deter individuals from alleging improper matter that may result in defaming and harming a party or third party when the matter is obtained through a public records request.

Sealing a court record is not always a solution for such improper matter. Court records may be sealed for compelling reasons only.¹⁰⁵ These reasons are recognized in Florida Rule of General Practice and Judicial Administration 2.420(c)(9)(A), which exempts matter in a court record from the right of public access under article I, section 24(a) of the Florida Constitution if confidentiality is required for reasons that include, in relevant part, the avoidance of substantial injury to: 1) a party by disclosure of matters protected by a common-law or privacy right not generally inherent in the specific type of proceedings to be closed; or 2) innocent third parties. Regarding injury to a party, only those matters that are peripheral to the litigation may be subject to the exemption; thus, it does not appear that sham, scandalous, or other improper matter that is generally inherent in the litigation can be exempted.¹⁰⁶

¹⁰³ Appendix B at 14-15.

¹⁰⁴ Section titled “Rules of Court Procedure” at 12-14.

¹⁰⁵ *News-Press Publ'g Co. v. State*, 345 So.2d 865, 867 (Fla. 2d DCA 1977).

¹⁰⁶ *Gombert v. Gombert*, 727 So. 2d 355, 358 (Fla. 1st DCA 1999) (holding that matters relating to a child custody determination are “generally inherent” in a dissolution of marriage proceeding and, as such are not subject to the exemption relating to substantial injury to a party).

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Regarding the sealing of matter that would avoid substantial injury to third parties, case law appears to provide only two examples of circumstances that would justify the exemption; i.e., the protection of young witnesses from offensive testimony and the protection of children in a divorce.¹⁰⁷ It is unknown whether this exemption would serve as a basis to exempt stricken matter relating to a third party in all instances where the public disclosure of the stricken matter is likely to defame and harm the third party.

To exempt stricken matter in a court record from public disclosure in all instances where public disclosure would defame and harm a party or a third party, it appears that a public records exemption adopted by the Florida Legislature would be necessary. Since July 1, 1993, only the Legislature has the authority to create a new public records exemption.¹⁰⁸ Such exemption would require a two-thirds vote of each house of the Legislature.¹⁰⁹ If such new exemption were adopted, it would apply to court records pursuant to Rule of General Practice and Judicial Administration 2.420(c)(7) and (d)(1)(B) so long as subdivision (d)(1)(B) is amended by the Florida Supreme Court to cross-reference the statutory exemption.

Vexatious Litigant Law

Multiple judges and a trial court clerk indicated that the statute is too limited. Suggestions for amendments are discussed below.

- In the definition of “action” set forth in section 68.093(2)(a), include, rather than exclude, actions governed by the Florida Family Law Rules of Procedure and the Florida Small Claims Rules, and include adversely determined “actions” in other states and in the federal courts for purposes of the five or more finally and adversely determined actions required under paragraph (2)(d) of the statute. Some state statutes addressing vexatious litigants apply broadly to civil actions commenced, maintained, or pending in any state or federal court.¹¹⁰

¹⁰⁷ *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 118 (Fla.1988).

¹⁰⁸ Art. I, § 24(d), Fla. Const.

¹⁰⁹ Art. I, § 24(c), Fla. Const.

¹¹⁰ See, e.g., Cal. Civ. Proc. Code § 391(a); Haw. Rev. Stat. § 634J-1; and Tex. Civ. Prac. & Remedies Code § 11.001(2) (2021).

Workgroup on Sanctions for Vexatious and Sham Litigation – Final Report

- Lower the requirement in section 68.093(2)(d) for five or more finally and adversely determined actions. Idaho requires three “litigations”¹¹¹ that have been “finally determined adversely” in the preceding seven-year period for its vexatious litigant rule.¹¹² Iowa requires three or more unsuccessfully prosecuted actions¹¹³ in the preceding five-year period that have been deemed frivolous by a judge for the imposition of a security requirement that will pay all costs, including attorney’s fees, of the opposing party.¹¹⁴
- Expand the look-back period in section 68.093(2)(d) from five years to a lengthier period. In some states, the look-back period is seven years.^{115, 116}

RECOMMENDATIONS

The workgroup recommends that the Supreme Court provide the following potential statutory amendments, along with the workgroup’s findings above, to the presiding officers of the Florida Legislature for their review and consideration:

- Adoption by the Legislature of a public records exemption to exempt stricken matter from public disclosure that would defame and harm a party or third party.
- Expansion by the Legislature of the Vexatious Litigant Law to include actions governed by the Florida Family Law Rules of Procedure and the Florida Small Claims Rules; lower the requirement for five or more finally

¹¹¹ “Litigation” is defined to mean any civil action or proceeding, including appeals. Idaho Ct. Admin. R. 59(b). For purposes of declaring an individual a vexatious litigant, the rule excludes small claims cases from inclusion in the three litigations. Idaho Ct. Admin. R. 59(d).

¹¹² *Id.*

¹¹³ This term is not defined in the law or the rule. Iowa Code § 617.16 (2021); Iowa R. Civ. P. 1.413(2).

¹¹⁴ *Id.*

¹¹⁵ *See, e.g.*, Cal. Civ. Proc. Code § 391(b)(1); Haw. Rev. Stat. § 634J-1; Idaho Ct. Admin. R. 59(d)(1); Tex. Civ. Prac. & Remedies Code § 11.054(1); and Utah R. Civ. P. 83(a)(1)(A) (2021).

¹¹⁶ Appendix B at 21-22 and 24 and Appendix C at 14.

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and adversely determined actions; and expand the law’s look-back period.

Additionally, the workgroup recommends that the Supreme Court suggest to the presiding officers that the Legislature may wish to consider consolidation of the many statutes set forth in numerous chapters of law into a single chapter of law that addresses sanctions for improper litigation. Such consolidation would improve user awareness and ease of use and could ensure more consistent use of the terminology describing improper litigation as well as more consistent procedures and sanctions or other remedies.

Supreme Court of Florida

No. AOSC21-62

IN RE: WORKGROUP ON SANCTIONS FOR VEXATIOUS AND
 SHAM LITIGATION

ADMINISTRATIVE ORDER

WHEREAS, vexatious and sham litigation in noncriminal trial court cases may be described as legal proceedings that are unwarranted, frivolous, inherently false, without good cause, or filed solely to harass the opposing party; are burdensome and costly for the defendant; and abuse the judicial process and waste limited court resources; and

WHEREAS, Florida has established rule and statutory provisions that address sanctions or other remedial actions that a trial court may take in response to vexatious and sham litigation in noncriminal cases; and

WHEREAS, some of these rule and statutory provisions have been in place for many years; and

WHEREAS, a review of these provisions is necessary to ensure the ongoing effective and efficient administration of justice;

NOW THEREFORE, the Workgroup on Sanctions for Vexatious and Sham Litigation is hereby established for the purpose of recommending whether any enhancements to these sanctions or other remedial actions are warranted based on experience, changes in litigation practice, technology, or other factors that have occurred since enactment of those provisions. Specifically, the Workgroup shall perform the following tasks:

1. Review existing rule and statutory provisions relating to vexatious and sham litigation in noncriminal cases;
2. Survey judges, court staff, and clerks on the utilization of these provisions and on the identification of challenges they encounter in the use of the provisions; and
3. Recommend any rule or statutory amendments that may be warranted to more effectively address vexatious or sham litigation in noncriminal cases.

The Workgroup shall, by June 1, 2022, submit its findings and recommendations to the Chief Justice through the State Courts Administrator.

The following persons are appointed to serve on the Workgroup for a term that expires on June 30, 2022:

The Honorable Alice L. Blackwell
Circuit Court Judge, Ninth Judicial Circuit

The Honorable Jerald D. Bryant
Clerk of the Circuit Court, Okeechobee County

The Honorable Janeice T. Martin
County Court Judge, Collier County

The Honorable Anne-Leigh Gaylord Moe
Circuit Court Judge, Thirteenth Judicial Circuit

The Honorable Carol-Lisa Phillips
Circuit Court Judge, Seventeenth Judicial Circuit

The Honorable Monique Richardson
County Court Judge, Leon County

The Honorable Andrea Teves Smith
Appellate Court Judge, Second District Court of Appeal

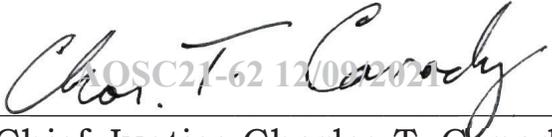
The Honorable Adam S. Tanenbaum
Appellate Court Judge, First District Court of Appeal

The Honorable Carol-Lisa Phillips shall serve as Chair to the Workgroup. Staff support shall be provided by the Office of the State Courts Administrator.

The Workgroup must be cognizant of the limitations on the resources available to support its efforts as it develops a work plan

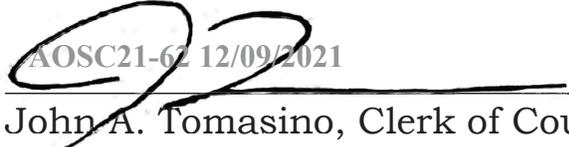
that will accomplish the important tasks assigned in this administrative order. With regard to meetings, the Workgroup should strive to utilize the most economical means appropriate to the type of work being accomplished.

DONE AND ORDERED at Tallahassee, Florida, on December 9, 2021.

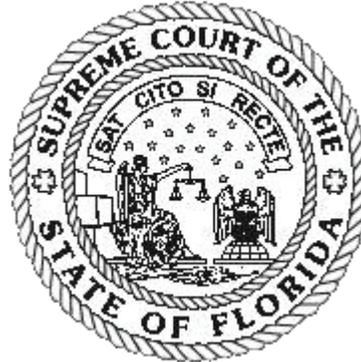


Chief Justice Charles T. Canady
AOSC21-62 12/09/2021

ATTEST:



John A. Tomasino, Clerk of Court
AOSC21-62 12/09/2021



OVERVIEW OF THE APPELLATE AND TRIAL JUDGE SURVEY RESULTS

INTRODUCTION

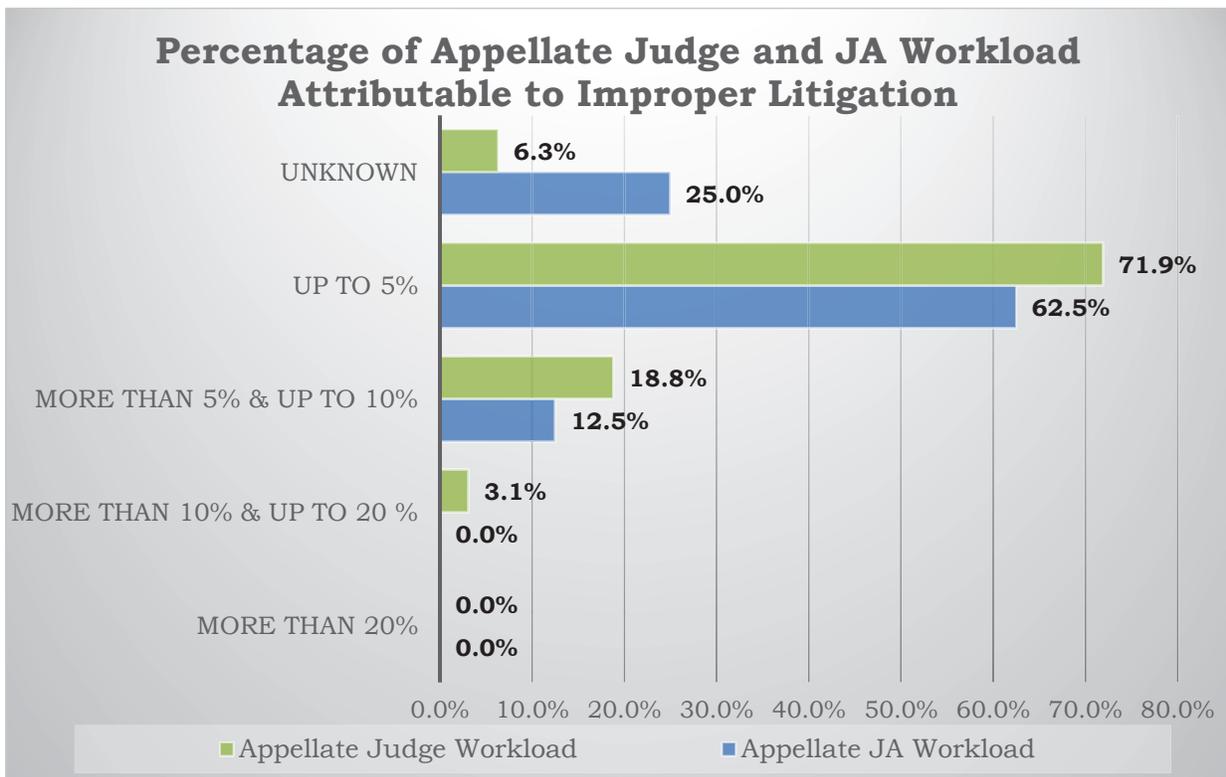
As used in this overview, the term “improper litigation” generally refers to frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation. An overview of the survey responses from appellate judges is presented at pages 1 to 9 and from trial judges is presented at pages 10 to 32.

APPELLATE JUDGE SURVEYS

Background

Responses were received from 32 appellate judges (50% of the 64 appellate judges statewide). All five of the district courts of appeal responded. Almost 35% of the respondents had served as an appellate judge for more than 10 years, while 40.6% had served as an appellate judge for more than three years and up to 10 years.

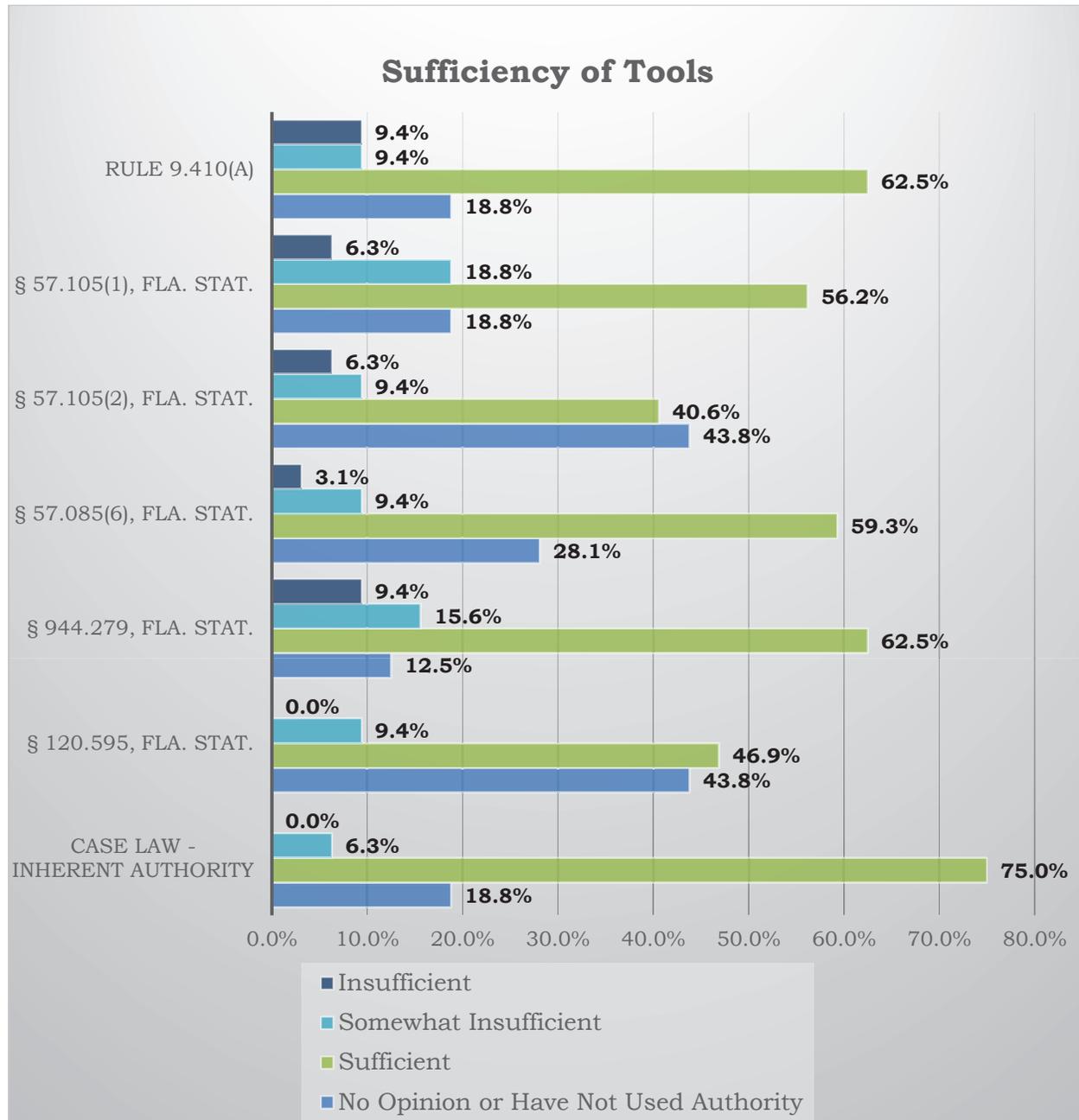
Appellate judges were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. The chart below illustrates the percentages estimated by appellate judges for themselves and their judicial assistants (“JAs”).



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Appellate judges were also asked to evaluate the sufficiency of certain tools in the rules of court, the statutes, and case law to effectively address specified types of improper litigation. Judges who indicated that a tool is “somewhat insufficient” or “insufficient” were then requested to explain their answer and to describe any changes recommended for the rules, statutes, or case law. The responses for each of these questions are presented at pages 3 through 6.

To provide an overall sense of the responses provided for the questions regarding the sufficiency of the tools, the following chart specifies the percentages of the 32 appellate judge respondents who selected a particular answer indicated in the legend at the bottom of the chart.



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Florida Rules of Court

The survey asked appellate judges to evaluate the sufficiency of attorney's fee awards and other sanctions pursuant to [Fla. R. App P. 9.410\(a\)](#) to effectively address the filing of any proceeding, motion, brief, or other document that is frivolous or in bad faith. Overall, 18.8% indicated "no opinion" or "I have not ruled upon such motion"; 62.5% indicated "sufficient"; 9.4% indicated "somewhat sufficient"; and 9.4% indicated "insufficient."

The six appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the rule:

- "Standard should be meritless, not 'frivolous' or in 'bad faith.'"
- "I would remove the phrase 'in bad faith' from Rule 9.410(a). The term elevates the standard for sanctions by suggesting that the appellate court has to make a finding as to the abusive filer's state of mind. Whether or not a filing is 'frivolous' under the rule should be based on the filing itself without consideration of the filer's state of mind."
- "Give courts express permission."
- "I would suggest studying and seeking input on a new, more forceful rule to address vexatious litigants."
- "Striking frivolous briefs and motions tends to facilitate and expedite the resolution of the appeal."
- "Indigent pro se litigants file [the] majority of frivolous pleadings and cannot pay sanctions."

Florida Statutes

[Section 57.105\(1\), Fla. Stat.](#)

The survey asked appellate judges to evaluate the sufficiency of prevailing party attorney's fee awards to effectively address an unsupported noncriminal claim or defense. Overall, 18.8% indicated "no opinion" or "I have not used this statute"; 56.2% indicated "sufficient"; 18.8% indicated "somewhat sufficient"; and 6.3% indicated "insufficient."

Six of the eight appellate judges who indicated "somewhat sufficient" or "insufficient" provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- "I would change statute to impose fees for 'meritless' claims."
- "Give courts express permission."

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- “The rule would seem to require a fact hearing which the trial courts are better equipped to handle. I believe that the power to award appellate sanctions should be by Rule, as suggested in my earlier answer.”
- “I have not studied the issue sufficiently to give further comment.”
- “It is occasionally sufficient. What changes may be made to ‘improve the statute’ depend on the case. I do not believe the problem is the statute.”
- “Yes it is.” [This judge selected “somewhat sufficient.”]

Section 57.105(2), Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of damage awards to effectively address actions taken primarily for the purpose of unreasonable delay. Overall, 43.8% indicated “no opinion” or “I have not used this statute”; 40.6% indicated “sufficient”; 9.4% indicated “somewhat sufficient”; and 6.3% indicated “insufficient.”

The five appellate judges who indicated “somewhat sufficient” or “insufficient” provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- Two judges indicated same as above.
- “Other sanctions may have merit depending on the facts.”
- “Give courts express permission.”
- “I have not studied the issue sufficiently to give further comment.”

Section 57.085(6), Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of dismissal to effectively address indigent prisoner noncriminal claims that are legally insufficient, frivolous, harassing, or similarly improper. Overall, 28.1% indicated “no opinion” or “I have not used this statute”; 59.3% indicated “sufficient”; 9.4% indicated “somewhat sufficient”; and 3.1% indicated “insufficient.”

Three of the four appellate judges who indicated “somewhat sufficient” or “insufficient” provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- “I have not studied the issue sufficient to give further comment.”
- “Review of claims and dismissal still takes too much time. Unless DOC enforces recommended sanctions, statutory remedy has no effect.”
- “Sometimes, there is no perfect rule that can balance a right to access to court with protecting the court and its resources from frivolous, harassing, repetitive complaints. But we should holistically seek to review and reform our rules, and,

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where necessary, seek statutory changes that balance the right of access to court, with stronger sanctions and bars on filing where such claims become repetitive and harassing. The relevant bar committees should study these issues, seek public comment, and propose rules that will also be subject to comment and refinement. To the extent statutory changes are needed, the relevant committees of the bar, or an ad hoc committee for this purpose, should study the issue. I do not feel comfortable proposing substantive changes to rules or statutes without a larger sample size than myself, and without the input of all stakeholders.”

Section 944.279, Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of referring prisoners to the Department of Corrections for disciplinary procedures as a means to effectively address prisoner noncriminal actions or appeals that are frivolous, malicious, or false. Overall, 12.5% indicated “no opinion” or “I have not used this statute”; 62.5% indicated “sufficient”; 15.6% indicated “somewhat sufficient”; and 9.4% indicated “insufficient.”

Seven of the eight appellate judges who indicated “somewhat sufficient” or “insufficient” provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- “[S]ee above.”
- “I have not studied the issue sufficient to give further comment.”
- “DOC does not appear to enforce any recommendations for discipline due to budgetary or other agency constraints.”
- “I assume the Department enforces the statute. My court issues many Spencer orders and bars many abusive prisoner litigants. We also frequently use this statute in addition to or instead of barring such litigants.”
- “It is simply one tool. Other tools need to be available, like prohibiting future filings unless signed by an attorney.”
- “Other tools can also be valuable.”
- “I’ve cited the statute but am not sure how much of a deterrent it is.”

Section 120.595, Fla. Stat.

The survey asked appellate judges to evaluate the sufficiency of awarding attorney’s fees and costs to the prevailing party in appeals of certain decisions under the Administrative Procedure Act as a means to address appeals that were frivolous, meritless, an abuse of the appellate process, or filed for other specified improper purposes. Overall, 43.8% indicated “no opinion” or “I have not used this statute”; 46.9% indicated “sufficient”; 9.4% indicated “somewhat sufficient”; and 0% indicated “insufficient.”

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The three appellate judges who indicated “somewhat sufficient” provided the following comments when asked to explain why they selected the answer and to describe any changes recommended to improve the statute:

- “One judge said see above.”
- “I have not studied the issue sufficient to give further comment.”
- “Other tools may also be valuable.”

Case Law

The survey asked appellate judges to evaluate the sufficiency of the court’s inherent authority under case law (*see, e.g., Ardis v. Pensacola State Coll., 128 So. 3d 260, 264 (Fla. 1st DCA 2013)*) to prohibit self-represented litigants (SRLs) from future pro se filings as a means to effectively address a SRL’s frivolous or excessive noncriminal filings that have interfered with the timely administration of justice. Overall, 18.8% indicated “no opinion” or “I have not used this authority”; 75% indicated “sufficient”; 6.3% indicated “somewhat sufficient”; and 0% indicated “insufficient.”

The two appellate judges who indicated “somewhat sufficient” provided the following comments when asked to explain why they selected the answer and to describe any changes recommended for holdings in specifically cited cases:

- “I am not suggesting the caselaw needs amending. I simply point out other tools need to be used as well, such as referrals to DOC for sanctions.”
- “It is sometimes difficult for the court to keep track of litigants who have been barred from pro se filings. I don't know how to improve it, but this is a common issue with these orders.”

Miscellaneous

Top Three Noncriminal Case Types

The survey asked appellate judges to identify up to three noncriminal case types in which improper litigation consumes a significant amount of judicial workload. The numbers in parentheses indicate the number of appellate judges who provided the answer. Case category descriptions indicated without a number were provided by staff.

- Civil cases
 - Foreclosures (5)
 - Direct civil appeals (1)
 - Employment discrimination (1)
 - Business litigation (1)
 - Landlord/tenant disputes (1)
 - “PIP Cases--its nonsensical that parties are engaged in jury trials, with expert witnesses, over disputes of several hundred dollars.” (1)

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- Pro se county court actions (1)
- Prisoner-related cases
 - Habeas (3)
 - 3.850 and 3.800 (2)
 - Criminal (1)
 - Prisoner Civil cases and writs like mandamus (1)
 - Petitions for writs of certiorari by prisoners (1)
- Domestic relations/family law cases
 - Pro se family law cases (2)
 - Dissolution (2)
 - Family law appeals (1)
 - Pro se domestic violence injunctions (1)
 - Pro se homeowners/condo association disputes (1)
- Writs generally
 - Extraordinary petitions (typically mandamus and prohibition) (1)
 - Prohibition (1)
 - Discovery petitions for certiorari (1)
 - “Pro se (and sometimes represented parties) cert petitions for prohibition” (1)
- Miscellaneous
 - Motions to review denials of stays (1)
 - Guardianship (1)

A judge who cited “foreclosures” stated, “I suspect some appeals are being filed because the lawyer is being paid a monthly fee as long as the debtor can remain in the house. I wonder if there is a way to access the attorney fees contracts in some of these cases.” This same judge after citing “criminal” stated, “Some incarcerated people file motions and appeals biannually for decades. I can certainly understand why in terms of the persons emotional needs. But most of these appeals beyond the first three are truly legally frivolous, although I treat them with respect.”

One judge stated, “None consumes a ‘significant’ amount of appellate judicial workload.”

One judge stated, “This is such a small percentage of our workload (Spencer Orders for criminal filings vastly outnumbering all other categories put together) that a listing of categories is not appropriate.”

Use of Other Tools

The survey asked appellate judges whether they use tools other than those discussed in the survey to address improper litigation in noncriminal cases. Thirty appellate judges indicated “no.” Two appellate judges indicated “yes” and provided the following comments:

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- “Orders to Show Cause and sanctions hearings for failure to comply with court orders. Admittedly, this process is used more for noncompliance than for frivolity.”
- “Requiring counsel to appear before the court for an in-person ‘visit.’”

Other Challenges

The survey asked appellate judges to describe challenges that they had not previously identified in the survey. Comments by the appellate judges who responded follow:

- Three judges indicated not applicable.
- Seven judges indicated none.
- “During times of normal caseload, the waste of judicial resources on frivolous matters.”
- “Mentioned above (failure to identify past barred litigants).”
- “Unprofessional and improper conduct by counsel in OA and motions for rehearing.”
- “Honestly, this issue does not consume too much bandwidth for me. Sure, it arises on occasion, but we deal with it, and then move on to the next case.”
- “I don't see a problem, in terms of volume of these cases, that creates a real problem.”
- “I have not experienced any challenges yet.”

The survey also asked appellate judges to identify solutions for the challenges they identified in the survey. The following comments were provided:

- Five judges indicated none.
- Three judges indicated not applicable.
- “I believe the framework we currently have is workable. This may be different on the trial level.”
- “I wish I knew.”
- “Legislation capping attorney's fees in PIP cases similar to Worker's Comp cases.”
- “Our court began using Spencer orders for frequent post-conviction filers, which has reduced repetitious appeals.”

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- “Perhaps Bar complaints that could allow confidential investigations into the attorney's fees provisions of foreclosure cases to determine if a lawyer is being paid to delay the foreclosure. Perhaps a Bar opinion stating that being paid for litigating for the sole purpose of delay is not proper. This is just a general suggestion.”

TRIAL JUDGE SURVEYS

Background

Responses were received from 120 of the 940 trial judges statewide (12.8% statewide response rate). Seventy-seven responses were from circuit judges (12.7% of the 606 circuit judges), and 43 were from county judges (12.9% of the 334 county judges). The responses came from 18 of the 20 judicial circuits.¹ Almost 40% of the respondents had served as a judge for more than 10 years, while 43% had served as a judge for more than three years and up to 10 years. With respect to division assignments:

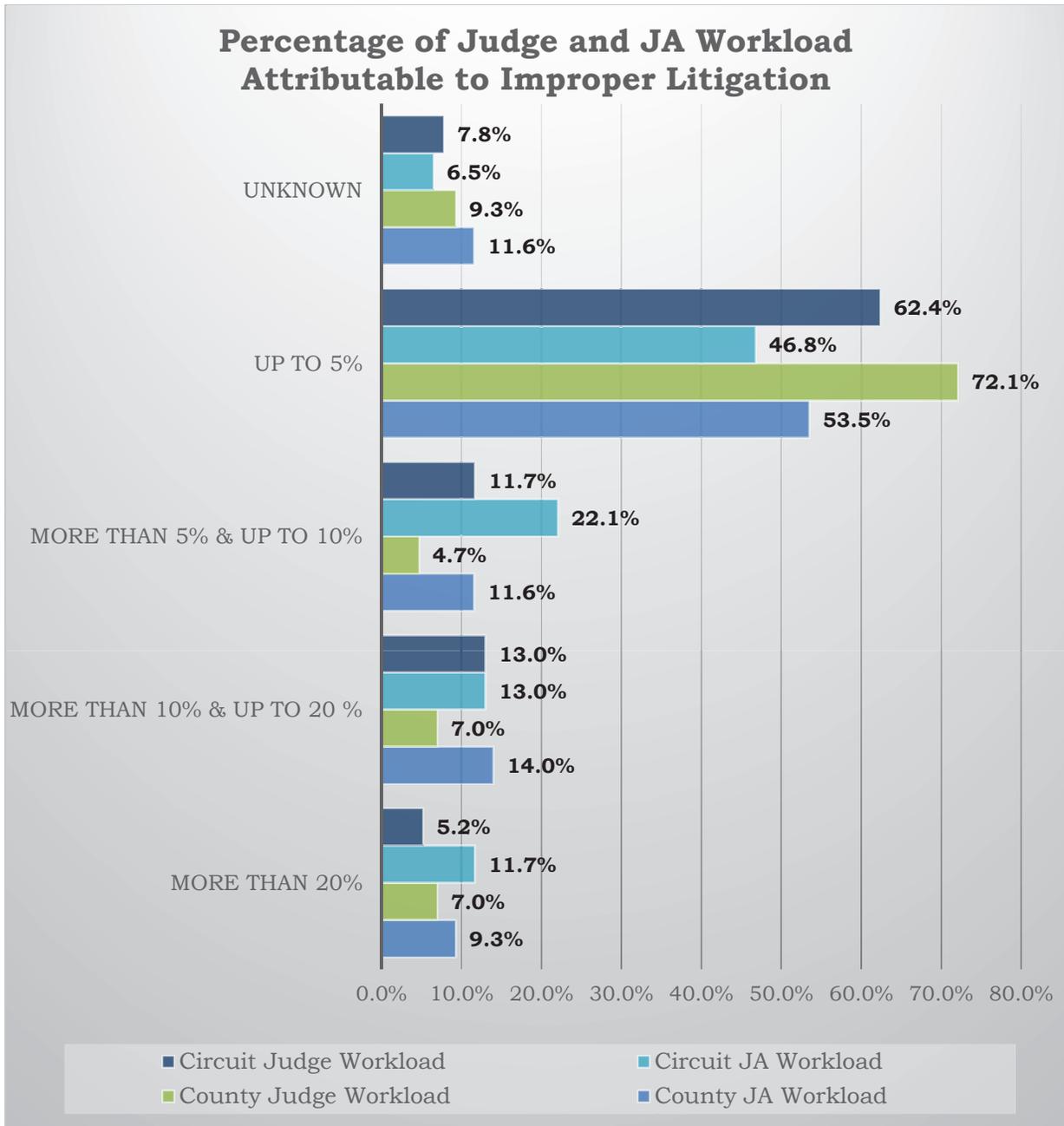
- 36.3% of circuit judges indicated that the circuit civil division is where the greatest percentage of their cases are assigned, while 32.5% selected domestic relations/family, 24.7% selected circuit criminal, and 6.5% selected probate/guardianship.
- 65% of county judges indicated that the county civil division is where the greatest percentage of their cases are assigned, while 25.6% selected county criminal, 4.7% selected circuit criminal, 2.3% selected circuit civil, and 2.3% selected probate/guardianship.

Trial judges were asked to estimate the percentage of workload attributable to improper litigation in noncriminal cases. The chart below illustrates the percentages estimated by circuit and county judges for themselves and their JAs.

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¹ The 2nd and 16th Judicial Circuits did not respond.

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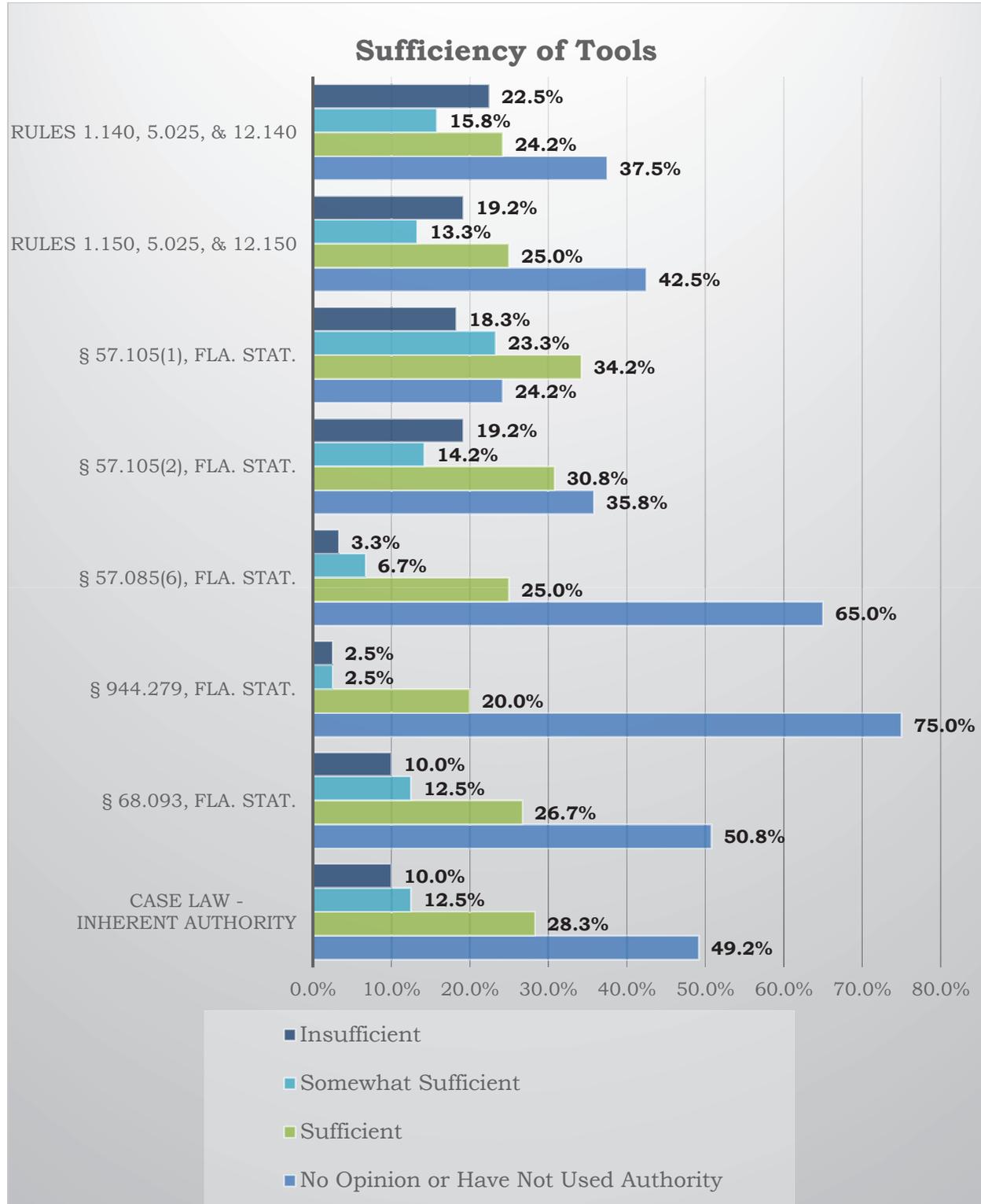


Trial judges were also asked to evaluate the sufficiency of certain tools in the rules of court, the statutes, and case law to effectively address specified types of improper litigation. Judges who indicated that a tool is “somewhat insufficient” or “insufficient” were then requested to explain their answer and to describe any changes recommended for the rules, statutes, or case law. The responses for each of these questions are presented at pages 12 through 23.

To provide an overall sense of the responses provided for the questions regarding the sufficiency of the tools, the following chart specifies the percentages of the 120 trial judges who selected a particular answer indicated in the legend at the bottom of the chart. As illustrated, in some cases, a low percentage of judges selected

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“somewhat insufficient” or “insufficient” as their response, while a large percentage selected “no opinion” or that they have not used the authority (e.g., §§ 57.085(6) and 944.279, Fla. Stat.). Such results may indicate that judicial education may be needed for that particular tool, rather than indicating the tool is in fact sufficient.



Florida Rules of Court

Motions to Strike Redundant, Immaterial, Impertinent, or Scandalous (RIIS) Matter

The survey asked trial judges to evaluate the sufficiency of motions to strike pursuant to [Fla. R. Civ. P. 1.140\(f\)](#), [Fla. Prob. R. 5.025\(d\)\(2\)](#), and [Fla. Fam. L.R.P. 12.140\(f\)](#), to effectively address RIIS matter in a pleading.

- Of circuit judges, 33.8% indicated “no opinion” or “I have not ruled upon such motion”; 26% indicated “sufficient”; 15.6% indicated “somewhat sufficient”; and 24.7% indicated “insufficient.”
- Of county judges, 44.2% indicated “no opinion” or “I have not ruled upon such motion”; 20.9% indicated “sufficient”; 16.3% indicated “somewhat sufficient”; and 18.6% indicated “insufficient.”

Overall, 46 of the 120 responding judges (38.3%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the rules. Forty-four commented as summarized or quoted below.

- The rules do not provide consequences. Only sanctions get attention. Requiring attorney’s fees or other sanctions may be helpful. The burden to file a motion, schedule a hearing, and draft an order is on the aggrieved party. This and a lack of consequences incentivizes bad behavior. (18)
 - “Perhaps it should be easier to utilize 57.105 in these instances. With possible sanctions against both the attorney and the client, it may act as a deterrent to the filings.” (1)
- RIIS matter often appears in domestic violence and family cases and in pleadings filed by self-represented litigants (SRLs). While SRLs are often the sources of such matter, aggrieved SRLs do not know to use these motions. (11)
 - “Too often in family law, we have pro se parties that don't know about this rule. I have spent hours dealing with pleadings that are simply harassing and holding unnecessary hearings on these pleadings.” (1)
 - SRLs whose pleadings are struck usually become upset with the court and accuse “the court of being bias and helping the other side. This can make it difficult in moving forward.” (1)
- Judges are reluctant to grant these motions due to the potential for reversal on appeal. “[M]any appellate decisions reverse sanctions as being too harsh or inappropriate.” “Although the rules allow it, striking pleadings is a last resort according to the case law.” (7)
 - Trial judges are reluctant to grant these motions because of election consequences. (1)
- These motions require too much judicial time due to the frequent need for the judge to have to parse out RIIS matter because the allegation in the motion to

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strike is bare bones or the pleading is large and primarily legitimate. The judicial labor required outweighs its practical value. (6)

- Due the generous case law, vexatious litigants get many chances to amend their often lengthy and incoherent pleadings; thus, requiring the court and opposing counsel to expend a great deal of time trying to make “heads or tails” of the pleading. (1)
- The RIIS terminology is ambiguous. (4)
 - Attorneys do not know what “impertinent and scandalous” means. (1)
 - Any attorney unhappy with an allegation can claim it is “immaterial.” The rule should clearly specify “that filing a motion to strike ... does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading.” (1)
 - “Harassing” should be added to the list. (1)
- Judges should have the ability to sua sponte strike pleadings that violate the RIIS standard. (2) [Note, however, that these rules allow the court to strike RIIS matter on its own.]
- The matter stricken remains in the court file. Clerks will not remove as it is a public record. It should be sealed to “alleviate the damage.” (2)
- The cases should be dismissed. (2)
 - But this would not be upheld on appeal. (1)
 - Filers should be reported to the State Attorney’s Office. (1)
- These motions should be required to be verified. (1)
- Family law cases should be added to the vexatious litigant statute (1) as well as small claims cases (1).
- Additional judicial training would help. (1)

Motions to Strike Sham (i.e., palpably or inherently false) Matter

The survey asked trial judges to evaluate the sufficiency of motions to strike pursuant to [Fla. R. Civ. P. 1.150](#), [Fla. Prob. R. 5.025\(d\)\(2\)](#), and [Fla. Fam. L.R.P. 12.150](#), to effectively address sham material in a pleading.

- Of circuit judges, 40.3% indicated “no opinion” or “I have not ruled upon such motion”; 26% indicated “sufficient”; 10.4% indicated “somewhat sufficient”; and 23.4% indicated “insufficient.”
- Of county judges, 46.5% indicated “no opinion” or “I have not ruled upon such motion”; 23.2% indicated “sufficient”; 18.6% indicated “somewhat sufficient”; and 11.6% indicated “insufficient.”

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Overall, 39 of the 120 responding judges (32.5%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the rules. Thirty-seven of the 39 judges provided comments. Of the 37, six indicated that their comments for this question are the same as those they made regarding motions to strike RIIS matter. The following summarizes or quotes comments made by the other 31 judges.

- As with motions to strike RIIS matter, the following issues were cited:
 - A lack of consequences (11)
 - Reversal on appeal (2)
 - The need to remove stricken matter from the public record (2)
- The “sham” terminology needs a clear definition using 21st century language that clarifies the parameters. Parties often use these motions when what they are actually doing is filing a response that disagrees with a motion. (6)
 - The rules should clearly specify “that filing a motion to strike ... does not constitute the filing of a response to the pleading otherwise required by the rules, unless the party is in good faith filing a motion to strike the entire pleading.” (1)
 - “[I]t is rare for an allegation to be proven to be blatantly false. Usually it's a ‘he said/she said’ situation and I have to make a credibility determination.” (1)
- These motions are rarely used as (5):
 - they require the movant to undertake time and expense to prove the pleading is indisputably false and that the falsity was known to the pleader.; (1)
 - it is more efficient to seek summary judgment in almost all cases; and (2)
 - SRLs do not know about them. (3)
- These motions require significant judicial time and cause delay due to evidentiary hearings and extensive discovery often being required and other reasons listed below. (3)
 - “[H]earing the motion should be optional. Too many parties make these motions under circumstances that double the work when pushing to trial would reveal the same sham nature of the claim and allow for sanctions at that point. Judges need discretion to handle misconduct without required additional hearings that may not benefit and largely duplicate work.” (1)
 - “Many of the vexatious litigants just file and file and file cases. They seldom get them served but we still have to case manage them, set them for hearings, etc. If they are served, they often face Motions to Dismiss and Motions to Strike under 1.150. If I grant both motions, they are often allowed to amend, and another complaint is often filed with similar deficiencies as the first complaint and another hearing is needed and another Motion to Dismiss and/or Strike is filed and so it goes. . . .” (1)

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- “In any response to a motion under 1.150, party who filed the sham must provide record evidence, sworn affidavit, etc. to evidence good faith basis within 5 days. If not filed, all counts based on the allegation are dismissed with prejudice. If ... discovery [is needed] to provide evidence, must list specific discovery needed to be taken and take same within 30 days. In the meantime, pleading stricken with reservation on sanctions. They should have info before they plead. Maybe also create a pre-motion safe harbor and allow party to withdraw the assertions within 5 days of notice of falsity--not sure that's a good idea, because once it's out there.... and make clear pro se subject to same sanctions.” (1)
- “[I]t is those litigants that might themselves be described as ‘vexatious’ that would be more inclined to use 1.150 motions to attack their opponent’s pleadings. Consequently, a rule change that incorporated a more severe remedy could invite additional vexatious litigation. Perhaps a shift away from technical rules of pleading and toward the goal of more rapidly identifying facts and evidence in all cases would be useful. A rule change requiring automatic initial discovery disclosures upon filing a claim, together with firm deadlines and severe consequences for failure to make discovery may be more useful.” (1)
- Additional judicial training would help. (1)

Florida Statutes

Section 57.105(1), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of prevailing party attorney’s fee awards to effectively address an unsupported noncriminal claim or defense.

- Of circuit judges, 22.1% indicated “no opinion” or “I have not used this statute”; 28.6% indicated “sufficient”; 29.9% indicated “somewhat sufficient”; and 19.5% indicated “insufficient.”
- Of county judges, 27.9% indicated “no opinion” or “I have not used this statute motion”; 44.2% indicated “sufficient”; 11.6% indicated “somewhat sufficient”; and 16.3% indicated “insufficient.”

Overall, 50 of the 120 responding judges (41.7%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended to improve the statute. Of the 50 judges, 48 provided comments, which are summarized or quoted below.

- Judges are reluctant to grant these motions due to the:
 - Potential for being reversed on appeal. (13)
 - “The appeals courts have gutted the statute ... too hard to use.” (1)
 - “Too liberal standards as to what may be ‘unsupported.’” (1)
 - “Bad behavior in family cases often does not arise to the level necessary to sanction under 57.105.” (1)

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- “A very high burden of proof, as it currently stands. Little discretion for the trial court.” (1)
- “Anyone can claim the filing was made in good faith ... to avoid the rule.” (1)
- “Unethical or seasoned attys know how to skirt the rule.” (1)
- “Too cumbersome.” The required order takes longer than necessary considering busy court dockets. Delays cases and results in more litigation. Takes time away from resolving cases. (8)
- Litigants, primarily SRLs, are unconcerned about financial penalties. They go unpaid. There’s no deterrent effect. (9)
 - “Sanctions should be at the discretion of the court and entitlement to Atty fees should be by statute or the American rule.” (1)
 - “In foreclosure cases, a defendant filing frivolous motions does not care about a money judgment against them.” (1)
- “The criteria to awarding fees is sometimes difficult to demonstrate clearly.” The exceptions make it confusing and can lead to additional litigation. (5)
 - Violations of the statute need to be clearly defined. (1)
 - “Enforcement of attorney's fees should be mandatory.” (1)
- Motions are rarely used. (3)
 - SRLs do not know about the statute. (1)
 - Complicated and attorneys do not understand it. (1)
 - “Seldom sought and when it is, it turns into satellite litigation--and cannot be raised during the course of the case for fear of creating a required attorney client privilege waiver or a conflict.” (1)
- “[D]ifficult in county civil to use this tool as a judge without the party moving for it and then actually having a hearing for the court to make a ruling without the parties resolving it before hearing.” (1)
- Collection of credit card debt is careless. “I have plaintiffs not showing up for court then refile and still not showing up for court so that the defendants are being required to come to the courthouse multiple times for no reason. The depth of this problem is nothing that I have seen before; plaintiffs are filing defaults on cases that are in trial posture. I am being generous in hoping that it was a well-intended error. The plaintiffs do not follow trial orders by filing paperwork ahead of time so a pro se defendant alleging fraud knows what they will face in trial. I could go on and on.” (1)
- “57.105 isn't very helpful for two self-represented individuals - these are the cases where the game-playing and manipulation are the worst. Motions to Strike are effective IF people know to file them. I see many instances where attorneys could, and should, file such motions but they do not.” (1)

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- Courts should be able to use the rule sua sponte. (1) [Note, however, that subsection (1) of § 57.105, Fla. Stat. can be used on “court’s initiative.”]

Section 57.105(2), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of damage awards to effectively address actions taken primarily for the purpose of unreasonable delay.

- Of circuit judges, 33.8% indicated “no opinion” or “I have not used this statute”; 28.6% indicated “sufficient”; 18.2% indicated “somewhat sufficient”; and 19.5% indicated “insufficient.”
- Of county judges, 39.6% indicated “no opinion” or “I have not used this statute”; 34.9% indicated “sufficient”; 7% indicated “somewhat sufficient”; and 18.6% indicated “insufficient.”

Overall, 40 of the 120 responding judges (33.3%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 40 judges, 37 provided comments. Of the 37, nine judges said to see their comments regarding § 57.105(2), Fla. Stat. The following summarizes or quotes comments made by the other 28 judges.

- The subsection is rarely used. (7)
 - “I don't know what kind of evidence a judge would see that would implicate [delay]. It would just turn into a mud fest.” (1)
 - “I think the delay gets gray for the use of 57.105. It's not really an issue for family law because of the fees provisions under Fla Stat 61.” (1)
 - SRLs do not know about the rule. (1)
 - Burden of proof is on the aggrieved party. (1)
- Appellate courts will not sustain. (5)
 - The statute is fine. The problem is the appellate courts. (2)
- It is an insufficient deterrent overall and is no deterrent to an indigent SRL. (4)
 - Sanctions other than money are needed, e.g., limiting pleadings where after a court warning to the litigant, the court can review and summarily deny future motions that appear to be for purposes of undue delay. (1)
- The subsection is ambiguous. (3)
 - It “should set forth factors the trial court must consider and which provide direction to all to limit these instances but, to also provide guidance to the trial court.” (1)
 - “Attorney's fees should be mandatory.” (1)
- Requires too much judicial labor. (2)
- Courts need authority to sua sponte use this subsection. (2)

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- “Litigants should not be allowed to walk away from improper conduct by dismissing the case.” (1)
- “This rule is of little use if there is already prevailing party attorney fee entitlement by contract or statute. Perhaps specifying further what "reasonable expenses" are might help. Is it limited to taxable costs? What about travel costs, a client's lost wages for having to appear at depo, etc.?” (1)
- “[T]hey always come up with excuses for delay and the other side can ... blame the delay on the other party. Ethical responsibilities and professionalism would go a long way - it is mostly attys because we control the pro se cases.” (1)

Section 57.085(6), Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of dismissal to effectively address indigent prisoner noncriminal claims that are legally insufficient, frivolous, harassing, or similarly improper.

- Of circuit judges, 66.3% indicated “no opinion” or “I have not used this statute”; 22.1% indicated “sufficient”; 7.8% indicated “somewhat sufficient”; and 3.9% indicated “insufficient.”
- Of county judges, 62.8% indicated “no opinion” or “I have not used this statute”; 30.2% indicated “sufficient”; 4.7% indicated “somewhat sufficient”; and 2.3% indicated “insufficient.”

Overall, 12 of the 120 responding judges (10%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 12 judges, 10 provided comments, which are summarized or quoted below.

- Need other penalties (e.g., take away gain time or “[t]hree strikes and you are out”). (5)
 - “It seems as if they continually re-file. It would be nice to have guidelines to be able to dismiss with prejudice easier.” (1)
 - “[N]o real civil penalties to someone in prison other than DL revocation, and even that would only work some time.” (1)
- “Most vexatious litigants I've encountered are not in prison.” “Not applicable to non-prisoners.” (2)
- “[A]ppeal court issues.” (1)
- “Not sure what additional changes could effectively address such claims.” (1)
- “It still takes time to write the orders that dismiss the claim. Template orders can be helpful and allows the judge to write in specific findings of fact. This may expedite matters.” (1)

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- “Tends to generate additional litigation, cost and expense; born by innocent party.” (1)
- “Not really because typically they do not care they simply refile.” (1)

Section 944.279, Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of referring prisoners to the Department of Corrections for disciplinary procedures as a means to effectively address prisoner noncriminal actions or appeals that are frivolous, malicious, or false.

- Of circuit judges, 75.4% indicated “no opinion” or “I have not used this statute”; 16.9% indicated “sufficient”; 3.9% indicated “somewhat sufficient”; and 3.9% indicated “insufficient.”
- Of county judges, 74.4% indicated “no opinion” or “I have not used this statute”; 25.6% indicated “sufficient”; 0% indicated “somewhat sufficient”; and 0% indicated “insufficient.”

Overall, only six circuit judges out of the 120 responding judges (5%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the six judges, five provided comments, which are quoted below.

- “Very little happens with the referral. If the inmate is serving a lengthy sentence, DOC sanctions are impotent.” (1)
- “No confidence in the department taking sufficient action to punish or deter the frivolous and time-wasting actions of the prisoner.” (1)
- “[A]ppeal court [will] not sustain.” (1)
- “[I] have used this to deter defendants from proceeding with frivolous 3.850 hearings after one has been granted. They sometimes waive a hearing to avoid losing gain time.” (1)
- “Never used this but can only imagine that a life prisoner would not care. Not sure how DOC enforces this or what the discipline is. Might want to set parameters to require DOC to enforce with certain minimum disciplinary tools (i.e. 1st offense 30 days hole, 2nd 60 days, etc) or take away phone and other privileges - a chart for offenses so it is consistent and known in advance.” (1)

Section 68.093, Fla. Stat.

The survey asked trial judges to evaluate the sufficiency of imposing security requirements and orders prohibiting future pro se filings as a means to effectively address “vexatious litigants” as defined in the statute.

- Of circuit judges, 44.2% indicated “no opinion” or “I have not used this statute”; 24.7% indicated “sufficient”; 19.5% indicated “somewhat sufficient”; and 11.7% indicated “insufficient.”

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- Of county judges, 62.8% indicated “no opinion” or “I have not used this statute”; 30.2% indicated “sufficient”; 0% indicated “somewhat sufficient”; and 7% indicated “insufficient.”

Overall, 27 judges out of the 120 responding judges (22.5%) selected “insufficient” or “somewhat sufficient.” These judges were asked to explain why they selected the answer and to describe any changes recommended for the statute. Of the 27 judges, 26 provided comments, which are summarized or quoted below.

- The statute is too limited. (9)
 - The types of cases addressed should be broadened. Small claims (3) and family cases should be included. (3)
 - “Saying ‘5 or more actions in 5 years’ is a meaningless ... in family cases. The problem of vexatiousness in family cases arises not by the number of actions, but rather the number of post judgment filings in an action. Each post judgment supplemental petition (or in some cases post-judgment motions) become actions in and of themselves. Vexatious should be a matter of the number of filings, the volume of the filings, and the merit of the filings. A method to define a vexatious family litigant could be, ‘5 or more filings within a five-year span that have been deemed to be either harassing, redundant, immaterial, or without merit.’ There is also a significant problem of vexatious litigation prior to final judgment. We see in family divisions some litigants filing countless motions for contempt, emergency motions, excessive motions for rehearing, and even various "complaints" against the judiciary. There should be a standard to which we as judges can equally hold all litigants in scenarios where the litigation process is abused. Appellate caselaw is not very helpful in giving trial courts bright line standards on when we can ‘pull the plug’ on a litigant filing these types of motions. Again, it may be helpful to set a standard such as ‘When a litigant files or more motions during the course of litigation which are deemed by the court to be either harassing, redundant, immaterial, or without merit...’” (1)
 - The number of cases required should be less than five or should not require a final adverse ruling. A determination that the person was a vexatious litigant in another state should be recognizable in Florida. “When I was in a civil division, there was a [SRL] who filed MANY more civil cases than 5, but he voluntarily dismissed most of them before a final adverse ruling He had already been found to be a vexatious litigant ... in Ohio. The cases that he filed in my division took time to review, and I had hearings on some of them (and had to draft orders). My JA's time was wasted with numerous phone calls, emails, and filings from this litigant and the people the litigant sued (who were also pro se). This litigant had filed other pro se cases that were pending before at least 3 other judges in my county ... so their time was wasted too.” (1)
 - “‘Finally and adversely determined’ ... takes a long time to reach and frivolous litigation can go on for a long time (amended complaint after amended complaint until the filer realizes that the next dismissal will be

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- ‘with prejudice’ and then they will just dismiss it[]). All the while, the Defendant has spent time and money and endured the stress of being harassed, often without consequence. I realize the importance of providing access to the courts and am mindful that we must not prevent legitimate suits from proceeding; on the other hand, we need to crack down on the increase in harassing/frivolous filings that are being presented which tax both the other parties and our court system.” (1)
- “[I] like requiring a member of the Florida bar to sign off as well. However, we have a problem with sovereign citizens and vexatious litigators in civil and family courts more now than anywhere..... so the word defendant needs to be replaced with a party or judge on his/her own motion.” (1)
 - “As stated above, 3 strikes and you're done.” (1)
 - Does not prevent refiling. (6)
 - Orders are not “followed by the clerk’s office and therefore frivolous motions continue to be received by the court.” (1)
 - “My Clerk will accept anything from anybody and file it wherever the case style ... says it should be filed.” (1)
 - “[I]t is grossly insufficient because the Clerk's office still accepts the filings. So it becomes very burdensome on the judges and their staff to manage or ignore the filings and multiple emails and phone calls from [SRLs] because they believe their filings were appropriately received and are pending. The statute would better serve the Courts if the filings were flagged and rejected by the Clerk's office so there's no misunderstanding on the part of the litigants that their filings will not be accepted (and consequently are not pending) unless they comply with the Court's last order on vexatious litigation/filings.” (1)
 - “[T]he better practice would be to have a system where pro se litigants must have their filings reviewed and approved prior to filing to ensure they meet certain basic requirements to help avoid vexatious filings.” (1)
 - Clear and meaningful sanctions for continued conduct are needed. (2)
 - However, a judge stated, “If this type of order is issued, and the party violates the order, then the Court will issue an order to show cause as to why the Court should not find the party in contempt; and if a contempt hearing proceeds then the threat of sanctions, including the possibility of incarceration is a fairly strong deterrent to such filings.” (1)
 - These litigants waste significant amounts of the court’s time. (5)
 - “[P]ro-se plaintiffs should not be allowed to claim indigent status and be able to file frivolous lawsuits. If they had to pay filing fees and service fees they would not do it.” (1)
 - “Concerns of reversal by the appellate court ‘chill’ the use of such actions by the trial court.” (1)

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- Elements established in case law to use when imposing the statute's sanctions should be included in the statute. (1)
- "This statute could be sufficient if [I could] search, on a statewide basis, other cases that the alleged vexatious litigant has filed in the time frame noted in the statute. Without a way to check that, I'm relying on the other side or the vexatious litigant to discovery and/or offer up that information." (1)

Case Law

The survey asked trial judges to evaluate the sufficiency of the court's inherent authority under case law (see, e.g., [*Graham v. Graham*, 898 So. 2d 210, 211 \(Fla. 2d DCA 2005\)](#)) to prohibit SRLs from future pro se filings as a means to effectively address a SRL's frivolous or excessive noncriminal filings that have interfered with the timely administration of justice.

- Of circuit judges, 44.2% indicated "no opinion" or "I have not used this authority"; 27.3% indicated "sufficient"; 16.9% indicated "somewhat sufficient"; and 11.7% indicated "insufficient."
- Of county judges, 58.2% indicated "no opinion" or "I have not used this authority"; 30.2% indicated "sufficient"; 4.7% indicated "somewhat sufficient"; and 7% indicated "insufficient."

Overall, 27 trial judges out of the 120 responding judges (22.5%) selected "insufficient" or "somewhat sufficient." These judges were asked to explain why they selected the answer and to describe any changes recommended for holdings in specifically cited cases. Of the 27 judges, three said to see their comments above. The following summarizes or quotes comments made by the other 24 judges.

- This authority should be specified in a rule or statute. (5)
 - The case cited in the survey "is devoid of facts and is not very helpful as a bright-line case." (1)
 - "To provide clarity for courts and litigants, it would be helpful if the holdings in cases like *Graham*; *Golden v. Buss*, 60 So. 3d 461 (Fla. 1st DCA 2011), and *Delgado v. Hearn*, 805 So. 2d 1017 (Fla. 2d DCA 2001) were distilled into a rule." (1)
 - "Authority should be either procedural or statutory and should clearly put all parties (and the courts) on notice. Lack of clarity raises due process concerns." (1)
- Consumes extensive judicial time and resources. (2)
 - "Improperly motivated pro se litigants consume a tremendous amount of judicial labor. Given the critical importance of access to the courts, a trial judge must undertake substantial time, effort, patience and concentration to properly implement this sanction without prejudice to the pro se litigant or committing reversible error. This is true even where the pro se filings are obviously insufficient, improperly motivated, or excessive (often incessant). Clearer rules regarding the necessary form,

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style and content for motions and pleadings would be useful, especially if the consequence for failure to carefully comply with these requirements was also included in the rule.” (1)

- Clerks still accept the filing. (2)
 - “[I]n many instances, the Clerk's office is not aware that these filings are in derogation of *Graham* and they should be rejected....” (1)
- “The holding in this case was made without a record of the hearing and in it the Supreme Court reminded trial courts that requiring parties to have counsel should be used ‘sparingly and in extreme circumstances.’ If we had more concrete examples of what types of pleadings/ number of pleadings etc. would qualify for an ‘extreme circumstance,’ this case might be used more. But, as it stands, I don't think I've ever used this case.” (1)
- “The trial court was upheld in *Graham* because there was court reporter. The case does not set any meaningful standard for stopping vexatious litigation in family cases. Pretty much it invites further appeals as there is no clear standard (except that which is noted below) as to when a litigant crosses the line of abusing the process. I have in my comments before set forth some suggested language on that standard in family law cases. The remedy employed by the trial court in this case should be used sparingly and only in extreme circumstances after the party has been afforded a full measure of due process to explain the questioned conduct and an opportunity to discontinue any misconduct.” (1)
- The appellate courts will not sustain these orders on appeal. (3)
 - “Seems like appellate courts give themselves the ability but overrule trial courts who exercise this authority.” (1)
- “[T]hey don't care and ignore our orders! Especially the sovereign citizens... vexatious statute should apply too!” (1)
- “[V]exatious litigation should be curtailed to two times not five.” (1)
- “Not enough of a deterrent.” (1)
- “The threshold to get here under the case law is too high.” (1)
- “Given the harshness of the remedy, it is difficult to impose this sort of restriction.” (1)
- “Needs expansion of authority.” (1)
- “[U]nder-utilized.” (1)

Miscellaneous

Top Three Noncriminal Case Types

The survey asked trial judges to identify up to three noncriminal case types in which improper litigation consumes a significant amount of judicial workload. In some cases, judges referenced the case types very generally and, in other cases, very specifically. Accordingly, the results below show specific case types referenced under the general category.

The following lists the case types cited by at least four circuit judges.

- Domestic Relations/Family generally (16): (multiple judges indicated that pro se litigants are more problematic and one judge mentioned that sovereign citizens and mentally ill patients are especially problematic)
 - Timesharing (4)
 - Dissolution (4)
 - Domestic Violence (9)
- Civil generally (7) (one judge mentioned that sovereign citizens and mentally ill patients are especially problematic)
 - Foreclosure cases (13) (some mentioned that pro se litigants are more problematic)
 - Negligence (5)
 - Insurance cases (4)

The following lists the case types cited by at least two county judges.

- Domestic relations/family generally (2) (one judge noted that pro se litigants are especially problematic)
 - Domestic violence (3) (one judge commented that many are frivolous due to the lack of filing fees)
- Civil generally (2) (one judge noted that complaints are filed despite knowing damages have been resolved or the statute of limitations has run)
 - Landlord/tenant (6)
 - Small claims cases (4)
 - PIP (4) (one judge noted that PIP cases are filed even though the defendants have paid the claims in order to obtain attorney's fees and dismissal is avoided by omitting facts in the complaint)
 - Inmate civil cases (one judge noted that malpractice of prison medical staff cases are problematic) (2)
 - Replevin (2)

Use of Other Tools

The survey asked trial judges whether they use tools other than those discussed in the survey to address improper litigation in noncriminal cases. Sixty circuit judges said “no” (78%), and 17 judges said “yes” (22%). Thirty-six county judges said “no” (83.7%), and 7 judges said “yes” (16.3%).

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Overall, 24 judges out of the 120 responding judges (20%) indicated “yes.” These judges were asked to identify the other tools used. All 24 judges provided comments, which are summarized or quoted below.

- Case management (e.g., setting conferences and deadlines and requirements for pleadings) (12)
 - “Having calendar time available to address small issues before they become large.” (1)
 - “After an evidentiary hearing on a matter, I rarely grant any further Court time to the issue. I try to manage cases and be cognizant of motions that get filed (limited based on technology issues) and rule on the ‘papers’ if it is an issue previously addressed. But, if I don't know of the motion, it usually sits. If I notice several motions that have been filed, I may call a case management conference to discuss whether a hearing should be granted (and generally to try to get the case back on track).” (1)
 - “Setting limitations on how pleadings should be titled (i.e.. limiting motions to a single subject). Restricting litigants from reincorporating of previously filed motions into current motions. Setting limitations on page lengths. Restricting methods of contact with the court. Restricting material inappropriately submitted outside of the court record to the court (i.e., medical records directed to the court's email as opposed to a litigant's attorney).” (1)
 - “Clear judicial requirements, frequent reference to published local rules and standards for professionalism, frequent hearings, formal orders in response to correspondence to the court, multiple warnings if sanctions are being considered.” (1)
 - “I set STATUS hearings every Friday at 3pm. until the issues are resolved.” (1)
 - “I set them for a hearing and deal with the issues once and for all. It takes less time than devising other remedies or sanctions which the litigants will think the court has overstepped its authority.” (1)
 - “Once detected, I set a case management conference and may sua sponte issue an order to show cause why pleadings should not be stricken.” (1)
 - “Ruling on procedural motions without a hearing and requiring parties to confer has stemmed the tide a bit.” (1)
 - “Upon multiple useless court dates I dismiss with prejudice. I shred bad paperwork and set other matters for hearing.” (1)
- “[S]anctions as allowed by the discovery rules.” (1)
- “Orders limiting future filings unless signed by an attorney.” (1)
- “[D]ismissals for fraud on the court.” (1)
- “Letting the litigant vent. Examining things from his/her perspective. Assuring them that I have heard and understood them. Then explain the process and why it is inappropriate for him/her to file what he/she filed.” (1)

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- “Assessing fees under rules, 61.16, *Rosen v Rosen*.” (2)
- “Refer criminal activity to law enforcement and attorney misconduct to the Florida Bar.” (1)
- “Striking pleadings” (1)
- “Spencer motion requiring attorney to sign pleadings.” (1)
- “Court counsel” (1)
- “Sending Orders prohibiting those litigants from sending e-mails and faxes and ordering them to file any documents with the Clerk.” (1)

Other Challenges

The survey asked trial judges to describe challenges that they had not previously identified in the survey. Comments were provided by 29 circuit judges (37.7% of circuit judges) and 10 county judges (23.3% of county judges).

The comments by circuit judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- “1- Legally insufficient and unfounded motions for disqualification 2- Federal law suits filed against the trial judge and opposing counsel 3-Attempts to avoid discovery by pro se arguing disabilities so cannot comply.”
- “Being an elected official”
- “[S]omething more than awarding attorney fees would be helpful even in routine matters. The delay in a denial of response, a filing, setting the hearing, and holding the hearing is perhaps not fully sanctioned with the award of ... fees.”
- “I had a family case (child custody of one child) which began in 2009. By 2018, the clerk's docket reflected almost 3000 filings, the vast majority of which were submitted by the former husband. His pleadings were often in excess of 100 pages, and would include dozens of citations of legal authority. He would reincorporate numerous previously filed motions. Occasionally, there would be viable claims hidden among the meritless. It would take hours just to review a single pleading. The time expended over the years on this once case was outrageous and significantly impacted the time available for the court's consideration of other cases. All of the above was complicated by the fact that both sides were pro se for the last several years, with the former wife having no idea how to utilize any of the aforementioned rules.”
- SRLs. (2)
 - SRLs are “currently the biggest challenge There is little incentive for a [SRL] to avoid filing countless pleadings to trigger a response by opposing counsel or the court; in some cases this can be an effective strategy given that the opposing party may be incurring attorneys fees each time a

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response is required. There is also little incentive to avoid the practice of declaring many filings as an ‘emergency.’”

- Need additional staff attorneys and case managers. (3)
 - “I would need a doubling or tripling of staff attorneys to assist the tsunami of post-conviction motions and motions to correct sentence that prisoners are filing decades after convictions were upheld.”
 - “Multiple appeals to district court, supreme court, federal district court, and U.S. Supreme Court. Takes a law clerk ... to keep up with just one case”
- “Invoked the vexatious litigation statute and, after a hearing, ... restricted the rogue litigant from filing any further civil cases unless reviewed and signed by a member of the Florida Bar as to the whether there was a meritorious claim. The rain of filings and constant record requests (he once made a public record request to me to provide copies of all resource material including thesaurus's, dictionaries, statutes, etc.) all stopped after my order, which followed dismissal of all of the claims pending at that time as being wholly without merit.”
- “Many litigants can’t afford to pay fees. A lot of bad behavior arises from understandable emotional issues associated with family cases. Punishment, often, is not the best way to change behavior.”
- “Professional rules as to attorneys. I would order a professionalism course.”
- “The new Supreme Court rules re referral to the Bar may be helpful...assuming that they have the staff to handle this referral...hopefully better than the condo cases.”
- “The tools we presently have available are perfectly fine.”
- “They just ignore our orders, overburden us with extra steps and additional work and take time from our daily routines of hearings and preparing orders. Some of their postings and allegations, lawsuits in federal court, liens against our homes and demeanor is at times emotional distressful.”
- “To dot the i's and cross the t's as required by existing case law takes a substantial amount of time and dedication to the outcome. Because of the investment of time and, because I dislike being in the position of having to raise issues that I then rule on, I routinely do not pursue vexatious / 57.105 unless I come to the conclusion that that investment is absolutely necessary. To me, the outcome must save me more time than I have to spend addressing the vexatious litigant issue. Otherwise, it is difficult ... to justify the investment of time because it really takes time away that I can be addressing other cases.”
- “We had a litigant file approximately 90 filings over ... several years before we felt we met a high enough threshold to stop future filings. These were harassing to the magistrates, judges, and hearing officers. ... We need ... a standard that does not require such an extreme drain before action can be taken in a family law case.”

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- “I have been in Civil for approximately 6 years during two different assignments and have dealt with this only once or twice. So, I don't know where ... this is a problem [I]t consumes virtually none of my judicial workload. Just rule.”

The comments by county judges are summarized or quoted below. Each comment was provided by one judge.

- “Aggressive nonsensical or accusatory arguments in correspondence and in court take up a significant amount of time to review and address.”
- “[T]hese pleadings are usually filed by [indigent SRLs]. They do not have to pay the regular clerk fees for filing because they are indigent which feeds into their inability to limit their filings. I believe there is usually some kind of mental health issue that prevents them from understanding what is appropriate. Fines and attorney fees do not serve as a deterrent as they don't have any money Unfortunately, in my experience, there doesn't seem to be much we can do.”
- “It is not always immediately apparent how frivolous a case is or that an individual has filed a number of unsuccessful claims. Further, pro se litigants do not know about 68.093 or 57.105.”
- “Knowing that case will eventually be dismissed but being unable to do anything until discovery is completed. Plaintiff Voluntarily Dismissing Complaint just prior to hearing on Motion for Summary Judgment knowing that they cannot be charged with reciprocal attorney fees.”
- “No matter what I order, they re-file.”
- “No real way for court to address sua sponte or get facts into evidence to support without attorney starting.
- “Pro se family litigants are the most challenging, especially with zoom hearings.”
- “[B]iggest frustration is that we are taught that contempt should only be used as a last resort. If we come down hard on someone for their behavior, then we are accused of not having a good judicial temperament. In today's society, where everyone's feelings get hurt, we have to be particularly aware of how we handle the public, and the lawyers, in every case. The one time, in more than 3 years, when I came down hard on someone for being extremely disruptive to a very full courtroom, I had a senior Judge in my office advising me that I violated at least three judicial canons by taking control of my courtroom and advising the gentleman of his bad behavior. I feel frustrated that I have to just put up with it. At least that's the message that was delivered to me.”
- “Sometimes they are coupled with safety concerns. Often, a vexatious litigant may have violent tendencies.”
- “The plaintiff counsel expect a lot of other people but little of themselves when pursuing litigation. They could also be a little more considerate of others. The

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law firms doing mass filings are often impossible to get on the phone, even to a judicial office (everyone should be treated with the same courtesy).”

The survey also asked trial judges to identify solutions for the challenges they identified in the survey. Numerous judges answered this question including ones who had not identified challenges.

The comments by circuit judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- “Stronger ‘encouragement’ for members of the Bar to refrain from such activities. More definitive sanctions for [SRLs] who engage in such conduct. Procedural and/or statutory guidelines to put all participants on notice and to include available sanctions courts can employ in cases where a party engages in that type of behavior.”
- “A more stringent timeline prohibiting motions and a requirement that the filings not be received ... by a clerk’s office if ... filed past the timeline.”
- “All of the tools available (most mentioned herein), criminal enforcement, striking of pleadings, sanctions such as dismissal, fees, grant relief to the other party (esp. when they don't plead b/c they are pro se), a specialist at OSCA to contact, form or sample template/orders for dealing with their motions/petitions.”
- “Amending the sanctions rules of procedure for clarity in the range of possible sanctions and specific criteria required to be considered in imposing sanctions.”
- “More robust rules regarding the form, style and content for all filings. An intermediate standard for preventing individual vexatious litigants from inappropriately consuming judicial resources. In many cases a litigant may not be a serial filer, but may instead file excessive pleadings within a single case or two. Clear procedures to identify these litigants on a case-by-case basis and take action to curtail their activities within a particular case would be helpful. Lawyers can be referred for discipline or directed to local professionalism panel. Perhaps some form of oversight for [SRLs] would also be useful.”
- “[A]warding fees in domestic restraining orders when the petitioner fails to show for the follow-up hearing thereby resulting in a dismissal of the underlying temporary injunction.”
- Effective case management. (2)
- Education for law enforcement, judges, and court staff on options available and how to deal with sovereign citizens and difficult attorneys and litigants. (2)
- Education for attorneys.

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- Allow the court “on its own motion, to order sanctions (such as community service, or reimbursement for gas money) to the party who is cooperating.”
- “Have Appellate Judges sit as trial judges for a month or two.” “Limit appellate review.” (2)
- “In dependency cases perhaps when a case is closed ... the rules could limit the number of attempts to reopen by the parents to a limited number per year. Continue authorization for the court to allow the respondents or appear virtually and the court having the discretion to require that the petitioners appear in person thus limiting the impact on the non-moving party.”
- “Just set in person hearings and strike them when they FTA. Seems to keep everything under control.”
- “Sanctions against pro se or attorneys for legally insufficient Motions to Disqualify. When Fed cases are dismissed, underlying state case should be placed on the fast track. Sanctions should be available for improper use of disability arguments.”
- “Something like "stand by" counsel for Civil cases - to assist [SRLs] with rules and possible appropriate filings.”
- “Staff and speed plus seriousness of resolution.”
- “Singing ‘I’m so Pretty’ to myself when my patience seems to be waning.”

The comments by county judges providing information not repeatedly discussed above are summarized or quoted below. Unless otherwise indicated, each comment was provided by one judge.

- “Ability to dismiss cases after the second time the Court either receives correspondence or conducts a hearing that falls within these situations.”
- “After many years, I (along with our mediation director) have come to know these individuals. I immediately set the case for hearing ... and ... hear from the plaintiff about the basis of the claim and then I consider dismissal....”
- “Allow for attorney's fees even if case is voluntarily dismissed after Motion for Summary Judgment is filed.”
- “For Small Claims and Landlord/Tenant: Would be great if there was authority for a magistrate to screen for sufficiency, order to mediation if a sufficient, then send to the judge for final resolution if unsuccessful at mediation.”
- “[L]egislature needs to change the PIP statute and the DCAs need to rule on the AOB statutes.”
- “Often will have extra security in the courtroom when vexatious matters are set for hearing and other appearances.”

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- “The Civil Collections Bar should hold themselves to a higher professional practice.”
- “The appellate courts should follow the language and intent of the statutes and rules enacted to prevent and punish frivolous litigation.”
- “There really is no solution other than to tolerate intolerable behavior.”
- “Five courts more power to initiate.”

OVERVIEW OF THE APPELLATE AND TRIAL COURT CLERK AND TRIAL COURT ADMINISTRATOR SURVEY RESULTS

INTRODUCTION/BACKGROUND

As used in this overview, the term “improper litigation” generally refers to frivolous, sham, harassing, malicious, vexatious, or similarly improper litigation. An overview of the survey responses from:

- District Court of Appeal (“DCA”) clerks is presented at pages 3 to 7;
- Trial court clerks of court (“trial court clerks”) is presented at pages 8 to 15; and
- Trial court administrators (“TCAs”) is presented at pages 16 to 19.

The response rates for the surveys are depicted in the chart below.

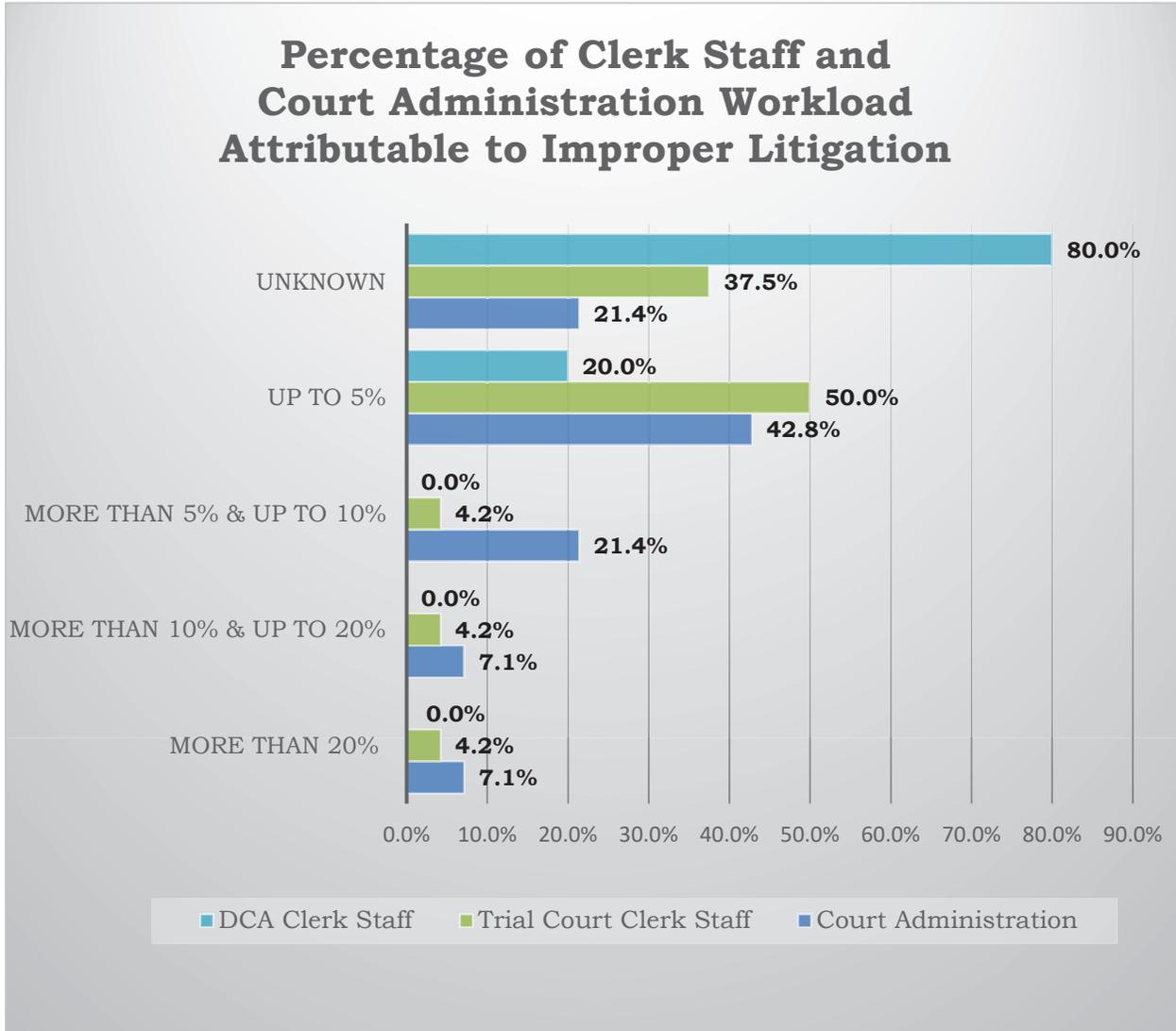
Respondent	Number Who Responded	Number of Potential Respondents Statewide	Response Rate
DCA Clerks	5 ¹	5	100%
Trial Court Clerks	24	67	35.8%
Trial Court Administrators	14	20	70%

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¹ Four DCA clerks responded, and one judge responded on behalf of the Third DCA (hereinafter collectively referred to as “DCA clerks”).

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DCA and trial court clerks were asked to estimate the percentage of clerk staff workload that is attributable to filings in cases involving improper litigation in noncriminal cases. TCAs were also asked to make the same estimation with respect to court administration (non-judicial) workload. The chart below illustrates the estimates provided by the respondents.



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DISTRICT COURT OF APPEAL CLERKS

Question 1.

DCA clerks were asked whether they have processes in place to identify improper filings at the time of filing by litigants in noncriminal cases. All five responded “yes.”

DCA clerks were then asked to describe their processes and whether the information was communicated to the court. Additionally, they were asked the following questions relating to communication with the court:

- If communicated to the court, DCA clerks were asked to identify the title of the person to whom the information is communicated and the purpose of the communication.
- If not communicated to the court, DCA clerks were asked how the information is used.

The summarized or quoted responses of the DCA clerks follow:

- The clerk’s office does not review the substance of filings, but maintains a list of litigants who are barred from further pro se filings. If such litigant attempts to file pro se, the clerk “reviews the new filing to see if it falls within the scope of the order or opinion barring the filer. If so, the filing is rejected and returned to the filer with the reason for rejection.”
 - Stated that this information is communicated to the court, and provided the following explanation of who receives the information and for what purpose: If, after rejection, the filer files a pleading attempting to challenge the determination that the attempted filing is barred, and the issue is debatable, then that pleading is submitted to the panel of judges who presided over the case in which the filer has attempted to file for a final determination. Or, if the filer had attempted to file a new case, the clerk’s office submits the pleading to the panel of judges assigned to decide motions for the week for a final determination.
- Substantively the same as the first bullet above.
 - Stated that this information is not communicated to the court and that, if the case cannot be opened due to the court's order, the clerk writes the filer to explain that no new case will be opened and that the notice or petition will be placed in a correspondence file without further action.
- The judge stated he does not know the details of the process, only that the clerk's office notifies the court – when the case is first tasked to a panel – that the lower court (or this court) has previously deemed one of the parties a vexatious litigant (or was previously barred from proceeding pro se).

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- The judge stated that this information is communicated to the court and that the information is sent to the Clerk of Court or Chief Deputy Clerk.
- Substantively the same as the first bullet above. Added that, “[d]uring the course of an opened case, if a filer is making what appear to be improper filings which are not authorized by the Florida Rules of Appellate Procedure, those filings are brought to the attention of the appropriate merits panel or motions panel. The court will often strike such filings, and if the filings continue, warn the filer or issue an order to show cause as why the filer should not be prohibited from future pro se filings.”
 - Stated that this information is communicated to the court, and provided the following explanation of who receives the information and for what purpose: “The Clerk's Office indicates in the case management system that the litigant has been previously warned, which is viewable to the merits panel judges and court staff. Individual filings which may be improper are brought to the attention of the appropriate merits panel or motions panel through the court's electronic workflow system.”
- The electronic case management system (“CMS”) “alerts us when a pro se filer has been barred. The proposed filing is given to me for review. If the filing is prohibited, it is returned as rejected.”
 - Stated that this information is not communicated to the court and that “We use the information to reject the filing. We do not track filings.”

Question 2.

DCA clerks were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on clerk workload. Their responses are summarized or quoted below.

- Indicated that is difficult to tell as we do not review the substance of the pleadings. Most staff time is spent on calls and with people at the counter.
- Indicated that the impact on workload is inestimable and further described the impact as follows:
 - The office receives a few notices or petitions annually in noncriminal cases from pro se filers who have been barred from opening new cases. These cases require review by a case opening deputy clerk and the clerk.
 - The office frequently receives calls that are frivolous or harassing. Some weeks, no calls occur. Other weeks, the “office, as a whole, spends several hours with callers who ... ask questions that we have repeatedly explained we cannot answer or who 'lecture' us. I use 'lecture' to refer to callers, who are likely ill, who monologue about their cases, their life, or the world in general.”
- Judge stated, “I do not know.”

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- “Although improper filings are less of an issue in noncriminal cases compared to criminal cases, the more vexatious filers in noncriminal cases tend to: file multiple improper documents through the Statewide Portal, mark non-emergency filings filed through the Statewide Portal as emergencies or as time-sensitive in an attempt to ‘jump the line’ to have their filings processed ahead of those of other filers, personally serve judges and court staff with documents they file through the Statewide Portal, call the Clerk's Office to take issue with the court's rulings, be belligerent with court staff both in person and over the phone, and continue to file improper documents in a case even after it has concluded. All of the above issues require an inordinate amount of staff time, often require the intervention of multiple staff members and levels of supervisors, and take staff away from working on important matters.”
- “The greatest impact is the time required to address this issue. Typically[,] vexatious pro se filers will call repeatedly, and keep the deputy clerks on the phone for extended periods of time to no purposeful end.”

Question 3.

DCA clerks were asked to identify up to three of the top noncriminal case types in which filings constituting improper litigation in noncriminal cases have on clerk workload improper filings constituting improper litigation in noncriminal cases occur most frequently. The judge indicated “unknown” and one DCA clerk stated that the judges can better answer the question (the clerk also indicated two case types that are noted below). The numbers in parentheses below indicate the number of DCA clerks who provided the same or similar answer.

- Civil
 - Circuit civil (1)
 - Foreclosures (3)
 - Evictions (2)
 - Denial of Medicaid benefits (1)
- Domestic relations/family law cases
 - Domestic violence injunctions (1)
 - Family (2)
 - Child custody/visitation (1)
 - Domestic Relations (1)

Question 4.

DCA clerks were asked to describe the processes utilized by their offices to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under [§ 57.085, Fla. Stat.](#) Under subsection (6) of the statute, the court must review an indigent prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court must dismiss a claim or part thereof that is insufficient, frivolous, malicious, intended to harass, or meets other similar criteria.

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The DCA clerks' responses are summarized or quoted below.

- If the lower court determines that a filer is indigent, the lower court's order is sent to the appellate court where it is docketed in the case. (2)
- The judge indicated unknown.
- "The clerk of the lower tribunal files the determination or order with the court through the Statewide Portal."
- "The indigent determination is listed on the case information panel."

DCA clerks were also asked if their offices can search court records to identify cases in which the court dismissed an indigent prisoner's claim under subsection (6). Four clerks (80%) responded "no" and the judge responded "unknown."

Question 5.

DCA clerks were asked to describe any recommendations they may have to more proactively deter or address improper filings in noncriminal cases. Responses received are summarized or quoted below.

Amendments to Rules of Court:

- "Perhaps, after a number of frivolous filings are made in the same case, require some sort of monetary fee."
- "Discourage use of the 'emergency filing' feature in the portal - perhaps require the filer to identify the emergency from a pre-set list of reasonable emergency reasons, which would not include that the filer is desperate or that the filer didn't make the filing on time."

Amendments to Statutes and Changes to Operational Processes:

No responses were provided.

Other:

- "There could be features added to the statewide E-Filing Portal to discourage (1) personal service on judges/clerks and (2) overuse of the 'emergency' button. It may be helpful if the Portal required more information about why a filing is an 'emergency' or include more detailed examples/explanation of what constitutes an emergency. Specifically, a statement that the filing is due that day does not equal an emergency."
- "There should be more information in the Portal which explains to filers that they should not mark filings as emergencies or time-sensitive as a matter of

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course. Also, filers should be required to state a detailed reason why a filing is an ‘emergency’ instead of having a dropdown with only a few options.”

TRIAL COURT CLERKS

Question 1.

Trial court clerks were asked whether they have processes in place to identify improper filings at the time of filing by litigants in noncriminal cases:

- Fifteen trial court clerks (62.5% of the respondents) indicated “no”; and
- Nine trial court clerks (37.5% of the respondents) indicated “yes.”

Trial court clerks who responded “yes” were asked to describe their processes and whether the information was communicated to the trial court. Additionally, they were asked the following questions relating to communication with the trial court:

- If communicated to the trial court, the trial court clerks were asked to identify the title of the person to whom the information is communicated and the purpose of the communication.
- If not communicated to the trial court, the trial court clerks were asked how the information is used.

Staff Note: In short, based on the responses summarized below for the nine trial court clerks who said “yes” to the initial question:

- *Five have processes in place to identify litigants who have been declared by court order to be a vexatious litigant under the statute.*
- *One tracks filings by sovereign citizens.*
- *One reviews civil cases and notifies the court of potential frivolous or vexatious filings.*
- *One notes frivolous or improper filings in the clerk’s note tab in the case management system (“CMS”) and notifies the judge’s judicial assistant (“JA”).*
- *One indicated that frivolous or improper filings by prisoners, as identified by a law clerk, are sent to the judge with an order for his/her signature.*

The nine trial court clerks’ summarized responses follow:

- Five responses relate only to processes for litigants declared by court order to be vexatious litigants under [§ 68.093, Fla. Stat.](#) For such litigants, the five trial court clerks indicated the following, respectively:
 - An alert is placed on the case in Benchmark, which results in notifying the deputy and the Florida Supreme Court (“FSC”) Clerk of the case. This information is not communicated to the trial court. Further relevant information was not provided.

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- The court order is entered into the CMS for a pending case and posted in the workspace where new cases are entered into the CMS, so clerks are alerted of the ban on new cases. This information is communicated to the trial court. Further information was not provided.
 - Pro se filings are compared against a list of vexatious litigants. This information is not communicated to the trial court. Electronic and paper filings received from vexatious litigants are rejected by the trial court clerk.
 - The case file is updated to reflect the court order and trial court clerk staff are instructed to watch for further pleadings from the vexatious litigant. The order is sent to the FSC Clerk. The information is provided to the trial court through a docket entry or a case alert.
 - Filings are reviewed by the deputy clerk against a list of vexatious litigants. This information is provided to the judge's JA.
- A trial court clerk indicated that the only filings by sovereign citizens are monitored. These are forwarded to the trial court clerk's legal team. This information is not communicated to the trial court, but is filed in the case.
 - A trial court clerk indicated that wills are reviewed to determine that they are original and, if not, the party is asked to submit the original. For civil cases, the trial court is notified of potential frivolous or vexatious filings.
 - A trial court clerk indicated that "customers," who are making or who have made improper filings, often require a significant amount of time to help and sometimes must be referred to senior managers or the sheriff's office. The clerk's intake team notes a frivolous or improper filing in the clerk's note tab in the CMS and notifies the presiding judge's JA.
 - A trial court clerk indicated that the law clerk reviews prisoner cases to determine if the filing is frivolous or otherwise improper. If it is, the law clerk prepares an order for the judge to sign.

Question 2.

Trial court clerks were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on clerk workload. Their responses are summarized or quoted below. The numbers in parentheses indicate the number of trial court clerks who provided the answer.

- Unknown (3) and no impact (2)
- Minimal impact as there are few improper filings. (2)
- Staff time, and expenses for equipment, for scanning, docketing, redacting, and processing improper filings. (7)

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- Staff time spent comparing pro se and other filings against vexatious and frivolous litigant lists to ensure that the filings are not accepted (4)
- Staff time to review poorly drafted, lengthy documents, which often lack a proper case caption, to determine if they are a filing or a public or court records request. Frequently, these litigants apply for an indigency determination that requires clerk time to review; file injunctions not requiring a filing fee; or refuse to pay a filing fee, which then requires the clerk to invoice the litigant and sometimes have to engage in extensive correspondence with the litigant. (2)
- Many of these litigants email, call, and visit regularly insisting to speak with specific clerks, management, or our attorney. They are usually argumentative as to how their case is being handled by opposing counsel and/or the court. (1)
- These filings are very time-consuming “with numerous entities involved with getting the pleadings through the proper channels.” (1)
- Workload is increased because the filer will appeal an order dismissing the case. The clerk must prepare the appeal for the DCA, which typically dismisses the appeal. This results in much wasted time and work by the clerk. (1)
- “Medium to high impact on the workload as it requires many more steps outside of normal operations for accepting a filing.” (1)
- “Searching records for improper filings: time spent[.]” (1)

Question 3.

Trial court clerks were asked to identify up to three of the top noncriminal case types in which filings constituting improper litigation in noncriminal cases occur most frequently. The numbers in parentheses indicate the number of trial court clerks who provided the same or similar answer.

- Civil
 - Circuit civil (13)
 - County civil (8)
 - Foreclosure (4)
 - Other circuit civil (2)
 - Contract/indebtedness (1)
 - Inmate replevins (1)
- Writs generally
 - Mandamus (4)
 - Habeas (3)
 - Certiorari (1)
- Domestic relations/family law cases
 - Domestic violence injunctions (3)

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- Family (2)
- Domestic Relations (2)
- Probate (1)
- Mental Health (1)
- Other (1)
- Unknown (3)

Question 4.

Trial court clerks were asked to describe the processes utilized by their offices to ensure the court is made aware of a clerk's determination that a prisoner is indigent for the purpose of deferring court costs and fees under [§ 57.085, Fla. Stat.](#) Under subsection (6) of the statute, the court must review an indigent prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court must dismiss a claim or part thereof that is insufficient, frivolous, malicious, or intended to harass, or meets other similar criteria.

Staff Note: In short, based on the responses summarized below for the trial court clerks:

- *Nine place the determination of indigency in the court file where it can be accessed by the court.*
- *Nine have processes where the determination is directly brought to the attention of the court or where the prisoners' affidavits and sometimes proposed orders are sent to the court for a ruling or review.*
- *One sends all pro se filings to the division judge for review.*
- *One has no formal process.*
- *Four provided no indication of whether the information is provided to the court.*

The trial court clerks' responses are summarized below. The numbers in parentheses indicate the number of trial court clerks who provided the same or similar answer.

- The determination of indigency ("DI") is filed/docketed in the CMS or court file where it may be accessed by the court. (9)
- It is reflected in the docket and the clerk in the courtroom brings it to the judge's attention. (1)
- The prisoner's affidavits and an order are submitted to the court for the court to make a ruling. (4)

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- The DI is submitted to the court. (1)
- The DI is made by the clerk in open court; thereby, notifying the judge. (1)
- The DI is submitted to the court with a proposed order. (1)
- The prisoner's filing is sent to the judge's office with a cover sheet. (1)
- All pro se filings, including those of indigent persons, are forwarded to the division judge for review. (1)
- No formal process. (1)
- Explained all or part of the process used by the clerk to determine indigency, but did not indicate whether the court is made aware of the DI. (4)

Trial court clerks were also asked whether their offices can search court records to identify cases in which the court dismissed an indigent prisoner's claim under subsection (6) of [§ 57.085, Fla. Stat.](#) Fifteen clerks (62.5% of the respondents) responded "no" and nine clerks (37.5% of the respondents) responded "yes."

Question 5.

Trial court clerks were asked if their offices could search records to identify pro se litigants who have been determined by the court to be vexatious litigants pursuant to [§ 68.093, Fla. Stat.](#), and required to furnish security. Sixteen clerks (67% of the respondents) responded "no" and eight clerks (33.3% of the respondents) responded "yes."

Of the eight clerks who responded "yes":

- Two (8.33% of the respondents) indicated that they cannot determine whether the vexatious litigant furnished the security while six (25% of the respondents) indicated they can.
- One (4.2% of the respondents) indicated that he/she cannot determine whether the case was dismissed for a failure to furnish the security, while seven (29.2% of the respondents) stated they can.

Trial court clerks were also asked to describe the processes used to ensure that their offices receive all pre-filing orders entered by a court under [§ 68.093\(4\), Fla. Stat.](#), and provide such orders to the FSC Clerk as required by the statute. The trial court clerks' responses are summarized or quoted below. The numbers in parentheses indicate the number of trial court clerks who provided the same or similar answer.

Staff Note: When conducting preliminary research, staff discovered that some "vexatious litigants" listed in local administrative orders were not included on the FSC Clerk's list of "vexatious litigants." Anecdotal reports from persons who have reached out to the workgroup have also mentioned this issue. Of the 24 responses received: (a) eight

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appear to have a process to provide it to the FSC Clerk; (b) seven appear to be aware of the issue but did not specify whether they send it to the FSC Clerk; (c) two are addressing this issue now; (d) one is unaware of any such orders in the county; and (e) six indicate not having a process or appear to not know about this issue.

- The prefiling orders are sent to the FSC Clerk when received by the clerk. (6)
- The clerk prepares an order when the court finds a litigant to be a vexatious litigant. This order is entered into the CMS, notice is provided to all deputy clerks, and the information is provided to the FSC Clerk. (1)
- Prefiling orders are filed by the court through the e-portal. The clerk then enters the order into the CMS and transmits it to the FSC Clerk. (1)
- Indicated placing the order in the CMS or notifying certain staff of the order, but did not specify information as to whether it is sent to the FSC Clerk. (7)
- We are unaware of any prefiling orders in this county. (1)
- Our office has not received any prefiling orders in the county, but we are creating a docket code to track this issue in the future. (1)
- “We receive emails daily in regards to court filings.” (1)
- “We have our Judge review filings we are not sure of.” (1)
- The process is “being drafted and revised.” (1)
- “We currently do not have a process in place for this.” (1)
- Unknown (2) or “N/A” (1)

Question 6.

Trial court clerks were asked to describe any recommendations they may have to more proactively deter or address improper filings in noncriminal cases. Responses received are summarized or quoted below.

Amendments to Rules of Court:

- Create a rule that would support the clerks and courts in having a clear and apparent manner to determine and track litigants responsible for improper litigation. The courts should make this determination and the rule should support a motion and an order that can flag these cases for tracking. This rule change should be funded.
- “Make it clear if the vexatious litigant is permitted to file a Notice of Appeal or an Injunction for Protection.”

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- Amend the rules to “standardize the criteria for determining what constitutes a ‘vexatious litigant.’” *Note: The criteria are in statute. It does not appear possible to change/standardize it with a court rule.*
- “Provide Judges and defendants with the latitude and opportunity to commence a hearing to make findings as to the motives of plaintiff earlier in the case, for example during pre[-]trial motions and/or discovery.”

Amendments to Statutes:

- Amend the vexatious litigant statute to:
 - Include, rather than except, small claims cases or, if not, create a statute limiting vexatious filings in small claims cases to 10 actions filed within an appropriate period.
 - Extend the lookback period of five years in the statute to seven or eight years.
 - “Include in the definition of ‘vexatious litigant’ triggering actions that are not only ‘finally and adversely determined against such person or entity,’ but also those that are ‘voluntarily dismissed’ by the person. This would prevent individuals from filing frivolous actions, settling with unsophisticated parties, and then dismissing the actions ... to remain under the filing cap.”
 - “Add a third definition of ‘vexatious litigant’ (as s. 68.093(2)(d)(3), F.S.) to state ‘Any person or entity who has not paid the appropriate filings fees within ___ days (possibly 60) and who has failed to file an application for determination of civil indigent status.[.]’”
 - “Add a section to s. 68.093 recommending that the clerk of court publish, on its website, a copy of s. 68.093 and a link to the Florida Supreme Court's list of vexatious litigants. This may help defendants in actions brought by vexatious litigants by (a) making them aware of their rights under Florida law and (b) allowing them to determine whether the plaintiff in their action has been deemed a ‘vexatious litigant.’”
- “Statutes could be amended to criminalize frivolous, sham, harassing, malicious, vexatious, or similarly improper filings in noncriminal cases.”
- “Upon a determination by the Court that plaintiff has commenced a frivolous, harassing, malicious, vexatious, or similarly improper filing, the Court shall have the authority and ability to sanction the plaintiff by imposition of a fine and fees.”

Changes to Operational Processes:

- “At the Portal level, there could be one listing for the entire State of Florida of known vexatious litigants with alerts to the individual counties.”

Other:

- “Statute awareness.”

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- “Some sort of notification to alert the judiciary of a possible vexatious litigant.”

TRIAL COURT ADMINISTRATORS

Question 1.

TCA's were asked how long they have served as a TCA. The responses indicated that:

- Nine (64.3% of the respondents) have served for more than 10 years.
- Three (21.4% of the respondents) have served for more than five years and up to 10 years.
- One (7.1% of the respondents) has served for more than 3 years and up to 5 years.
- One (7.1% of the respondents) has served for 1 to 3 years.

Question 2.

TCA's were asked to describe the impact that filings constituting improper litigation in noncriminal cases have on court administration (non-judicial) workload. Their responses are summarized or quoted below. The numbers in parentheses below indicate the number of TCA's who provided the same or similar answer.

- Little Impact
 - No impact. (1)
 - Very little impact as the filings go to the judge. (1)
 - Little to no impact as few cases in the small circuit fall under the category. (1)
 - "Subjectively, small impact." (1)
- Improper filings affect everyone (e.g., administrative staff, JA, staff attorney, case managers, TCA, chief judge, and, if there is a threat against a judge, court security). The recipient must read them, look up the case to find its division, and try to direct it appropriately. Sometimes have to send a response. These litigants also make public records requests, tying up the Public Information Officer's time and sometimes the Court Technology Officer's time. They also call or walk in, which can require a lengthy amount of staff time. Can spend "5 minutes to "hours and hours working on it." (8)
- General/Court Counsel
 - The general counsel is impacted by frivolous cases against judges or cases that otherwise harass a judge. These issues may require research and the development of a strategy to address them on behalf of the judge. (1)

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- “In most instances, these documents are also forwarded to our court counsel's office for review and advice.” (1)
- Sometimes the filings need to be sent to court counsel to determine if there is any merit. (1)
- Court counsel must review public records requests for redaction. (1)
- Family Cases
 - About 10% of the time in family court case management is spent dealing with these types of pleadings. Staff attorneys spend about 2 to 5% of their time moving through such filings. (1)
 - “We have seen the great impact in Family Law cases in our Pro Se Department.” (1)
 - In Unified Family Court, extra case management conferences often need to be set up, which consumes the judge's and case manager's time. (1)
- Sham pleadings must be reviewed by a case manager and judge. “Many times, hearings must be set even though it is known to be a sham.” (1)
- “A final impact on our office is our Court Reporting Department. We have one vexatious litigant who makes frequent requests for transcripts and often requests that they be expedited. The transcripts requested are not typically related to an appeal or anything pertinent to a specific issue.” (1)

Question 3.

TCAs were asked to describe any recommendations they may have to more proactively deter or address frivolous, sham, harassing, malicious, vexatious, or similarly improper filings in noncriminal cases. Responses received are summarized or quoted below. Each bullet reflects the response of one respondent.

Amendments to Rules of Court:

- Prohibit pro se litigants who have been determined to have brought frivolous or otherwise improper litigation from further pro se filing.
- Need “[r]ules that designate what is frivolous, provide the authority to stop responding, and establish sanctions to violators.”
- Need penalties for improper litigation. “While a judge may hold someone in contempt, it is not really a vehicle to address vexatious litigants. Many of these people have mental health issues and ... cannot be dealt with the same way as others.”
- “Allow us to charge extra for transcript or audio CD requests that are unrelated to an appeal or specific pending motion. Not sure whether this should be a rule or statutory provision.”

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- “Amend the Florida Rules to more closely mirror the Federal Rules allowing for more judicial discretion for dismissal of actions not based on a motion to dismiss.”
- “Unless someone is designated as the gatekeeper for the entry of this litigation entering the court system, I don't see how you can deter citizens/litigants from filing documents; some of these filings may not be readily apparent as frivolous, harassing, malicious, etc.”
- Need to amend to require certain elements before you can file a case and to limit improper filings by people who are very litigious.

Amendments to Statutes:

- Statutes should assess fees for improper litigation.
- Need “[s]tatutes that designate what is frivolous, provide the authority to stop responding, and establish sanctions to violators.”
- Need to amend to require certain elements before you can file a case and to limit improper filings by people who are very litigious.

Changes to Operational Processes:

- “We have tried many different approaches for dealing with these types of litigants, especially in our Unified Family Court but I don't know that there is a one size fits all solution. We instruct our staff to contact security if they feel threatened and there are panic buttons installed in the offices in case of an emergency. We cannot simply turn people away. Additional staff would definitely help because we might be able to assign 1 or 2 staff to deal with these type of litigants instead of diverting time from another case manager, or supervisor.”
- “When we have a litigant who has abused judicial process by filing these types of cases or papers, we include in the initial orders cautionary language about the possible sanctions for abuse of judicial process, which includes being barred from filing pro se pleadings. The next step after repeated abuse-usually after at least three orders with the cautionary language-we issue an order to show cause why a litigant should not be barred from filing further pro se pleadings. We usually set it for hearing, but we can rule on just the papers. We can then issue an order barring an individual from filing further pro se pleadings, and directing the clerk to return papers unfiled with a copy of the order. This is very similar to what we do in post-conviction cases where a defendant keeps raising the same claims that have been denied and unsuccessfully appealed. As you can see, it takes a lot of time to do this.”

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Other:

- “I do not have any recommendation at this time but welcome any recommendations or suggestions in dealing with this group of litigants.”

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Examples of Statutory Sanctions for Improper Litigation in Specific Noncriminal Case Types

Statute	Brief Summary
<p>Florida False Claims Act – §§ 68.081–68.092. Fla. Stat. (2021)</p>	<p>An individual, the Department of Legal Affairs, or the individual and the department together may bring an action against a person who has, in any of various defined ways, defrauded the state financially.¹ If the individual proceeds alone, “the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.”²</p>
<p>Whistle-blower’s Act – §§ 112.3187–.31895, Fla. Stat. (2021)</p>	<p>An employee whistle-blower who files a “frivolous action in bad faith” is subject to costs, including attorney’s fees, in favor of the prevailing employer.³ This relief is mandatory.⁴</p>
<p>Public Records – Chap. 119, Fla. Stat. (2021)</p>	<p>If the court determines that a complainant “requested to inspect or copy a public record or participated in the civil action for an improper purpose” — i.e., “primarily to cause a violation of [chapter 119] or for a frivolous purpose” — the court “shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action.”⁵</p>

¹ §§ 68.082(1)(b), 68.083(1) and (2), and 68.084(3), Fla. Stat. (2021).

² § 68.086(2).

³ § 112.3187(9)(d), Fla. Stat. (2021).

⁴ § 112.3187(9) (“... the relief must include the following:”).

⁵ § 119.12(3), Fla. Stat. (2021).

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<p>Administrative Procedure Act – Chap. 120, Fla. Stat. (2021)</p>	<p>“When there is an appeal [relating to agency action], the court in its discretion may award reasonable attorney’s fees and reasonable costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process, or that the agency action which precipitated the appeal was a gross abuse of the agency’s discretion.”⁶</p>
<p>“Public meetings; ...” – §§ 286.011 and 286.0114, Fla. Stat. (2021)</p>	<p>If the court finds that an action filed by an individual against a state, county, or municipal entity for violation of the statute requiring that meetings of such entities be open to the public⁷ was “in bad faith or frivolous,” the court “may assess” attorney’s fees against the individual.⁸ There is a virtually identical provision in the related statute requiring that members of the public be given a reasonable opportunity to be heard at meetings of government entities.⁹</p>
<p>“Loan modification.” – § 494.00296, Fla. Stat. (2021)</p>	<p>The defendant in an action brought for loss as a result of an alleged violation of the loan modification statute¹⁰ may move the court to determine that the action is “frivolous, without legal or factual merit, or brought for the purpose of harassment.”¹¹ If the court so finds, it “may” require the plaintiff “to post a bond in the amount that the court finds reasonable to indemnify the defendant for any damages incurred, including reasonable attorney’s fees.”¹²</p>

⁶ § 120.595(5), Fla. Stat. (2021).

⁷ § 286.011(1), Fla. Stat. (2021).

⁸ § 286.011(4),

⁹ § 286.0114(7)(a), Fla. Stat. (2021).

¹⁰ § 494.00296, Fla. Stat. (2021).

¹¹ § 494.00296(3)(b)1.

¹² *Id.*

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<p>“Consumer report security freeze.” – § 501.005, Fla. Stat. (2021)</p>	<p>A person aggrieved by a violation of the statute governing consumer report security freezes¹³ may file a civil action for damages.¹⁴ “Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this subsection was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney’s fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.”¹⁵</p>
<p>Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) – §§ 501.201–.213, Fla. Stat. (2021)</p>	<p>Section 501.211 of FDUTPA provides for several remedies: a declaration that an act or practice violates FDUTPA,¹⁶ an injunction against the violator,¹⁷ and damages plus attorney’s fees and costs for a violation of FDUTPA.¹⁸ In response, the defendant may by motion allege that an action brought under section 501.211 “is frivolous, without legal or factual merit, or brought for the purpose of harassment.”¹⁹ The court, “after hearing evidence as to the necessity therefor,” “may . . . require the party instituting the action to post a bond in the amount which the court finds reasonable to indemnify the defendant for any damages incurred, including reasonable attorney’s fees.”²⁰</p>

¹³ § 501.005, Fla. Stat. (2021).

¹⁴ § 501.005(16)(a)–(d).

¹⁵ § 501.005(16)(e).

¹⁶ § 501.211(1), Fla. Stat. (2021).

¹⁷ *Id.*

¹⁸ § 501.211(2).

¹⁹ § 501.211(3).

²⁰ *Id.*

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<p>“Payment by direct deposit of funds.” – § 532.04, Fla. Stat. (2021)</p>	<p>An employer may pay an employee by direct deposit to the employee's bank account if the employer so authorizes.²¹ An employer may not terminate an employee solely for refusing to authorize direct deposit of wages or salary.²² An employee so terminated may bring a civil action against the employer.²³ However, “[i]f it appears to the court that the suit brought by the plaintiff was ill-founded or brought for purposes of harassment, the plaintiff shall be liable for reasonable attorney's fees incurred by the defendant.”²⁴</p>
<p>Viatical Settlement Act – §§ 626.991–.99295, Fla. Stat. (2021)</p>	<p>A person damaged by a person who violates this act may bring a civil action.²⁵ However, “[i]f it appears to the court that the suit brought by the plaintiff is frivolous or brought for purposes of harassment, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.”²⁶</p>
<p>“Civil remedy.” – § 634.271, Fla. Stat. (2021) (under “Motor Vehicle Service Agreement Companies,” Part I of Chap. 634, Fla. Stat. (2021))</p>	<p>“Any person damaged by a violation of the provisions of this part may bring a civil action against a person who violated such provisions”²⁷ However, “[i]f it appears to the court that the suit brought by the plaintiff is ill-founded or brought for purposes of harassment, the plaintiff shall be liable for court costs and reasonable attorney's fees incurred by the defendant.”²⁸</p>

²¹ § 532.04(1), Fla. Stat. (2021).

²² § 532.04(2).

²³ § 532.04(3).

²⁴ *Id.*

²⁵ § 626.9927(3), Fla. Stat. (2021).

²⁶ *Id.*

²⁷ § 634.271(1), Fla. Stat. (2021).

²⁸ § 634.271(4).

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<p>“Charter schools.” – § 1002.33(4), Fla. Stat. (2021)</p>	<p>“No district school board, or district school board employee who has control over personnel actions, shall take unlawful reprisal against another district school board employee because that employee is either directly or indirectly involved with an application to establish a charter school.”²⁹ In a lawsuit over alleged reprisal, relief “shall include” “[p]ayment of reasonable costs, including attorney’s fees . . . to the prevailing employer if the employee filed a frivolous action in bad faith.”³⁰</p>
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²⁹ § 1002.33(4)(a), Fla. Stat. (2021).

³⁰ § 1002.33(4)(b)4.

Course Syllabi

Florida State University College of Law

Legislative Power

Spring 2020

Adam S. Tanenbaum
Judge, First District Court of Appeal

Contact E-mail: Adam.Tanenbaum1@gmail.com

Course Overview and Objectives

This class will explore the nature and scope of legislative power vested in the Legislature by the Florida Constitution and how that power differs from powers vested in the other two branches of state government and enumerated to Congress at the federal level. The course will cover the extent to which there are constitutional limits on the Legislature's otherwise plenary policymaking authority, as well as how the legislative and executive branches compete to assert the full scope of their respective powers on various fronts. The course will also cover the implications of that competition in constitutional litigation. Finally, it will consider litigation fundamentals and strategy, and students will engage with examples in which the legislative branch has sought to protect and enforce the legislative prerogative in the courts.

This is a skills-training course, so a fundamental purpose of this course, given the subject matter, is to give you further grounding in litigation practice and tactics. There is no textbook. Instead, we will read and discuss various court opinions and court filings; occasionally, we will read from secondary sources (like law review articles and political theory essays) and excerpts from historical documents and writings (like the Federalist Papers). By reading this material closely and critically—along with coming to class prepared and eager to participate—you will continue to develop your ability to dissect legal analyses as a lawyer and to utilize that material creatively and persuasively as an advocate. A secondary objective of this course is to support your development of job acquisition skills, such as CV and cover letter drafting and interview techniques.

Topics

1. Introduction. Florida procedural rules review. Litigation overview (standing, jurisdiction, private vs public litigation). Pleading and motion practice basics.
2. What is legislative power? Who can exercise it? Original vesting of political power with the People, and the vesting of legislative power in a legislative body versus reservation of initiative power to the People.

3. Difference between federal and state legislative power—Article I (U.S. Constitution) versus Article III (Florida Constitution). Or, enumerated federal powers versus full reservation and vesting of state police powers. Are there inherent limitations on legislative power? How is legislative power expressly limited?
4. Separation of powers and combinations of powers—how does a constitutional structure of power allocation work? What is executive power? What is judicial power? How do the other branches exercise legislative power under the Florida Constitution? Consideration of the House’s power to impeach; the Senate’s power to try impeachments, confirm appointments, and remove or reinstate suspended officers; the Governor’s power to sign or veto presented legislation; and the Supreme Court’s power under Article V, section 9.
5. The non-delegation doctrine and how “quasi-legislative” power can be assigned and exercised.
6. Power and activities of individual legislators—public records, social media, constituent services, voting, debate, drafting bills. And what is the exercise of legislative power versus participation in political activity? Consideration of legislative immunity and legislative privilege and their application in state and federal litigation.
7. Legislative investigations and legislative subpoenas. Plus, a case study: Florida House of Representatives, 2016–18.
8. Preemption, home rule, mandates, and charter counties—Florida’s special type of power decentralization.
9. Departmentalism, public litigation, legislative prerogative and intervention—Quo warranto and projection of legislative power in litigation.
10. Practical skills discussion/redux: Drafts of pleadings, motions, and briefs.
11. Litigation as a public lawyer—perspectives and war stories.
12. Pursuit of government employment—CVs, cover letters, and interviewing.

General Course Matters

As I noted above, there is no textbook. Your reading will consist primarily of court opinions and court filings (like motions and briefs), and from time to time, there will be readings from other sources as well. I will endeavor to provide most of the assigned material via

e-mail and other digital outlets. At the same time, this is a legal skills class, so occasionally I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, because this is a legal skills course, classes will not be strictly in lecture format. The contribution by each of you of your own experiences, thinking, and effort is essential to this course’s success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes reserving enough time in advance of the next class to both read the material *and* absorb and think about it. You should come to each class with questions, thoughts, and reactions regarding the week’s assigned reading. I will call on students frequently, and you will be expected to participate robustly.

As in all classes, you should not engage in any activity—on an electronic device, phone, or otherwise—that would disrupt me or the attention of students sitting near you. Texting during class is strictly forbidden and will be penalized.

You may have and use laptops in class, but they are discouraged. Take a look at this article if you have a chance—<https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away>

Classroom Recordings Policy

Students are not permitted to use laptops, phones, or other personal devices to make audio or video recordings of class sessions.

Syllabus Change Policy

FSU requires that all course syllabi include the following policy on syllabus changes: “Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.”

Class Attendance

Class attendance is required, because it is necessary for each of you to gain a full understanding of the readings *and* get the full benefit of the skills training that you no doubt enrolled in this course for.

Attendance at every class is expected, and an attendance sheet will be circulated at the beginning of each class. Please be on time. Any unexcused absence will result in a reduction in the participation portion of your grade. This reduction will occur in the following way: The absent student will receive zero points toward the participation score for the missed class (see below for how the participation score is calculated), *and* the

student will have a two-point reduction/penalty (that is, a -2) recorded for that day's participation.

The College of Law requires a student to attend a minimum of 80% of class meetings to receive credit for the course. Attendance includes the obligation to arrive on time and to satisfactorily complete reading assignments prior to class. If the cumulative number of unexcused absences brings you below the mandatory 80% class attendance threshold (that is, you have unexcused absences for at more than 20% of the scheduled classes), you will be reported to the College of Law's administration for disenrollment and/or assignment of an "Administrative F" grade.

Class Participation

Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students are expected to attend each class, to be on time, and to be ready to participate robustly in class discussion. In each class, I will assign each student up to 5 points toward the participation portion of the course grade. I reserve the right to award a student a bonus point for extraordinary participation in a particular class. At the end of the course, I will add up each student's points, divide by the total possible points (number of classes x 5 points), and curve each student's percentage up based on the top overall participation score. (In other words, the total points accumulated by the student with the top participation score will become the new denominator (i.e., "total possible points") when calculating each student's participation score).

Grading

Your grade will be based on class participation and two practical exercises. Class participation (including on-time attendance, out-of-class preparation for class, and engagement in discussion during class) will count as 30 percent of your grade. (See above for how this portion of your grade will be calculated). Each of the practical exercises will count as 35 percent of your grade. One exercise will have you develop and write a short legal memorandum on a course-related topic. The other will involve participation in an oral advocacy presentation. The two exercises will be equally weighted as part of your final grade. Late assignments may receive a 5-point grade reduction for each day late. There is no final exam.

Communication

Assignments and materials will be communicated electronically on a weekly basis, and students are encouraged to seek any clarification by e-mail to Adam.Tanenbaum1@gmail.com.

Student Conduct Code

The College of Law's Student Conduct Code (Section 17) [http://www.law.fsu.edu/docs/default-source/academic_rules/academic_rules_policies.pdf?sfvrsn=12] governs the academic conduct of students at the Florida State University College of Law. Students are bound by the College of Law's Code in all of their academic work. The Code outlines the College of Law's expectations for the integrity of students' academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process.

University Attendance Policy

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid excuse. Consideration will also be given to students whose dependent children experience serious illness.

Academic Honor Policy

The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of students' academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy and for living up to their pledge to "...be honest and truthful and...[to] strive for personal and institutional integrity at Florida State University." (Florida State University Academic Honor Policy, found at <http://fda.fsu.edu/academic-resources/academic-integrity-and-grievances/academic-honor-policy>.)

Americans With Disabilities Act

Students with disabilities needing academic accommodations should:

1. register with and provide documentation to the Student Disability Resource Center; and
2. bring a letter to Nancy Benavides, Associate Dean for Student Affairs, indicating the need for accommodations and what type. This should be done during the first week of class.

Please note that professors are not allowed to provide classroom accommodation to a student until appropriate verification from the Student Disability Resource Center has been provided.

This syllabus and other class materials are available in alternative format upon request.

For more information about services available to FSU students with disabilities, contact the:

Student Disability Resource Center

874 Traditions Way
108 Student Services Building
Florida State University
Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
(850) 644-8504 (TDD)

Florida State University College of Law

Legislative Power

Fall 2021

A. S. Tanenbaum
Judge, First District Court of Appeal

Contact E-mail: atanenbaum@fsu.edu

Course Overview

This class will explore the nature and scope of the power vested in the Legislature by the Florida Constitution and how that power differs from powers vested in the other two branches of state government. We also will consider the difference between the “vested” legislative power of the Florida Constitution with the “enumerated” legislative power of the U.S. Constitution. The course will cover the extent to which there are constitutional limits on the Legislature’s otherwise plenary policymaking authority, as well as how the legislative and executive branches compete to assert the full scope of their respective powers on various fronts. We will discuss the implications of that competition in constitutional litigation. Finally, because this is a skills-training course, we will talk throughout about litigation fundamentals and strategy and research and writing techniques; and you will have opportunities to engage with examples in which the legislative branch has sought to protect and enforce the legislative prerogative in the courts.

There is no textbook. Instead, we will read and discuss various court opinions and court filings; occasionally, we will read from secondary sources (like law review articles and political theory essays) and excerpts from historical documents and writings (like the Federalist Papers). By reading this material closely and critically—along with coming to class prepared and eager to participate—you will continue to develop your ability to dissect legal analyses as a lawyer and to utilize that material creatively and persuasively as an advocate.

Rough Course Outline

1. What is legislative power? What is its provenance? Does it naturally exist separately from other sovereign powers? Where does it “naturally” reside, and who can exercise it? How is it exercised?
2. Different ways to vest legislative power: Original vesting of political power with the People, and the vesting of legislative power in a legislative body versus reservation of initiative power to the People.

3. In the United States, is there a difference between federal and state legislative power? Consider Article I of the U.S. Constitution and Article III of the Florida Constitution—Does it matter that federal powers are enumerated and state powers (especially the “police power”) are reserved and vested? Are there inherent limitations on legislative power, or are the only limitations found expressed in a constitution?
4. Separation of powers and combinations of powers. Why keep them separate? What is the structural significance of the Florida Constitution, and is there really complete separation of the various sovereign powers? What is executive power? What is judicial power? How do the other branches participate in the exercise of legislative power under the Florida Constitution?
5. Legislative power in practical terms: The non-delegation doctrine, “quasi-legislative” power, “quasi-judicial” power, “emergency” powers, the Administrative Procedure Act, and legislative control over the executive branch. Also, the common law, substantive rights, and legislative control over the judicial branch. Finally, what type of power is exercised in redistricting/reapportionment, and how is that power exercised?
6. Preemption, home rule, mandates, and charter counties—Florida’s special type of power decentralization.
7. What are the powers and responsibilities of individual legislators? Consider their involvement with public records, social media, constituent services; and compare that with their roles in drafting, debating, and voting on bills. Put a different way, what is the exercise of legislative power, and what is participation in political activity? How does any of this relate to the idea of legislative immunity and legislative privilege?
8. Legislative investigations and legislative subpoenas. Plus, a case study: Florida House of Representatives, 2016–18.
9. Departmentalism, public litigation, legislative prerogative and intervention—Quo warranto and projection of legislative power in litigation. Plus, litigation overview and practice basics.
10. Litigation as a public lawyer—perspectives and war stories.

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I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, because this is a legal skills course, classes will be more in a Socratic format and less in a lecture format. The contribution by each of you of your own experiences, thinking, and effort is essential to this course's success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes reserving enough time in advance of the next class to both read the material *and* absorb and think about it. You should come to each class with questions, thoughts, and reactions regarding the week's assigned reading. I will call on students frequently, and you will be expected to participate robustly.

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Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students are expected to attend each class, to be on time, and to be ready to participate robustly in class discussion. In each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class will be factored into the final grade.

Grading

Your course grade will be based on class participation and a writing assignment due at the end of the semester. "Class participation" includes on-time attendance, out-of-class preparation for class, and engagement in discussion during class. Late assignments will receive a five-percent grade reduction for each day late. There is no final exam.

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108 Student Services Building
Florida State University
Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
(850) 644-8504 (TDD)

Course Syllabus

LEGISLATIVE POWER

SYLLABUS

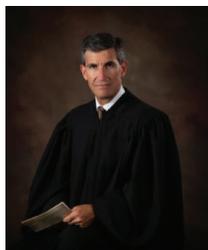


COURSE INFORMATION

- **Course Hours:** Wednesdays 5:15 pm – 7:05 pm
- **Course Meeting Location:** Room 326
- **Credit Hours:** 2 hours



COURSE INSTRUCTOR



Adam Tanenbaum

🏛️ Judge, First District Court of Appeal

✉️ atanenbaum@fsu.edu (<mailto:email@fsu.edu>)

tanenbauma@flcourts.org (<mailto:tanenbaum@1dca.org>)

📞 (850) 717-8222

🏠 2000 Drayton Drive Tallahassee FL 32399

I will be available by appointment to talk in person or by phone to discuss course matters. I also usually will be available for a short period of time after class. Students of course may also reach out by e-mail.

↩️ I will try to respond to e-mails sent to the school address within a day. If more urgent, please use my court e-mail address.



COURSE OVERVIEW

In this course, we will explore the nature and scope of the power vested in the Legislature by the Florida Constitution and how that power differs from powers vested in the other two branches of state government. We also will consider the difference between the “vested” legislative power of the Florida Constitution with the “enumerated” legislative power of the U.S. Constitution. Along the way, we will cover the extent to which there are constitutional limits on the Legislature’s otherwise plenary policymaking authority, and how the legislative branch competes with the executive and judicial branches to assert the full scope of their respective powers on various fronts. Indeed, we will discuss how that competition comes to a head in the courtroom in constitutional litigation. Finally, we will talk throughout about litigation fundamentals and strategy and research and writing techniques; and you will have opportunities to engage with examples in which the legislative branch has sought to protect and enforce the legislative prerogative in the courts. Sprinkled throughout the semester will be anecdotes and career advice from your professor and opportunities to engage in discussions with him about the practical side of being a lawyer.

There is no textbook. Instead, we will read and discuss various court opinions and court filings; occasionally, we will read from secondary sources (like law review articles and political theory essays) and excerpts from historical documents and writings (like the *Federalist Papers*). By reading this material closely and critically—along with coming to class prepared and eager to participate—you will continue to develop your ability to dissect legal analyses as a lawyer and to utilize that material creatively and persuasively as an advocate.

Assignments will be posted on the course's Canvas page at the "Assignments" tab. Assigned reading material will be available in PDF at the "Modules" tab, under that week's class heading.



LEARNING OBJECTIVES

At the completion of this course, students will be able to:

1. Define what the "law" is in Florida, and distinguish between the constitution and statutes, on the one hand; and rules, policies, and court decisions, on the other.
2. Define what sovereign "power" is, and describe the political philosophy that underlies (and the mechanics behind) the vesting and exercise of legislative power.
3. Explain the theory or theories behind legislative supremacy and how that supremacy interfaces with provisions of the Florida Constitution relating to vesting, de-vesting, re-vesting, and separation of powers.

4. Identify the extrinsic and intrinsic limitations on the legislative power in Florida.
5. Describe the historical diminution of state legislative power vis-à-vis the federal legislative and judicial powers.
6. Compare and contrast legislative power with both executive and judicial power, and describe the tensions between the exercise of legislative power and the exercise of the other two powers, including through the "administrative state."
7. Describe the difference between the authority of an individual member of the Florida Legislature and the power of the Legislature itself.
8. Compare and contrast the authority of a local government versus the authority of the Legislature in Florida.
9. Identify and evaluate creative methodologies for the projection of Florida's legislative power outside the legislative process.



ROUGH COURSE OUTLINE

1. What is "power"? How does it relate to the idea of sovereignty?
2. What is the "law"? We consider a constitution or a statute to be the law, but why? Are administrative rules considered part of the "law"? What about court rules? What about court *opinions*? What is the "common law"? Where do rights come from?
3. What is legislative power? What is its provenance? Does it naturally exist separately from other sovereign powers? Where does it "naturally" reside, and who can exercise it? How is it exercised? Is there legislative supremacy in our system of government? Compare and contrast the legislative power with executive power and judicial power.
4. What are different ways to vest legislative power? Discuss original vesting of political power with the People, and the vesting of legislative power in a legislative body versus reservation of initiative power to the People.
5. In the United States, is there a difference between federal and state legislative power? Consider Article I of the U.S. Constitution and Article III of the Florida Constitution—Does it matter that federal powers are enumerated and state powers (especially the "police power") are reserved and vested? When the U.S. Constitution was ratified, what effect did that have on the states' respective sovereign legislative powers? Are there extrinsic and intrinsic limitations on Florida's legislative power? What are they?

6. What do we mean by "separation of powers"? Discuss Article II, section 3, of the Florida Constitution and how it operates. What is executive power? What is judicial power? How does the executive branch attempt to exercise legislative power? How does the judicial branch do so? Why keep these powers separate? What is the structural significance of the Florida Constitution, and is there *really* complete separation of the various sovereign powers? What about vertical or federal separation of powers? What are federal limits on state legislative power? In particular, how has the federal judiciary come to limit the exercise of state legislative power?
7. Legislative power and the administrative state: What is the non-delegation doctrine? What does the exercise of "quasi-legislative" power and "quasi-judicial" power look like? Are "emergency" powers really a thing? How does the Administrative Procedure Act serve as a legislative control over the executive branch?
8. What are the powers and responsibilities of individual legislators? How do their involvement with drafting, debating, and voting on bills compare to their engagement with social media, public speaking, and "constituent services"? Or: What is the difference between a legislator's exercise of power and his or her participation in what is considered "political" activity? How does any of this relate to the idea of legislative immunity and legislative privilege?
9. Florida's special type of power decentralization: What is preemption? What is the difference between a charter county and a non-charter county? What is home rule? What limits are there on the Legislature's power to impose "local mandates"?
10. How does a chamber of the Legislature project authority through legislative investigations and subpoenas? Plus, a case study: Florida House of Representatives, 2016–18.
11. What is departmentalism? How does the legislative branch compete with the other branches in the exercise of power? How can the Legislature project its authority through public litigation and the exercise of other prerogatives? What is quo warranto? How does competition between the branches come to a head in the courtroom in constitutional litigation?
12. Throughout the course: Litigation overview and practice basics. Plus, litigation as a public lawyer—perspectives and war stories.



STUDENT RESPONSIBILITIES

- I will maintain and update this Canvas site, which will contain class modules with reading assignments and PDFs of many of the assigned materials. Students should log on to Canvas frequently to check for course and assignment updates.

- Students are expected to keep up with the class, to engage with the course material, to attend each class prepared to discuss the assigned material, and to submit any writing assignment by the due dates.
- Students are expected to be on time to class each week and are expected to be present and engaged for the duration of each class.
- Assignments, activities, and final papers are expected to be products of individual students per the **FSU Academic Honor Policy** (<http://registrar.fsu.edu/bulletin/undergraduate/information/integrity/>). Students should not discuss any of the questions with each other before or during the actual assignments, activities, or final papers without instructor approval.
- To receive maximum points for questions, students need to follow the instructions carefully, follow word limits as instructed, and use spell- and grammar-checking.
- To be successful in this course, students need to read all assigned materials, participate robustly in class, and complete all assigned activities and final paper.
- Assignments and materials will be distributed electronically on a weekly basis, and students are encouraged to seek any clarification by e-mail to atanenbaum@fsu.edu (<mailto:atanenbaum@fsu.edu>).



COURSE POLICIES

GENERAL COURSE MATTERS

As noted elsewhere, there is no textbook. Your reading will consist primarily of court opinions and court filings (like motions and briefs), and from time to time, there will be readings from other sources as well. I will endeavor to provide most of the assigned material via Canvas. Occasionally, I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, classes will be more in a Socratic format and less in a lecture format, so the contribution by each of you of your own experiences, thinking, and effort is essential to this course's success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes reserving enough time in advance of the next class to both read the material *and* absorb and think about it. You should come to each class with questions, thoughts, and reactions regarding the week's assigned reading. I will call on students frequently, and you will be expected to participate robustly.

As in all classes, you should not engage in any activity—on an electronic device, phone, or otherwise—that would disrupt me or the attention of students sitting near you. Texting during class

is strictly forbidden and will be penalized.

You may have and use laptops in class, but they are discouraged. Take a look at this article if you have a chance—<https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away>  (https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away).

ATTENDANCE AND CLASS PARTICIPATION

Attendance at every class is expected, and it will be taken at each class meeting. Please be on time. Any unexcused absence could result in a penalty reflected in your final grade.

Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students are expected to attend each class, to be on time, and to be ready to participate robustly in class discussion. In each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class will be factored into the final grade.

The College of Law requires a student to attend a minimum of 80% of class meetings to receive credit for the course. Attendance includes the obligation to arrive on time and to satisfactorily complete reading assignments prior to class. If the cumulative number of unexcused absences brings you below the mandatory 80% class attendance threshold (that is, you have unexcused absences for at more than 20% of the scheduled classes), you will be reported to the College of Law's administration for disenrollment and/or assignment of an "Administrative F" grade.

COMMUNICATIONS/ONLINE ETIQUETTE

For Discussions:

- Please use polite, respectful behavior when posting your responses to prompts in the Discussion Boards.
- Be mindful of how you express your emotions and humor, and be sensitive to cultural and ability differences of your online peers.
- Keep postings to the point, and make sure your comments are relevant to the topic of discussion.
- Avoid messages such as, "Wow," "Way to go," or "Ditto" and aim for comments that validate other members' ideas through careful explanation of why.
- When replying, give a short description in the subject line of what you are replying to, and use correct punctuation and spelling throughout your post.

For E-mail Communication:

- For e-mail, please respond to your instructor's and peers' messages within a 24-hour period.
- Use a brief description in the subject line that outlines the topic of discussion.
- Avoid using slang or profane words.
- Use your instructor's correct title he or she prefers for communication.
- Avoid using emoticons, such as smiley faces, and maintain a professional demeanor.
- Sign your e-mail messages using your full name.
- AVOID USING ALL CAPS. This makes the message visually difficult to read and is perceived by the reader as "shouting."
- Use correct spelling, grammar, and punctuation, just as you would for any communication.
- Ask yourself whether you would be comfortable if someone other than the intended receiver were to read your message. Remember, e-mail is not a completely secure form of communication.
- Refrain from "flaming," which is expressing a strongly held opinion without tact or regard for others. Don't assume that recipients will know the intent of the message (e.g., "just kidding"). It reads differently when it's in print (electronic or not).
- Report any inappropriate communication considered to be of a serious nature to your instructor, as it may be a violation of University policy.
- Treat others with respect by making messages clear and succinct.



COURSE RECORDING NOT PERMITTED

In this class, consistent with state law and university policy, you may not make recordings of classroom activities without the permission of the instructor. This policy applies to both audio and video recordings.

GRADING POLICY

You will be graded primarily based on a writing assessment (short-answer questions) to be due on the last day of the exam period. The writing assessment will be graded on the following matrix: Mastery of subject matter--70%; Quality of writing and efficacy of idea organization and presentation--20%; Accuracy, proofreading, following instructions--10%. Moreover, in each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class will be factored into the final grade. Note that "class participation" includes on-time attendance, out-of-class preparation for

class, and engagement in discussion during class. Late assignments will receive a five-percent grade reduction for each day late. There is no formal final exam.



GRADE SCHEME

The following grading standards will be used in this class:

Grade	Range
A	93% to 100%
A-	90% to < 93%
B+	87% to < 90%
B	83% to < 87%
B-	80% to < 83%
C+	77% to < 80%
C	73% to < 77%
C-	70% to < 73%
D+	67% to < 70%
D	63% to < 67%
D-	60% to < 63%
F	0% to < 60%



TECHNOLOGY REQUIREMENTS

Course content is accessible through Canvas. Students will need to be able to view videos, write and upload assignments, post to discussion boards, and take assessments. Students should have access to high-speed internet and updated software. Mobile devices may be used to view course content, upload assignments, and take assessments as determined by the instructor. To view the most current technology requirements, visit the [FSU Canvas support site \(https://support.canvas.fsu.edu/kb/article/899-technology-recommendations-for-learning-online-at-fsu/\)](https://support.canvas.fsu.edu/kb/article/899-technology-recommendations-for-learning-online-at-fsu/).



CANVAS SUPPORT

Need help with Canvas? Contact FSU Canvas Support:

✉ **Email:** canvas@fsu.edu (<mailto:canvas@fsu.edu>)

📞 **Phone:** (850) 644-8004

🌐 **Website:** support.canvas.fsu.edu (<http://support.canvas.fsu.edu>)

🕒 **Hours:** 8am to 5pm, Monday - Friday



FSU LIBRARIES RESOURCES & SERVICES

Whether on campus or learning online, you can [access library resources easily](https://lib.fsu.edu/service/campus-access) (<https://lib.fsu.edu/service/campus-access>). You'll find databases, tutorials, workshops, and other helpful resources in the [FSU Libraries for Students](https://canvas.fsu.edu/courses/102) (<https://canvas.fsu.edu/courses/102>) Canvas org site (all students are enrolled automatically). For recommended research resources and ways to connect with [your librarians](https://lib.fsu.edu/service/library-liaisons) (<https://lib.fsu.edu/service/library-liaisons>), look for "Library Tools" in your Canvas course navigation.



UNIVERSITY POLICIES

UNIVERSITY ATTENDANCE POLICY

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid excuse. Consideration will also be given to students whose dependent children experience serious illness.

ACADEMIC HONOR POLICY

The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of student's academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy and for living up to their pledge to "... be honest and truthful and ...[to] strive for personal and institutional integrity at Florida State University." (For more details, see the [FSU Academic Honor Policy and procedures for addressing alleged violations \(http://fda.fsu.edu/academic-resources/academic-integrity-and-grievances/academic-honor-policy\)](http://fda.fsu.edu/academic-resources/academic-integrity-and-grievances/academic-honor-policy).)

ACADEMIC SUCCESS

Your academic success is a top priority for Florida State University. University resources to help you succeed include tutoring centers, computer labs, counseling and health services, and services for designated groups, such as veterans and students with disabilities. The following information is not exhaustive, so please check with your advisor or the [Department of Student Support and Transitions \(https://dsst.fsu.edu/\)](https://dsst.fsu.edu/) to learn more.

PROCESS FOR RESOLVING ACADEMIC PROBLEMS OR GRIEVANCES

Please use the *Resolving Academic Problems: A Step-by-Step Guide for Students* in the Academic Honor Policy and Grievances section of the [Office of Faculty Development & Advancement \(https://fda.fsu.edu/academic-resources\)](https://fda.fsu.edu/academic-resources) website to begin the process of communicating with your instructor to resolve any confusion or difficulty you may be having in the course. Detailed information on FSU's grievance procedure, including special instructions for students enrolled in an FSU branch campus, is maintained on the FSU Undergraduate Bulletin's [Academic Integrity & Grievances \(https://registrar.fsu.edu/bulletin/undergraduate/information/integrity/index.cfm\)](https://registrar.fsu.edu/bulletin/undergraduate/information/integrity/index.cfm) webpage. Out-of-state distance learning students should review the Office of Distance Learning [Complaint Resolution \(https://distance.fsu.edu/about-us/complaint-resolution\)](https://distance.fsu.edu/about-us/complaint-resolution) webpage for additional procedures.

AMERICANS WITH DISABILITIES ACT

Florida State University (FSU) values diversity and inclusion; we are committed to a climate of mutual respect and full participation. Our goal is to create learning environments that are usable, equitable, inclusive, and welcoming. FSU is committed to providing reasonable accommodations for all persons with disabilities in a manner that is consistent with academic standards of the course while empowering the student to meet integral requirements of the course.

Students with disabilities needing academic accommodation should:

1. register with and provide documentation to the Office of Accessibility Services; and
2. request a letter from the Office of Accessibility Services to be sent to the instructor indicating the need for accommodation and what type; and,
3. meet (in person, via phone, email, teams, zoom, etc...) with each instructor to whom a letter of accommodation was sent to review approved accommodations.

Please note that instructors are not allowed to provide classroom accommodations to a student until appropriate verification from the Office of Accessibility Services has been provided.

This syllabus and other class materials are available in an alternative format upon request.

For the latest version of this statement and more information about services available to FSU students with disabilities, contact the:

[Office of Accessibility Services \(Tallahassee Campus\)](https://dsst.fsu.edu/oas) (<https://dsst.fsu.edu/oas>)

874 Traditions Way

108 Student Services Building

Florida State University

Tallahassee, FL 32306-4167

(850) 644-9566 (voice)

(850) 644-8504 (TDD)

oas@fsu.edu (<mailto:oas@fsu.edu>)

<https://dsst.fsu.edu/oas>

[Student Accessibility Services \(Panama City Campus\)](https://pc.fsu.edu/students/sas) (<https://pc.fsu.edu/students/sas>)

2nd Floor Barron Building (Room 215)

Florida State University Panama City

Panama City, FL 32405

(850) 770-2172 (office)

(866) 693-7872 (toll free)

Email: sds@pc.fsu.edu (<mailto:sds@pc.fsu.edu>)

<https://pc.fsu.edu/students/sas>

FREE TUTORING FROM FSU

On-campus tutoring and writing assistance are available for many courses at Florida State University. High-quality tutoring is available by appointment and on a walk-in basis. These services are offered by tutors trained to encourage the highest level of individual academic success while upholding personal academic integrity.

Tallahassee Campus

For a comprehensive list of on-campus tutoring options, visit the [Academic Center for Excellence \(https://ace.fsu.edu/tutoring\)](https://ace.fsu.edu/tutoring) (ACE) webpage (<http://ace.fsu.edu/tutoring>) or contact tutor@fsu.edu (<mailto:tutor@fsu.edu>).

Panama City Campus

Peer tutoring is available for all undergraduate FSU Panama City students both in-person on campus and remotely through Zoom. If you need tutoring support, please email the peer tutor listed on the [Peer Tutoring \(https://pc.fsu.edu/peer-tutoring\)](https://pc.fsu.edu/peer-tutoring) webpage (<https://pc.fsu.edu/peer-tutoring>). Tutoring will be in-person in the [John and Gail Robbins Center for Academic Excellence and Innovation \(https://pc.fsu.edu/students/student-services/john-gail-robbon-center\)](https://pc.fsu.edu/students/student-services/john-gail-robbon-center) unless you specify with the tutor that you would like to meet via Zoom instead. If you have trouble reaching a peer tutor outside their scheduled availability listed on the [Peer Tutoring \(https://pc.fsu.edu/peer-tutoring\)](https://pc.fsu.edu/peer-tutoring) webpage, you may email [advising@pc.fsu.edu \(mailto:advising@pc.fsu.edu\)](mailto:advising@pc.fsu.edu) or call (850) 770-2263 to be connected with available resources.

CONFIDENTIAL CAMPUS RESOURCES

Various centers and programs are available to assist students with navigating stressors that might impact academic success. These include the following:

Victim Advocate Program (<https://dsst.fsu.edu/vap>)

University Center A

Room 4109

Phone: (850) 644-7161 (24/7)

Text: (850) 756-4320 (24/7)

Email: [Victims-Advocate@fsu.edu \(mailto:Victims-Advocate@fsu.edu\)](mailto:Victims-Advocate@fsu.edu)

Office Hours: Monday-Friday 8am-5pm

<https://dsst.fsu.edu/vap>

Counseling & Psychological Services (*Tallahassee Campus*) (<https://counseling.fsu.edu/>)

Askew Student Life Center, 2nd Floor

942 Learning Way

Phone: (850) 644-8255 / (850) 644-TALK

<https://counseling.fsu.edu>

FSU PC Counseling Center (*Panama City Campus*) (<https://pc.fsu.edu/students/student-affairs/counseling-Center>)

Michael McLaughlin, LCSW

Coordinator/Therapist

Barron Building, Office 214

Phone: (850) 770-2174

Email: [mrm18bg@fsu.edu \(mailto:mrm18bg@fsu.edu\)](mailto:mrm18bg@fsu.edu)

Office Hours: Monday-Thursday 9am-4pm; Friday 9am-3pm

<https://pc.fsu.edu/students/student-affairs/counseling-center>

University Health Services (<https://uhs.fsu.edu/>)

Health and Wellness Center

960 Learning Way

Phone: (850) 644-6230

Office Hours: Monday-Friday 8am-4pm

<https://uhs.fsu.edu>

FSU FOOD PANTRIES

FSU has established food pantries where students in need can pick up nonperishable food items freely and anonymously. Donations for the collection of nonperishable food items are encouraged.

For information about the Tallahassee food pantry, visit the **Food for Thought Pantry** (<https://dsst.fsu.edu/resources/food-for-thought-pantry>) webpage

(<https://dsst.fsu.edu/resources/food-for-thought-pantry>). The pantry is located at University Center A, Suite 4148. If you have questions or concerns, contact the Department of Student Support and Transitions at [foodpantry@fsu.edu \(mailto:foodpantry@fsu.edu\)](mailto:foodpantry@fsu.edu) or (850) 644-2428.

For information about the Panama City Food Pantry, visit the **Seminole Exchange** (<https://pc.fsu.edu/students/counseling-center/food>) webpage

(<https://pc.fsu.edu/students/counseling-center/food>) The pantry is located at Barron Building, 2nd floor. If you have questions or concerns, contact Michael McLaughlin, LCSW, at [mmclaughlin3@fsu.edu \(mailto:mmclaughlin3@fsu.edu\)](mailto:mmclaughlin3@fsu.edu) or (850) 770-2174.

SYLLABUS CHANGE POLICY

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

Course Syllabus

JUDICIAL POWER

SYLLABUS

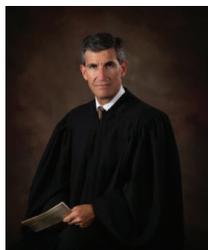


COURSE INFORMATION

- **Course Hours:** Mondays 9:00 a.m. – 10:50 a.m.
- **Course Meeting Location:** Room 310
- **Credit Hours:** 2 hours



COURSE INSTRUCTOR



Adam Tanenbaum

🏛️ Judge, First District Court of Appeal

✉️ atanenbaum@fsu.edu (<mailto:email@fsu.edu>)

tanenbauma@flcourts.org (<mailto:tanenbaum@1dca.org>)

📞 (850) 717-8222

🏠 2000 Drayton Drive Tallahassee FL 32399

I will be available by appointment to talk in person or by phone to discuss course matters. I also usually will be available for a short period of time after class. Students of course may also reach out by e-mail.

↩️ I will try to respond to e-mails sent to the school address within a day. If more urgent, please use my court e-mail address.



COURSE OVERVIEW

This is a course taught at one of Florida's finest publicly funded law schools, so its emphasis will be the State's constitution, its statutory law, and its court system. In this course, we will explore the nature and scope of the power vested in courts by the Florida Constitution and how that power differs from powers vested in the other two branches of state government. We also will consider whether there is any difference between the "judicial" power vested by our state constitution and the "judicial Power of the United States" vested by the federal constitution. Additionally, we will discuss how courts were understood to function historically and compare that to what Florida's (and federal) courts do now. There will be coverage of the old separations between common law and equity and of what we should make of the exercise of judicial power in what roughly can be characterized as a common-law system like ours versus the exercise of that power in a civil-law system like that found across continental Europe.

Naturally, we will cover how judges exercise judicial power on behalf of their respective courts. This will include discussions about adjudications, what is considered the "law" that is to be applied upon those adjudications, and the forms of remedies that courts may provide in comportment with the law. That will get us into rules of decision, scopes of review, and how judges go about deciding cases. In this respect, we will touch briefly on the extent to which non-textual authority (*viz.* natural law, "reasonableness") should serve as part of the rules of decision. When we discuss remedies, we also will hit on the difference between a judgment and an order, and we will cover one of my favorite topics: Writs!

We will talk about how appellate courts function in contrast to trial courts, and how the limited authority of administrative hearing officers contrasts with that of constitutional judicial officers. We will touch on vertically binding precedent, horizontal "stare decisis," and other judicial policies. We will talk about rules of procedure, who they govern, how they compare to "procedural law," and how they differ from "substantive law." I will explain to you what "judicial review" is and what it is not, and we (once again) explore the meaning behind one of my favorite cases: *Marbury v. Madison*. Hopefully, we also can get to some miscellaneous constitutional considerations that impact on the function of Florida courts (e.g., "Marsy's Law," access to courts, due process). In this vein, I will show you how understanding all of the nuance referenced in this paragraph can help you be a more effective advocate.

Sprinkled throughout the semester will be anecdotes and career advice from your professor and opportunities to engage in discussions with him about the practical side of being a lawyer (and a judge).

There is no textbook. Instead, we will read and discuss various court opinions, constitutional and statutory provisions, and selections from secondary sources and historical writings.

Assigned reading material will be available at the "Modules" tab, under that week's class heading.



LEARNING OBJECTIVES

At the completion of this course, students will be able to:

1. Define "judicial power" in the context of its vesting under the Florida and U.S. Constitutions.
2. Explain the difference between a civil-law court and a common-law court, and the difference between a common-law court and a court of equity (or chancery).
3. Identify differences between Florida courts and federal courts—in terms of the exercise of judicial power and constitutional and functional limitations.
4. Distinguish between the exercise of judicial power by a trial court and such an exercise by an appellate court.
5. Describe the various types of relief that trial courts and appellate courts are authorized to award.
6. Distinguish between a court order and a court judgment.
7. Describe the function of various writs that courts have authority to issue under Florida's constitutional and statutory law.
8. Distinguish between the exercise of judicial power and "judicial review," and between judicial power and "quasi-judicial" power.
9. Distinguish between the judicial policy of treating decisions of a higher court as binding (vertical precedent) and the judicial policy of treating prior decisions of the same court as binding (horizontal *stare decisis*), and state a persuasive position as to the merits of each policy.
10. Identify at least two techniques by which a lawyer can use his or her understanding of judicial power to be more persuasive before a court on behalf of a client.



STUDENT RESPONSIBILITIES

- I will maintain and update this Canvas site, which will contain class modules with reading assignments and PDFs of many of the assigned materials. Students should log on to Canvas frequently to check for course and assignment updates.
- Students are expected to keep up with the class, to engage with the course material, to attend each class prepared to discuss the assigned material, and to submit any writing assignment by the due dates.
- Students are expected to be on time to class each week and are expected to be present and engaged for the duration of each class.
- Any written submission is expected to be the product of the individual student making the submission, per the **FSU Academic Honor Policy** (<http://registrar.fsu.edu/bulletin/undergraduate/information/integrity/>). Students should not discuss any of the questions with each other before or during preparation of the written submission without prior approval of the professor. ***Use of any artificial intelligence tool to substitute for a student's own work constitutes academic dishonesty and is strictly prohibited.***
- To be successful in this course, a student will need to read all assigned materials, participate robustly in class, and complete all assigned activities and written assignments.
- Assignments and materials will be distributed electronically on a weekly basis, and students are encouraged to seek any clarification by e-mail to atanenbaum@fsu.edu (<mailto:atanenbaum@fsu.edu>).



COURSE POLICIES

GENERAL COURSE MATTERS

As noted elsewhere, there is no textbook. Your reading will consist primarily of law text, court opinions, and excerpts from secondary sources. I will endeavor to provide most of the assigned material via Canvas. Occasionally, I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, classes will be more dialectic (as opposed to a straight lecture format), so the contribution by each of you from your effort at completing and thinking about the readings (with your own experiences added to the mix) is essential to this course's success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes both reading the assigned material *and* having thought about it in some meaningful way. You, then, should come to each class with questions, thoughts, and

reactions regarding the week's assigned reading. I will call on students frequently, and you will be expected to participate robustly.

As in all classes, you should not engage in any activity—on an electronic device, phone, or otherwise—that would disrupt me or the attention of students sitting near you.

You may have and use laptops in class, but they are discouraged. Take a look at this article if you have a chance—<https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away>  (https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away).

ATTENDANCE AND CLASS PARTICIPATION

Attendance at every class is expected, and it will be taken at each class meeting. Please be on time. Any unexcused absence could result in a penalty reflected in your final grade.

Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students should come to each class ready to participate robustly in class discussion. In each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class could become a factor in determining that student's final grade.

The College of Law requires a student to attend a minimum of 80% of class meetings to receive credit for the course. Attendance includes the obligation to arrive on time and to satisfactorily complete reading assignments prior to class. If the cumulative number of unexcused absences brings you below the mandatory 80% class attendance threshold (that is, you have unexcused absences for at more than 20% of the scheduled classes), you will be reported to the College of Law's administration for disenrollment and/or assignment of an "Administrative F" grade.

COMMUNICATIONS/ONLINE ETIQUETTE

For Discussions:

- Please use polite, respectful behavior when posting your responses to prompts in the Discussion Boards.
- Be mindful of how you express your emotions and humor, and be sensitive to cultural and ability differences of your online peers.
- Keep postings to the point, and make sure your comments are relevant to the topic of discussion.

- Avoid messages such as, "Wow," "Way to go," or "Ditto" and aim for comments that validate other members' ideas through careful explanation of why.
- When replying, give a short description in the subject line of what you are replying to, and use correct punctuation and spelling throughout your post.

For E-mail Communication:

- For e-mail, please respond to your instructor's and peers' messages within 24 hours.
- Use a brief description in the subject line that outlines the topic of discussion.
- Avoid using slang or profane words.
- Use your instructor's correct title he or she prefers for communication.
- Avoid using emoticons, such as smiley faces, and maintain a professional demeanor.
- Sign your e-mail messages using your full name.
- AVOID USING ALL CAPS. This makes the message visually difficult to read and is perceived by the reader as "shouting."
- Use correct spelling, grammar, and punctuation, just as you would for any communication.
- Ask yourself whether you would be comfortable if someone other than the intended receiver were to read your message. Remember, e-mail is not a completely secure form of communication.
- Refrain from "flaming," which is expressing a strongly held opinion without tact or regard for others. Don't assume that recipients will know the intent of the message (e.g., "just kidding"). It reads differently when it's in print (electronic or not).
- Report any inappropriate communication considered to be of a serious nature to your instructor, as it may be a violation of University policy.
- Treat others with respect by making messages clear and succinct.



COURSE RECORDING NOT PERMITTED

In this class, consistent with state law and university policy, you may not make recordings of classroom activities without the permission of the instructor. This policy applies to both audio and video recordings.

GRADING POLICY

Your grade in this course will be determined based on your performance on an end-of-course writing assignment, which will be due on the last day of the law school's exam period. You will be graded on the following matrix: Mastery of subject matter--65%; Quality of writing and efficacy of idea organization and presentation--25%; Accuracy, proofreading, following instructions--10%.

Moreover, in each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, I reserve the ability to factor a student's relative participation during class into determining the student's final grade, where warranted. Note that "class participation" includes on-time attendance, out-of-class preparation for class, and engagement in discussion during class.

Late assignments will receive a five-percent grade reduction for each day late. There is no formal final exam.



GRADE SCHEME

The following grading standards will be used in this class:

Grade	Range
A	93% to 100%
A-	90% to < 93%
B+	87% to < 90%
B	83% to < 87%
B-	80% to < 83%
C+	77% to < 80%
C	73% to < 77%
C-	70% to < 73%
D+	67% to < 70%
D	63% to < 67%

Grade	Range
D-	60% to < 63%
F	0% to < 60%



TECHNOLOGY REQUIREMENTS

Course content is accessible through Canvas. Students will need to be able to view videos, write and upload assignments, post to discussion boards, and take assessments. Students should have access to high-speed internet and updated software. Mobile devices may be used to view course content, upload assignments, and take assessments as determined by the instructor. To view the most current technology requirements, visit the [FSU Canvas support site \(https://support.canvas.fsu.edu/kb/article/899-technology-recommendations-for-learning-online-at-fsu/\)](https://support.canvas.fsu.edu/kb/article/899-technology-recommendations-for-learning-online-at-fsu/).



CANVAS SUPPORT

Need help with Canvas? Contact FSU Canvas Support:

✉ **Email:** canvas@fsu.edu (<mailto:canvas@fsu.edu>)

📞 **Phone:** (850) 644-8004

🌐 **Website:** support.canvas.fsu.edu (<http://support.canvas.fsu.edu>)

🕒 **Hours:** 8am to 5pm, Monday - Friday



FSU LIBRARIES RESOURCES & SERVICES

Whether on campus or learning online, you can [access library resources easily \(https://lib.fsu.edu/service/campus-access\)](https://lib.fsu.edu/service/campus-access). You'll find databases, tutorials, workshops, and other helpful resources in the [FSU Libraries for Students \(https://canvas.fsu.edu/courses/102\)](https://canvas.fsu.edu/courses/102) Canvas org site (all students are enrolled automatically). For recommended research resources and ways

to connect with **your librarians** (<https://lib.fsu.edu/service/library-liaisons>), look for "Library Tools" in your Canvas course navigation.



UNIVERSITY POLICIES

UNIVERSITY ATTENDANCE POLICY

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid excuse. Consideration will also be given to students whose dependent children experience serious illness.

ACADEMIC HONOR POLICY

The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of student's academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are responsible for reading the Academic Honor Policy and for living up to their pledge to "... be honest and truthful and ...[to] strive for personal and institutional integrity at Florida State University." (For more details, see the **FSU Academic Honor Policy and procedures for addressing alleged violations** (<http://fda.fsu.edu/academic-resources/academic-integrity-and-grievances/academic-honor-policy>).

ACADEMIC SUCCESS

Your academic success is a top priority for Florida State University. University resources to help you succeed include tutoring centers, computer labs, counseling and health services, and services for designated groups, such as veterans and students with disabilities. The following information is not exhaustive, so please check with your advisor or the **Department of Student Support and Transitions** (<https://dsst.fsu.edu/>) to learn more.

PROCESS FOR RESOLVING ACADEMIC PROBLEMS OR GRIEVANCES

Please use the *Resolving Academic Problems: A Step-by-Step Guide for Students* in the Academic Honor Policy and Grievances section of the **Office of Faculty Development & Advancement** (<https://fda.fsu.edu/academic-resources>) website to begin the process of communicating with your instructor to resolve any confusion or difficulty you may be having in the course. Detailed information on FSU's grievance procedure, including special instructions for students enrolled in an FSU branch campus, is maintained on the FSU Undergraduate Bulletin's **Academic Integrity & Grievances** (<https://registrar.fsu.edu/bulletin/undergraduate/information/integrity/index.cfm>) webpage. Out-of-state distance learning students should review the Office of Distance Learning **Complaint Resolution** (<https://distance.fsu.edu/about-us/complaint-resolution>) webpage for additional procedures.

AMERICANS WITH DISABILITIES ACT

Florida State University (FSU) values diversity and inclusion; we are committed to a climate of mutual respect and full participation. Our goal is to create learning environments that are usable, equitable, inclusive, and welcoming. FSU is committed to providing reasonable accommodations for all persons with disabilities in a manner that is consistent with academic standards of the course while empowering the student to meet integral requirements of the course.

Students with disabilities needing academic accommodation should:

1. register with and provide documentation to the Office of Accessibility Services; and
2. request a letter from the Office of Accessibility Services to be sent to the instructor indicating the need for accommodation and what type; and,
3. meet (in person, via phone, email, teams, zoom, etc...) with each instructor to whom a letter of accommodation was sent to review approved accommodations.

Please note that instructors are not allowed to provide classroom accommodations to a student until appropriate verification from the Office of Accessibility Services has been provided.

This syllabus and other class materials are available in an alternative format upon request.

For the latest version of this statement and more information about services available to FSU students with disabilities, contact the:

Office of Accessibility Services (Tallahassee Campus) (<https://dsst.fsu.edu/oas>)

874 Traditions Way

108 Student Services Building

Florida State University

Tallahassee, FL 32306-4167

(850) 644-9566 (voice)

(850) 644-8504 (TDD)

[oas@fsu.edu \(mailto:oas@fsu.edu\)](mailto:oas@fsu.edu)

<https://dsst.fsu.edu/oas>

Student Accessibility Services (Panama City Campus) (<https://pc.fsu.edu/students/sas>)

2nd Floor Barron Building (Room 215)

Florida State University Panama City

Panama City, FL 32405

(850) 770-2172 (office)

(866) 693-7872 (toll free)

Email: [sds@pc.fsu.edu \(mailto:sds@pc.fsu.edu\)](mailto:sds@pc.fsu.edu)

<https://pc.fsu.edu/students/sas>

FREE TUTORING FROM FSU

On-campus tutoring and writing assistance are available for many courses at Florida State University. High-quality tutoring is available by appointment and on a walk-in basis. These services are offered by tutors trained to encourage the highest level of individual academic success while upholding personal academic integrity.

Tallahassee Campus

For a comprehensive list of on-campus tutoring options, visit the **Academic Center for Excellence** (<https://ace.fsu.edu/tutoring>) (ACE) webpage (<http://ace.fsu.edu/tutoring>) or contact [tutor@fsu.edu \(mailto:tutor@fsu.edu\)](mailto:tutor@fsu.edu).

Panama City Campus

Peer tutoring is available for all undergraduate FSU Panama City students both in-person on campus and remotely through Zoom. If you need tutoring support, please email the peer tutor listed on the **Peer Tutoring** (<https://pc.fsu.edu/peer-tutoring>) webpage (<https://pc.fsu.edu/peer-tutoring>). Tutoring will be in-person in the **John and Gail Robbins Center for Academic Excellence and Innovation** (<https://pc.fsu.edu/students/student-services/john-gail-robbon-center>) unless you specify with the tutor that you would like to meet via Zoom instead. If you have trouble reaching a peer tutor outside their scheduled availability listed on the **Peer Tutoring** (<https://pc.fsu.edu/peer-tutoring>) webpage, you may email [advising@pc.fsu.edu \(mailto:advising@pc.fsu.edu\)](mailto:advising@pc.fsu.edu) or call (850) 770-2263 to be connected with available resources.

CONFIDENTIAL CAMPUS RESOURCES

Various centers and programs are available to assist students with navigating stressors that might impact academic success. These include the following:

Victim Advocate Program (<https://dsst.fsu.edu/vap>)

University Center A

Room 4109

Phone: (850) 644-7161 (24/7)

Text: (850) 756-4320 (24/7)

Email: **Victims-Advocate@fsu.edu** (<mailto:Victims-Advocate@fsu.edu>)

Office Hours: Monday-Friday 8am-5pm

<https://dsst.fsu.edu/vap>

Counseling & Psychological Services (Tallahassee Campus) (<https://counseling.fsu.edu/>)

Askew Student Life Center, 2nd Floor

942 Learning Way

Phone: (850) 644-8255 / (850) 644-TALK

<https://counseling.fsu.edu>

FSU PC Counseling Center (Panama City Campus) (<https://pc.fsu.edu/students/student-affairs/counseling-Center>)

Michael McLaughlin, LCSW

Coordinator/Therapist

Barron Building, Office 214

Phone: (850) 770-2174

Email: **mrm18bg@fsu.edu** (<mailto:mrm18bg@fsu.edu>)

Office Hours: Monday-Thursday 9am-4pm; Friday 9am-3pm

<https://pc.fsu.edu/students/student-affairs/counseling-center>

University Health Services (<https://uhs.fsu.edu/>)

Health and Wellness Center

960 Learning Way

Phone: (850) 644-6230

Office Hours: Monday-Friday 8am-4pm

<https://uhs.fsu.edu>

FSU FOOD PANTRIES

FSU has established food pantries where students in need can pick up nonperishable food items freely and anonymously. Donations for the collection of nonperishable food items are encouraged. For information about the Tallahassee food pantry, visit the **[Food for Thought Pantry](https://dsst.fsu.edu/resources/food-for-thought-pantry)** (<https://dsst.fsu.edu/resources/food-for-thought-pantry>) webpage

(<https://dsst.fsu.edu/resources/food-for-thought-pantry>). The pantry is located at University Center A, Suite 4148. If you have questions or concerns, contact the Department of Student Support and Transitions at **foodpantry@fsu.edu** (<mailto:foodpantry@fsu.edu>) or (850) 644-2428.

For information about the Panama City Food Pantry, visit the **Seminole Exchange** (<https://pc.fsu.edu/students/counseling-center/food>) webpage (<https://pc.fsu.edu/students/counseling-center/food>) The pantry is located at Barron Building, 2nd floor. If you have questions or concerns, contact Michael McLaughlin, LCSW, at mmclaughlin3@fsu.edu (<mailto:mmclaughlin3@fsu.edu>) or (850) 770-2174.

SYLLABUS CHANGE POLICY

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

[Text download from Canvas page]

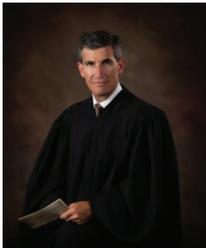
Legislative Power—Spring 2025

Syllabus

Course Information

- **Course Hours:** Mondays 5:15 pm – 7:05 pm
- **Course Meeting Location:** Room 308
- **Credit Hours:** 2 hours

Course Instructor



Adam Tanenbaum

Judge, First District Court of Appeal

atanenbaum@fsu.edu

tanenbauma@flcourts.org

(850) 717-8222

2000 Drayton Drive Tallahassee FL 32399

I will be available by appointment to talk in person or by phone to discuss course matters. I also usually will be available for a short period of time after class. Students of course may also reach out by e-mail.

I will try to respond to e-mails sent to the school address within a day. If more urgent, please use my court e-mail address.

Course Overview

In this course, we will explore the nature and scope of the power vested in the Legislature by the Florida Constitution and how

that power differs from powers vested in the other two branches of state government. We also will consider the difference between the “vested” legislative power of the Florida Constitution with the “enumerated” legislative power of the U.S. Constitution. Along the way, we will cover the extent to which there are constitutional limits on the Legislature’s otherwise plenary policymaking authority, and how the legislative branch competes with the executive and judicial branches to assert the full scope of their respective powers on various fronts. Indeed, we will discuss how that competition comes to a head in the courtroom in constitutional litigation, so we necessarily will consider the nature of judicial power and how it interfaces with the other sovereign powers. Finally, we will talk throughout about litigation fundamentals and strategy and research and writing techniques; and you will have opportunities to engage with examples in which the legislative branch has sought to protect and enforce the legislative prerogative in the courts. Sprinkled throughout the semester will be anecdotes and career advice from your professor and opportunities to engage in discussions with him about the practical side of being a lawyer.

There is no textbook. Instead, we will read and discuss various court opinions and court filings; occasionally, we will read from secondary sources (like law review articles and political theory essays) and excerpts from historical documents and writings (like the *Federalist Papers*). By reading this material closely and critically—along with coming to class prepared and eager to participate—you will continue to develop your ability to dissect legal analyses as a lawyer and to utilize that material creatively and persuasively as an advocate.

Assignments will be posted on the course's Canvas page at the "Assignments" tab. Assigned reading material will be available in PDF at the "Modules" tab, under that week's class heading.

Learning Objectives

At the completion of this course, students will be able to:

1. Define what the "law" is in Florida, and distinguish between the constitution and statutes, on the one hand; and rules, policies, and court decisions, on the other.

2. Define what sovereign "power" is, and describe the political philosophy that underlies (and the mechanics behind) the vesting and exercise of legislative power.
3. Explain the theory or theories behind legislative supremacy and how that supremacy interfaces with provisions of the Florida Constitution relating to vesting, de-vesting, re-vesting, and separation of powers.
4. Identify the extrinsic and intrinsic limitations on the legislative power in Florida.
5. Describe the historical diminution of state legislative power vis-à-vis the federal legislative and judicial powers.
6. Compare and contrast legislative power with both executive and judicial power based on a working definition of each; and describe the tensions between the exercise of legislative power and the exercise of the other two powers, including through the "administrative state."
7. Describe the difference between the authority of an individual member of the Florida Legislature and the power of the Legislature itself.
8. Compare and contrast the authority of a local government versus the authority of the Legislature in Florida.
9. Identify and evaluate creative methodologies for the projection of Florida's legislative power outside the legislative process.

Rough Course Outline

1. What is "power"? How does it relate to the idea of sovereignty?
2. What is the "law"? We consider a constitution or a statute to be the law, but why? Are administrative rules considered part of the "law"? What about court rules? What about court *opinions*? What is the "common law"? Where do rights come from?

3. What is legislative power? What is its provenance? Does it naturally exist separately from other sovereign powers? Where does it “naturally” reside, and who can exercise it? How is it exercised? Is there legislative supremacy in our system of government?
4. What are different ways to vest legislative power? Discuss original vesting of political power with the People, and the vesting of legislative power in a legislative body versus reservation of initiative power to the People.
5. In the United States, is there a difference between federal and state legislative power? Consider Article I of the U.S. Constitution and Article III of the Florida Constitution— Does it matter that federal powers are enumerated and state powers (especially the “police power”) are reserved and vested? When the U.S. Constitution was ratified, what effect did that have on the states' respective sovereign legislative powers? Are there extrinsic and intrinsic limitations on Florida's legislative power? What are they?
6. What do we mean by "separation of powers"? Discuss Article II, section 3, of the Florida Constitution and how it operates. What is executive power? What is judicial power? Compare and contrast the legislative power with the other two powers. How does the executive branch attempt to exercise legislative power? How does the judicial branch do so? Why keep these powers separate? What is the structural significance of the Florida Constitution, and is there *really* complete separation of the various sovereign powers? What about vertical or federal separation of powers? What are federal limits on state legislative power? In particular, how has the federal judiciary come to limit the exercise of state legislative power?
7. Legislative power and the administrative state: What is the non-delegation doctrine? What does the exercise of “quasi-legislative” power and “quasi-judicial” power look like? Are “emergency” powers really a thing? How does the Administrative Procedure Act serve as a legislative control over the executive branch?

8. What are the powers and responsibilities of individual legislators? How do their involvement with drafting, debating, and voting on bills compare to their engagement with social media, public speaking, and "constituent services"? Or: What is the difference between a legislator's exercise of power and his or her participation in what is considered "political" activity? How does any of this relate to the idea of legislative immunity and legislative privilege?
9. Florida's special type of power decentralization: What is preemption? What is the difference between a charter county and a non-charter county? What is home rule? What limits are there on the Legislature's power to impose "local mandates"?
10. How does a chamber of the Legislature project authority through legislative investigations and subpoenas? Plus, a case study: Florida House of Representatives, 2016–18.
11. What is departmentalism? How does the legislative branch compete with the other branches in the exercise of power? How can the Legislature project its authority through public litigation and the exercise of other prerogatives? What is quo warranto? How does competition between the branches come to a head in the courtroom in constitutional litigation?
12. Throughout the course: Litigation overview and practice basics. Plus, litigation as a public lawyer—perspectives and war stories.

Student Responsibilities

- I will maintain and update this Canvas site, which will contain class modules with reading assignments and PDFs of many of the assigned materials. Students should log on to Canvas frequently to check for course and assignment updates.
- Students are expected to keep up with the class, to engage with the course material, to attend each class prepared to

discuss the assigned material, and to submit any writing assignment by the due dates.

- Students are expected to be on time to class each week and are expected to be present and engaged for the duration of each class.
- Assignments, activities, and final papers are expected to be products of individual students per the [FSU Academic Honor Policy](#). Students should not discuss any of the questions with each other before or during the actual assignments, activities, or final papers without instructor approval.
- To receive maximum points for questions, students need to follow the instructions carefully, follow word limits as instructed, and use spell- and grammar-checking.
- To be successful in this course, students need to read all assigned materials, participate robustly in class, and complete all assigned activities and final paper.
- Assignments and materials will be distributed electronically on a weekly basis, and students are encouraged to seek any clarification by e-mail to atanenbaum@fsu.edu.

Course Policies

General course matters

As noted elsewhere, there is no textbook. Your reading will consist primarily of court opinions and court filings (like motions and briefs), and from time to time, there will be readings from other sources as well. I will endeavor to provide most of the assigned material via Canvas. Occasionally, I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, classes will be more in a Socratic format and less in a lecture format, so the contribution by each of you of your own experiences, thinking, and effort is essential to this course's success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes reserving enough time in advance of the next class to

both read the material *and* absorb and think about it. You should come to each class with questions, thoughts, and reactions regarding the week's assigned reading. I will call on students frequently, and you will be expected to participate robustly.

As in all classes, you should not engage in any activity—on an electronic device, phone, or otherwise—that would disrupt me or the attention of students sitting near you. Texting during class is strictly forbidden and will be penalized.

You may have and use laptops in class, but they are discouraged. Take a look at this article if you have a chance—<https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away>

Attendance and class participation

Attendance at every class is expected, and it will be taken at each class meeting. Please be on time. Any unexcused absence could result in a penalty reflected in your final grade.

Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students are expected to attend each class, to be on time, and to be ready to participate robustly in class discussion. In each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class may be factored into the final grade.

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Communications/Online Etiquette

For Discussions:

- Please use polite, respectful behavior when posting your responses to prompts in the Discussion Boards.
- Be mindful of how you express your emotions and humor, and be sensitive to cultural and ability differences of your online peers.
- Keep postings to the point, and make sure your comments are relevant to the topic of discussion.
- Avoid messages such as, "Wow," "Way to go," or "Ditto" and aim for comments that validate other members' ideas through careful explanation of why.
- When replying, give a short description in the subject line of what you are replying to, and use correct punctuation and spelling throughout your post.

For E-mail Communication:

- For e-mail, please respond to your instructor's and peers' messages within a 24-hour period.
- Use a brief description in the subject line that outlines the topic of discussion.
- Avoid using slang or profane words.
- Use your instructor's correct title he or she prefers for communication.
- Avoid using emoticons, such as smiley faces, and maintain a professional demeanor.
- Sign your e-mail messages using your full name.
- AVOID USING ALL CAPS. This makes the message visually difficult to read and is perceived by the reader as "shouting."
- Use correct spelling, grammar, and punctuation, just as you would for any communication.

- Ask yourself whether you would be comfortable if someone other than the intended receiver were to read your message. Remember, e-mail is not a completely secure form of communication.
- Refrain from "flaming," which is expressing a strongly held opinion without tact or regard for others. Don't assume that recipients will know the intent of the message (e.g., "just kidding"). It reads differently when it's in print (electronic or not).
- Report any inappropriate communication considered to be of a serious nature to your instructor, as it may be a violation of University policy.
- Treat others with respect by making messages clear and succinct.

Course Recording Not Permitted

In this class, consistent with state law and university policy, you may not make recordings of classroom activities without the permission of the instructor. This policy applies to both audio and video recordings.

Grading Policy

You will be graded primarily based on a writing assessment (short-answer questions) to be due on the last day of the exam period. The writing assessment will be graded on the following matrix: Mastery of subject matter--65%; Quality of writing and efficacy of idea organization and presentation--25%; Accuracy, proofreading, following instructions--10%. Moreover, in each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class may be factored into the final grade. Note that "class participation" includes on-time attendance, out-of-class preparation for class, and engagement in discussion during class. Late return of the final writing assignment will receive a five-

percent grade reduction for each day late. There is no formal final exam.

Grade Scheme

The following grading standards will be used in this class:

Grade	Range
A	93% to 100%
A-	90% to < 93%
B+	87% to < 90%
B	83% to < 87%
B-	80% to < 83%
C+	77% to < 80%
C	73% to < 77%
C-	70% to < 73%
D+	67% to < 70%
D	63% to < 67%
D-	60% to < 63%
F	0% to < 60%

Technology Requirements

Course content is accessible through Canvas. Students will need to be able to view videos, write and upload assignments, post to discussion boards, and take assessments. Students should have access to high-speed internet and updated software. Mobile devices may be used to view course content, upload assignments, and take assessments as determined by the instructor. To view

the most current technology requirements, visit the [FSU Canvas support site](#).

Canvas Support

Need help with Canvas? Contact FSU Canvas Support:

Email: canvas@fsu.edu

Phone: (850) 644-8004

Website: support.canvas.fsu.edu

Hours: 8am to 5pm, Monday - Friday

FSU Libraries Resources & Services

Whether on campus or learning online, you can [access library resources easily](#). You'll find databases, tutorials, workshops, and other helpful resources in the [FSU Libraries for Students](#) Canvas org site (all students are enrolled automatically). For recommended research resources and ways to connect with [your librarians](#), look for "Library Tools" in your Canvas course navigation.

University Policies

University Attendance Policy

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not arbitrarily penalize students who have a valid excuse. Consideration will also be given to students whose dependent children experience serious illness.

Academic Honor Policy

The Florida State University Academic Honor Policy outlines the University's expectations for the integrity of student's academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process. Students are

responsible for reading the Academic Honor Policy and for living up to their pledge to "... be honest and truthful and ...[to] strive for personal and institutional integrity at Florida State University." (For more details, see the [FSU Academic Honor Policy and procedures for addressing alleged violations.](#))

Academic Success

Your academic success is a top priority for Florida State University. University resources to help you succeed include tutoring centers, computer labs, counseling and health services, and services for designated groups, such as veterans and students with disabilities. The following information is not exhaustive, so please check with your advisor or the [Department of Student Support and Transitions](#) to learn more.

Process for Resolving Academic Problems or Grievances

Please use the *Resolving Academic Problems: A Step-by-Step Guide for Students* in the Academic Honor Policy and Grievances section of the [Office of Faculty Development & Advancement](#) website to begin the process of communicating with your instructor to resolve any confusion or difficulty you may be having in the course. Detailed information on FSU's grievance procedure, including special instructions for students enrolled in an FSU branch campus, is maintained on the FSU Undergraduate Bulletin's [Academic Integrity & Grievances](#) webpage. Out-of-state distance learning students should review the Office of Distance Learning [Complaint Resolution](#) webpage for additional procedures.

Americans With Disabilities Act

Florida State University (FSU) values diversity and inclusion; we are committed to a climate of mutual respect and full participation. Our goal is to create learning environments that are usable, equitable, inclusive, and welcoming. FSU is committed to providing reasonable accommodations for all persons with disabilities in a manner that is consistent with academic standards of the course while empowering the student to meet integral requirements of the course.

Students with disabilities needing academic accommodation should:

1. register with and provide documentation to the Office of Accessibility Services; and
2. request a letter from the Office of Accessibility Services to be sent to the instructor indicating the need for accommodation and what type; and,
3. meet (in person, via phone, email, teams, zoom, etc...) with each instructor to whom a letter of accommodation was sent to review approved accommodations.

Please note that instructors are not allowed to provide classroom accommodations to a student until appropriate verification from the Office of Accessibility Services has been provided.

This syllabus and other class materials are available in an alternative format upon request.

For the latest version of this statement and more information about services available to FSU students with disabilities, contact the:

Office of Accessibility Services (Tallahassee Campus)
874 Traditions Way
108 Student Services Building
Florida State University
Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
(850) 644-8504 (TDD)
oas@fsu.edu
<https://dsst.fsu.edu/oas>

Student Accessibility Services (Panama City Campus)
2nd Floor Barron Building (Room 215)
Florida State University Panama City
Panama City, FL 32405
(850) 770-2172 (office)
(866) 693-7872 (toll free)
Email: sds@pc.fsu.edu
<https://pc.fsu.edu/students/sas>

Free Tutoring from FSU

On-campus tutoring and writing assistance are available for many courses at Florida State University. High-quality tutoring is available by appointment and on a walk-in basis. These services are offered by tutors trained to encourage the highest level of individual academic success while upholding personal academic integrity.

Tallahassee Campus

For a comprehensive list of on-campus tutoring options, visit the [Academic Center for Excellence \(ACE\)](http://ace.fsu.edu) webpage (<http://ace.fsu.edu/tutoring>) or contact tutor@fsu.edu.

Panama City Campus

Peer tutoring is available for all undergraduate FSU Panama City students both in-person on campus and remotely through Zoom. If you need tutoring support, please email the peer tutor listed on the [Peer Tutoring](https://pc.fsu.edu/peer-tutoring) webpage (<https://pc.fsu.edu/peer-tutoring>). Tutoring will be in-person in the [John and Gail Robbins Center for Academic Excellence and Innovation](#) unless you specify with the tutor that you would like to meet via Zoom instead. If you have trouble reaching a peer tutor outside their scheduled availability listed on the [Peer Tutoring](#) webpage, you may email advising@pc.fsu.edu or call (850) 770-2263 to be connected with available resources.

Confidential Campus Resources

Various centers and programs are available to assist students with navigating stressors that might impact academic success. These include the following:

<u>Victim</u>	<u>Advocate</u>	<u>Program</u>
University	Center	A
Room		4109
Phone:	(850) 644-7161	(24/7)
Text:	(850) 756-4320	(24/7)
Email:	Victims-Advocate@fsu.edu	
Office	Hours: Monday-Friday	8am-5pm
https://dsst.fsu.edu/vap		

Counseling & Psychological Services (Tallahassee Campus)

Askew Student Life Center, 2nd Floor
942 Learning Way
Phone: (850) 644-8255 / (850) 644-TALK
<https://counseling.fsu.edu>

FSU PC Counseling Center (Panama City Campus)

Michael McLaughlin, LCSW
Coordinator/Therapist
Barron Building, Office 214
Phone: (850) 770-2174
Email: mrm18bg@fsu.edu
Office Hours: Monday-Thursday 9am-4pm; Friday 9am-3pm
<https://pc.fsu.edu/students/student-affairs/counseling-center>

University Health Services

Health and Wellness Center
960 Learning Way
Phone: (850) 644-6230
Office Hours: Monday-Friday 8am-4pm
<https://uhs.fsu.edu>

FSU Food Pantries

FSU has established food pantries where students in need can pick up nonperishable food items freely and anonymously. Donations for the collection of nonperishable food items are encouraged. For information about the Tallahassee food pantry, visit the [Food for Thought Pantry](https://dsst.fsu.edu/resources/food-for-thought-pantry) webpage (<https://dsst.fsu.edu/resources/food-for-thought-pantry>). The pantry is located at University Center A, Suite 4148. If you have questions or concerns, contact the Department of Student Support and Transitions at foodpantry@fsu.edu or (850) 644-2428.

For information about the Panama City Food Pantry, visit the [Seminole Exchange](https://pc.fsu.edu/students/counseling-center/food) webpage (<https://pc.fsu.edu/students/counseling-center/food>) The pantry is located at Barron Building, 2nd floor. If you have questions or concerns, contact Michael McLaughlin, LCSW, at mmclaughlin3@fsu.edu or (850) 770-2174.

Syllabus Change Policy

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

[Text download from Canvas page]

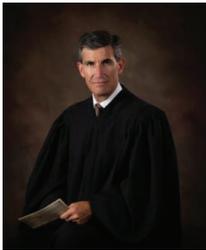
COURTS AND THE LEGISLATURE—Fall 2025

LAW 7930-0018 Syllabus

Course Information

- **Course Hours:** Mondays 3:15 p.m. – 5:05 p.m.
- **Course Meeting Location:** LAW 210
- **Credit Hours:** 2 hours

Course Instructor



Adam Tanenbaum

Judge, First District Court of Appeal

atanenbaum@fsu.edu

tanenbauma@flcourts.org

(850) 717-8222

2000 Drayton Drive Tallahassee FL 32399

I will be available by appointment to talk in person or by phone to discuss course matters. I also usually will be available for a short period of time after class. Students of course may also reach out by e-mail.

I will try to respond to e-mails sent to the school address within a day. If more urgent, please use my court e-mail address.

Course Overview

This is a course taught at one of Florida's finest publicly funded law schools, so its emphasis will be the State's constitution, its

statutory law, and its structure of governance. To that end, we will explore the nature and scope of the power vested in courts by the Florida Constitution and how that power differs from powers vested in the other two branches of state government. In particular, we will look at how the judicial power interfaces with the legislative power--through application of law to facts to conclusively resolve disputes between private parties; through resolving conflicts between citizens and their government; and through court review of administrative agency action under legislative direction.

We will consider whether there is any difference between the "judicial" power vested by our state constitution and the "judicial Power of the United States" vested by the federal constitution. Related to this, we will discuss how differently the federal judicial power interfaces with the federal legislative power when compared with the same powers in Florida's system. We also will discuss the difference between an adjudication of a fact dispute (which could include the exercise of quasi-judicial power by an administrative hearing officer) and imposition of a judgment (which comes only through the exercise of judicial power) under both systems; and the role a magistrate and other non-judicial fact-finders play in resolving fact disputes (both outside and inside the judiciary) versus the role of juries under the aegis of an Article V (Florida) or Article III (federal) judge in a true judicial forum. As we do so, we will touch on principles like private rights versus public rights and, relatedly, sovereign immunity.

Additionally, we will discuss how courts were understood to function historically and compare that to what Florida's (and federal) courts do now--based on what is both constitutionally and statutorily specified. There will be coverage of the old separations between common law and equity and of what we should make of the exercise of judicial power in what roughly can be characterized as a common-law system like ours versus the exercise of that power in a civil-law system like that found across continental Europe. On a related note, we will consider whether Florida truly operates under a common-law system, given the six volumes of codified statutes enacted by the Legislature; and contrast this with the purely statute-based federal system. In doing so, we will cover the difference between substantive law

(rights and regulations)--typically stemming from a constitution or legislative enactment--and procedure (how those rights and regulations are enforced or applied)--typically falling within the judicial province in Florida (but the legislative province at the federal level); and the tension that exists between the judicial and legislative powers over the adoption and implementation of each.

Naturally, we will cover how judges exercise judicial power on behalf of their respective courts. This will include discussions about adjudications, what is considered the "law" that is to be applied upon those adjudications and the forms of remedies that courts may provide in comportment with the law--and the role that the legislative power can play in expanding or contracting those remedies vis-à-vis constitutional mandates like court access and jury trials. That will get us into concepts like jurisdiction, inherent limits on judicial power, rules of decision, scopes of review, and how judges go about deciding cases. In this respect, we will touch briefly on the extent to which non-textual authority (*viz.* natural law, "reasonableness") should serve as part of the rules of decision. When we discuss remedies, we also will hit on the difference between a court's judgment and a court's order; the difference between a judgment and an administrative final order; and the judicial use of writs (one of my favorite topics). In this context, we will consider briefly current events involving courts and injunctions.

We will talk about how appellate courts function in contrast to trial courts, how the limited authority of administrative hearing officers contrasts with that of constitutional judicial officers, and what "judicial review" is and what it is not. We will touch on vertically binding precedent, horizontal "stare decisis," and other judicial policies and doctrines.

Impressively, many of you indicated in your survey responses a deep interest in exploring how judges realistically go about interpreting and applying statutory text. We in turn will consider why (or in what context) judges are actually called upon to interpret and apply a constitutional or--as most often is the case--a statutory provision. We will look at common interpretative techniques and how individual judges decide when to use construction canons to resolve ambiguities. This necessarily will

include consideration of textualism versus purposivism (among other theories) and of the inherent tension that exists between the legislative power's effort at reducing policy to text (if imperfectly) and the judicial power's effort at assessing the scope of its responsibility to accurately determine what that policy is and conclusively resolve parties' disputes under the law. As a practical matter, we also will look at the extent to which the legislative branch and the judicial branch interact (and react!) regarding the drafting and revising of statutes and rules. And while we are on this topic, we briefly will discuss judicial policymaking and the role the judicial branch plays in legislative policymaking--including through budget requests, policy proposals, and lobbying.

Finally, we will cover some operational mechanics of the judicial branch and the legislative branch--an overview of how each branch works from an insider's perspective. Hopefully, we also will be able to find time for me to give you a tour of the First District Court of Appeal's courthouse.

Sprinkled throughout the semester will be anecdotes and career advice from your professor and opportunities to engage in discussions with him about the practical side of being a lawyer (and a judge). And, I will show you how understanding the nuance surrounding the exercise of judicial power (against the backdrop of the legislative power) can help you be a more effective advocate.

There is no textbook. Instead, we will read and discuss various court opinions, constitutional and statutory provisions, and selections from secondary sources and historical writings.

Assigned reading material will be available at the "Modules" tab, under that week's class heading.

Learning Objectives

At the completion of this course, students will be able to:

1. Define "judicial power" in the context of its vesting under the Florida and U.S. Constitutions; contrast it with "quasi-judicial power" as exercised by administrative and other non-judicial officers; and explain how each operates

to implement legislatively enacted policy--as manifested in the form of rights, duties, prohibitions, and remedies.

2. Describe how the legislative power can shape and control the judicial power under the Florida and U.S. Constitutions; how the judicial power interacts with the legislative power in the development of policy; and the manner in which courts implement legislatively enacted policy through the interpretation and application of the law to facts in order to conclusively resolve disputes.

3. Explain the difference between a civil-law court and a common-law court; the difference between a common-law court and a court of equity (or chancery); and the role the legislative power can play in supplying the "rules of decision" for each.

4. Identify differences between Florida courts and federal courts—in terms of their respective exercises of judicial power and of the constitutional and functional limitations that apply to each.

5. Distinguish between the exercise of judicial power by a trial court and such an exercise by an appellate court; between the exercise of judicial power and the process of judicial review; and between a court order, a court judgment, and an administrative agency order.

6. Describe the various remedies that trial courts and appellate courts may be authorized to award under both the Florida and federal systems; and describe the function of various writs that courts have authority to issue under Florida's constitutional and statutory law.

7. Describe how a judge goes about disposing of a case in a manner consistent with legal mandates and restrictions; the role that a lawyer can play in affecting that process; and other factors in play that could have an impact.

8. Explain the extent to which the judicial power defers to the legislative power--including when and why it would do so--and analyze how the judicial power might effect an

alteration or distortion of legislatively crafted policy through interpretation and application of the law.

9. Distinguish between the judicial policy of treating decisions of a higher court as binding (vertical precedent) and the judicial policy of treating prior decisions of the same court as binding (horizontal *stare decisis*), and state a persuasive position as to the merits of each policy.

10. Apply learned principles regarding the exercise of judicial power to be a more effective and persuasive advocate in court on behalf of a client.

Student Responsibilities

- I will maintain and update this Canvas site, which will contain class modules with reading assignments and PDFs of many of the assigned materials. Students should log on to Canvas frequently to check for course and assignment updates.
- Students are expected to keep up with the class, to engage with the course material, to attend each class prepared to discuss the assigned material, and to submit any writing assignment by the due dates.
- Students are expected to be on time to class each week and are expected to be present and engaged for the duration of each class.
- Any written submission is expected to be the product of the individual student making the submission, per the [FSU Academic Honor Policy](#). Students should not discuss any of the questions with each other before or during preparation of the written submission without prior approval of the professor. ***Use of any artificial intelligence tool to substitute for a student's own work constitutes academic dishonesty and is strictly prohibited.***
- To be successful in this course, a student will need to read all assigned materials, participate robustly in class,

and complete all assigned activities and written assignments.

- Assignments and materials will be distributed electronically on a weekly basis, and students are encouraged to seek any clarification by e-mail to atanenbaum@fsu.edu.

Course Policies

General course matters

As noted elsewhere, there is no textbook. Your reading will consist primarily of law text, court opinions, and excerpts from secondary sources. I will endeavor to provide most of the assigned material via Canvas. Occasionally, I will expect you to use citations that I give you and find the material yourself—just like a lawyer would have to do. Also, classes will be more dialectic (as opposed to a straight lecture format), so the contribution by each of you from your effort at completing and thinking about the readings (with your own experiences added to the mix) is essential to this course's success. In turn, I expect you to be thoroughly prepared for every class. Thorough preparation includes both reading the assigned material *and* having thought about it in some meaningful way. You, then, should come to each class with questions, thoughts, and reactions regarding the week's assigned reading. I will call on students frequently, and you will be expected to participate robustly.

As in all classes, you should not engage in any activity—on an electronic device, phone, or otherwise—that would disrupt me or the attention of students sitting near you.

You may have and use laptops in class, but they are discouraged. Take a look at this article if you have a chance—<https://www.npr.org/2016/04/17/474525392/attention-students-put-your-laptops-away>

Attendance and class participation

Attendance at every class is expected, and it will be taken at each class meeting. Please be on time. Any unexcused absence could result in a penalty reflected in your final grade.

Students should be prepared for each class, having read the assigned materials and having planned for any discussion question posed in the previous class. Students should come to each class ready to participate robustly in class discussion. In each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, each student's overall, relative participation during class could become a factor in determining that student's final grade.

The College of Law requires a student to attend a minimum of 80% of class meetings to receive credit for the course, unless the student's absence is excused under university policies. Attendance includes the obligation to arrive on time and to satisfactorily complete reading assignments prior to class. Excused absences will be accommodated in a way that does not arbitrarily penalize students who have valid excuses. Consideration will also be given to students whose dependent children experience serious illness.

If the cumulative number of unexcused absences brings you below the mandatory 80% class attendance threshold (that is, you have unexcused absences for at more than 20% of the scheduled classes), you will be reported to the College of Law's administration for disenrollment and/or assignment of an "Administrative F" grade.

Course Recording Not Permitted

In this class, consistent with state law and university policy, you may not make recordings of classroom activities without the permission of the instructor. This policy applies to both audio and video recordings.

Grading Policy

There is no formal final exam. Your grade in this course will be determined based on your performance on an end-of-course writing assignment, which will be due on the last day of the law school's exam period. You will be graded on the following matrix: Mastery of subject matter--65%; Quality of writing and efficacy of idea organization and presentation--25%; Accuracy, proofreading, following instructions--10%. Late responses to the writing

assignment will receive a five-percent grade reduction for each day late.

Moreover, in each class, I will keep track of who participates, who participates robustly, and who participates not-at-all. At the end of the course, I reserve the ability to factor a student's relative participation during class into determining the student's final grade, where warranted. Note that "class participation" includes on-time attendance, out-of-class preparation for class, and engagement in discussion during class.

Grade Scheme

The following grading standards will be used in this class:

Grade	Range
A	93% to 100%
A-	90% to < 93%
B+	87% to < 90%
B	83% to < 87%
B-	80% to < 83%
C+	77% to < 80%
C	73% to < 77%
C-	70% to < 73%
D+	67% to < 70%
D	63% to < 67%
D-	60% to < 63%
F	0% to < 60%

Technology Requirements

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Canvas Support

IMPORTANT NOTE Canvas works best with Chrome or Firefox browsers. If you use Safari and notice issues on either your mobile or desktop devices, please switch to Chrome or Firefox.

Need help with Canvas? Contact FSU Canvas Support:

Email: canvas@fsu.edu

Phone: (850) 644-8004

Website: support.canvas.fsu.edu

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University Policies - Main

University Attendance Policy

Excused absences include documented illness, deaths in the family and other documented crises, call to active military duty or jury duty, religious holy days, and official University activities. These absences will be accommodated in a way that does not

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Your academic success is a top priority for Florida State University. University resources to help you succeed include tutoring centers, computer labs, counseling and health services, and services for designated groups, such as veterans and students with disabilities. The following information is not exhaustive, so please check with your advisor or the [Department of Student Support and Transitions](https://dsst.fsu.edu) (dsst.fsu.edu) to learn more.

Confidential Campus Resources:

Various centers and programs are available to assist students with navigating stressors that might impact academic success. These include the following:

[Victim Advocate Program](#)

University (850)	Center	A,	Room	4100
Available				644-7161
Office	Hours:	M-F		24/7/365
https://dsst.fsu.edu/vap				8am-5pm

Counseling and Psychological Services (CAPS)

Florida State University's Counseling and Psychological Services (CAPS) primary mission is to address psychological needs and personal concerns, which may interfere with students' academic progress, social development, and emotional well-being. The following in-person and virtual (tele-mental health) services are available to all enrolled students residing in the state of Florida:

1. Individual therapy
2. Group therapy
3. Crisis intervention
4. Psychoeducational and outreach programming
5. After-hours crisis hotline
6. Access to community providers for specialized treatment

Call 850-644-TALK (8255) for more information on how to initiate services.

Counseling and Psychological Services
250 Askew Student Life Center
942 Learning Way
(850) 644-TALK (8255)
Walk-in and Appointment Hours:
M-F 8am-4pm
<https://counseling.fsu.edu/>

University Health Services

Services at UHS are available to all enrolled students residing in Florida:

The mission of University Health Services (UHS) is to promote and improve the overall health and well-being of FSU students. UHS provides a coordinated continuum of care through prevention, intervention, and treatment. Services include general medical care, priority care, gynecological services, physicals, allergy injection clinic, immunizations, diagnostic imaging,

physical therapy, and a medical response unit. The Center for Health Advocacy and Wellness (CHAW) assists students in their academic success through individual, group, and population-based health and wellness initiatives. Topics include wellness, alcohol and other drugs, hazing prevention, nutrition and body image, sexual health, and power-based personal violence prevention. For more information, go to the [University Health Services](https://uhs.fsu.edu/) (https://uhs.fsu.edu/) page.

University Health Services

Health 960 Tallahassee, Hours: (850) https://uhs.fsu.edu/	and	Wellness Learning FL M-F,	Center Way 32306 8am-4pm 644-6230
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Tallahassee Campus

For a comprehensive list of on-campus tutoring options, visit the [Academic Center for Excellence \(ACE\)](http://ace.fsu.edu/tutoring) webpage (<http://ace.fsu.edu/tutoring>) or contact tutor@fsu.edu.

Panama City Campus

FSU Panama City offers in-person tutoring for select courses to all FSU PC students. To view our current tutors, courses they tutor, and their schedule, please visit our [Peer Tutoring Website](http://pc.fsu.edu/peer-tutoring) (pc.fsu.edu/peer-tutoring). Our tutoring center is located in the Digital Design Studio in the John and Gail Robbins Center in Holley B101. If you have trouble reaching a tutor, please email studentsuccess@pc.fsu.edu or call The Chapman Center at 850-770-2288. If students need tutoring in a course that is not offered

that semester at FSU PC, students should visit the [Academic Center for Excellence \(ACE\) Website](https://ace.fsu.edu/tutoring/course-based-tutoring-learning-studio) (ace.fsu.edu/tutoring/course-based-tutoring-learning-studio) to see if virtual tutoring via Zoom is available for that course. To schedule a virtual tutoring session through ACE, Panama City students should email tutor@fsu.edu or call 850-645-9151 and request a virtual tutoring appointment. Note that all tutoring through ACE is listed in Eastern Time.

FSU Food Pantries

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Process for Resolving Academic Problems or Grievances

Please use the Resolving Academic Problems: A Step-by-Step Guide for Students in the Academic Honor Policy and Grievances section of the [Office of Faculty Development & Advancement](https://www.fsu.edu/office-of-faculty-development-advancement) website to begin the process of communicating with your instructor to resolve any confusion or difficulty you may be having in the course. Detailed information on FSU's grievance procedure, including special instructions for students enrolled in an FSU branch campus, is maintained on the FSU Undergraduate Bulletin's [Academic Integrity & Grievances](https://www.fsu.edu/bulletin/academic-integrity-grievances) webpage. Out-of-state distance learning students

should review the Office of Digital Learning [Complaint Resolution](#) webpage for additional procedures.

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874 Traditions Way
108 Student Services Building
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Tallahassee, FL 32306-4167
(850) 644-9566 (voice)
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oas@fsu.edu
<https://dsst.fsu.edu/oas>

Student Accessibility Services (Panama City Campus)
2nd Floor Barron Building (Room 215)
Florida State University Panama City
Panama City, FL 32405
(850) 770-2172 (office)
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Syllabus Change Policy

Except for changes that substantially affect implementation of the evaluation (grading) statement, this syllabus is a guide for the course and is subject to change with advance notice.

Writing Samples

In the Supreme Court of Florida

CASE NOS. SC19-328, SC19-479
(CONSOLIDATED)

*Advisory Opinion to the Attorney General Re: Right to
Competitive Energy Market for Customers of Investor-
Owned Utilities; Allowing Energy Choice*

*Advisory Opinion to the Attorney General Re: Right to
Competitive Energy Market for Customers of Investor-
Owned Utilities; Allowing Energy Choice (Financial
Impact Statement)*

REPLY BRIEF OF THE FLORIDA HOUSE OF REPRESENTATIVES IN OPPOSITION TO THE INITIATIVE

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ARGUMENT IN RESPONSE AND REBUTTAL

The House does not propose anything nearly as dramatic as the sponsor asserts. Instead, the House suggests that the Court consider, as part of its advisory opinion review, whether an initiative-proposed change to the Constitution falls within the scope of the narrow initiative power reserved in Article XI, section 3, of the Florida Constitution. This approach is based in the original meaning of the text, and, contrary to what the sponsor suggests, the House presents the Court with plenty of authority to support that. This Court has shown a willingness to reconsider its prior approach to an issue when that approach is unprincipled or unworkable. And elevating the original meaning of the Constitution's text over incorrect or unworkable precedent is quintessentially conservative, not activist.

Moreover, the proponents do not dispute that the proposed constitutional policy is complex. Given this complexity, it strains credulity for the proponents to claim that there is no single-subject violation. The proposal necessarily transfers legislative power from the Legislature to the people, and at the same time, purports to exercise that power. Then it gives the courts (or this Court) the power to continuously monitor whether the Legislature has adequately implemented this complex policy and, presumably, to grant compulsory relief against the Legislature if it does not meet that yet-undefined standard. These multiple shifts in governmental function—including a blurring of the Constitution's strictly mandated

separation of powers—is disguised behind a single section addition to Article X. This is contrary to the intent of Article X, and illustrates how this Court’s enforcement of the single-function limitation can be circumvented.

The proponents’ efforts at defending the proposed amendment fall short. The initiative proposal should be kept off the ballot.

I. Hewing to the Original Meaning of Article XI, Section 3’s Text and Following Principles Derived from Binding Precedent Are Neither “Judicial Activism” Nor the Abandonment of Case Law.

The House does not advocate for what the sponsor calls “judicial activism.” Sponsor Br. 78. It does not “[u]rge the Court to abandon decades of case law.” Sponsor Br. 80. And it does not make arguments that are not supported by authority. Sponsor Br. 81. Rather, the House proposes a solution based on the original meaning of Article XI, section 3’s text and on principles drawn from this Court’s *binding* case law.

Advocating for the original meaning of a text is hardly “judicial activism.” Rather, looking to a text’s original meaning “prioritizes what we might think of as the original precedent: the contemporaneously expressed understanding of ratified text.” Amy Coney Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1924 (May 2017); *see also id.* at 1923 (describing “the history and traditions of the American people” as a “competing form of precedent”); *cf. United States v. Virginia*, 518 U.S. 515, 568 (1996) (Scalia, J., dissenting) (“For that reason it is my

view that, whatever abstract tests we may choose to devise, they cannot supersede—and indeed ought to be crafted *so as to reflect*—those constant and unbroken national traditions that embody the people’s understanding of ambiguous constitutional texts.”) (emphasis in original).

Precedent, then, is more than just case law. It includes “a variety of legal and other sources” in order “to determine the public understanding of a legal text in the period after its enactment or ratification.” *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). “That sort of inquiry is a critical tool of constitutional interpretation.” *Id.*; *see also* 577–619 (relying on a variety of historical documents and secondary sources, and on very little case law, to conclude that original meaning of the Second Amendment guarantees an individual’s right to bear arms); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 806–858 (2010) (Thomas, J., concurring) (same, regarding original meaning of privileges and immunities clause).

In this respect, contrary to what the sponsor contends, the House points the Court to ample historical “precedent.” The House cites to state constitutions extant in the mid-1960s that contained language reserving legislative initiative power to the people, which the framers of the 1968 Constitution did not adopt. *See* House Br. 24–25. It cites to historical documents reflecting the context and concerns of the

framers when they were drafting Article XI, section 3. *See* House Br. 16–20 & nn.7–18.¹ And it cites to myriad secondary sources. *See* House Br. 7, 10, 11, 16, 21.

Also, this Court would not be abandoning decades of case law if it were to apply principles derived from its early decisions on initiative proposals, which came exclusively in the context of adversarial proceedings that resulted in binding precedent.² For example, the House highlights this Court’s statement in *Adams v.*

¹ The House inadvertently omitted the citations to these historical documents from the table of citations in the initial brief, even though they were specifically cited in the argument section. Those documents are all available across the street at the State Archives. *See* Minutes and Transcripts from March 25, 1966, CRC Convention (available at Fla. Dep’t of State, Fla. State Archives, Record Group 720, Box 1, Folder 6; Minutes, CRC Suffrage and Elections Committee, Feb. 3, 1966 (available at Fla. Dep’t of State, Fla. State Archives, Record Group 720, Box 8, Folder 10; Letter to Chairman Smith Enclosing “Initiative and Referendum in Wisconsin and Other States,” March 7, 1966 (available at Fla. Dep’t of State, Fla. State Archives, Record Group 720, Box 8, Folder 2; Index, Mar. 25, 1966, CRC Convention (available at Fla. Dep’t of State, Fla. State Archives, Series 720, Box 1, Folder 7.

² Before 1986 this Court reviewed the validity of initiative proposals only through adversarial proceedings. Between 1970 (the first election year following adoption of Article XI, section 3) and 1986 (the year that the advisory opinion process was added to Articles IV and V), this Court handed down opinions on the validity of initiative proposals approximately six times. *See Adams v. Gunter*, 238 So. 2d 824 (Fla. 1970); *Weber v. Smathers*, 338 So. 2d 819 (Fla. 1976); *Floridians Against Casino Takeover v. Let’s Help Florida*, 363 So. 2d 337 (Fla. 1978); *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984); *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984); *Carroll v. Firestone*, 497 So. 2d 1204 (Fla. 1986). Any action requesting pre-election consideration of a ballot initiative is one for an advisory opinion, and without the addition of Article V, section 3(b)(10), there was no jurisdiction in this Court or any other Florida court to consider such a request. *Cf. Roberts v. Brown*, 43 So. 3d 673, 680 (Fla. 2010) (noting that trial courts did not have jurisdiction to

Gunter that the “long and arduous work” involved in framing the 1968 Constitution eliminated “inconsistencies and conflicts” and created “a workable, accordant, homogenous and up-to-date document,” all of which “could disappear very quickly” if sweeping, interlocking changes to the Constitution are allowed to appear on the ballot as part of a single initiative. *Adams*, 238 So. 2d at 832; *see* House Br. 16.

The House cites and quotes the Court’s similar observation in *Smathers v. Smith*³ to support the assertion that this Court has the authority, as part of its advisory opinion review, to preserve the integrity of the Constitution as a charter document. *See* House Br. 29. That principle applies here because the present initiative proposal’s massive policy addition, as a single section in Article X, threatens the “functional unity of sections and articles,” would create “ambiguities and contradictions,” and would push the 1968 Constitution one step closer to becoming the “hodgepodge of disharmonious provisions” contained in the “much-amended 1885 Constitution” that the 1968 Constitution was supposed to fix. *Smathers*, 338 So. 2d at 829, *quoted in* House Br. 29.

The House also relies on *Smathers* to support its assertion that this Court already determined that there are limitations on what could be added to the

render a declaratory judgment, pre-election, determining “the impact of a citizen initiative” because it “would be an advisory opinion”).

³ 338 So. 2d 825 (Fla. 1976).

Constitution “[i]nherent in the amendatory process,” such that the Court could preclude “wholly random placements of constitutional provisions by legislative amendment” out of “respect for the people’s declaration that our organic law shall be free from [] confusion and uncertainty.” *Smathers*, 338 So. 2d at 830, *quoted in* House Br. 28–29. The House simply proposes that the Court apply this principle of inherent limitation, along with the other principles recited above, to initiative proposals as well.⁴

But even if the Court’s prior refusal to consider whether there is any limitation on what can be added to the Constitution were based on more than dicta and non-binding advisory opinions, this Court’s “adherence to stare decisis [] is not unwavering.” *Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012) (internal

⁴ The sponsor suggests the House’s “novel theory” fails to consider the expansion of the scope of Article XI, section 3 just a few years after ratification of the 1968 Constitution. Sponsor Br. 81. But the House specifically addressed why this expansion does not affect the analysis. *See* House Br. 26–27, 30–31. The sponsor similarly mischaracterizes the Jameson article as contradicting the House’s main point, which is that the initiative power in Florida is limited and does not include the power to legislate through the Constitution. *See* Sponsor Br. 81. This is not correct. The quotation that the sponsor lifts comes from an overview section on the history of the general initiative power. *See* P.K. Jameson & Marsha Hoscak, *Citizen Initiatives in Florida: An Analysis of Florida’s Constitutional Initiative Process, Issues, and Alternatives*, 23 FLA. ST. U.L. REV. 417, 422 (1995). The House, on the other hand, contends that the specific text of section 3 points to a much more narrow initiative power than that more generally (and historically) described in the Jameson article. *See* House Br. 30–32; *cf. Browning v. Fla. Hometown Democracy, Inc.*, 29 So. 3d 1053, 1063 (Fla. 2010) (characterizing Article XI, section 3 as giving “the people of Florida a *narrow* but direct voice in amending their fundamental organic law” *Id.* (emphasis supplied)).

quotation and citation omitted). It “bends” if “there has been a significant change in circumstances since the adoption of the legal rule.” *Id.* (internal quotation and citation omitted). Relevant considerations in deciding to depart from a prior conclusion are whether the legal rule is “unsound in principle” and whether it “is unworkable in practice.” *Id.* (internal quotation and citation omitted); *see also Roughton v. State*, 185 So. 3d 1207, 1211 (Fla. 2016). The House’s initial brief explains why the current approach is unsound in principle. A legal rule that “has created uncertainty and inconsistency” supports a conclusion that it has become unworkable in practice. *Brown*, 84 So. 3d at 311. And this Court’s numerous advisory opinions on initiatives indicate how the Court’s refusal to limit what can be added to the Constitution has created the requisite uncertainty and inconsistency to warrant a change in course.

In any event, elevating the text of the Constitution over prior erroneous judicial reasoning could not fairly be labeled as “judicial activism.” A few days ago, Justice Thomas was direct on this point. In his view, the typical *stare decisis* standard does not comport with the judiciary’s task, which is to “interpret and apply written law to the facts of particular cases.” *Gamble v. United States*, No. 17-646, (U.S. June 17, 2019) (Thomas, J., concurring), slip. op. at 2, 8. That standard “elevates demonstrably erroneous decisions—meaning decisions outside the realm of permissible interpretation—over the text of the Constitution and other duly

enacted federal law.” *Id.*, slip op. at 2. A key premise of our legal system is “that words, including written laws, are capable of objective, ascertainable meaning.” *Id.*, slip op. at 8. In matters of constitutional interpretation, the Supreme Court “bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function.” *United States v. Scott*, 437 U.S. 82, 101 (1978) (Rehnquist, J.) (internal quotations and citation omitted)

Noting that judicial officers do not “swear to uphold judicial precedents,” *Gamble*, slip. op. 9, Justice Thomas explains that the Constitution’s status as the supreme law “limits the power of a court to give legal effect to prior judicial decisions” because they “cannot takes precedence over the Constitution itself.” *Id.*, slip op. at 10; *cf. Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 955 (1992) (Rehnquist, C.J., concurring) (“It is therefore our duty to reconsider constitutional interpretations that ‘depar[t] from a proper understanding’ of the Constitution.”) (quoting *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 557 (1985) (brackets in original). In other words, “*stare decisis* requires adherence to decisions made by the People—that is, to the original understanding of the relevant legal text—which may not align with decisions made by the Court.” *Gamble*, slip. op. at 11.

As part of its typical advisory opinion review of initiatives, the Court has not been asking the threshold question whether a particular proposal fits within the narrow authority reserved to the people in Article XI, section 3. But any analysis of constitutional validity should start with this fundamental question. Doing so would be consistent with what this Court ordinarily does. “The fundamental object to be sought in construing a constitutional provision is to ascertain the intent of the framers and the provision must be construed or interpreted in such manner as to fulfil [sic] the intent of the people, never to defeat it.” *Gray v. Bryant*, 125 So. 2d 846, 852 (Fla. 1960). At issue here is whether this proposed change exceeds the initiative power reserved to the people. It does, and it should be kept off the ballot.

II. The Proposal Fails the Single-Subject Test Because It Uses Article X to Mask Multiple Functional Changes. It Alters Legislative Power and the Separation of Powers by Authorizing and Exercising Initiative Power to Legislate and Giving the Courts the Power to Engage in Continuing Regulatory Jurisdiction over Legislative Business.

The sponsor complains that there is too much focus on the merits of the initiative proposal. Sponsor Br. 10. But it is nearly impossible for the Court to avoid consideration of the merits of a massive policy proposal like this one as part of a single-subject and ballot summary review. The heavy volume of policy discussion on both sides of the matter in this case illustrates what the Court has in store for itself in future advisory opinion cases as more and more policies are proposed by initiative to be added to Article X.

The House argues against the sponsors’ continued use of Article X to enfold “disparate subjects within the cloak of a broad generality” to circumvent this Court’s requirement that an initiative proposal “identify the articles or sections of the constitution substantially affected.” House Br. 36 (quoting *Evans*, 457 So. 2d at 1353; *Fine*, 448 So. 2d at 989); *see also* House Br. 33, 38–40. Quoting the Court, the House explains that characterizing or disguising what essentially is “an article revision . . . as a mere section amendment” renders “the people’s deliberate choice of [the terms “amend” and “revise” in Article XI, section 3 as] wholly without significance.” House Br. 40 (quoting *Smathers*, 338 So. 2d at 828). Neither proponent responded directly to this point.

Instead, the responses serve as monuments to the problem that the House identifies. They illustrate the massive structural change that the proposal seeks to accomplish. The Energy Suppliers indicate that they “support policies that expand free markets,” and they describe the proposed amendment as “one such policy.” Energy Suppliers Br. 1. That policy, according to Energy Suppliers, is “complex,” but they nonetheless want to see it added to the Constitution. Energy Suppliers Br. 42–43. Both briefs also describe the proposal as primarily directed at the Legislature, “since it is tasked with the creation of new legislation within constitutional parameters.” Energy Suppliers Br. 44; *see also id.* 46 (“The major impact of the Energy Choice Amendment is on the Legislature.”); Sponsor Br. 40,

49. Neither denies that the initiative proposal will subject the Legislature to judicial monitoring; both instead minimize this proposed shift in power by comparing the proposal to the medical marijuana amendment, which established standing to seek mandamus to compel the Department of Health (an executive branch agency) to abide by a certain timeline. Sponsor Br. 46–47; Energy Suppliers Br. 45.

The proposal effectuates a foundational structural change that typically is obscured by placement of policy in Article X.⁵ Direct placement of a statewide policy in the Constitution shifts the power of changing a policy away from the Legislature, and gives it to the people, but only in the form of the initiative power. *Cf. Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) (per Marshall, C.J.) (observing that “one legislature cannot abridge the powers of a succeeding legislature”); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (per Marshall, C.J.) (noting that once a provision is in the Constitution, it is no longer “alterable when the legislature shall please to alter it”); *see also* Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 278 (2012) (explaining “nonentrenchment doctrine,” by which legislators cannot make laws that

⁵ Ironically, Article X originally was a repository of truly miscellaneous structural items. *Cf. Adams*, 238 So. 2d at 831 (looking to, at the time, Article X’s first 13 sections as examples of constitutional provisions that would lend themselves to focused, single-subject initiative-proposed amendments because a change to “most, if not all, of these sections could be complete within itself and not substantially affect other provisions of the Constitution or require further amendments thereof”).

are “irrepealable” and cannot “disable themselves or their successors from taking action”). Floridians’ addition of a policy to their Constitution effects a subtraction of some legislative power that they previously had fully vested in the Legislature, and it is a new reservation of that power in their hands on the subject matter covered by the proposed amendment. As a result, the initiative-proposed addition of a policy should be preceded by an initiative-proposed constitutional alteration that gives Floridians the power to engage in policymaking on that particular subject.

In turn, the proposed amendment, when compared against what the framers of the 1968 Constitution eschewed, violates the original meaning and limited purpose of Article XI, section 3. It hides significant changes to the nature of state government behind what appears to be a referendum to the people on their preference for a proposed policy. The current initiative proposal fails to give the electorate fair notice of what the proposed amendment really does. It *sub silentio* reduces the Legislature’s policymaking authority and appropriates to Floridians by plebiscite the power to legislate regarding competition in electricity markets and, at the same time, proceeds to exercise that power. It mandates how the policy must be implemented, automatically voids a range of statutes without any judicial involvement, and gives the judiciary the power to manage the Legislature in how it legislates.

Notably, neither proponent explains why the proposal seeks to drop the new policy into Article X. If the proposal truly were directed at the Legislature, as they

claim, it should be drafted as a specific change to one or more of Article III's sections that deal with the vesting and use of legislative power. Of course, the proposal does much more than just alter the exercise of legislative power. As the House points out, the proposal also purports to alter the strict separation of powers mandated by Article II, section 3, as recently applied by this Court to another change to the Constitution. House Br. 41–43. If the proposal were being truly up front with the voters, it would propose changing that article, and perhaps Article V, as well. Instead, the proposal seeks to drop yet another section into Article X, illustrating how easily multiple structural changes can be masked through the use of the miscellaneous article.

The sponsor attempts to distinguish *Citizens for Strong Schools* by claiming that unlike the “unmanageable standard” the judiciary was asked to administer there, courts need determine “only that any legislation includes the five requirements specified” in the section on implementation, “hardly an unmanageable task.” Sponsor Br. 50–51. The sponsor denies that the courts would “be asked to legislate anything, only to determine if a particular provision complied with the constitutional mandate.” Sponsor Br. 51.

The sponsor mischaracterizes its own proposal. The question before a court under this proposed amendment would not be whether “a particular provision complied.” The proposed amendment purports to give the judiciary responsibility for determining whether any legislation that the Legislature adopts is “complete”

enough and “comprehensive” enough to meet the overall mandate of the amendment, and to *compel* the Legislature to do so if the courts determine that the legislation falls short. It is folly to think that any court could review whether electricity market legislation is far-reaching and full-scale enough to achieve full competition, and whether to order the Legislature to do more, and *not* engage in judicial policymaking. The Court need only look at the hundreds of pages of briefing in this case to understand how unmanageable a task that will be, from a judicial perspective. Surely, the task that the sponsor seeks to add to the Constitution represents a shift in function at a magnitude at least equivalent to that which this Court rejected in *Citizens for Strong Schools*.

The voluminous briefing on electricity market policy in this case points to what this Court will be in for as increasingly complex policy proposals are submitted for this Court’s review. *See, e.g.*, Infinite Energy Br. 3–38; *see also* Infinite Energy Br. 42, 43 (conceding that the policy subject matter of the proposed amendment is “complex”). Under the current standard, and without the threshold question proposed by the House, the Court will have no choice but to do a deep dive into these policy discussions—not to pass on the wisdom of a particular proposal (at least not officially), but just to determine whether a 75-word ballot summary adequately and accurately informs the voter of what he or she is actually voting on.

Finally, there simply is no comparison between this proposal and the medical marijuana amendment. The medical marijuana amendment charged an executive agency with doing what executive agencies do—implement policy. And the amendment provided standing to seek judicial relief via mandamus against the executive agency—again, something that courts already have the authority to do. *Citizens for Strong Schools* was about something different. That case reflected a reticence by this Court to engage in ongoing management of the Legislature in the exercise of its plenary policymaking power. That reticence stemmed from this Court’s reading of Article II, section 3’s strict separation of powers requirement. The initiative proposal will force this Court into the role of ongoing regulatory monitor of legislative activities, a role that the Court determined is foreclosed by the current version of the Constitution’s textual separation of powers.

* * *

The absence of a “filter” on initiative proposals counsels in favor of more review, not less, by this Court to protect the integrity of the Florida Constitution as a charter document. Doing so will also advance the intent of the 1968 Framers, whose concerns over what had become the unwieldiness of the 1885 Constitution motivated the 1968 revision in the first place. The initiative proposal should be kept off the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2019, a true copy of the foregoing reply brief was furnished Clerk of the Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to the counsel listed on the attached service list, constituting compliance with the service requirements of Florida Rule of Judicial Administration 2.516(b) and Florida Rule of Appellate Procedure 9.420(c).

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief was generated by computer using Microsoft Word 2016 with Times New Roman 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Adam S. Tanenbaum _____

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ATTORNEY

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

CASE NO. 1D18-0687

REP. LARRY METZ, *et al.*,

Appellants,

v.

MAT MEDIA, LLC, and CHARLES "PAT" ROBERTS,

Appellees.

REPLY BRIEF OF ALL APPELLANTS

*On Appeal from the Circuit Court of the Second Judicial Circuit
in and for Leon County, Florida*

L.T. Case Nos. 2017-CA-2284, 2017-CA-2368

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ARGUMENT IN RESPONSE AND REBUTTAL

MAT Media falls short in all three of its arguments for why the House's subpoenas should not be enforced. First, MAT Media applies an incorrect and unduly restrictive interpretation of relevance to the House's investigative subpoenas. Relevance in an investigative context has a much broader meaning than it does in an evidentiary context. There can be no doubt that the House has the authority to investigate the VISIT FLORIDA contracts, and MAT Media's journals and ledgers pertaining to those contracts will assist in that investigation. A facial review of the subpoenas easily supports the conclusion that the demanded documents are not *wholly* unrelated to the House's investigation.

Second, MAT Media relies on inapposite discovery cases to support its contention that the trial court's *in camera* review properly balanced the House's need for the documents against MAT Media's "privacy" interests. The cases are inapposite because a court's authority to engage in balancing flows from its inherent power to control procedural matters like discovery. However, that authority cannot extend to controlling the conduct of legislative investigations, because the authority behind legislative subpoenas flows from article III of the Florida Constitution, rather than from article V. The judicial power over discovery, then, cannot operate to circumscribe this separate legislative subpoena authority.

Finally, MAT Media improperly relies on a judicially created corporate privacy right to argue against enforcement of the subpoenas. There, however, is not a single case that extends the *Florida Constitution's* privacy right beyond the text that establishes the right, which is expressly limited to natural persons. To the extent there are discovery cases that suggest a corporate right to privacy in financial documents, that right can be only a procedural right, enforceable only in the context of discovery. Because only the Legislature can create substantive rights, a court-created right to control discovery cannot operate to limit the scope of a statutorily authorized legislative subpoena.

At bottom, then, this is a separation of powers case. And it boils down to whether the judiciary can apply its procedural protections utilized in discovery to create substantive rights that limit the legislative authority to issue and enforce investigative subpoenas. It cannot. The trial court should not have utilized discovery procedures in its assessment of MAT Media's objections to the legislative subpoenas, which crossed the line separating judicial from legislative power.

A. "Relevance," as Applied in an Investigative Context, Is More Expansive and Permissive, and It Cannot Reasonably Be Argued That the Subpoenas Were *Wholly* Unrelated to the House Investigation.

The House subpoenas fit comfortably within the broader concept of relevance typically applied in the enforcement of investigative subpoenas, which effectively inquires whether a subpoena is *wholly* unrelated to an authorized investigative

purpose. By their express terms, the subpoenas were addressed specifically to publicly funded contracts and how they were procured and valued. Surely, the responsive documents will provide useful insight that will assist the committee in its investigative function, and the subpoenas are relevant in the investigative sense.

MAT Media incorrectly reads the House investigation to be limited “to the establishment of the contracts themselves.” AB 21. And it argues for an unreasonable and unsupportable application of “pertinence” to the subpoenas. AB 21–25. A facial review of the subpoenas, however, reveals a direct connection to the broad legislative power that “encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.” *Watkins v. United States*, 354 U.S. 178, 187 (1957), *quoted in Hagaman v. Andrews*, 232 So. 2d 1, 6 (Fla. 1970). That should end the matter.

As the House explained in its initial brief, and its complaint before that, the committee sought documents to gain insight into the quality of VISIT FLORIDA’s procurement of programming like *Emeril’s Florida*, pursuant to legislative authority to review how government is functioning and “to determine whether the public is receiving a *positive return on its investment*” in VISIT FLORIDA. § 288.904(4), Fla. Stat. (emphasis supplied); § 11.143(1), Fla. Stat.; *see* IB 3, 31–32; SR 2351. The subpoenas consistently reference the *Emeril’s Florida* contracts.

Moreover, there is nothing in the record to support MAT Media’s narrow assertion that the investigation did not include the “ultimate performance” of the contracts “or anything thereafter.” AB 21. The subpoenas were issued as part of the committee’s investigation into VISIT FLORIDA’s contracting to spend public funds to produce television programs, as part of the committee’s effort to “discover the integrity of such contracts and the quality of their procurement.” R 114, 428, 1593; AB 21; *see also Fla. H.R. Jour.* 297 (Reg. Sess. 2018). And as MAT Media alleged in its pleading, the committee’s investigation sought insight into how the costs that VISIT FLORIDA agreed to pay with public funds were developed and negotiated with MAT Media. R 98. To do this, the committee needed to understand how the quoted prices were developed “on the vendor’s side” of the contracts as they were being negotiated with VISIT FLORIDA. R 98. In other words, included within the scope of understanding the quality of the *Emeril’s Florida* procurement is a comparison of the quoted and negotiated price *prior* to the execution of the contracts with the actual costs and value of the product *subsequent* to the vendor’s (here, MAT Media) performance.

MAT Media’s argument in support of the trial court’s substantive review of the responsive documents for relevance also misses the mark. AB 21–25. The argument applies an evidentiary standard of relevance, which is an overly exacting

and inoperative standard for investigative subpoenas. An inquiry into relevance regarding enforcement of an investigative subpoena is much more permissive.

It is true that there are times when “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). That was not the case here. The House subpoenas were specific in what they sought. On their face, they were limited to records relating to MAT Media’s expenses incurred as part of its performance under the public contracts with VISIT FLORIDA.¹

The trial court, of course, is not a “rubber stamp,” and its function in considering enforcement of the House’s subpoenas is “neither minor [nor] ministerial.” *Cf. United States v. Markwood*, 48 F.3d 969, 979 (6th Cir. 1995) (considering enforcement of agency investigative demands for documents). But the inquiry should have been limited to examining whether the subpoenas and their enforcement were statutorily authorized, whether the information sought was “reasonably relevant” to the House’s investigation, and whether the subpoena was too indefinite or an abuse of the court’s process. *See Morton Salt*, 338 U.S. at 652; *Markwood*, 48 F.3d at 979. The examination should not have been a substantive

¹ Notably, the responsive documents are a discrete set that was easily obtainable. R 2165–69, 2173–74, 2180–87. *See also* IB 15–17. Those records were provided to the trial court under seal. R 1707–1950, 2206–07.

review by the trial court of the documents themselves to determine whether the committee really needed them. The trial court improperly substituted its judgment for the House committee's regarding how to conduct the legislative investigation.

The relevancy requirement instead should have been considered in broad terms, should not have been “especially constraining,” and should have been “generously construed” to allow access “to virtually any material that might cast light” on the committee's inquiry into how VISIT FLORIDA priced the *Emeril's Florida* contracts. *Cf. EEOC v. Fed. Express Corp.*, 558 F.3d 842, 854 (9th Cir. 2009) (explaining that relevancy should be considered “in terms of the investigation rather than in terms of evidentiary relevance”). Put another way, the legislative subpoenas should have been enforced unless they were “plainly incompetent or irrelevant to any lawful purpose” of the committee. *Cf. Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943).

Relevance in the investigative context is even broad enough to include documents that would help the committee get a better overview of the topic being investigated so that it could craft additional requests. *Cf. Fed. Express Corp.*, 558 F.3d at 854. Likewise, documents are “directly relevant” to an investigation if they will help “better focus” the investigation. *Cf. EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 114 (4th Cir. 1997).

The House’s subpoenas, then, should have been judged by a more permissive standard, one that gauged the “*potential* relevance to an ongoing investigation.” *United States v. Arthur Young & Co.*, 465 U.S. 805, 814 (1984) (emphasis in original). The committee could “hardly be expected to know” whether the documents it sought would be relevant until it obtained those documents and reviewed them, so it should not have been “required to establish that the documents it [sought were] actually relevant in any technical, evidentiary sense.” *Id.*

As MAT Media concedes, “legitimate legislative action is the ultimate objective and the prime justification for the inquiry.” AB 19 (quoting *Gibson v. Fla. Legislative Investigation Comm.*, 108 So. 2d 729, 737 (Fla. 1959) (brackets omitted). “[A]ny inquiry must be pertinent to the subject of the applicable legislative inquiry.” AB 19 (citing *Gibson* and *Hagaman*). That is indeed the case here.

The committee, of course, had the statutory authority to investigate VISIT FLORIDA, which spends millions of taxpayer dollars for the State. *See* §11.143(1), Fla. Stat. (authorizing legislative committees to continuously review “the performance of the functions of government”). A full understanding of that return on investment starts with a determination of whether VISIT FLORIDA negotiated a fair price with MAT Media for the production of the *Emeril’s Florida* seasons at taxpayer expense. And that determination requires knowledge of the actual expenses associated with that production, which are available only from MAT Media’s

journals and ledgers. The House subpoenas easily satisfied the question of relevance, as that term typically is applied, in the broad sense, to investigative subpoenas.²

B. The House Was Entitled to Judicial Enforcement of its Subpoenas, Which Were Facially Lawful. The Trial Court Erred By Engaging in a Balancing Test Used in Discovery to Limit That Enforcement.

MAT Media contends that the trial court had the authority to substantively weigh the relevance of the responsive documents against MAT Media’s claim of confidentiality and privacy as part of an *in camera* review. AB 25–28. There is no substantive law that gave the trial court that authority. The authority for legislative subpoenas flows from a different source than the authority to administer discovery, so the trial court erred by applying court discovery procedures to enforcement of the House subpoenas.

The rules of court are the authority for the courts to order and control discovery, and the judicial power to adopt those rules flows from the Florida

² The subpoenas were relevant for another reason. During the same legislative term, the committee considered and advanced legislation that would have required proposed contractors to include good faith estimates of gross profits to be earned under public contracts they were bidding for and required agencies to make written determinations of whether those estimates were excessive. R 1622–24, 1634; *see generally* R 1100–1198, 1595–1696. As the House explained to the trial court, the committee was trying to “assess whether there should be better procurement methodologies in place to obtain state tourism marketing services like those provided by MAT Media” and “whether the State can contract for programming like Emeril’s Florida at a lower cost and in a more transparent way.” R 1102.

Supreme Court’s exclusive authority to “adopt rules for the practice and procedure in all courts.” Art. V, § 2, Fla. Const. The Supreme Court explained that it “adopted discovery as part of our *procedural rules* to improve our system of justice.” *Dodson v. Persell*, 390 So. 2d 704, 706 (Fla. 1980) (emphasis supplied).

Courts, then, possess “broad discretion in overseeing discovery, and protecting the parties that come before it.” *Bush v. Schiavo*, 866 So. 2d 136, 138 (Fla. 2d DCA 2004) (internal quotation and citation omitted). As to issues pertaining to “parties, their counsel and the Court throughout the progress of the case” and to “the *method* of conducting litigation,” the judiciary has exclusive authority. *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1225 (Fla. 2018), *reh’g denied*, SC16-2182, 2018 WL 6433137 (Fla. Dec. 6, 2018) (emphasis supplied); *see also id.* at 1229 (invalidating legislative amendment to § 90.702 of the Florida Evidence Code because it “solely regulates the action of litigants in court proceedings”).

The Florida Constitution’s separation of powers keeps the Legislature from invading the exclusive province of the judiciary to control its own procedural matters. *See State v. Raymond*, 906 So. 2d 1045, 1048 (Fla. 2005) (explaining that “the constitution provides that powers constitutionally bestowed upon the courts may not be exercised by the Legislature”); *accord DeLisle*, 258 So. 3d at 1228.

At the same time, courts cannot invade the exclusive *legislative* province to make substantive law and create new rights. *See* Art. III, § 1, Fla. Const. (vesting

all “legislative power of the state” in the Legislature); *DeLisle*, 258 So. 3d at 1224 (“Generally, the Legislature has the power to enact substantive law while this Court has the power to enact procedural law.”); *see also Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993) (observing that Florida Supreme Court’s “exclusive rule-making authority . . . does not extend to substantive rights”). “Substantive law has been described as that which defines, creates, or regulates rights.” *DeLisle*, 258 So. 3d at 1224.

For this reason, a trial court’s consideration of a legislative subpoena differs from its administration of a typical civil suit. Statutory law limits the trial court’s jurisdiction and discretion to consider the legislative subpoenas. *See* § 11.143(4)(b), Fla. Stat. (requiring trial court to direct production of “*all* documentary evidence” that “is lawfully demanded”) (emphasis supplied). This limitation is a function of the difference between a legislative subpoena, which stems from the Legislature’s constitutional investigative authority, *see* Art. III, § 5, Fla. Const., and a civil discovery demand in litigation, which stems from the courts’ constitutional authority to procedurally control litigation, *see* Art. V, § 2, Fla. Const.

The trial court’s only charge, then, was to review the subpoenas and determine whether they “lawfully demanded” MAT Media’s journals and ledgers regarding VISIT FLORIDA’s contracts for *Emeril’s Florida*. As long as the subpoenaed documents related to a cognizable legislative investigation and did “not infringe on

constitutional rights of the person investigated,” the subpoenas should have been deemed “permissible.” *Petition of Graham*, 104 So. 2d 16, 18 (Fla. 1958).

Legislative committees draw their authority to subpoena documents, including confidential ones, from statute, not from a court rule. *See* § 11.143(3)(b), Fla. Stat. In turn, while discovery is within the courts’ inherent power to control litigation within their jurisdiction, the independent legislative power to issue and enforce investigative subpoenas is not a discovery matter subject to that judicial control. The trial court, then, should not have gone further and treated enforcement of the legislative subpoenas as it would a typical discovery dispute involving confidential financial records.

Yet this is precisely what the trial court did in this case. Rather than just review the subpoenas for scope, it applied discovery procedures to create a new substantive privilege that trumped the House’s separate substantive entitlement to the documents. For this reason, MAT Media has cases to cite that seem to support the trial court’s *in camera* review. *See* AB 26–27 (citing *Westco, Inc. v. Scott Lewis Gardening & Trimming, Inc.*, 26 So. 3d 620, 622 (Fla. 4th DCA 2009) and *Muller v. Wal-Mart Stores, Inc.*, 164 So. 3d 748, 750 (Fla. 2d DCA 2015)). But they illustrate the separation of powers problem that occurred here.

In *Westco*, for instance, a litigant in a pending lawsuit subpoenaed a non-party for an asset purchase agreement. *Westco*, 26 So. 3d at 621. The court noted the test

for “[w]hen confidential information is sought from a non-party,” which is a determination of “whether the requesting party establishes a need for the information that outweighs the privacy rights of the non-party.” *Id.* at 622. *Muller* applied a similar balancing approach to impose a judicial limitation on discovery where an individual asserts a constitutional right to privacy. *See Muller*, 164 So. 3d at 750; *see also Bianchi & Cecchi Services, Inc. v. Navalimpianti USA, Inc.*, 159 So. 3d 980, 982 (Fla. 3d DCA 2015).

These cases came out the way they did because “Florida’s discovery rules grant the trial judge authority to control the manner and means of discovery in all of its aspects so as to protect against harassment, undue invasion of one’s right to privacy, and other offensive results.” *Springer v. Greer*, 341 So. 2d 212, 214 (Fla. 4th DCA 1976); *see also S. Florida Blood Serv., Inc. v. Rasmussen*, 467 So. 2d 798, 801 (Fla. 3d DCA 1985), *approved*, 500 So. 2d 533 (Fla. 1987). For good cause shown, a court “may make any order necessary to protect the interests set out *in the rules*,” and the court must “balance the competing interests that would be served by the granting or denying of discovery” when determining whether there is “good cause.” *Rasmussen*, 467 So. 2d at 801 (emphasis supplied).

These judicial principles, applied in the context of court-controlled discovery, have no place in a proceeding to enforce a legislative subpoena. The trial court’s application of these principles to the House subpoenas breached the separation of

powers and effectively, and improperly, added to the substantive law governing their enforcement. The courts' procedural power to control discovery does not extend to the Legislature's separate subpoena power, which independently flows from the Florida Constitution. Out of respect for this separation of powers, the trial court should have limited its inquiry to ensuring that subpoenas were within the legislative authority and did not infringe on any constitutional rights.

C. The Courts Do Not Have Authority to Create a Substantive Right to Privacy for Corporate Entities that Would Limit the House's Statutory Entitlement to Confidential Documents.

Both the trial court and MAT Media presume that MAT Media has a privacy right. As the House explains in its principal brief, though, corporate entities like MAT Media do not have a constitutionally guaranteed right to privacy. IB 42. Only natural persons hold that right in Florida. *See* Art. I, § 23, Fla. Const. (guaranteeing right of privacy to “[e]very natural person”); *see also* *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002); *Parnell v. St. Johns Cty.*, 603 So. 2d 56, 57 (Fla. 5th DCA 1992).

MAT Media fails to cite any Florida case that interprets the plain language of article I, section 23, of the Florida Constitution differently. MAT Media instead turns to a single judicial discovery case as support for its contention that a corporate right to privacy exists. AB 30 (citing *Chetu, Inc. v. KO Gaming, Inc.*, Case No. 4D18-1551, 44 Fla. L. Weekly D210, 2019 WL 140991, at *1 (Fla. 4th DCA Jan. 9, 2019)).

This case is inapposite. It, at best, *alluded* to a company’s “privacy” interest in its “personal financial information.” *Id.* Any recognition of a corporate privacy interest, though, was in the limited context of review of a discovery order as part of a balance of that interest with relevance. *See id.* (“That balance allows discovery relating to personal financial information when it is relevant to the pending action.”). But in any event, as already explained above, court rules governing discovery cannot create substantive rights, and any judicial recognition of such a privacy interest cannot operate against enforcement of legislative subpoenas.

The trial court erred, then, by creating a substantive right that limits the statutory subpoena authority of a legislative committee, which includes the power to obtain confidential documents. *See* § 11.143(3)(b), Fla. Stat. This is not to say that MAT Media has no cognizable trade secret claim. But the Legislature, not the Constitution, determined that those documents were confidential. *See* §§ 688.002, 688.003, 688.004, Fla. Stat.; *see also* § 815.045, Fla. Stat. (declaring trade secrets in public records to be confidential and exempt from disclosure); § 11.0431(2)(a), Fla. Stat. (rendering legislative records exempt from disclosure if they would be confidential or exempt if held by an agency under other statutory provisions). That statutory confidentiality, then, cannot preclude the House’s statutory entitlement to confidential records under § 11.143(3)(b). *Cf. Seta Corp. of Boca, Inc. v. Fla. Dep’t of Legal Affairs*, 756 So. 2d 1093, 1094 (Fla. 4th DCA 2000) (upholding order

requiring production of trade secret and financial information, which was demanded by the State and “not a competitor”); *see also* IB 48–49. There being no constitutional preclusion to the committee’s obtaining those documents, and no substantive right against production that the trial court could create, the only inquiry as part of the *in camera* review that the trial court should have conducted was which outstanding documents should be protected from further disclosure upon production to the House, presumably pursuant to § 688.006, Fla. Stat., which outlines a process for maintaining the secrecy of produced trade secret documents.

* * *

The trial court’s order should be reversed, the House’s subpoenas should be enforced, and MAT Media should be ordered to produce to the House its financial records reflecting its *Emeril’s Florida* costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2019, a true copy of the foregoing reply brief was furnished to the Clerk of the Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to the counsel listed below, constituting compliance with the service requirements of Florida Rule of Judicial Administration 2.516(b), Florida Rule of Appellate Procedure 9.420(c), and this Court's Administrative Order 19-1:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief was generated by computer using Microsoft Word 2016 with Times New Roman 14-point font, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

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