

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Wendy Williams Berger
Maiden Name: Wendy Leigh Williams

2. **Position**: State the position for which you have been nominated.

United States District Judge for the Middle District of Florida

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114

Residence: Ponte Vedra Beach, Florida.

4. **Birthplace**: State year and place of birth.

1968; Athens, Georgia.

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1990 – 1992, Florida State University College of Law, J.D., 1992
1986 – 1990, Florida State University, B.S. (*cum laude*), 1990

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2012 – present
State of Florida
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
District Judge

2005 – 2012
State of Florida
Seventh Judicial Circuit
Richard O. Watson Judicial Center
4010 Lewis Speedway
St. Augustine, Florida 32084
Circuit Judge

2001 – 2005
State of Florida
Executive Office of the Governor
Room 209, The Capitol
Tallahassee, Florida 32399
Assistant General Counsel, Clemency Aide

1993 – 2000
Office of the State Attorney, Seventh Judicial Circuit
Richard O. Watson Judicial Center
4010 Lewis Speedway
St. Augustine, Florida 32084
Assistant State Attorney

Summer 1996
University of North Florida, Continuing Education
12000 Alumni Drive
Jacksonville, Florida 32224
Adjunct Instructor - Torts

Fall 1992
Landers and Parson, P.A.
310 West College Avenue
Tallahassee, Florida 32301
Law Clerk

Summer 1992
Office of State Attorney, Fourth Judicial Circuit
340-1 East Adams Street
Jacksonville, Florida 32202
Certified Legal Intern

1991 – 1992
Oertel Hoffman Fernandez & Cole, P.A.
2060 Delta Way
Tallahassee, Florida 32303
Law Clerk

Summer 1991
Office of State Attorney, Fourth Judicial Circuit
340-1 East Adams Street
Jacksonville, Florida 32202
Intern

Summer 1989; Summer 1990; Summer 1991
The McCormick Agency
2579 Oak Street
Jacksonville, Florida 32204
Clerical

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Hernando County Bar Association, Honorary Membership (2014)

International Rotary Foundation, Paul Harris Fellow (1999, 2013)

St. Johns County Adult Drug Court, In Recognition of Service as the Presiding Judge from 2005 – 2012 (2012)

Seventh Judicial Circuit Court, In Recognition of Dedicated Service as a Circuit Judge (2012)

The Marketplace Christian Professional Resources, Certificate of Appreciation in Recognition of Outstanding Service as a Circuit Judge (2008)

Epic Community Services, Inc., Award for Leadership with the Drug Court Program (2007)

Governor Jeb Bush, Recognition for Outstanding Service to the Administration of Justice in the State of Florida (2005)

Mothers Against Drunk Driving, Outstanding DUI Prosecutor (2001)

State Attorney's Office, Outstanding Performance, *State v. Tanya Hudson* (1998)

Florida State University Law Review (1991 – 1992)

Bachelor of Science, Florida State University, *cum laude*, (1990)

Golden Key National Honor Society (1990)

Alpha Society, Alpha Delta Pi National Sorority Scholastic Honorary (1987 – 1990)

Dean's List, Florida State University (1986 – 1990)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

St. Augustine Inn of Court (2017 – present)

Founding Member (2017 – present)

Executive Board (2017 – present)

Programs Chair (2017 – present)

District Court of Appeal Budget Commission (2016 – present)

Legislative Committee (2017 – present)

Dunn Blount Inn of Court (2015 – present)

Hernando County Bar Association (2014 – present)

The Florida Supreme Court Committee on Standard Jury Instructions - Civil (2013 – present)

Florida Conference of District Court of Appeal Judges (2012 – present)

Memorials and Resolutions Committee (2014 – present)

The Orange County Bar Association (2012 – present)

The St. Johns County Bar Association (Intermittent dates since 1994 – present)

The Florida Bar (1993 – present)

Appellate Practice Section Executive Council, Fifth District Representative
(2013 – present)

Criminal Procedure Rules Committee (2001 – 2007; 2013 – present)
Vice Chair (2004 – 2005; 2017 – 2018)
Parliamentarian (2003 – 2004)
Judicial Administration and Evaluation Committee (2007 – 2013)
Judicial Administration Selection and Tenure Committee (2001 – 2004)

Florida Conference of Circuit Judges (2005 – 2012)

The Florida Supreme Court Subcommittee on Postconviction Relief (2010 – 2011)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Florida; Admitted April 28, 1993.

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court, Middle District of Florida; Admitted June 3, 1994
All Florida Courts; Admitted April 28, 1993

My membership with the United States District Court for the Middle District of Florida is currently inactive, having lapsed in 2004. During the ten years I was a member of the Middle District, I did not practice in federal court. I did not renew my membership in 2004 and saw no need to do so after becoming a judge in 2005.

There have been no lapses of membership in the state courts of Florida.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

United States Mounted Games Association (2018 – present)

TPC Sawgrass, Social Member (2017 – present)

United States Pony Club (2015 – present)

St. Johns River Pony Club (2015 – present)
Nominating Committee (2016 – 2017)

National Rifle Association (2015 – present)

The Federalist Society (2008 – present)

The Marketplace Christian Professional Resources (2008 – present)
Steering Committee (2010 – present)

St. Augustine Rotary Club (1997 – 2001; 2006 – present)
Grant Allocation Committee (2015 – present)
Paul Harris Fellow (1999, 2013)

Alpha Delta Pi National Sorority (1986 – present)
Alumni Standards Advisor, Epsilon Omega Chapter, Jacksonville
University (1998 – 2000)

Palencia Homeowner's Association (2005 – 2014)

St. Johns County Consortium on Substance Abuse (2011 – 2012) (approximate)

St. Johns County Public Safety Coordinating Council (2011 – 2012)
(approximate)

Statewide Diversity Team (2009 – 2012)

National Association of Drug Court Professionals (2008 – 2009)

Florida Association of Drug Court Professionals (2005 – 2008)

Republican Women's Club of Duval Federated (2004 – 2005) (approximate)

Mothers Against Drunk Driving (2003 – 2005) (approximate)

Epping Forrest Yacht Club (2002 – 2005) (approximate)

St. Augustine Sports Club (1999 – 2000) (approximate)

San Marco Preservation Society (1996 – 2000) (approximate)

Seminole Boosters (1990's) (approximate)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Although not active, I am an alumni of Alpha Delta Pi National Sorority. I joined Alpha Delta Pi in 1986 while a freshman at Florida State University. The sorority presently limits its membership to females. However, the Alpha Delta Pi Grand Council is currently in the process of changing its bylaws to limit membership in the sorority to women and defining the term "woman" as anyone who identifies themselves as female.

Years before I was a member, Rotary International, an organization devoted to community service, restricted its membership to males.

To the best of my knowledge, none of the other organizations listed in question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Florida Supreme Court, Subcommittee on Juror Conduct, *Juror Conduct Subcommittee Report*, February 8, 2018. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, January 12, 2017. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, January 19-23, 2017. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, September 14, 2016. Copy supplied.

Florida Supreme Court, Subcommittee on Juror Conduct, *Subcommittee Action Report*, July 1, 2016. Copy supplied.

Florida Supreme Court Committee on Standard Jury Instructions in Civil Cases, Subcommittee on Social Media, *Subcommittee Action Report*, January 28, 2016

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, May 7, 2015 (via email). Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, March 30, 2015. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, November 5, 2014. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, September 17, 2014. Copy supplied.

Florida Bar Association, Criminal Procedure Rules Committee, *Subcommittee Action Report*, July 23, 2014. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

District Court of Appeal Budget Commission, Meeting Agenda and Notes, September 5, 2017. Copy supplied.

District Court of Appeal Budget Commission, Video Conference Call Meeting Minutes, August 3, 2017. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

December 8, 2017: Panelist, "Preservation of Error," Orange County Bar Association, Orlando, Florida, Criminal Law Section, Criminal Law Seminar. Course outline, power point slides, and video supplied.

August 25, 2017: Investiture of the Honorable Norma Lindsey, Third District Court of Appeal, Miami, Florida. I administered the oath of office to Judge Lindsey during her investiture as a district judge. I have no notes, transcript, or recording. The address of the Third District Court of Appeals is 2001 SW 117th Avenue, Miami, Florida 33175.

May 10, 2017: Panelist, Judicial Panel on Appellate Ethics, Jacksonville Bar Association Annual Professionalism Conference at The Players Championship, Ponte Vedra Beach, Florida. I spoke about, among other things, the duties of appellate counsel in evaluating cases, consideration of the client's objectives, counsel's duty of candor to the court in the preparation of briefs, and dealing with difficult questioning during oral argument. I have no notes, transcripts, or recordings of the presentation.

February 7, 2017: Panelist, "Judicial Panel: Best Practices in Trial Advocacy from an Appellate Perspective," Jacksonville, Florida. I have no notes, transcripts or recordings of the presentation.

May 6, 2016: Speaker, "Standards of Conduct in the Legal Profession," Florida Bar Labor and Employment Section, Amelia Island, Florida. The program was a question and answer session moderated by The Honorable Alan Forst of the Fourth District Court of Appeal. I answered questions regarding professionalism at the trial and appellate levels. I have no notes, transcripts, or recording.

April 15, 2016: Panelist, "Effective Brief Writing; Preservation of Error," Orange County Bar Association Annual Bench Bar Conference, Orlando, Florida. I spoke on two panels at this conference, addressing how to write an effective appellate brief and also on preservation of error issues. I have no notes, transcripts or recordings of the presentation.

February 1, 2016: Panelist, "Judging Your Appeal, Views from the Bench," Jacksonville Bar Association, Jacksonville, Florida. I discussed the appellate process in Florida. I have no notes, transcripts or recording.

February 2016 (approximate): Speaker, "The Role of the Judiciary," Alice B. Landrum Middle School, Ponte Vedra Beach. Remarks supplied.

November 5, 2015: Speaker, "Judicial Appointment Process," St. Johns Association of Women Lawyers, St. Augustine Chapter, St. Augustine, Florida. I

spoke on the topic of Florida's judicial appointment process from the perspective of both a former governor's assistant general counsel and as an applicant for judicial appointment. I also used this as an opportunity to encourage qualified women to seek judicial appointment. Remarks supplied.

October 2015 (approximate): Installation of Officers, United Way of St. Johns County, St. Augustine, Florida. Remarks supplied.

August 5-7, 2015: Faculty Member, Successful Appellate Advocacy Workshop, Davie, Florida. Sponsored by The Florida Bar Appellate Practice Section and the Shepard Broad College of Law, Nova Southeastern University. I instructed students on brief writing and how to present an effective oral argument. Agenda attached. I have no other notes, transcript, or recording.

June 24, 2015: Panelist, "Differences Among the DCA's," The Florida Bar Annual Meeting, Boca Raton, Florida. I served on a panel with other DCA judges from around the State of Florida. I have no notes, transcripts, or recording.

February 2015 (approximate): Moderator, "Perspectives on the Florida Judicial Selection Process," Florida Federalist Society Statewide Conference, Orlando, Florida. Outline supplied.

October 17, 2014: Speaker, Investiture of the Honorable Carlos E. Mendoza, District Judge, United States District Court, Middle District of Florida, Orlando, Florida. Remarks supplied.

April 2014 (approximate): Guest Speaker, "American Democracy and the Rule of Law: Why Every Vote Matters," Hernando County Bar Association Law Day Dinner, Brooksville, Florida. Remarks supplied.

2014; 2012; 2009: Guest Speaker, The Marketplace Christian Professional Resources Luncheon, St. Augustine, Florida. The Marketplace invites a community leaders and business persons to speak at their monthly meetings. I have been invited to speak three times. In 2009, I spoke about the power of prayer and detailed a night I spent with my father in the hospital. In 2012, I reflected back on the night I spent with my father and discussed how God works through other people. In 2014, I spoke about faith, forgiveness, and redemption and how my faith guides me in my daily work. I have no notes or transcripts of the 2009 or 2012 speech. Notes from my 2014 speech are supplied. A video of the 2014 presentation is available at <https://www.youtube.com/watch?v=C47eQb0oxgI>

October 1, 2013: Guest Speaker, Palatka Rotary Club, Palatka, Florida. I spoke about my work as a judge on the Fifth District Court of Appeal, as well as the jurisdiction of the court. Remarks supplied.

April 5, 2013: Speaker, "Practicing Before the Fifth DCA," The Florida Bar Appellate Practice Section, Orlando, Florida. I believe I spoke generally on the

topic of oral arguments. I have no notes, transcripts or recordings. The address for The Florida Bar is 651 East Jefferson Street, Tallahassee, Florida 32399.

February 22, 2013: The Investiture of the Honorable Howard Maltz, Seventh Judicial Circuit, St. Augustine, Florida. I administered the oath of office to Judge Maltz during his investiture as a circuit judge. I have no notes, transcript or recording. The address of the Seventh Judicial Circuit is 125 East Orange Avenue, Suite 110, Daytona Beach, Florida 32114.

January 2013 (approximate): Keynote Speaker, St. Johns County Adult Drug Court, St. Augustine, Florida. Remarks supplied.

December 3, 2012: Administration of the Oath of Office, St. Augustine City Commission Meeting, St. Augustine, Florida. I administered the oath of office to newly elected St. Augustine Mayor, Joe Boles, and St. Augustine City Commissioner, Roxanne Horvath. I have no notes, transcript or recording. The address of the St. Augustine City Commission is 75 King Street, St. Augustine, Florida 32085.

November 9, 2012: Speaker, District Court of Appeal Investiture, St. Augustine, Florida. Remarks supplied.

September 20, 2012: Panelist, PACT Prevention Coalition of St. Johns County Town Hall Meeting, Jacksonville, Florida. The theme of the town hall was "Be a parent, not a friend." I served on a panel with Sheriff David Shoar, Superintendent Joseph Joyner, and Flagler Hospital Emergency Care medical director, Dr. Doug Scott. We discussed the dangers of underage drug and alcohol use. The panel was moderated by Kent Justice of Channel 4 News. I have no notes, transcript or recording. The address of the PACT Prevention Coalition of St. Johns County is 1400 Old Dixie Highway, St. Augustine, Florida 32084.

October 7, 2011: Investiture of the Honorable Carlos E. Mendoza, Circuit Judge, Seventh Judicial Circuit of Florida, Palatka, Florida. I provided remarks at the investiture. I have no notes, transcript or recording. The address of the Seventh Judicial Circuit is 125 East Orange Avenue, Suite 110, Daytona Beach, Florida 32114.

October 2010 (approximate): Moderator, 2010 Florida Drug Court Statewide Distance Learning Session, St. Augustine, Florida. I made some initial welcoming remarks and introduced speakers. I have no notes, transcripts or recordings. The address of the Florida Association of Drug Court Professionals is c/o Jennifer Bassett, Freeman Justice Center, 302 Fleming Street, Key West, Florida 33040.

August 31, 2010: Panelist, "Gender Bias in the Media," Florida Commission on the Status of Women and the University of Florida, Gainesville, Florida. Agenda and press release supplied. An audio recording is available at:
<http://www.jou.ufl.edu/assets/newsaudio/Gender-Media-2010-08-31.mp3>

February 12, 2010: Panelist, "What Civil Court Judges Want You To Know," National Business Institute Judicial Forum, Daytona Beach, Florida. I served on a judicial panel that discussed a wide range of topics regarding civil practice in state court. This panel was moderated in question and answer format. I have no notes, transcripts or recordings. The address for the National Business Institute is P.O. Box 3067, Eau Claire, Wisconsin 54702.

2010 (approximate): Speaker, "Consequences of Drinking and Driving," St. Augustine High School, St. Augustine, Florida. I spoke to the students about the dangers of drinking and driving and the legal consequences associated with driving under the influence. I have no notes, transcript, or recording. The address of the St. Augustine High School is 3205 Varella Avenue, St. Augustine, Florida 32084.

2009: Panelist, Bench and Bar Professionalism Seminar Volusia County Bar Association, Daytona Beach, Florida. I have no notes, transcripts, or recordings. The address of the Volusia County Bar Association is 327 South Palmetto Avenue, Daytona Beach, Florida 32114.

2007 – 2008: Participant, Project Safe Prom, St. Augustine, Florida. PACT Prevention Coalition. Participated in a DUI re-enactment at local high schools. The program, a collaborative effort between the PACT Prevention Coalition, St. Johns County Fire Rescue, the St. Johns County School District, and the St. Johns County Sheriff's Office, alerted high school juniors and seniors to the dangers of drinking through a dramatic presentation of its deadly consequences. Script supplied.

July 22, 2005: Speaker, Circuit Court Investiture, St. Augustine, Florida. I provided remarks at my investiture to the Circuit Court. Remarks supplied.

2005 (approximate): Speaker, Judicial Appointment Process, Jacksonville Women Lawyers Association, Jacksonville, Florida. Remarks supplied.

October 2003 (approximate); September 2001 (approximate): Speaker, "Fundamentals of Extradition," Annual Florida Extradition Conference. I taught a course on extradition procedures. Outline supplied.

May 2001 (approximate): Speaker, "Judicial Diversity," National Consortium of Task Forces and Commissions on Racial and Ethnic Bias in the Courts, Orlando, Florida. I discussed Governor Bush's policy regarding judicial appointments and provided those in attendance with statistics; i.e., race and gender of the governor's

judicial appointments to date. I have no notes, transcript or recording. I am not certain, but I believe the event was sponsored by The National Consortium of Racial and Ethnic Fairness in the Courts, whose address is 300 Newport Avenue, Williamsburg, Virginia 23185.

While working as a prosecutor, I conducted an in-service training program on DUI law and courtroom demeanor at the Flagler County Sheriff's Office. I taught a similar class as part of an in-service training program for members of the Putnam County Sheriff's Office. In addition, I instructed members of the St Augustine Police Department on search and seizure issues. I do not recall the specific dates. I have no notes, transcripts or recordings.

In addition to the above, from 2007 to 2012, I spoke at a course sponsored by the Florida Bar which is required for new Florida Bar members. I have supplied the materials used for the program. The same outline was used every year that I participated in the panel. Notes supplied.

From 2005 to 2012, I spoke at the St. Johns County Adult Drug Court Graduation in St. Augustine, Florida. I introduced the keynote speaker and provided introductory and closing remarks, as well as individual remarks specific to each graduate, at twenty (20) separate drug court graduation ceremonies. The graduations took place on the following dates: September 14, 2005; December 21, 2005; June 13, 2006; August 29, 2006; June 7, 2007; September 27, 2007; December 13, 2007; April 30, 2008; August 2008; December 17, 2008; May 15, 2009; September 30, 2009; March 24, 2010; June 9, 2010; November 17, 2010; April 13, 2011; June 27, 2011; September 28, 2011; February 8, 2012; and May 30, 2012. Remarks from July 14, 2010, October 20, 2010, and May 30, 2012 are supplied. I have no other notes, transcripts, or recordings. The address of the St. Johns County Adult Drug Court is Richard O. Watson Judicial Center, 4010 Lewis Speedway, St. Augustine, Florida 32084.

From 2007 to 2009, I spoke about the St. Johns County Adult Drug Court at a variety of fora, including the St. Augustine Rotary Club (2009); Village Church Mother's Day Luncheon (2009); St. Augustine Legal Secretaries Association (2008); St. Johns Rotary Club (2008); Community Treatment Support Corporation, Candle Lights to the Future (2008); Flagler College Radio (2007). Remarks for the Village Church Mother's Day Luncheon supplied. I have no other notes, transcripts, or recordings.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Stuart Korfhage, *5th District Court of Appeal visits Flagler College, hears oral arguments*, The St. Augustine Record, March 8, 2017. Copy supplied.

Jason Garcia, *Florida Supreme Court Contenders*, Florida Trend, February 26, 2016. Copy supplied.

Susan Johnson, *It's gus! . . . and it's all about us*, Gus! Magazine, February 23, 2013. Copy supplied.

Stuart Korfhage, *Drug court gives offenders a second chance*, The St. Augustine Record, January 6, 2013. Copy supplied.

Stuart Korfhage, *Judge Berger Happy to Slip Out of Limelight*, The St. Augustine Record, November 11, 2012. Copy supplied (reprinted in multiple outlets).

Stuart Korfhage, *Judge Berger Recounts Some of Her Memorable Cases*, The St. Augustine Record, November 11, 2012. Copy supplied.

Local News, *Judge Berger praised, roasted before being sworn in*, The St. Augustine Record, November 10, 2012. Copy supplied.

Editorial, *Our view: Judge Berger's tenure was a job well done*, The St. Augustine Record, August 22, 2012. Copy supplied.

Stuart Korfhage, *Judge Berger leaving 7th Circuit to join appellate court*, The St. Augustine Record, August 21, 2012. Copy supplied.

Sheldon Gardner, *Drug court graduation 'awesome day' for 3 local residents*, The St. Augustine Record, June 7, 2012. Copy supplied.

Richard Prior, *Rocca sentenced to 12 years*, The St. Augustine Record, August 6, 2011. Copy supplied.

Richard Prior, *Judge Watson dies*, The St. Augustine Record, May 31, 2011. Copy supplied.

Deirdre Conner, *What schizophrenia is like; A new device offers better understanding of the brain disorder*, The Florida Times Union, March 23, 2007. Copy supplied.

Ken Lewis, *At 36, St. John's newest judge prepares to serve from the bench; Wendy Berger will be the first female circuit judge for the county*, The St. Augustine Record, May 16, 2005. Copy supplied.

Richard Prior, *There's a new judge in town*, The St. Augustine Record, May 12, 2005. Copy supplied.

Vivian Wakefield, *Sentencing today in DUI case Jacksonville woman is learning to walk again*, The Florida Times Union, August 10, 2000. Copy supplied.

Bart Price, *Mother pleads guilty to DUI manslaughter*, The St. Augustine Record, July 19, 2000. Copy supplied.

Dana Treen, *Jury: Mom killed baby Woman convicted in her second trial*, The Florida Times Union, June 7, 2000. Copy supplied.

Dana Treen, *Retrial in baby's death to open after offer fails*, The Florida Times Union, May 30, 2000. Copy supplied.

Matt Gowen, *Killer Gets 10 years for DUI crash*, Daytona Beach News Journal, October 13, 1999. Copy supplied (reprinted in multiple outlets).

Dana Treen, *Man convicted in fatal 1997 DUI collision*, The Florida Times Union, July 31, 1998. Copy supplied.

St. Johns County Adult Drug Court, Flagler College Radio, 2007 (I have no clip or transcript).

In addition to the above, while I was employed as an assistant state attorney, I gave a number of interviews to the St. Augustine Record and the Florida Times Union. I do not have precise dates or records of any interviews other than those listed above.

As a Judge, several of my cases have generated media interest, including: State v. Freddie Wilson (DUI Manslaughter); State v. Tanya Hudson (First Degree Murder); State v. Omar Long (Manslaughter); and State v. Quinn Gray (Extortion). I have had various discussions with reporters during my time as a judge, generally for background purposes. As with the above, I do not have precise dates or records of any interviews other than those listed above.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Circuit Judge, Seventh Judicial Circuit

Appointed in April 2005 by Governor Jeb Bush; Elected, without opposition, in 2006; Reelected, without opposition, in 2012.

Circuit courts are courts of general jurisdiction with exclusive original jurisdiction in probate, guardianship, juvenile, felony, and civil cases over \$15,000. They also have appellate jurisdiction over appeals from county courts (except those declaring a state statute unconstitutional) and from final administrative orders of local government code enforcement boards.

Associate Judge
Fifth District Court of Appeal (December 7 – 11, 2009)
First District Court of Appeal (January and February 2010)

District Judge, Fifth District Court of Appeal
Appointed in August 2012 by Governor Rick Scott; Retained in 2014.
The district courts are intermediate appellate courts with jurisdiction to hear appeals from final judgments or orders of trial courts, including review of administrative actions (except those directly appealable to the Florida Supreme Court or a circuit court). The courts also have jurisdiction to hear original proceedings, which includes all writs.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Approximately 200, with 61 to verdict by a jury.

- i. Of these, approximately what percent were:

jury trials:	30 %
bench trials:	70 %

civil proceedings:	15 %
criminal proceedings:	85 %

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Please see attached list.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Eleanor Agostino, as personal representative of the Estate of Rosemarie Agostino, et al. v. Praxair Distribution Se., LLC, Praxair Distribution, Inc., and Jerry Allen Sloan*, CA02-1520

This case involved a motor vehicle accident. The Decedent ran a stop sign and was struck by a flatbed truck owned by the Defendant, Praxair, and driven by Defendant, Jerry Sloan. The truck was hauling a load of hazardous materials cylinders, which came loose on impact and fell on top of the Decedent's car. Plaintiffs alleged in the Complaint that Defendant, Praxair, was negligent in the manner it secured and transported the load of cylinders. Plaintiffs also alleged that Defendant, Sloan, was negligent in the operation of the vehicle. At the close

of the evidence, the Plaintiffs dismissed the action against Defendant Sloan. The jury found no liability against Defendant, Praxair, and judgment was later entered in favor of the Defendants. No appeal was taken. Final Judgment supplied.

Prosecuting Attorney

Fred Abbott
Abbott Law Group, P.A.
2929 Plummer Cove Road
Jacksonville, Florida 32223
(904) 292-1111

Defense Counsel

Robert J. Beckham
(Deceased)

Dominic C. MacKenzie
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
(904) 798-7303

2. *State v. Shawn Michael Hawkins*, CF05-51

Shawn Hawkins suffered from an addiction to cocaine and opiates. He was arrested for possession of cocaine and placed on 18 months of community control. After violating his community control supervision, Shawn was offered drug court in lieu of prison. He entered into the St. Johns County Adult Drug Court program on November 2, 2005. Shawn was not initially invested in drug court. He was defiant and found himself on the verge of being kicked out of the program on multiple occasions. Ultimately, Shawn made the decision to work the program. He began engaging in treatment and graduated from the program on June 7, 2007. Upon graduation, his probation was successfully terminated. Prior to graduating from drug court, Shawn was severely injured in a motor cycle accident and hospitalized. He suffered through his injury without the aid of narcotic pain medication because he believed taking the medication would result in a relapse.

Prosecuting Attorney

Cheryl McCrae
Albaugh Law Firm
1301 Plantation Island Drive South, Suite 302B
St. Augustine, Florida 32080
(904) 471-3434

Defense Attorney

Gary Smolek

4 East Park Avenue
St. Augustine, Florida 32084
(904) 827-5699

2. *State v. Odermatt*, CF05-2340

This case involved a plea. The Defendant was charged with molesting the young child of a family he had befriended while working as a maintenance man. Although the child did not testify at the hearing, another of the Defendant's victims, who was now in her 20's, testified how the Defendant, a family friend, had raped her on Easter Sunday and again on Christmas Day when she was only five years old. His two former wives also gave compelling testimony about his prior sexual deviance, which included, among many things, molesting at least five children. The Defendant was sentenced, pursuant to a plea agreement, to 25 years. He was also declared a sexual predator and ordered chemically castrated. He did not appeal. Judgment and Sentence supplied.

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3. *State v. Turner*, CF05-1954

Turner, an escaped prisoner from South Carolina, drove to St. Augustine, Florida and broke into a hotel room occupied by two victims and their three small children. After bursting his way inside, Turner stabbed the victims and robbed them. One victim died as a result of her injuries. The other victim survived by escaping to the bathroom and locking herself inside. Turner then fled the scene in a victim's truck and was captured by law enforcement after a short pursuit.

The case was tried twice. The first trial ended in a mistrial after a juror suffered an epileptic seizure during deliberations and was rushed to the hospital. The mistrial was granted after Turner objected to proceeding with eleven jurors. On retrial, Turner was convicted as charged of two counts of first degree murder. At

the conclusion of the penalty phase, the jury recommended Turner be sentenced to death by a vote of 10 to 2. He was sentenced according to the recommendation.

Turner's judgment and sentence was affirmed on appeal. *See Turner v. State*, 37 So. 3d 212 (Fla. 2010). However, his death sentence was recently vacated by the trial court based on the United States Supreme Court opinion in *Hurst v. Florida*, 136 S. Ct. 616 (2016). A copy of my sentencing order is supplied.

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4. *State v. McKenzie*, CF06-1864

This case involved the brutal murder of two men at the hands of the Defendant, McKenzie. On October 4, 2006, McKenzie drove to the victims' home with the intent to rob and kill them. They were not strangers. Just before the homicide, McKenzie and Victim 1 were working on their cars together. At some point, Victim 1 went inside the house, leaving McKenzie outside with Victim 2. According to McKenzie, he asked Victim 2 for a hammer and piece of wood so he could pound out a dent in his car. He was given a hatchet with a hammer end and a blade end. When Victim 2 went into his shed to grab a piece of wood, McKenzie followed him inside and struck him multiple times in the head with the blade end of the hatchet. McKenzie then left the shed and walked inside the house where he found Victim 1 cooking soup on the stove. He struck Victim 1 multiple times in the head with the hammer end of the hatchet. Afterward, he returned to the shed where he found Victim 2 still alive. He struck Victim 2 in the head once

again with the hatchet then placed the hatchet on top of a bucket and walked back inside the house. Once inside, McKenzie noticed Victim 1 struggling to stand up. McKenzie then armed himself with a butcher knife and stabbed Victim 1 multiple times. Both victims died as a result of their injuries. McKenzie left the scene in Victim 1's car. When McKenzie was arrested, Victim 1's wallet was found in his possession.

McKenzie represented himself during the trial, after which he was found guilty. At the conclusion of the penalty phase, the jury recommended he be sentenced to death by a vote of 10 to 2. He was sentenced accordingly. The judgment and sentence of death was affirmed on appeal. *See McKenzie v. State*, 29 So.3d 272 (Fla. 2010). However, his death sentence was recently vacated by the trial court based on the United States Supreme Court opinion in *Hurst v. Florida*, 136 S. Ct. 616 (2016). A copy of my sentencing order is supplied.

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6. *State v. Gallagher*, CF06-1980

Gallagher was a well-respected Assistant United States Attorney at the time he slammed his car into the rear of the victim's car, killing her. After the crash,

instead of attempting to help the victim, he made phone calls and began removing items from his trunk. When police arrived to investigate, they chose not to conduct field sobriety tests or obtain a blood or breath sample from him. Gallagher was later charged with vehicular homicide. On the morning of jury selection, he entered a plea as charged. The sentencing hearing lasted an entire afternoon. A number of prosecutors and defense attorneys, as well as a federal judge, testified regarding Gallagher's exemplary service as a prosecutor. Family and friends of the victim also testified and her father spoke for nearly an hour. Gallagher was ultimately sentenced to serve seven years in prison with five years of probation to follow. He did not appeal. Because Gallagher had been involved in a separate federal prosecution of the Secretary of the Florida Department of Corrections, arrangements were made for him to serve his sentence in the State of Washington. Gallagher has since been released.

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7. *Burton v. State*, 1D09-1958

Panel: The Honorable Wendy W. Berger, Associate Judge, The Honorable
Nikki Ann Clark (Retired), The Honorable William Van Nortwick (Retired)

I wrote the dissent in the *Burton* case in 2010 while serving as an associate judge on the First District Court of Appeal. The case involved the forced hospitalization of a pregnant woman. Unfortunately, the baby passed away, in utero, while the case was pending. Because the issue in the case was not new and became moot upon the death of the child, it was my view that the case should be dismissed. The majority thought otherwise, believing the issue in the case was "capable of repetition yet evading review." In my view, the majority used this case to offer an unnecessary and improper advisory opinion. The dissent explains my reasoning for exercising judicial restraint. See *Burton v. State*, 49 So. 3d 263 (Fla. 1st DCA 2010) (Berger, A.J., dissenting).

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8. *State v. Davis*, CF07-689

In the early morning hours of March 31, 2007, Davis broke into the 75-year old victim's home, attacked her from behind, beat her with a bottle, and sodomized her. She was found on the floor the following morning by her son. Davis was arrested and DNA evidence linked him to the crime.

On May 8, 2007, after an outburst in court, Davis was held in contempt and sentenced to serve 180 days in the county jail. A competency hearing was later held, after which Davis was determined competent to proceed. The case was then set for trial. Later, Davis's behavior became increasingly bizarre. He was reevaluated and, in January 2009, was determined incompetent to proceed and sent to the State hospital, where he remained until competency was restored.

Because of the victim's advanced age, her testimony was perpetuated prior to trial. The video of her testimony was presented to the jury because she passed away before the trial could take place. Davis was ultimately convicted, as charged, and sentenced to serve two consecutive life sentences on the sexual battery and burglary convictions, and a concurrent 30-year sentence on the aggravated battery. His judgments and sentences were per curiam affirmed on appeal, *see Davis v. State*, 67 So. 3d 221 (Fla. 5th DCA 2011).

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9. *UCF Athletics Ass'n Inc. v. Plancher*, 5D11-2710

Panel: The Honorable Wendy W. Berger, The Honorable Vincent Torpy,
The Honorable C. Alan Lawson

This wrongful death case was brought by the parents of UCF football player Plancher, against UCF Athletics Association, Inc. (UCFAA), the direct-support organization responsible for administering the university's athletic department. After the jury found UCFAA liable and awarded the Plancher parents damages in the amount of ten million dollars, UCFAA appealed, arguing the trial court erred in (1) denying UCFAA's motion for summary judgment based on a release signed by Plancher, and (2) denying UCFAA's motion for partial summary judgment and entering summary judgment against UCFAA on the issue of limited sovereign immunity.

I authored the majority per curiam opinion affirming, in part, reversing, in part, and remanding, as well as the opinion concurring, in part, and dissenting, in part.

The case involved an issue of first impression, namely, whether university athletic associations were direct-support organizations primarily acting as instrumentalities or agencies of the state pursuant to section 768.28(2), Florida Statutes, and thus entitled to limited sovereign immunity. In the case of UCFAA, we concluded it was.

The Planchers argued that in order for UCFAA to be entitled to limited sovereign immunity, UCF had to control its day to day operations. We rejected that argument, determining, instead, that power to control was sufficient.

On the issue of the release, at the time this case was decided, the Fifth District was the only appellate district in Florida that did not require an exculpatory clause to expressly release a party from actions in negligence. A release waiving "all claims, causes of actions or demands of any kind and nature whatsoever" was sufficient. While the majority determined that the release signed by Plancher was ambiguous, I dissented on this issue. In my view, the release he signed was clear, unambiguous and enforceable against him and his heirs for any acts of negligence committed by UCFAA, and that the trial court erred when it denied UCFAA's motion for summary judgment on this issue.

The Florida Supreme Court affirmed our decision but remanded for entry of a judgment corresponding to the jury's award of damages but limiting UCFAA's liability for payment to \$200,000 pursuant to section 768.28(5). *UCF Athletics Ass'n Inc. v. Plancher*, 121 So. 3d 1097 (Fla. 5th DCA 2013), *approved in part, quashed in part*, 175 So. 3d 724 (Fla. 2015).

In a companion case, we reversed the award of attorney's fees and costs based on the offer of judgment statute. *See UCF Athletics Ass'n Inc. v. Plancher*, 121 So. 3d 616 (Fla. 5th DCA 2013).

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10. *Nationstar Mortg., LLC v. Berdecia*, 5D14-569

Panel: The Honorable Wendy W. Berger, The Honorable Thomas Sawaya,
The Honorable Richard Orfinger

This case involves the admission of evidence under the business records exception to the hearsay rule in mortgage foreclosure cases. The opinion recognizes that oftentimes a plaintiff in a foreclosure suit is not the original party to a loan and, as a result, the plaintiff must prove its case using documents prepared by the previous note owner. This case explains the predicate that must be established to admit such documents and, as a result, has streamlined the process for admitting evidence in foreclosure cases. See *Nationstar Mortg., LLC v. Berdecia*, 169 So. 3d 209 (Fla. 5th DCA 2015).

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Burton v. State*, 49 So. 3d 263 (Fla. 1st DCA 2010) (Berger, J., Associate Judge, dissenting).

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2. *UCF Athletics Ass'n, Inc., v. Plancher*, 121 So. 3d 1097 (Fla. 5th DCA 2013) (Berger, J., concurring, in part, and dissenting, in part).

I authored the majority per curiam opinion, as well as the opinion concurring, in part, and dissenting, in part.

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3. *Crew v. State*, 146 So. 3d 101 (Fla. 5th DCA 2014) (Berger, J., concurring).

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4. *Patel v. State*, 141 So. 3d 1239 (Fla. 5th DCA 2014).

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5. *State v. Powell*, 140 So. 3d 1126 (Fla. 5th DCA 2014).

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6. *Paolerico v. State*, 129 So. 3d 1174 (Fla. 5th DCA 2014).

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7. *McDonnell v. Sanford Airport Auth.*, 200 So. 3d 83 (Fla. 5th DCA 2015).

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8. *Volusia Cty. v. Joynt*, 179 So. 3d 448 (Fla. 5th DCA 2015).

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9. *Nationstar Mortg., LLC v. Berdecia*, 169 So. 3d 209 (Fla. 5th DCA 2015).

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10. *Purdy v. State*, 2017 WL 384094 (Fla. 5th DCA January 27, 2017) (Berger, J., concurring in part, and dissenting in part), *reh'g denied*, April 28, 2017.

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- e. Provide a list of all cases in which certiorari was requested or granted.

Fletcher v. State, 168 So.3d 186 (Fla. 2015), *cert. denied*, *Fletcher v. Florida*, 136 S. Ct. 980 (2016), *reh'g denied*, 126 S.Ct. 1403 (2016).

McKenzie v. State, 29 So.3d 272 (Fla. 2010), *cert. denied*, *McKenzie v. Florida*, 562 U.S. 854 (2010).

Turner v. State, 37 So.3d 212 (Fla. 2010), *cert. denied*, *Turner v. Florida*, 562 U.S. 987 (2010).

Hope v. State, 2017 WL 6542533 (Fla. 5th DCA December 22, 2017), *cert. denied*, *Hope v. Florida*, – U.S. – (April 2, 2018).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were 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, provide copies of the opinions.

Fifth DCA Reversals:

Burton v. State, 191 So. 3d 543 (Fla. 5th DCA 2016), quashed by *Burton v. State*, No. SC16-1116, 2018 WL 798521 (Fla. Feb. 9, 2018).

Burton was convicted of first-degree murder and petit theft. On appeal he challenged the denial of his motion to suppress evidence obtained from a warrantless search of his cell phone incident to arrest, along with the subsequent use of that evidence during the course of his interrogation and as the basis for a warrant to search his residence and seize additional evidence. Judge Cohen authored the per curiam opinion, which I joined. Although we concluded that the initial search of Burton's cell phone violated his Fourth Amendment rights, we nevertheless affirmed the denial of his motion to suppress based on the United States Supreme Court opinion in *Davis v. United States*, 564 U.S. 229 (2011), which held that "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." 564 U.S. at 232. At

the time of the search, the binding precedent out of our court, relied upon by the police in *Burton*'s case, allowed the warrantless search of a cell phone incident to arrest. See *State v. Glasco*, 90 So. 3d 905, 908 (Fla. 5th DCA 2012) quashed by *Glasco v. State*, 137 So. 3d 1014 (Fla. 2014). However, after we issued our opinion in *Burton*, the Florida Supreme Court held in *Carpenter v. State*, 228 So. 3d 535, 542 (Fla. 2017), that the good faith exception to the exclusionary rule did not apply to an officer's warrantless search of a cell phone because the officers were not relying on the type of longstanding, thirty-year appellate precedent at issue in *Davis*. Consequently, on appeal, the Florida Supreme Court quashed our decision in *Burton* and remanded for reconsideration in light of *Carpenter*. On remand, we reversed the order of the trial court denying *Burton*'s motion to suppress. *Burton v. State*, 237 So. 3d 488 (Fla. 5th DCA 2018). I wrote a concurring opinion, which stated that although I believed the police officers acted in good faith when they searched *Burton*'s cell phone, I was constrained to concur with the majority's decision to reverse based on *Carpenter*. *Id.* at 488-89.

Churchill v. State, 169 So. 3d 1260 (Fla. 5th DCA 2015), quashed by, 219 So. 3d 14 (Fla. 2017).

Churchill appealed his judgment and sentence after he pleaded no contest, reserving his right to appeal the trial court's ruling on his motion to suppress. We declined to address the issue and dismissed the appeal finding the motion to suppress was not dispositive. The Florida Supreme Court reversed, concluding that appellate courts have jurisdiction to review the merits of a conditional no contest plea when the State stipulates that an issue reserved for appeal is dispositive of the case. On remand, we issued a per curiam affirmance. See *Churchill v. State*, 2017 WL 4570354 (Fla. 5th DCA October 10, 2017).

Florence v. State, 128 So. 3d 198 (Fla. 5th DCA 2013), disapproved by, *Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

In this case, citing the Florida Supreme Court's opinions in *Parker v. State*, 904 So. 2d 370 (Fla. 2005) and *Woodel v. State*, 804 So. 2d 316 (Fla. 2001), and the Fourth District's opinion in *Dempsey v. State*, 72 So. 3d 258 (Fla. 4th DCA 2011), we concluded in a per curiam opinion that when an information charges attempted first degree murder, the State may pursue either a theory of premeditation or felony murder, or both, and that both theories need not be charged in order to receive a jury instruction on both. The Florida Supreme Court later held in *Weatherspoon*, that the analogy between premeditated murder and felony murder no longer exists in the attempted premeditated murder and attempted felony murder context. In doing so, the court disapproved the opinions in *Florence* and *Dempsey*, to the extent they were inconsistent with its opinion.

Allstate Ins. Co. v. Theodotou, 171 So. 3d 163 (Fla. 5th DCA 2015), quashed by, *Holmes Reg'l Med. Ctr. v. Allstate Ins. Co.*, 225 So. 3d 780 (Fla. 2017).

This case involved a claim of equitable subrogation. The victim, who had received an \$11 million judgment against an at-fault driver and the driver's insurance company, brought a medical malpractice suit against the medical provider for exacerbating his injuries. The at-fault driver and insurer intervened to file an equitable subrogation claim against the medical providers. The trial court dismissed the complaint because the at-fault driver and insurer had not paid the entirety of the judgment. The majority on my court held that the right to equitable subrogation arises when the judgment is entered against the initial tortfeasor, not only when payment has been made. Although I agreed in principle with the majority, I dissented in the case, concluding that well settled law precluded an initial tortfeasor from filing an independent equitable subrogation claim against a subsequent tortfeasor until the entire debt was paid. The Florida Supreme court quashed the opinion in *Holmes Reg'l Med. Ctr. V. Allstate Ins. Co.*, 42 Fla. L. Weekly S738 (Fla. 2017), concluding, as I had outlined in my dissent, that the driver and insurer were not entitled to seek equitable subrogation from a subsequent tortfeasor until the judgment had been fully satisfied.

State v. Myers, 169 So. 3d 1227 (Fla. 5th DCA 2015), quashed by, 211 So. 3d 962 (Fla. 2017).

The State appealed the trial court's order granting Defendant's motion to suppress based on a *Miranda* violation. In a majority opinion written by Judge William Palmer, in which I concurred and Judge Jay Cohen dissented, our court concluded, using the four factors outlined in *Ramirez v. State*, 739 So. 2d 568 (Fla. 1999), that Defendant was not in custody for the purpose of *Miranda*. On appeal, the Florida Supreme Court disagreed, finding that we had failed to properly weigh the factors in *Ramirez* and concluding that the manner in which Defendant was summoned for questioning weighed in favor of a finding that she was in custody for the purpose of *Miranda*.

Worley v. Cent. Fla. Young Men's Christian Ass'n., 163 So. 3d 1240 (Fla. 5th DCA 2015), quashed by, 42 Fla. L. Weekly S443 (Fla. April 13, 2017).

Worley petitioned the court for a writ of certiorari to quash a discovery order requiring her to produce information regarding the relationship between her treating physicians and her attorneys. We denied the petition, concluding the trial court did not depart from the essential requirements of the law. In the opinion authored by Judge Brian Lambert, in which I concurred, we determined that "[u]nlike detailed financial and business records that could reveal confidential information protected by the doctor-patient privilege, the limited type of discovery presently at issue here concern[ed] only the existence of a referral relationship between [attorneys] and the treating physicians in this case. As stated earlier, this type of information is relevant, not privileged, and essential to the truth-seeking function of the court system." *Worley*, 163 So. 3d at 1248. The Florida Supreme Court quashed our opinion in a 4-3 decision, concluding that the financial relationship between a plaintiff's law firm and a treating physician is not

discoverable and that whether an attorney referred a client to a particular physician was protected by the attorney-client privilege.

Hilton Hotels Corp. v. Anderson, 153 So. 3d 412 (Fla. 5th DCA 2014), quashed by, *Anderson v. Hilton Hotels Corp.*, 202 So. 3d 846 (Fla. 2016).

In an opinion authored by Judge Evander, in which I concurred, our court agreed with the trial court's determination that the proposals for settlement at issue in the case were ambiguous and thus, unenforceable. The Florida Supreme Court reversed, finding that the separate settlement offers satisfied the particularity requirement of the offer of judgment statute and that the victim of a criminal attack that took place in the parking lot of the Hilton Hotel was entitled to attorney's fees under the offer of judgment statute.

Allen v. State, 150 So. 3d 1213 (Fla. 5th DCA 2014), quashed by, 41 Fla. L. Weekly S578 (Fla. Oct. 28, 2016).

On appeal, Allen argued that his life sentence with the possibility of parole after 25 years violated the dictates set forth by the United States Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Additionally, he argued that the trial court erred when it resentenced him to 45 years for his armed robbery conviction, to run consecutively with the life sentence for first-degree murder, because the sentencing scheme did not follow the spirit of *Graham v. Florida*, 130 S. Ct. 2011 (2010). In a case with a nearly identical procedural history, the Fourth District Court of Appeal affirmed a trial court's conclusion that *Miller* was not implicated when a defendant has been sentenced to life imprisonment without the possibility of parole for 25 years. See *Atwell v. State*, 128 So. 3d 167, 169 (Fla. 4th DCA 2013). Thus, we affirmed, per curiam, citing *Atwell*. (Panel: Evander, Palmer, Berger, JJ.) After the Florida Supreme Court reversed the Fourth District in *Atwell*, see *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), our decision in *Allen* was quashed and the case was remanded for resentencing.

Omega Ins. Co. v. Johnson, 207 So. 3d 245 (Fla. 5th DCA 2014), quashed by, *Johnson v. Omega Ins. Co.*, 200 So. 3d 1207 (Fla. 2016).

After an insured brought a sinkhole claim against its insurer, the insurer tendered policy benefits to the insured. Thereafter, the insured filed a motion for confession of judgment and a motion for attorney's fee and costs. In an opinion authored by Judge Sawaya, in which I concurred, our court concluded that the insured was not entitled to attorney's fees based on the insurer's tender of policy benefits. In so concluding, we determined that the insurer did not wrongfully withhold benefits from the insured because it had investigated her claim according to the statutory directives and justifiably relied on a report issued by its engineering firm. We noted that the purpose of FS 627.428 was to penalize a carrier for wrongfully causing its insured to resort to litigation and that did not happen here. The Florida Supreme Court reversed, concluding that the statutory

presumption of correctness granted to insurer's investigative report did not apply during the trial stage and that the presumption did not preclude an award of attorney's fees when the insured ultimately prevails. The court further concluded that the insurer's payment of a previously denied claim following the initiation of an action for recovery is the functional equivalent of a confession of judgment entitling the insured to attorney's fees as the prevailing party.

Dep't of Highway Safety and Motor Vehicles v. Futch, 142 So. 3d 910 (Fla. 5th DCA 2014), quashed by, *Futch v. Dep't of Highway Safety and Motor Vehicles*, 189 So. 3d 131 (Fla. 2016).

In this second tier certiorari case, we quashed the circuit court order directing the Department of Highway Safety and Motor Vehicles to set aside a suspension and reinstate Futch's driver's license. Although we agreed with the circuit court that the hearing officer deprived Futch of procedural due process, we concluded the proper remedy was to remand the case for rehearing. In a 5-2 decision, the Florida Supreme Court quashed our decision, concluding we had inappropriately granted certiorari review.

Galan v. State, 140 So. 3d 1105 (Fla. 5th DCA 2014), quashed by, 41 Fla. L. Weekly S621 (Fla. Dec. 13, 2016).

This was another juvenile sentencing case. Here, Galan appealed the 90-year aggregate sentence imposed against him for six separate offenses. Mindful that our court had upheld a similar sentence in *Henry v. State*, 82 So. 3d 1084 (Fla. 5th DCA 2012) (concluding that Henry's aggregate term-of-years sentence was not invalid under the Eighth Amendment and *Graham*), rev. granted, 107 So. 3d 405 (Fla. 2012), Galan asked us to recede from *Henry* or, in the alternative, stay proceedings until *Henry* was decided by the Florida Supreme Court. We ultimately issued a per curiam opinion affirming Galan's sentence, citing *Henry*, which provided him with the opportunity to seek further review. When the Florida Supreme Court later quashed our opinion in *Henry*, see *Henry v. State*, 175 So. 3d 675 (Fla. 2015), the decision in *Galan* was quashed as well, and the case was remanded for resentencing.

Garcia v. State, 159 So. 3d 973 (Fla. 5th DCA 2015), quashed by, 177 So. 3d 1265 (Fla. 2015).

Garcia challenged the constitutionality of his life sentence pursuant to *Miller v. Alabama*, 132 S.Ct. 2455 (2012), claiming he was a juvenile at the time of his offense. At the time of Garcia's appeal, there was a conflict among the district courts on the question of retroactive application of *Miller*. We aligned ourselves with the First District's opinion in *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA 2013), finding *Miller* did not apply retroactively to defendants whose sentences were final prior to the decision. We issued a per curiam affirmance in Garcia's case, citing *Falcon*. (Panel: Sawaya, Berger, Lawson, JJ.) Thereafter, the Florida

Supreme Court quashed the First District's opinion in *Falcon*. See *Falcon v. State*, 162 So. 2d 954 (Fla. 2015), concluding that *Miller* required retroactive application. Thereafter, our court's decision in *Garcia* was quashed and the case was remanded for resentencing.

Ray v. State, 140 So. 3d 702 (Fla. 5th DCA 2014), quashed by, 177 So. 3d 1270 (Fla. 2015).

In this juvenile sentencing case, we reversed Ray's life sentence without the possibility of parole pursuant to our decision in *Horsley v. State*, 121 So. 3d 1130 (Fla. 5th DCA 2013) (holding that the only sentencing option in juvenile murder cases is life imprisonment with the possibility of parole after twenty-five years), and remanded with directions that the trial court impose a sentence of life with the possibility of parole after 25 years. The Florida Supreme Court later quashed the decision in *Horsley*, after the Florida Legislature enacted chapter 2014-220, Laws of Florida, to address the concerns in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). As a result, our decision in *Ray* was quashed and the case was remanded for resentencing in conformance with chapter 2014-220, codified in sections 775.082, 921.1401, and 921.1402, Florida Statutes.

Gutierrez v. State, 133 So. 3d 1125 (Fla. 5th DCA 2014), quashed by, 177 So. 3d 226 (Fla. 2015).

In this sexual battery case, the trial court granted the State's request for a special jury instruction informing the jury that a sexual battery victim's testimony need not be corroborated. Although we determined it was error to give the instruction, based on the facts of this case, the majority opinion I authored concluded that the error was harmless. Judge Evander concurred, in part, and dissented, in part. In a 4-3 decision, the Florida Supreme Court quashed our decision concluding that giving the "no corroboration" instruction was not harmless error.

Browning v. Poirier, 128 So. 3d 144 (Fla. 5th DCA 2013), quashed by, 165 So. 3d 663 (Fla. 2015).

In this case, Browning, the former romantic partner of Poirier, a million-dollar lottery winner, brought an action against Poirier seeking a share of the lottery proceeds, alleging breach of an oral contract and unjust enrichment. In a 7-2 en banc opinion, relying on the Florida Supreme Court's opinion in *Yates v. Ball*, 181 Fla. 341, 344 (Fla. 1937)("[W]hen no time is agreed on for the complete performance of the contract, if from the object to be accomplished by it and the surrounding circumstances, it clearly appears that the parties intended that it should extend for a longer period than a year, it is within the statute of frauds, though it cannot be said that there is any impossibility preventing its performance within a year."), our court concluded that the oral agreement between Poirier and Browning to split the proceeds of any lottery tickets they purchased during the course of their ten-year relationship, was an agreement that lasted longer than a

year and thus, fell within the statute of frauds. On appeal, the Florida Supreme Court quashed our decision, determining that the oral agreement between Browning and Poirier fell outside the Statute of Frauds because it could have possibly been performed within one year.

UCF Athletics Ass'n. v. Plancher, 121 So. 3d 1097 (Fla. 5th DCA 2013), *aff'd in part, rev'd in part*, *Plancher v. UCF Athletics Ass'n.*, 175 So. 3d 724 (Fla. 2015).

In this wrongful death case, we concluded that the UCF Athletic Association was a direct-support organization primarily acting as an instrumentality or agency of the state, namely the University of Central Florida, pursuant to section 768.28(2), Florida Statutes, and thus, was entitled to limited sovereign immunity. We reversed the trial court's order concluding otherwise and directed the trial court to reduce the jury's \$10 million verdict to \$200,000 in accordance with section 768.28(5), Florida Statutes, and directed that any amount over the cap must be sought in a claims bill filed in the Florida Legislature. On appeal, the Florida Supreme Court approved our holding that the UCF Athletic Association was entitled to limited sovereign immunity, but quashed the statement in footnote 17 of the opinion that "the judgment entered against UCFAA shall be reduced to \$200,000. . ." The court agreed that the Planchers were required to look to the Legislature to collect any money above the \$200,000 statutory cap, but concluded that "[r]ather than requiring a reduction of the judgment, we remand for entry of a judgment corresponding to the jury's award of damages but limiting UCFAA's liability for payment to \$200,000 pursuant to section 768.28(5)." *Plancher v. UCF Athletics Ass'n.*, 175 So. 3d 724, 729 (Fla. 2015).

UCF Athletics Ass'n. v. Plancher, 121 So. 3d 616 (Fla. 5th DCA 2013), *rev. granted*, *Plancher v. UCF Athletics Ass'n.*, 175 So. 3d 724 (Fla. 2015).

Review was granted in this companion case, but no specific ruling on the attorney's fee issue was addressed in the opinion. However, the case was effectively affirmed due to a finding that the sovereign immunity cap applied.

Trial Court Reversals:

Biller v. State, 109 So.3d 1240 (Fla. 5th DCA 2013), disapproved by *Smith v. State*, 204 So. 3d 18 (Fla. 2016).

Biller pleaded guilty to fifteen counts of possession of child pornography and one count of transmission of pornography by electronic device, reserving his right to appeal the denial of his dispositive motion to dismiss. In his motion, Biller argued that section 827.071(5), Florida Statutes was unconstitutional and void for vagueness and also that the use of a peer-to-peer sharing network known as Limewire, which allowed other Limewire subscribers to access the pornographic images he had downloaded to his home computer, did not constitute transmission as that term is defined by statute. On appeal, the Fifth District affirmed the

Biller's convictions for possession of child pornography but reversed the conviction for transmission of pornography based on lenity principles. The court concluded that whether Biller's conduct of allowing access to his computer files through Limewire constituted "transmission" was unclear and susceptible of more than one construction. The State did not appeal. However, the Fifth District's decision was later disapproved by the Florida Supreme Court in *Smith v. State*, 204 So.3d 18 (Fla. 2016), wherein the supreme court held "that the use of a file-sharing program, where the originator affirmatively grants the receiver access to child pornography placed by the originator in files accessible through the file sharing program, constitutes the transmission of child pornography under the plain meaning of section 847.0137, Florida Statutes."

Leatherwood v. State, 108 So. 3d 1154 (Fla. 5th DCA 2013).

Leatherwood appealed the restitution order I entered after his plea of no contest to the charge of grand theft. He successfully argued that the State had failed to prove the amount of restitution by competent substantial evidence when it failed to properly qualify an appraisal letter from a jeweler as a business record pursuant to section 90.803(6) and section 90.902(11), Florida Statutes. The restitution order was reversed and the case was remanded for a new hearing to determine the proper restitution amount.

Lee v. State, 89 So. 3d 290 (Fla. 5th DCA 2012).

After his conviction for robbery with a firearm and aggravated battery with a firearm, Lee filed a motion for new trial pursuant to Florida Rule of Criminal Procedure 3.600(a)(2), arguing the verdict was against the weight of the evidence. The motion was denied in an unelaborated order. Because it was unclear whether I applied the correct standard in denying the motion, the order was reversed and the case was remanded for a new hearing on the motion. The opinion was later withdrawn to clarify that only the ruling on the motion for new trial was reversed, not the judgment and sentence. See *Lee v. State*, 117 So. 3d 848 (Fla. 5th DCA 2013).

Long v. State, 99 So. 3d 997 (Fla. 5th DCA 2012).

Long was originally sentenced as a youthful offender on two counts of robbery to concurrent sentences of two years in prison followed by four years of probation. Upon a finding that he had violated his probation, Long's probation was revoked and he was sentenced to serve five years in prison. When I sentenced Long on the violation, I revoked his youthful offender status. This was error. On appeal, the portion of his sentence revoking youthful offender status was reversed and the case was remanded for correction of the sentencing documents.

McKinnon v. State, 85 So.3d 1188 (Fla. 5th DCA 2012).

The judgment and sentence revoking and terminating McKinnon's probation was affirmed by the Fifth District, but remanded for correction of the written order of revocation so that it would conform to the oral pronouncement. After a hearing on the violation, I announced orally that McKinnon violated conditions two, three, four, six, and eleven of his order of probation. However, the written order only showed a finding that he violated conditions two and eleven. On remand, I was ordered to correct the judgment so that it showed a violation of conditions three, four, six, and eleven. Condition two was deleted after the court determined the evidence was insufficient to sustain a violation for changing his residence without the permission of his probation officer.

Rose v. State, 68 So. 3d 377 (Fla. 5th DCA 2011).

Rose appealed her convictions and sentences for attempted robbery with a firearm and aggravated assault after a jury trial. On appeal, the Fifth District determined that Rose's motion for judgment of acquittal should have been granted on the attempted robbery charge. Finding the case similar to *Thomas v. State*, 349 So. 2d 743 (Fla. 1st DCA 1977), the court concluded that although the evidence adduced at trial suggested that Rose intended to commit an offense when she pointed a gun at the victim, the evidence was insufficient to establish she intended to commit a robbery. Therefore, the attempted robbery with a firearm conviction was reversed and the case was remanded for entry of an amended judgment. The aggravated assault conviction was affirmed.

Wilbur v. State, 64 So. 3d 756 (Fla. 5th DCA 2011).

During Wilbur's trial on the charge of sale of cocaine, I allowed the State to present *Williams* rule similar fact evidence of two prior sales to the same confidential informant to prove identity. On appeal, the Fifth District reversed, concluding there was nothing unique or special in the crime allegedly committed by Wilbur and the fact that he made two prior sales to the same confidential informant was not relevant.

Gonzalez-Ramos v. State, 46 So. 3d 67 (Fla. 5th DCA 2010).

Gonzalez-Ramos' adjudication for violation of probation and four-year prison sentence was reversed upon a determination by the appellate court that the affidavit of violation was filed and the warrant was issued after the term of probation had expired. In so concluding, the court determined that the trial court lacked jurisdiction to find Gonzalez-Ramos in violation, reasoning that when Gonzalez-Ramos' two-year term of probation was twice reinstated on prior violations, no time was tolled between the dates the warrants were issued with respect to each violation and the dates the violation allegations were adjudicated. According to the court, reinstatement was the equivalent of continuing probation.

Allen v. State, 43 So.3d 874 (Fla. 5th DCA 2010).

In this case, the Fifth District affirmed Allen's conviction and sentence but remanded for clarification and correction so that the written sentence would conform to the oral pronouncement. As written, the sentence appeared to authorize a total of six years of probation when, in fact, Allen was placed on five years of probation with a special condition that he serve a year in the county jail.

Outin v. State, 12 So.3d 322 (Fla. 5th DCA 2009).

Outen's conviction and sentence was affirmed on appeal, but the assessment of \$250 for costs of prosecution was reduced to the \$100 statutory minimum required by section 938.27, Florida Statutes (2008). The court determined that the additional assessment was not supported in this case.

Eberheart v. State, 5 So. 3d 791 (Fla. 5th DCA 2009).

After I denied Eberheart's Florida Rule of Criminal Procedure 3.800(c), motion to mitigate sentence as untimely, Eberheart filed a petition for writ of certiorari. His petition was granted upon a finding that the trial court had jurisdiction to hear the motion because it was filed within 60 days of issuance of the mandate on direct appeal.

Fleming v. State, 24 So. 3d 783 (Fla. 5th DCA 2009).

In this case, Fleming challenged the denial of her Florida Rule of Criminal Procedure 3.800 motion to correct illegal sentence. The denial was affirmed in all respects except for Fleming's claim for jail credit. I denied the request because the time Fleming requested was served post sentencing while awaiting a bed in a court-ordered drug treatment facility. The court determined it was error to deny the credit and, on remand, directed me to award Fleming an additional 40 days of jail credit.

Helms v. State, 993 So. 2d 1135 (Fla. 5th DCA 2008).

After his conviction for sexual battery, lewd and lascivious battery, and lewd and lascivious conduct was affirmed on appeal, Helms filed a motion for post-conviction relief alleging six grounds of ineffective assistance of counsel. I denied grounds two, three, and five as insufficiently pled. When Helms sought to amend his claims, I denied his request based on the Fourth District's opinion in *Spera v. State*, 923 So. 2d 543 (Fla. 4th DCA 2006). Subsequent to my decision, the Florida Supreme Court issued its opinion in *Spera v. State*, 971 So. 2d 754 (Fla. 2007), permitting defendants to amend defective claims. Under that decision, the court determined it was error to refuse Helms leave to amend claims two, three, and five. In all other respects, my order was affirmed.

McCauslin v. O'Conner, 985 So. 2d 558 (Fla. 5th DCA 2008).

After the jury returned a verdict in favor of McCauslin in this automobile accident case, I granted a motion for new trial based on juror misconduct, after it was determined that two jurors failed to disclose that they had been injured in automobile accidents after the panel was asked the following question: "Have any of you ever been injured in any way, whether it be a car accident, a collision, a slip and fall?" In a 2-1 decision, the Fifth District reversed, concluding that granting a new trial under these circumstances was an abuse of discretion.

Lawrence v. State, 991 So.2d 406 (Fla. 5th DCA 2008).

Lawrence appealed the summary denial of his motion for post-conviction relief wherein he claimed the forfeiture of gain time by the Department of Corrections had the effect of subverting his plea agreement. After noting that gain time forfeitures may not thwart the terms of a plea agreement, the Fifth District reversed my order summarily denying the motion and remanded the for the purpose of holding an evidentiary hearing or attaching portions of the record conclusively refuting his claim.

Sadler v. State, 980 So.2d 567 (Fla. 5th DCA 2008).

While on supervised release from a sentence imposed in federal court, Sadler was charged with multiple felonies in St. Johns County. He was subsequently charged in federal court with violating supervised release and, as a result, was facing additional time. Sadler wanted to return to federal court prior to entering a plea in State court but that request was denied. When he entered his plea in St. Johns County, the State Attorney agreed that his sentence should run concurrent with any other sentences. Although it was the intent that his sentence run concurrent with the federal sentence, Sadler was warned that the federal judge was not bound by the agreement. Sadler was sentenced by me to serve four years in the Department of Corrections. He was later transferred to federal court and sentenced there to thirty-six months. Instead of remaining in federal custody, Sadler was returned to Florida to complete his Florida sentence. While in the Florida prison system, Sadler was not receiving credit for his federal sentence. Believing the effect of his sentence was contrary to his plea agreement, Sadler filed a motion for post-conviction relief. The motion was summarily denied. The Fifth District later reversed the summary denial and directed me to modify Sadler's sentence to time-served so that he could be released to federal authorities or, alternatively, suspend his sentence to be released to serve his federal sentence. The court concluded that even though Sadler had been warned by me prior to entering his plea that the federal judge was not bound by the agreement, the federal sentence did not prevent me from enforcing the State's agreement.

Dasher v. State, 956 So. 2d 1209 (Fla. 5th DCA 2007).

After a plea of no contest to grand theft and dealing in the same stolen property, Dasher filed a timely motion to correct illegal sentence, claiming his dual convictions violated double jeopardy principles. Although I timely ruled from the bench that Dasher was entitled to relief, the written order did not issue until after the 60 days permitted by the rule expired. As a result, the order correcting Dasher's sentence was vacated with directions to reinstate the original sentence. In doing so, the court observed that Dasher was not entitled to relief because he waived his double jeopardy claim by entering a negotiated plea.

Infinity Design Builders, Inc. v. Hutchinson, 964 So. 2d 752 (Fla. 5th DCA 2007).

In this case, my order compelling arbitration was reversed after it was determined that I had erroneously concluded that Infinity Design Builders waived its right to a trial on the merits by participating in the arbitration process. The court determined that Infinity did not knowingly waive its right to have its dispute litigated in the courts where its participation in arbitration was by mistake.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All of my appellate court opinions are published. All written orders entered as a circuit judge are unpublished and may be found in the court files maintained by the Clerk of Court, in and for St. Johns County, Florida.

- h. 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, provide copies of the opinions.

Burton v. State, 49 So. 3d 263 (Fla. 1st DCA 2010) (Berger, Associate Judge, dissenting).

UCF Athletics Ass'n, Inc. v. Plancher, 121 So. 3d 1097 (Fla. 5th DCA 2013), *aff'd in part, rev'd in part*, 175 So. 3d 724 (Fla. 2015).

State v. Thomas, 133 So. 3d 1133 (Fla. 5th DCA 2014) (Berger, J. concurring).

State v. Proctor, 161 So. 3d 409 (Fla. 5th DCA 2014).

Agresta v. City of Maitland, 159 So. 3d 876 (Fla. 5th DCA 2015) (Berger, J., concurring, in part, and dissenting, in part).

Williams v. State, 198 So. 3d 1084 (Fla. 5th DCA 2016).

Fox v. Hamptons at Metrowest Condominium Ass'n, Inc., 223 So. 3d 453 (Fla. 5th DCA 2017).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

On the district court, I routinely recuse myself on cases where I was the trial court judge or the prosecutor. Likewise, while on the circuit court, I voluntarily recused myself on cases where I was the former prosecutor. I also recused myself on cases where counsel for either the plaintiff or defendant represented me or my husband in separate matters. Additionally, pursuant to Rule 2.330, Florida Rules of Judicial Administration, I have disqualified myself upon the filing of a timely and legally sufficient motion.

In Florida, there is not an automatic recusal system. The Rules of Judicial Administration set the parameters under which disqualification is to be considered. If a litigating party seeks disqualification, the judge is not permitted to deny the allegations supporting the motion as untrue or reject them as unfounded. Commenting in such a way establishes independent grounds for disqualification. If the motion to disqualify is timely and legally sufficient, the judge must disqualify him or herself. I review all such requests on a case by case basis.

The Fifth District Court of Appeal currently employs an automatic recusal system, whereby appeals of cases that I presided over as a trial judge are automatically reassigned by the clerk's office. In addition to the automatic recusals, each month, as cases are assigned to me, I review each to determine whether any conflict exists that would require my recusal. If so, I send a memo to the chief judge requesting the case be reassigned to a different judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

I recused myself sua sponte on the following cases in the Fifth District Court of Appeal:

5D11-1314 *Parlato v. Secret Oaks Subdivision Owners' Ass'n, Inc.*
5D11-2319 *Lee v. State of Florida*
5D11-4426 *Brennan v. Honsberger*

5D12-4851 *Poineau v. State of Florida*
5D13-628 *Lacey v. State of Florida*
5D13-1867 *Shugart v. State of Florida*
5D14-1309 *Claudio v. State of Florida*
5D14-2329 *Campbell v. State of Florida*
5D14-2331 *Kearse v. State of Florida*
5D14-2719 *Brinson v. State of Florida*
5D14-3537 *Henry v. State of Florida*
5D15-2517 *Bank of America v. US Bank Nat'l Ass'n*

The following cases were not assigned to me by the Clerk's office based on the filing of a Notice of Potential Conflict:

5D11-2320 *Cashus Cummings v. State of Florida*
5D12-1221 *Alfonso Johnson v. State of Florida*
5D12-3168 *Scott Lamping v. State of Florida*
5D12-0394 *Timothy Bollinger v. State of Florida*
5D12-2820 *Mark Biller v. State of Florida*
5D12-2186 *Christopher Gibson v. State of Florida*
5D12-3495 *Isaac Forh v. State of Florida*
5D12-4141 *James Mongelli v. State of Florida*
5D13-1743 *Devon Edwards v. State of Florida*
5D13-1143 *Lavender Perkins v. State of Florida*
5D13-3348 *Andrea Zampatti v. State of Florida*
5D13-4382 *William Moore v. State of Florida*
5D13-1405 *Willie Powell v. State of Florida*
5D13-1626 *Shawn Arthur v. State of Florida*
5D13-2179 *Randy Johnson v. State of Florida*
5D13-0658 *Michael McIntosh v. State of Florida*
5D14-1568 *Justin Love v. State of Florida*
5D16-2083 *Christopher Jones v. State of Florida*

I recused myself upon the filing of a motion in the following cases:

5D16-0005 *Steve Leslie Stanaland, Jr. v. State of Florida*
CF14-1374 *State of Florida v. Williams Telano Evans*

I declined to recuse myself in the trial court upon the filing of a motion in the following cases:

CF11-0228 *State of Florida v. Raymond Claudio*
CF09-1474 *State of Florida v. Quinn Gray*
CF08-1499 *State of Florida v. Dewayne Bell*
CF08-1966 *State of Florida v. Andrew Stanton*

- b. a brief description of the asserted conflict of interest or other ground for recusal;

I recused myself sua sponte in the cases listed above in all but *Bank of America v. US Bank National Association* (5D15-2517) and *Brennan v. Honsberger* (5D11-4426) because I was the trial court judge in the underlying case. In *Bank of America v. US Bank National Association*, I recused myself because the attorney of record represented me and my husband in the law suit we filed against MLXL Sportswear, Inc. and MLXL Productions, Inc. in Duval County case number: 2008-CA-002531. I recused myself in *Brennan v. Honsberger* upon my initial appointment to the court on the advice of my interim judicial assistant after informing her that I was on a prior appellate panel involving the parties while serving as an associate judge on the court. In hindsight, I do not believe there was a conflict that required my recusal in that case.

The Notices of Potential Conflict filed in the cases listed above provided notice that I was the trial judge in the underlying case.

I recused myself in the *Stanaland* case because I was the trial judge in the underlying case. Mr. Stanaland's pro se motion made the same assertion.

While on the trial court, I recused myself in the *Evans* case after multiple motions were filed by counsel, Curtis Falgatter, Esquire, asserting a conflict. The first motion, which was filed after he received an adverse ruling in the case, alleged a conflict due to the fact that I was employed by the State Attorney's Office in 1995 when the crime was alleged to have occurred. The motion was denied as legally insufficient and untimely. Counsel then filed a motion for reconsideration, which was denied. He then filed a writ of prohibition, which was also denied. Thereafter, counsel filed a second motion for disqualification asserting, in essence, that he was told he had fallen out of favor with the court. Counsel alleged he was asked by Hank Coxe, Esquire not to attend the sentencing of his friend, Michael Gallagher, because his presence would be offensive to the court. Although I determined the motion was legally insufficient, I nevertheless recused myself, in the interest of justice, to avoid additional delays.

I recall recusing myself in one other case while I was a trial judge, but after a diligent search, I am unable to provide the case number or name of the defendant. The motion alleged that I had clued the State in on their burden of proof in a bond hearing by inquiring in open court whether the scheduled hearing was a proof evident, presumption great hearing. Although I believed the motion was frivolous, I nonetheless recused myself because it was legally sufficient and timely.

In *State of Florida v. Raymond Claudio* (CF11-228), Mr. Claudio's multiple pro se motions to disqualify were based on adverse rulings. The motions were denied as legally insufficient and untimely.

In *State of Florida v. Quinn Gray* (CF09-1474), counsel for Ms. Gray moved to disqualify me because the defendant's young daughter went to school with my daughter and had attended my daughter's birthday party. The motion was denied as legally insufficient and untimely.

In *State of Florida v. Dewayne Bell* (CF08-1499), Mr. Bell filed multiple pro se motions to disqualify me based on adverse rulings. He also claimed that I prosecuted him during the 1990's while I was employed with the State Attorney's Office. The motions were denied as legally insufficient and untimely.

In *State of Florida v. Andrew Stanton* (CF08-1966), counsel for Mr. Stanton, Curtis Falgatter, Esquire, moved to disqualify me based on counsel's perception that he had fallen out of favor with the court. He also alleged that Mr. Stanton believed I was biased against him due to comments made on some unknown date informing him that he would be dealt with harshly should he ever come before the court again. The motion was denied as legally insufficient and untimely.

- c. the procedure you followed in determining whether or not to recuse yourself;

As stated previously, as a district judge, I routinely recuse myself on cases where I was the trial court judge or the prosecutor. Likewise, as a circuit judge, I voluntarily recused myself on cases where I was the former prosecutor. I also recused myself on cases where counsel for either the plaintiff or defendant represented me or my husband in separate matters. Pursuant to Rule 2.330, Florida Rules of Judicial Administration, I review motions to disqualify for legal sufficiency without passing on the truthfulness of the allegations contained therein.

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I declined to recuse myself in *State of Florida v. Raymond Claudio* (CF11-228), *State of Florida v. Quinn Gray* (CF09-1474), *State of Florida v. Dewayne Bell* (CF08-1499), and *State of Florida v. Andrew Stanton* (CF08-1966) because the motions were legally insufficient and untimely. Although the motions filed in *State of Florida v. William Evans* (CF04-1374) were also legally sufficient and untimely, I recused myself in the interest of justice in an effort to get the case resolved without further delay.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for

elective office or unsuccessful nominations for appointed office.

I have not held elective office outside of the judiciary. However, I consider the following positions public offices:

1. Assistant State Attorney, Office of the State Attorney, Seventh Judicial Circuit
The Honorable J. Stephen Alexander, State Attorney
The Honorable John Tanner, State Attorney
January 1993 – December 2000
2. Assistant General Counsel, Executive Office of the Governor
The Honorable Jeb Bush, Governor
January 2001 – May 2005

Unsuccessful Candidacies:

1. County Court Vacancy, Seventh Judicial Circuit Judicial Nominating Commission: May 2000
2. First District Court of Appeal Judicial Nominating Commission: October 2004; November 2009
3. The Florida Supreme Court: December 2016

I was one of three nominated by the Florida Supreme Court Judicial Nominating Commission for appointment to fill a vacancy on the Florida Supreme Court. Governor Scott appointed Judge Alan Lawson.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

When Steve Alexander ran for reelection as State Attorney in 1996, I volunteered to wave signs during the campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

No, I did not clerk for a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Assistant General Counsel
Executive Office of the Governor
Room 209, The Capitol
Tallahassee, Florida 32399
January 2001 – May 2005

Assistant State Attorney
Office of the State Attorney, Seventh Judicial Circuit
4010 Lewis Speedway, Room 252
St Augustine, Florida 32084
January 1993 – December 2000

Note: I worked in the Flagler County office from January 1993 through approximately October 1993 before transferring to the St. Johns County office.

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Prior to my appointment to the circuit court, I was employed as an assistant general counsel for then Governor Jeb Bush. As an assistant general counsel, I was responsible for advising Governor Bush on death penalty cases and other issues related to criminal and juvenile justice. In particular, I monitored the procedural advancement of all prisoners on Florida's death row and prepared case analyses and background information on inmates whose cases were ready for the signing of a death warrant. I prepared the death warrant and all other related documents for the Governor's signature and acted as a liaison with the Florida State Prison, Attorney General's Office, Capital Collateral Regional Counsel,

and Florida Supreme Court until the execution of sentence. I also attended the execution, via telephone, with the Governor.

In addition, I served as Governor Bush's clemency aide, offering counsel on all issues related to executive clemency. As the Governor's clemency aide, I reviewed applications and made recommendations to the Governor regarding whether various forms of executive clemency should be granted or denied. In this capacity, I prepared for and attended all clemency hearings with the Governor and presided over hearings for individuals, otherwise ineligible for clemency, who were seeking a waiver of the Rules of Executive Clemency.

I was also responsible for managing the direction of significant agency litigation affecting the Governor's interests within the Department of Corrections and the Department of Juvenile Justice. I assisted in making decisions regarding legal arguments, settlement issues and matters of policy.

I reviewed extradition requests, requests for international prisoner transfers, and executive orders involving state attorney special assignments and suspension and removal of elected officials; helped draft and review legislation; reviewed requests for independent investigations by the Florida Department of Law Enforcement; responded to victim and other constituent issues; and provided legal counsel to the Executive Office of the Governor and designated Governor's agency general counsels. I was also involved in interviewing candidates nominated for judicial appointment and provided counsel to the Governor regarding the selection of those judges.

Before joining the Governor's Office, I served eight years as an Assistant State Attorney in the Seventh Judicial Circuit, prosecuting cases ranging from misdemeanor offenses to first-degree capital murder. I tried over 50 jury trials as a prosecutor and served as either sole or chief counsel for most of the cases tried to conclusion.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While serving as an assistant general counsel in the Executive Office of the Governor, my client was Governor Bush, in his capacity as the Chief Executive of the State of Florida. When I served as an assistant state attorney, my client was the State of Florida.

Prior to taking the bench, I practiced almost exclusively in the area of criminal law. During my eight years as an assistant state attorney, I was responsible for the successful prosecution and resolution of a wide variety

of cases ranging in severity from misdemeanors to first degree capital murder. I continued my work in this area when I joined the Executive Office of the Governor. As an assistant general counsel, I advised Governor Bush on issues involving criminal justice, clemency and the death penalty. During that time, I began my service on The Florida Bar's Criminal Procedure Rules Committee.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Over the course of my career as a practicing attorney, approximately 65% of my time was spent in litigation. I was employed as an assistant state attorney from January 1993 until December 2000. During that time, I appeared in court approximately three to four times a week and tried 50 or more cases to verdict as either sole or associate counsel. The cases I tried ranged in severity from misdemeanor offenses to first-degree capital murder. I left the State Attorney's Office at the end of 2000 to begin working as an assistant general counsel in the Executive Office of the Governor. I worked for Governor Jeb Bush from January 2001 through May 2005. During this time, I did not appear in court. I have been a member of the judiciary since June 2005.

- i. Indicate the percentage of your practice in:
- | | |
|-----------------------------|--------------|
| 1. federal courts: | <u>0</u> % |
| 2. state courts of record: | <u>100</u> % |
| 3. other courts: | <u>0</u> % |
| 4. administrative agencies: | <u>0</u> % |

- ii. Indicate the percentage of your practice in:
- | | |
|--------------------------|--------------|
| 1. civil proceedings: | <u>0</u> % |
| 2. criminal proceedings: | <u>100</u> % |

Totals reflect the time I was employed as an assistant state attorney from 1993 to 2000.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an assistant state attorney I litigated over 50 contested jury trials as either sole or chief counsel. The number of non-jury trials were numerous and included bench trials, violation of probation hearings, and juvenile adjudicatory hearings.

- i. What percentage of these trials were:
- | | |
|----------|----------------|
| 1. jury: | <u>35-40</u> % |
|----------|----------------|

2. non-jury:

60-65 %

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not had the privilege of practicing before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Hudson v. State*, 745 So. 2d 1014 (Fla. 5th DCA 1999); *Hudson v. State*, 792 So. 2d 474 (Fla. 5th DCA 2001).

Hudson I:

Trial Date: May 26, 1998

Hudson II:

Trial Date: May 22, 2000

Hudson was one of the first criminal defendants tried in the State of Florida for first-degree murder based on a theory of concealed birth infanticide. Hudson hid her pregnancy, labored in silence in the bathroom of her home, delivered a healthy, fully formed baby girl, smothered her, placed her in trash bags, then shoved her body into a soft-sided cooler and left it on a shelf in her closet. Hudson later told her boyfriend that she delivered the baby at a midwife's house in Jacksonville and that the baby was stillborn. She claimed the midwife took the baby to a Jacksonville hospital.

Desperate to find his child, Hudson's boyfriend began contacting local hospitals. A nurse at Baptist Hospital told him that although there were no reports of a baby being brought in, if his girlfriend had just given birth, she needed to be seen by a doctor. Hudson's boyfriend then drove her to Baptist. When they arrived, the nurse contacted the police. Hudson maintained her story, but when confronted

with inconsistencies, eventually told the police where they could find the baby. She claimed the baby was stillborn with the umbilical cord wrapped around its neck. Hudson told detectives that she made up the story about the midwife because she was afraid of her boyfriend.

The case divided the community, involved complicated legal arguments, and controversial issues, such as when life begins. Unlike most homicide cases, not only were we required to prove beyond a reasonable doubt that Hudson murdered her child, but because Hudson claimed her child was stillborn, we also had to prove the child was born alive.

Ms. Christine and I were equally responsible for the prosecution. However, I handled most of the expert medical testimony and evidence. After a week-long trial, Hudson was convicted of manslaughter. The case was later reversed and remanded for a new trial due to evidence being introduced regarding two prior abortions. The case was retried two years later, after which Hudson was again convicted of manslaughter. Her conviction and sentence was affirmed on appeal.

Presiding Judge

The Honorable Robert K. Mathis (Retired)

Co-Counsel

Maureen S. Christine (Deceased)

Defense Attorney

Thomas E. Cushman
222 San Marco Avenue, Suite C
St. Augustine, Florida 32084
(904) 826-0220

2. *Wilson v. State*, 749 So. 2d 516 (Fla. 6th DCA 1999).
Trial Date: July 30, 1998

I was solely responsible for the prosecution of this case. At the time, I handled all the traffic homicide cases filed in St. Johns County.

Freddie Wilson was charged with DUI manslaughter, DUI resulting in serious bodily injury, reckless driving, and driving while license suspended or revoked. The evidence established that on March 22, 1997, Wilson was driving northbound on Interstate 95 in St. Johns County at a high rate of speed and weaving within traffic lanes. He struck a Chevrolet Blazer, causing the Blazer to roll numerous times. One of the passengers in the Blazer was killed and another was seriously injured. At the time, Wilson had a blood alcohol level of .196 and .197; over twice the lawful limit.

During trial, Wilson requested that the trial court instruct the jury on the crime of vehicular homicide. The trial judge denied the request, but instructed the jury on the lesser included offense of driving under the influence. The jury later returned a verdict of guilty on all counts.

Wilson argued on appeal that he was entitled to receive the instruction on vehicular homicide as a permissive lesser included offense. In its opinion affirming Wilson's conviction, the Fifth District Court of Appeal outlined when necessary and permissive lesser included offenses should go to the jury for consideration. The court concluded Wilson was not entitled to the vehicular homicide instruction because the allegations in the DUI manslaughter count were insufficient to authorize an instruction on the permissive lesser included offense.

Presiding Judge

The Honorable Richard O. Watson (Deceased)

Defense Counsel

Renee Peshek
Office of the Public Defender
4010 Lewis Speedway, Suite 1101
St. Augustine, Florida 32084
(904) 827-5699

3. *Cannon v. State*, 793 So. 2d 967 (Fla. 5th DCA 2002).
Trial Date: July 21, 2000

I was solely responsible for the prosecution of this case. It involved a shooting over the theft of a box of records. The defendant, a young man with no prior record, committed the offense two hours after Florida's 10-20-Life law took effect. Under the 10-20-Life law, if an individual displayed a firearm during the course of committing a felony, the crime was punishable by a mandatory 10 years in prison. If the defendant discharged a firearm during the commission of the felony, the crime was punishable by a mandatory 20 years in prison. And if the gun was discharged during commission of a felony and struck the victim, the offense was punishable by a mandatory sentence of 25 years to life in prison. Because Cannon was convicted of aggravated battery with a firearm, he was sentenced in accord with the law to serve 25 years. His conviction and sentence was affirmed on appeal.

Presiding Judge

The Honorable Robert K. Mathis (Retired)

Defense Counsel

Wayne Henderson
222 San Marco Avenue, Suite B
St. Augustine, Florida 32084

(904) 823-1232

4. *Lewis v. State*, 787 So. 2d 872 (Fla 5th DCA 2001).

Trial Date: May 5, 2000

I was solely responsible for the prosecution of this case. It involves the sexual battery of a 44-year-old woman by a former boyfriend. The victim grew up with nothing and wound up addicted to crack cocaine. She moved from job to job and place to place until she eventually found a home with the defendant. When that relationship ended, she moved into condemned building with no electricity or running water. Although her living conditions were deplorable, she eventually found steady work and stopped using drugs. Soon after, she was raped. Lewis was charged and convicted of sexual battery and false imprisonment. The sole issue in the case was whether the victim consented to the encounter. In addition to the victim's testimony, her clothes, which were ripped and soiled, were used to help prove she did not consent to the rape. Lewis was convicted of sexual battery. His conviction and sentence was affirmed on appeal.

Presiding Judge

The Honorable Richard O. Watson (Deceased)

Defense Attorney

Gary Smolek

4 East Park Avenue

St. Augustine, Florida 32084

(904) 827-5699

5. *Jordan v. State*, 707 So. 2d 816, (Fla. 5th DCA 1998), rev. granted, 717 So. 2d 533 (Fla. 1998), *approved by*, 720 So. 2d 1077 (Fla. 1998).

Trial Date: October 28, 1996

I was solely responsible for the prosecution of this case. It involves the death of a Flagler College Student and the serious bodily injury of two small children at the hands of a drunk driver. Jordan was driving her young daughter and another small child when she ran a stop sign at an intersection and T-boned the car in which the deceased victim was riding. The victim was killed and the two children, also victims, were seriously injured. Jordan was charged with DUI manslaughter, two counts of DUI resulting in serious bodily injury, and driving on a suspended license. During the trial, a significant amount of medical evidence and testimony was introduced, including evidence related to Jordan's blood alcohol level and the use of prescription drugs. Jordan was convicted at trial and later sentenced to serve 21.1 years in prison, six years above the statutory maximum. Her judgment and sentence was affirmed on appeal. The court held that if the sentencing range encompassed and included the statutory maximum, then the trial judge could sentence a defendant within the full range set forth within the guidelines, even if the range exceeded the statutory maximum.

Presiding Judge

The Honorable Richard O. Watson (Deceased)

Defense Attorney

Paul Braddock
P.O. Box 969
St. Augustine, Florida 32085
(904) 808-1846

6. *Fairchild v. State*, 719 So. 2d 302 (Fla. 5th DCA 1998).

Trial Date: August 25, 1997

Fairchild was charged and convicted of murdering her boyfriend and his two elderly parents by setting fire to their home during the night. She ordered her 12-year-old son to help by directing him to light some twigs on fire and place them around the home. The boy was never charged. He was the only eyewitness and testified against his mother at trial.

Several unexpected issues arose during the trial. First, despite the extensive background and education in the area of fire detection and the use of accelerants, the court refused to allow the State Fire Marshal to give expert testimony regarding the nature of the fire and how it was set because he was not a college graduate. Additionally, during the penalty phase, while the defense attorney was questioning one of his mitigation witnesses, the witness began having difficulty speaking. Opposing counsel and I approached sidebar with concerns that the witness may be having a stroke. The judge gave her some water and told us to continue with questioning. I had prepared an extensive cross examination of this witness, but after consultation with co-counsel, opted not to question her. After the witness exited the courtroom, she collapsed and suffered a stroke. At the close of the penalty phase, the jury recommended life and Fairchild was sentenced accordingly. Her judgment and sentence was affirmed on appeal.

Presiding Judge

The Honorable Richard Weinberg (Retired)

Co-Counsel

R. Robin Strickler
Putnam County Sheriff's Office
P.O. Box 1578
Palatka, Florida 32178-1578
(386) 326-7249

Defense Attorney

Douglas Withee, Esquire (Deceased)

7. *State v. Bhuta*, MM96-173
Trial Date: December 16, 1997

Defendant, a neurologist practicing in both Jacksonville and St. Augustine, was charged with battery after more than 30 female patients came forward claiming he had inappropriately fondled their breasts during neurological exams. Defendant, who had been treating the victims for headaches, convinced them to consent to breast examinations under the guise that a tumor may be the cause of their pain. Expert testimony from a board certified obstetrician/gynecologist was used to prove that the purported breast examinations were not conducted appropriately and, in the manner performed, served no medical purpose. The exams were also conducted without a nurse in the room, which was against standard medical protocol. I prosecuted this case along with my co-counsel, Maureen Christine. We divided the case evenly. I was responsible for presenting and cross-examining the medical experts.

Defendant was convicted of battery. He later entered pleas to a number of additional battery charges in Duval and St. Johns County and was sentenced to a term of incarceration in the county jail and probation. In addition, he agreed to surrender his medical license. No appeal was taken.

Presiding Judge
The Honorable Peggy Ready (Deceased)

Co-Counsel
Maureen S. Christine, Esquire (Deceased)

Defense Attorneys
The Honorable Charles W. Arnold
(Retired)
13738 Mandarin Road
Jacksonville, Florida 32223
(904) 703-9320

Thomas Bishop
1 Independent Drive, Suite 1700
Jacksonville, FL 32202
(904) 598-0034

8. *Butt v. State*, 690 So. 2d 1316 (Fla. 5th DCA 1997).
Trial Date: October 31, 1995 through November 1, 1995

I was solely responsible for the prosecution of this case. Butt was 16 years old when he shot his father to death in their home during an argument. He claimed he and his father had been arguing and that during the argument, his dad put a gun on the coffee table and told Butt to shoot him. Butt told detectives that he pointed

the gun at his dad a couple of times but only pulled the trigger when his dad got up from a chair and moved toward him. According to Butt, he thought his dad was going to hit him.

Butt was initially charged with second degree murder. When it was learned that he made statements indicating he may have planned to kill his father prior to the date of the incident, I made him an offer to plea as charged in lieu of seeking an indictment for first degree murder. When he did not accept the offer, the grand jury was convened and he was indicted for first degree murder. He was ultimately convicted at trial of second degree murder and given a twenty-year split sentence. His judgment and sentence was affirmed on appeal. Governor Bush later commuted the incarcerative portion of his sentence. He was released from prison in 1999. To my knowledge, he has not reoffended.

Presiding Judge

The Honorable Richard O. Watson (Deceased)

Defense Counsel

Douglas Withee, Esquire (Deceased)

9. *Kalapp v. State*, 729 So. 2d 987 (Fla. 5th DCA 1999).

Date of Plea: February 23, 1998

Date of Sentence: April 22, 1998

I was solely responsible for the prosecution of this case. In June of 1997, 16-year-old, Kalapp, knocked on his neighbor's door and asked if he could borrow a cup of sugar. What followed was one of the most brutal and violent set of facts I would ever encounter as a prosecutor. Completely unprovoked, Kalapp attacked his victim mercilessly, beating her, tying her up, raping her repeatedly, and threatening to kill her because she could identify him. Fortunately, the victim was able to reason with Kalapp, telling him that if he let her live she would tell the police someone else committed the crime. He believed her and left. Kalapp was later found by police hiding in his bedroom closet. He was arrested and charged with two counts of sexual battery, kidnapping, burglary of a dwelling with a battery, and attempted second degree murder.

A number of motions were heard prior to the case being set for trial, including a motion to increase bond; motion for HIV testing; motion for hair and blood samples, and photographs; and motion for psychiatric evaluation. The case ultimately proceeded to trial, at which time Kalapp entered a plea as charged. He scored a total of 528 points on his sentencing guidelines scoresheet, which qualified him for a life sentence. In exchange for his plea, I agreed to recommend a range of 20 years to life. After a lengthy sentencing hearing, Kalapp was sentenced to serve five concurrent life sentences. The sentence was permissible because his total sentence points exceeded 363. *See* §921.0014(2), Fla. Stat. (1997). Kalapp's judgment and sentence was affirmed on appeal. However, he is

currently seeking resentencing in the trial court based on the United States Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010).

Presiding Judge

The Honorable Robert K. Mathis (Retired)

Defense Counsel

Brent Woolbright, Assistant Public Defender (deceased)

William Sheppard
Sheppard White & Kachergus
215 N. Washington Street
Jacksonville, Florida 32202-2808
(904) 356-9661

10. *Glisson v. State*, 941 So. 2d 1243 (Fla. 5th DCA 2006); *Glisson v. State*, 8 So. 3d 1148 (Fla. 5th DCA 2009).

Trial Date: February 14, 1996

This case was originally assigned to my co-counsel, Olen Meredith. Mr. Meredith picked the jury. However, on the morning of trial, he awoke with a severe case of laryngitis and could not talk. Mr. Meredith approached me and asked if I could try the case for him. I reviewed the file and tried the case. It was a rather straightforward burglary and theft case, but significant because Glisson was a habitual felony offender. After Glisson was convicted and sentenced to thirty years as a habitual offender, he filed a motion for new trial claiming that I "killed his chances for a fair trial" based on the way I was dressed. The motion was denied. Glisson did not file a direct appeal. Instead, he filed a 3.800(a) motion challenging his habitual offender sentence. After a hearing in the trial court, the petition was denied. The denial was affirmed on appeal.

Presiding Judge

The Honorable Robert K. Mathis (Retired)

Co-Counsel

Olen Meredith
1412 San Rafael Court
St. Augustine, Florida 32080
(904) 540-5475

Defense Attorney

Renee Peshek
4010 Lewis Speedway, Suite 1101
St. Augustine, Florida 32084
(904) 827-5699

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I had the honor of presiding over the St. Johns County Adult Treatment Division (Drug Court) for seven years. The program offers nonviolent felony offenders an intensive treatment-based alternative to incarceration. Instead of a jail term, participants are ordered to go through a strict multi-phased program of court appearances, group therapy, counseling and random drug testing. The goal of our drug court program was to help these offenders overcome their dependence on drugs by integrating drug treatment with strict and intensive judicial monitoring, in an effort to reduce the crimes associated with addiction and, ultimately, benefit the community as a whole. Without a doubt, I am most proud of my work with drug court. Nothing is more professionally rewarding than being blessed with the opportunity to take part in a life transformed.

From 2001 to 2005, I served as Governor Bush's clemency aide advising him on all matters related to executive clemency. As the Governor's clemency aide, I reviewed applications and made recommendations regarding whether various forms of executive clemency (restoration of civil rights, remission of fines, commutations, and pardons) should be granted or denied. In this capacity, I prepared for and attended all clemency hearings with the Governor and presided over hearings for individuals, otherwise ineligible for clemency, who were seeking a waiver of the Rules of Executive Clemency. I was also involved in helping to draft amendments to the Rules of Executive Clemency regarding the restoration of civil rights.

I believe experienced attorneys and judges have an obligation to promote the highest levels of professionalism in the practice of law and to mentor young lawyers to do the same. The American Inns of Court are dedicated to fostering professionalism and I am proud to be a part of the Inn. I have been a member of the Dunn Blount Inn of Court in Daytona Beach for the last several years and recently became a founding member of the St. Augustine Inn of Court. I serve as chair of programs for the Inn.

I am a member of the District Court of Appeal Budget Commission Legislative Committee and, during the 2017 legislative session, lobbied members of the Florida Legislature on issues related to judicial salaries and term limits.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Torts: University of North Florida

I was contracted by the University of North Florida's Department of Continuing Education to teach Torts to students enrolled in the university's paralegal certification program. I taught the class from May 16, 1996 through August 22, 1996. I have been unable to locate a syllabus for this course.

Fundamentals of Extradition

Annual Florida Extradition Conference (October 2003; September 2001). Outline supplied.

Faculty Member: Successful Appellate Advocacy Workshop

Sponsored by The Florida Bar Appellate Practice Section and the Shepard Broad College of Law, Nova Southeastern University (2015).

I instructed students on brief writing and how to present an effective oral argument. Copy supplied in response to 12d.

Preservation of Error

Orange County Bar Association, Criminal Law Section, Criminal Law Seminar (December 8, 2017). The presentation was videotaped and is available for CLE credit through The Florida Bar Association. Copy supplied in response to 12d.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no deferred income arrangements.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any existing circumstance likely to present a potential conflict of interest. However, should any conflict or potential conflict arise, I would strictly adhere to the Code of Judicial Conduct and recuse myself when necessary.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Conflicts of interest are resolved through recusal. I routinely recuse myself on cases where I was the trial court judge. Likewise, while on the circuit court, I voluntarily recused myself on cases where I was the former prosecutor. I also recused myself on cases where counsel for either the plaintiff or defendant represented me or my husband in separate matters. Additionally, pursuant to Rule 2.330, Florida Rules of Judicial Administration, I have disqualified myself upon the filing of a timely and legally sufficient motion. Should any conflict arise while serving as a United States District Judge, I would not hesitate to recuse myself in accordance with 28 U.S.C. § 455.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My professional career has been devoted to public service. However, my ability to provide pro bono legal services has been restricted due to my employment as an Assistant State Attorney, Assistant General Counsel, and Judge.

I believe in the importance of volunteering and giving back to the community. Although unrelated to the law, while living in Tallahassee, I volunteered for several years as a reading mentor at Sabal Palm Elementary School. I also served as a mentor at Jacksonville Country Day School in the Parents Encouraging Pupils (PEP) program. Additionally, I volunteered my time at Alice B. Landrum Middle School to speak to seventh grade civics students about the role of the judiciary.

While on the circuit court, I worked on various community service projects with participants in the St. Johns County Adult Drug Court Program and for several years,

participated in the PACT Prevention Coalition's Safe Prom event. I also routinely volunteer to serve as a preliminary and semifinal round judge at the annual Robert Orseck Moot Court Competition.

I served on the vestry at my church, as well as the youth council, and am active in other church ministries.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

The Florida Federal Judicial Nominating Commission (JNC) is a bi-partisan commission made up of commissioners appointed by Senator Marco Rubio and Senator Bill Nelson. The Federal JNC for the Middle District of Florida has 36 members. On September 6, 2017, the Statewide Chair of the JNC announced it was accepting applications for the purpose of recommending a specified number of applicants for the position of United States District Judge for the Northern, Middle, and Southern Districts of Florida. Applications for the Middle District were due on October 30, 2017. Of the 29 people who applied for the Middle District, the JNC chose to interview ten (10) applicants, from which the JNC indicated it would select and submit four (4) finalists to Florida Senators Marco Rubio and Bill Nelson. I was one of the ten applicants invited for an interview. I interviewed with the JNC at the Federal Courthouse in Orlando on December 4, 2017. During the interview, I answered questions posed by members of the Commission about my qualifications and experience. Later that evening, I was informed that I was selected as a finalist for the position of United States District Judge for the Middle District of Florida. The following day, I received an email from Senator Rubio and Senator Nelson's offices to schedule a time to meet in Washington, DC.

On December 14, 2017, I met separately with Senator Rubio and Senator Nelson. The meeting with Senator Rubio and his general counsel lasted about 30 minutes. We discussed my qualifications, generally, and the process moving forward. My meeting with Senator Nelson and his general counsel was over an hour in duration and covered a wide range of topics, including significant cases I have handled throughout my career, my work in the governor's office, current issues of the day, and, as with Senator Rubio, the process moving forward. Since December 16, 2017, I have been in contact with officials from the White House Counsel's

Office. On December 20, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington D.C. On April 10, 2018, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

*Report Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Berger, Wendy W.	2. Court or Organization U.S. District Court for the Middle District of Florida	3. Date of Report 04/16/2018
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) ☒ Nomination Date 04/10/2018 ☐ Initial ☐ Annual ☐ Final 5b. ☒ Amended Report	6. Reporting Period 01/01/2017 to 04/10/2018
7. Chambers or Office Address 300 South Beach Street, Daytona Beach, Florida 32114		
IMPORTANT NOTES: <i>The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.</i>		

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.	Trustee	Family Trust
2.	Steering Committee	Marketplace Christian Professional Resources
3.	Executive Board/Programs Chair	St. Augustine Inns of Court
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1.	1993	State of Florida Defined Benefit Retirement Plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Berger, Wendy W.

Date of Report

04/16/2018

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)***A. Filer's Non-Investment Income**☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2016	State of Florida Salary	\$154,140.00
2. 2017	State of Florida Salary	\$157,993.50
3. 2018 (YTD)	State of Florida Salary	\$46,946.40
4.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.**(Dollar amount not required except for honoraria.)*☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2017	Salary Allied Plastics Co., Inc.
2. 2017	Salary Wearworks, Inc. (Self-Employed)
3. 2018	Salary Allied Plastics Co., Inc.
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.**(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

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V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*☐NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*☐NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Chase Bank	Credit Card	J
2.	Wells Fargo	Retail Services Account	K
3.			
4.			
5.			

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Name of Person Reporting

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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Citibank Stock	A	Dividend	J	T	Exempt				
2. Duke Energy Stock	A	Dividend	J	T	Exempt				
3. Eaton Vance Worldwide Health Science Fund	A	Dividend	J	T	Exempt				
4. Proctor and Gamble Stock	A	Dividend	J	T	Exempt				
5. Fidelity Four in One Index Fund (IRA)	A	Dividend	J	T	Exempt				
6. First Florida Credit Union	A	Interest	J	T	Exempt				
7. Fidelity Brokerage Account (Cash)	A	Interest	L	T	Exempt				
8. Chase Bank Account	A	Interest	K	T	Exempt				
9. Northwestern Mutual Variable Life Insurance GOVTMMKT (MSA-BOKRCK)	A	Dividend	K	T	Exempt				
10. Fidelity Government Income 529 Account (Fidelity Govt Income FGOVX)	A	Dividend	J	T	Exempt				
11. Florida Prepaid College 529 (Age Based/ Years to Enrollment Portfolio)	B	Dividend	K	T	Exempt				
12. Allied Plastics Co., Inc.	F	Dividend	L	U	Exempt				
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes:

(See Columns B1 and D4)

A = \$1,000 or less

F = \$50,001 - \$100,000

J = \$15,000 or less

N = \$250,001 - \$500,000

P3 = \$25,000,001 - \$50,000,000

Q = Appraisal

U = Book Value

B = \$1,001 - \$2,500

G = \$100,001 - \$1,000,000

K = \$15,001 - \$50,000

O = \$500,001 - \$1,000,000

R = Cost (Real Estate Only)

V = Other

C = \$2,501 - \$5,000

H1 = \$1,000,001 - \$5,000,000

L = \$50,001 - \$100,000

P1 = \$1,000,001 - \$5,000,000

P4 = More than \$50,000,000

S = Assessment

W = Estimated

D = \$5,001 - \$15,000

H2 = More than \$5,000,000

M = \$100,001 - \$250,000

P2 = \$5,000,001 - \$25,000,000

T = Cash Market

E = \$15,001 - \$50,000

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Berger, Wendy W.	04/16/2018

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: s/ Wendy W. Berger

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		110	544	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		113	494	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		73	082
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable -- see schedule		655	687
Real estate owned -- see schedule		884	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		107	000				
Cash value-life insurance		35	705				
Other assets itemize:							
State of Florida Pension (Present Value)	1	012	433				
				Total liabilities		728	769
				Net Worth	1	534	407
Total Assets	2	263	176	Total liabilities and net worth	2	263	176
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULE

Listed Securities

Citibank stock	\$1,393
Duke Energy stock	5,433
Eaton Vance Worldwide Health Science Fund	363
Proctor and Gamble stock	2,059
Fidelity Four in One Index Fund (IRA)	6,296
Allied Plastics Co. Inc stock	97,950

Total Listed Securities	\$113,494
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Real Estate Owned

Residence	\$884,000
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Total Real Estate Owned	\$884,000
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Real Estate Mortgage Payable

Residence	\$355,687
Construction/Renovation Loan	\$300,000

Total Real Estate Mortgages Payable	\$655,687
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AFFIDAVIT

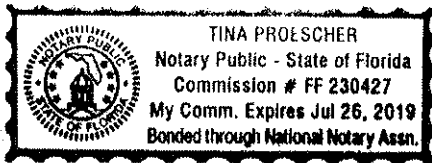
I, Wendy W Berger, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

4-18-18

(DATE)

Wendy W Berger

(NAME)



Tina Proescher

(NOTARY)