

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:**

Mark Eaton Walker

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

United States District Judge for the Northern 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.

Leon County Courthouse
301 South Monroe Street, Room 365-A
Tallahassee, Florida 32301

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

1967; Winter Garden, Florida

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, University of Florida College of Law; J.D., 1992

1987 – 1989, University of Florida; B.A., 1989

Summer/Fall 1986, United States Military Academy; no degree awarded

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.

2009 – present
Second Judicial Circuit
Leon County Courthouse
301 South Monroe Street, Room 365-A
Tallahassee, Florida 32301
Circuit Judge

2006 – 2008
The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Sole practitioner

2005 – 2006
Pelham, Andrews & Walker
(currently known as The Pelham Law Firm)
2502-2 Barrington Circle
Tallahassee, Florida 32308
Partner

2004 – 2005
Broad and Cassel
Sun Trust Bank Building, Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
Of Counsel

2000 – 2004
Andrews & Walker, P.A.
(currently known as Law Offices of Steven R. Andrews, P.A.)
822 North Monroe Street
Tallahassee, Florida 32303
Shareholder

1999 – 2000
The Law Offices of Steven R. Andrews, P.A.
822 North Monroe Street
Tallahassee, Florida 32303
Associate

1997 – 1999
The Office of Public Defender, Second Judicial Circuit
Leon County Courthouse
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
Assistant Public Defender

July 1997
Berger, Davis & Singerman
(currently known as Berger Singerman)
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
Associate

1996 – 1997
Hon. Robert L. Hinkle
United States District Court for the Northern District of Florida
United States Courthouse
111 North Adams Street
Tallahassee, Florida 32301
Law Clerk

Summer 1996
Cummings, Lawrence & Vezina
(currently known as Vezina, Lawrence & Piscitelli, P.A.)
The Walker-Lee House
413 East Park Avenue
Tallahassee, Florida 32301
Associate

1994 – 1996
Hon. Stephen H. Grimes
Former Chief Justice of the Florida Supreme Court
315 South Calhoun Street, Suite 600
Tallahassee, Florida 32301
Law Clerk

1993 – 1994
Hon. Emmett Ripley Cox
United States Court of Appeals for the Eleventh Circuit
United States Courthouse
113 St. Joseph Street, Room 433
Mobile, Alabama 36602
Law Clerk

Summer 1993
Winderweede, Haines, Ward and Woodman
329 Park Avenue North, Second Floor
Winter Park, Florida 32790
Summer Associate

Summer 1992
Career City College

(currently known as City College)
7001 NW Fourth Boulevard
Gainesville, Florida 32607
Paralegal Instructor

Summer 1991
Rumberger Kirk & Caldwell
Lincoln Plaza, Suite 1400
300 South Orange Avenue
Orlando, Florida 32801
Summer Associate

1989 – 1993 (Summers & Holidays)
Winn Dixie, Store #2248 (store closed)
South Dillard Street
Winter Garden, Florida 34787
Part-time employee

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.

I attended the United States Military Academy as a cadet in the summer and early fall of 1986. I voluntarily withdrew and received an honorable discharge. I registered for selective service upon turning age 18.

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.

2011 Trial Jurist of the Year, Tallahassee Chapter of the American Board of Trial Advocates

Florida Trend Legal Elite

AV rating with the Martindale-Hubbell publication

University of Florida College of Law:
Graduated second in class with high honors
Senior Managing Editor, Florida Law Review
Order of the Coif

University of Florida:
Phi Beta Kappa
National Alumni Four Year Scholar (graduated first in class)

Eagle Scout

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.

Tallahassee Bar Association

Tallahassee Women Lawyers

William H. Stafford American Inn of Court

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, 1993

There have been no lapses 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 Court of Appeals for the Eleventh Circuit, 1993

United States District Court for the Northern District of Florida, 1996

United States District Court for the Middle District of Florida, 1996

Florida State Courts, 1993

I allowed my memberships in the Eleventh Circuit and the Middle District of Florida to lapse because I was not actively practicing in those courts. I renewed those memberships in 2007 in order to represent clients with matters before those courts. Otherwise, there have been no lapses in membership.

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.

Economic Club of Florida (approx. 1994)

Golden Eagle Golf & Country Club (2008 – 2010)

Governor's Club (2001 – 2002)

- 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.

To the best of my knowledge, none of the organizations listed in response to Question 11(a) currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

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.

Mark E. Walker, *The Godfather's Revenge*, Fla. Bar Journal (Jan. 1, 2007). Copy supplied.

Mark E. Walker, Comment, *Workers' Compensation: Florida's Resistance to Non-Statutory Limits to the Employment-At-Will Doctrine*, 43 Fla. L. Rev. 583 (1992). Copy supplied.

- 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.

None.

- 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.

On June 30, 2005, I appeared before the Board of Trustees for Florida A&M University on behalf of a client about a potential lawsuit. Meeting minutes and press coverage supplied.

On June 23, 2005, I wrote a letter to Florida A&M University Board Trustee Chair Challis Lowe on behalf of a client about a potential lawsuit. I no longer have a copy of the letter, but press coverage is 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.

Other than for my investiture, I do not have notes, transcripts or recordings for any of the events below as it has generally not been my practice to speak from prepared notes for panel discussions and lectures.

May 13, 2011: Panel discussion on civil trial practice, National Business Institute, Tallahassee, Florida. Audio recording supplied.

2010: Guest Lecturer for Professor Dan Markel's Criminal Procedure class at the Florida State University College of Law, Tallahassee, Florida. I fielded questions regarding criminal procedure. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

2010: Panel discussion on the legal job market in Florida at the Florida State University College of Law, Tallahassee, Florida. I fielded questions regarding the legal job market in Florida. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

October 16, 2009: Panel discussion on civil trial practice, National Business Institute, Tallahassee, Florida. Audio recording supplied.

January 30, 2009: Remarks during my investiture as a judge, Tallahassee, Florida. Remarks supplied.

2009: Guest Lecturer for Judge Terry Lewis' Civil Procedure class at the Florida State University College of Law, Tallahassee, Florida. I fielded questions

regarding civil procedure. I have no notes, transcripts or recordings. The address of the law school is 425 West Jefferson Street, Tallahassee, Florida 32306.

2007: Guest Lecturer for Professor Stephen Bailey's Business Law class at Florida State University, Tallahassee, Florida. I fielded questions regarding civil trial practice. I have no notes, transcripts or recordings. The address of the university is 600 West College Avenue, Tallahassee, Florida 32306.

2003: Guest Lecturer for Professor Leslei Street's Sociology class at Florida State University, Tallahassee, Florida. I fielded questions regarding civil trial practice. I have no notes, transcripts or recordings. The address of the university is 600 West College Avenue, Tallahassee, Florida 32306.

November 6, 1997: Remarks during a retirement ceremony for Supreme Court Justice Stephen H. Grimes, Tallahassee, Florida. I have no notes, transcripts or recordings, but press coverage is supplied. The address of the Florida Supreme Court is 500 South Duval Street, Tallahassee, Florida 32399.

Finally, I have spoken at my church and made brief statements at various fundraisers when I was running for judge. I do not recall the dates or the substance of those remarks, and have no notes, transcripts, or recordings. I have been unable to identify and do not recall any other speeches, remarks, lectures, or panel discussions.

- 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.

During my time as a litigator, I occasionally responded to press inquiries regarding cases in which I was counsel of record. I have given few interviews since taking the bench. Although I have not maintained a record of such occasions, I have attempted to create as complete a list as possible through searches of public databases, the Internet, and my personal files.

Julie Montanaro, *Tallahassee Judge a Finalist for Federal Bench*, WCTV News, Aug. 2, 2011. Copy supplied.

Jeff Burlew, *Judge Presiding over Hoffman Murder Trial Known for Fairness*, Tallahassee Democrat, Dec. 13, 2009. Copy supplied.

Nic Corbett, *New Jurists Complete Training*, Tallahassee Democrat, Jan. 10, 2009. Copy supplied.

Lindsay Peterson, *Lawyer Sues DOT to View CSX Documents*, Tampa Tribune, Mar. 28, 2008. Copy supplied.

David DeCamp, *More Trouble for Orlando Commuter Rail Project*, St. Petersburg Times Blogs, Mar. 27, 2008. Copy supplied.

Mike Perrin, *Hall of Famer Joe to Coach at Miles*, Birmingham News, Dec. 12, 2007. Copy supplied.

Ex-Ball Player Pleads to Lesser Charge in Prison Investigation, Associated Press, Mar. 22, 2006 (reprinted in multiple outlets). Copy supplied.

Matt Galnor, *Prison Team Player Takes Lesser Charge*, Florida Times-Union, Mar. 22, 2006. Copy supplied.

Brian Landman, *Fired Then Cleared, Coach Sues FAMU*, St. Petersburg Times, Feb. 3, 2006. Copy supplied.

Emily Badger, *FAMU Faces Probation*, Orlando Sentinel, Feb. 2, 2006. Copy supplied.

Randy Beard, *Former FAMU Coach Sues after NCAA Clears Him*, The News-Press, Feb. 2, 2006. Copy supplied.

Randy Beard, *Joe, Cleared by NCAA, Sues FAMU*, Tallahassee Democrat, Feb. 2, 2006 (reprinted in multiple outlets). Copy supplied.

Emily Badger, *NCAA Move Will Delay Joe's Suit*, Orlando Sentinel, Aug. 10, 2005. Copy supplied.

Emily Badger, *Joe Likely to File Suit against Florida A&M*, Orlando Sentinel, July 9, 2005. Copy supplied.

Emily Badger, *Cuts Will Make Life Harder for Coaches*, Orlando Sentinel, July 2, 2005. Copy supplied.

Emily Badger, *Joe May Sue Florida A&M over Unexpired Contract Dispute*, Orlando Sentinel, June 29, 2005 (reprinted in multiple outlets). Copy supplied.

Kim McCoy Vann, *School Board Sued in Sex Case*, Tallahassee Democrat, Apr. 1, 2005. Copy supplied.

James Rosica, *Newest Judge a Study in Contrasts*, Tallahassee Democrat, Aug. 25, 2002. Copy supplied.

James Rosica, *Court Denied Maloy's Request*, Tallahassee Democrat, May 4, 2002. Copy supplied.

James Rosica, *Maloy Petitions Supreme Court*, Tallahassee Democrat, May 3, 2002. Copy supplied.

Bruce Ritchie, *HMOs Win Patients, Fight for Survival*, Tallahassee Democrat, Feb. 6, 2002. Copy supplied.

James Rosica, *Girl Sues Station for Identifying Her*, Tallahassee Democrat, Sept. 15, 2000. Copy supplied.

James Rosia, *Coach Sentenced to 25 Years*, Tallahassee Democrat, Sept. 9, 2000. Copy supplied.

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.

I ran unopposed and was elected as a Circuit Judge, Second Judicial Circuit, on November 4, 2008. I took office on January 6, 2009, and my term ends on January 5, 2015. I was assigned to the criminal division from January 2009 to January 2011, and the family law division from January 2011 to January 2012. Effective January 23, 2012, I have been reassigned to the criminal division.

In Florida, the circuit courts are referred to as courts of general jurisdiction inasmuch as most criminal and civil cases originate at this level. Circuit courts have original jurisdiction over civil disputes in excess of \$15,000, criminal prosecution for all felonies, family law, probate and a host of other matters including extraordinary writs.

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

I have presided over approximately 135 trials that have gone to verdict or judgment, including 75 jury trials.

- i. Of these, approximately what percent were:

jury trials:	55%
bench trials:	45%
civil proceedings:	45%
criminal proceedings:	55%

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

I have not written any published opinions. During my time on the bench, I have signed hundreds of orders, the vast majority of which were routine orders without legal analysis or proposed orders prepared by counsel based on

my oral pronouncements. In a limited number of cases set for trial, I have issued orders containing legal analysis beyond my oral pronouncements on the record.

On July 12, 2011, I sat by designation with the First District Court of Appeal. I sat on three panels, two of which affirmed without opinion. In the third case, the panel issued a written opinion *per curiam*. *Thornton v. State*, 68 So. 3d 320 (Fla. 1st DCA 2011).

- 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. *State v. Bradshaw*, Case No. 2008 CF 1682 (2009).

Defendant was charged with the execution-style murder of a college student turned confidential informant, Rachel Hoffman. Hoffman's death was the source of marches, protests, a civil lawsuit against the City of Tallahassee and even legislation relating to the use of confidential informants. See § 914.28, Fla. Stat. ("Rachel's Law"). Notwithstanding pretrial publicity, we seated a jury in less than three days. After more than a week of testimony, the parties rested. The jury deliberated for more than 22 hours over three days before returning a verdict of guilty. Following the penalty phase, the jury recommended life in prison and, following that recommendation, I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Bradshaw v. State*, 64 So. 3d 680 (Fla. 1st DCA 2011).

Defense Counsel:

Gregory Cummings
P.O. Box 546
Eastpoint, Florida 32328
(850) 222-3456

Clyde Taylor
119 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1191

Charles Hobbs
602 North Adams
Tallahassee, Florida 32301
(850) 219-1625

State Attorneys:

Georgia Cappelman
Francis Allman
Eddie Evans
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

2. *State v. Jones*, Case No. 2008 CF 2707 (2009).

Defendant was charged with sexual battery of a physically incapacitated victim for sexually assaulting an intoxicated woman he picked up in his taxi. Two novel issues were presented. First, Defendant argued that he had been charged under the wrong statute because intoxication rendered a person “helpless” not “physically incapacitated.” Second, Defendant argued that the State presented insufficient evidence because if the putative victim “blacked out” as she claimed then there was no evidence that she did not consent to sexual relations with Defendant. I denied the Defendant’s motion for judgment of acquittal, concluding that intoxication could render a person incapacitated within the meaning of the law. Moreover, viewed in the light most favorable to the State, I held that a jury could reasonably conclude that the victim was unconscious when she was placed in the taxi and thus could not have given consent. The jury found the Defendant guilty. The judgment and sentence were affirmed on appeal. *Jones v. State*, 43 So. 3d 696 (Fla. 1st DCA 2010).

Defense Counsel:

Leonard Holton
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
(850) 606-1000

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

3. *State v. Williams*, Case No. 2008 CF 3830 (2010).

Defendant was charged with sexual battery of his biological daughter when she was under twelve years of age. It was further alleged that Defendant videotaped the sex acts. Prior to trial, Defendant moved to suppress the video and other objects seized from his home, arguing the search warrant was defective. I denied the motion to suppress and the case proceeded to trial where the video was shown to the jury. The jury found Defendant guilty on all counts. I sentenced Defendant to consecutive life terms followed by terms of years totaling 85 years. Defendant’s direct appeal is pending.

Defense Counsel:

John Leace
414 North Meridian
Tallahassee, Florida 32301
(850) 577-3555

State Attorney:

Stefanie Walters
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

4. *State v. Mendiola*, Case. No. 2009 CF 229 (2010).

Defendant was charged with sexual battery of her biological son when he was under twelve years of age. At the time of trial, the child was only seven.

Following evidentiary hearings, I found the child competent and permitted the child to testify by closed-circuit television. I granted judgment of acquittal as to several counts and the jury returned a verdict of guilty as to molestation and child abuse. I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Mendiola v. State*, 2011 WL 5906090 (Fla. 1st DCA Nov. 28, 2011).

Defense Counsel:

John Kenny
241 East Sixth Avenue
Tallahassee, Florida 32303
(850) 224-9092

State Attorney:

Lorena Bueno
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

5. *State v. Faust*, Case No. 2009 CF 1709 (2010).

Defendant was charged with first degree murder. The State's theory of the case was that Defendant sent females into a home to identify valuables, make sure that the intended target was not armed, and text Defendant when the door was open. The case involved novel issues regarding the admissibility of text messages and cell phone locator information. I admitted the text messages over Defendant's hearsay objections. The jury found Defendant guilty and I sentenced Defendant to life in prison. The judgment and sentence were affirmed on appeal. *Faust v. State*, 69 So. 3d 280 (Fla. 1st DCA 2011).

Defense Counsel:

David Collins
310 North Jefferson Street
Monticello, Florida 32345
(850) 997-8111

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32345
(850) 606-6000

6. *State v. Powell*, Case No. 2009 CF 930 (2010).

Defendant was charged with the sexual battery of his stepdaughter when she was under twelve years of age. The case involved critical evidentiary issues involving similar act evidence which I admitted over Defendant's objection. The case was tried twice. The first jury hung. The second jury found Defendant guilty and I sentenced him to life in prison. Defendant's direct appeal is pending.

Defense Counsel:

Darren Shippy
P.O. Box 1019
Tallahassee, Florida 32302
(850) 922-0179

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32345
(850) 606-6000

John Eagen
103 North Gadsden Street
Tallahassee, Florida 32301
(850) 894-1859

7. *State v. Smith*, Case No. 2008 CF 3488 (2009).

Defendant was charged with attempted murder for repeatedly shooting a man in the parking lot of an apartment complex. This was an unusual case because it was tried three times and I issued bench warrants to secure the attendance of the State's primary witnesses. At the first trial, the State presented the testimony of an eyewitness but could not locate the victim. The jury hung. At the second trial, the State could not locate the eyewitness or the victim but read the prior sworn testimony of the eyewitness from the first trial. Again, the jury hung. At the third trial, the eyewitness and the victim were brought to court on bench warrants. The jury returned a verdict of not guilty.

Defense Counsel:

Leonard Holton
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
(850) 606-1000

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

8. *State v. Vathis*, Case No. 1996 CF 1260 (2010).

In 1997, Defendant was sentenced to 25 years for capital sexual battery. After realizing that the crime carried a mandatory life sentence, the judge brought Defendant back to court eight days later and sentenced him to life in prison. Eleven years later, Defendant moved to set aside his sentence. Because a Florida appellate court had squarely addressed the issue – holding that resentencing under these circumstances would violate double jeopardy principles – I was required to set aside Defendant's life sentence. In so ruling, I opined that the appellate court was wrong because I did not believe double jeopardy attached to a sentence until the State's time for appeal had run. The State again did not appeal but instead filed a postconviction motion. I held that double jeopardy had clearly attached at that point so I entered an order denying the State's motion. Copy supplied. The order was affirmed on appeal. *State v. Vathis*, 68 So. 3d 239 (Fla. 1st DCA 2011).

Defense Counsel:

Michael Ufferman
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345

Attorney General:

Charmaine Millsaps
400 South Monroe, PI-01
Tallahassee, Florida 32399
(850) 414-3584

9. *Herzog v. Babington*, Case No. 2002 DR 409 (2011).

Mother/Former Wife sought to relocate to Orlando with a minor child because her current husband secured a job with Walt Disney World. Father/Former Husband opposed relocation. After an evidentiary hearing, I granted the Mother's Supplemental Petition to Permit Relocation with Minor Child. Copy supplied.

Counsel for Mother:

Maggie Moody
2940 Kerry Forrest Parkway, Suite 103
Tallahassee, Florida 32309
(850) 656-7753

Counsel for Father:

John Kenny
241 East Sixth Avenue
Tallahassee, Florida 32303
(850) 224-9092

10. *In re Johnson*, Case No. 2010 DP 100 (2011).

The Department of Children and Families sought to terminate parental rights of both the mother and father of two minor children where their paraplegic son sustained third-degree burns from scalding water in a bath tub. The matter proceeded to trial. I granted the Department's motion terminating the father's parental rights but denied as to the mother. Copy supplied.

Counsel for Dep't of Children & Families: Counsel for Mother:

Michael Lee (supervising attorney)
1000 West Tharpe Street, Suite 15
Tallahassee, Florida 32303
(850) 922-5231

Catherine Healey
P.O. Box 1019
Tallahassee, Florida 32302
(850) 922-0179

Counsel for Father:

Cydnee Brown
1303 Miccosukee Road
Tallahassee, Florida 32308
(850) 216-1010

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.

None of my opinions have been published. Copies of ten of my unpublished decisions are attached.

1. *Herzog v. Babington*, Case No. 2002 DR 409 (Order Granting Supplemental Petition to Permit Relocation with Minor Child). Copy supplied in response to 13(c).

Counsel for Mother:

Maggie Moody
2940 Kerry Forrest Parkway, Suite 103
Tallahassee, Florida 32309
(850) 656-7753

Counsel for Father:

John Kenny
241 East Sixth Avenue
Tallahassee, Florida 32303
(850) 224-9092

2. *In re Johnson*, Case No. 2010 DP 100 (Final Order Denying Petition for Involuntary Termination of Parental Rights as to the Mother but Adjudicating Children Dependent and Granting Petition for Involuntary Termination of Parental Rights as to the Father). Copy supplied in response to 13(c).

Counsel for Dep't of Children & Families: Counsel for Mother:

Michael Lee (supervising attorney)
1000 West Tharpe Street, Suite 15
Tallahassee, Florida 32303
(850) 922-5231

Catherine Healey
P.O. Box 1019
Tallahassee, Florida 32302
(850) 922-0179

Counsel for Father

Cydnee Brown
1303 Miccosukee Road
Tallahassee, Florida 32308
(850) 216-1010

3. *State v. Jordan*, Case No. 2009 CF 569 (Order Granting Defendant's Motion to Dismiss), *aff'd*, *State v. Jordan*, 41 So. 3d 899 (Fla. 1st DCA 2010). Copy supplied.

Defense Counsel:

Laura Leve
2709 Killarney Way, Suite 1
Tallahassee, Florida 32309
(850) 893-9254

State Attorney:

Lorena Bueno
301 South Monroe, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

4. *State v. Vathis*, Case No. 1996 CF 1260 (Order Denying State's Motion to Correct Illegal Sentence Pursuant to Rule 3.800(a)), *aff'd*, *State v. Vathis*, 68 So. 3d 239 (Fla. 1st DCA 2011). Copy supplied in response to 13(c).

Defense Counsel:

Michael Ufferman
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345

Attorney General:

Charmaine Millsaps
400 South Monroe, Pl-01
Tallahassee, Florida 32399
(850) 414-3300

5. *State v. Reddick*, Case No. 2006 CF 2189 (Order Denying Defendant's 3.850 Motion). Copy supplied.

Defense Counsel:

Cliff Davis
P.O. Box 1057
Monticello, Florida 32345
(850) 997-0113

State Attorney:

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

6. *State v. Deluca*, Case No. 2009 CF 716A (Order Granting Motion to Suppress), *rev'd*, *State v. Deluca*, 40 So. 3d 120 (Fla. 1st DCA 2010). Copy supplied.

Defense Counsel:

Paul Villeneuve
254 East Sixth Avenue
Tallahassee, Florida 32303
(850) 561-0707

State Attorney:

Kate Doyle
10119 Ebenshire Court
Oakton, Virginia 22124
(850) 445-9024

7. *State v. Irvin*, Case No. 2000 CF 2553 (Order Denying Defendant's 3.850 Motion), *aff'd*, *Irvin v. State*, 41 So. 3d 894 (Fla. 1st DCA 2010). Copy supplied.

State Attorney:

Jermaine Irvin, pro se
Gulf Correctional Institution
699 Ike Steele Road
Wewahitchka, Florida 32465

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

8. *State v. Ganey*, Case Nos. 2000 CF 3233 & 4968 (Order Denying Petition for Writ of Habeas Corpus). Copy supplied.

State Attorney:

James Ganey, pro se
Dade Correctional Institution

Jon Fuchs
301 South Monroe Street, Suite 475

19000 S.W. 377th Street
Florida City, Florida 33034

Tallahassee, Florida 32301
(850) 606-6000

9. *State v. Whitehurst*, Case No. 2001 CF 4602 (Order Denying Motion to Correct Illegal Sentence). Copy supplied.

State Attorney:

Derick Whitehurst, pro se
Liberty Correctional Institution
11064 NW Dempsey Barron Road
Bristol, Florida 32321

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

10. *State v. Kenon*, Case No. 1994 CF 3413 (Order Denying Motion to Correct Illegal Sentence without Prejudice), *aff'd*, *Kenon v. State*, 59 So. 3d 112 (Fla. 1st DCA 2011). Copy supplied.

State Attorney:

Vincent Kenon, pro se
Jefferson Correctional Institution
1050 Big Joe Road
Monticello, Florida 32344

Jon Fuchs
301 South Monroe Street, Suite 475
Tallahassee, Florida 32301
(850) 606-6000

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

The First District Court of Appeals reversed my decision in *Garland v. State*, 2010 WL 2671904 (Fla. 1st DCA July 7, 2010). The State of Florida filed a Petition for Writ of Certiorari with the Supreme Court of the United States in *Florida v. Garland*, Case No. 10-1519. The petition was denied on November 14, 2011.

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.

Garland v. State, 2010 WL 2671904 (Fla. 1st DCA July 7, 2010). Defendant was charged with raping a 12 year old girl on one day and raping a 9 year old girl the next day. Defendant was 15 at the time. He pled no contest and was sentenced as an adult to 5 years in prison followed by 10 years of sex offender probation. After his release from prison, Defendant violated his probation by not answering his GPS monitor. My predecessor, Judge Dekker, reinstated his probation. Once back on probation, Defendant robbed a convenience store. He was 21 at the time of the robbery. The matter came before me on Defendant's second violation of probation. After an evidentiary hearing, I

found Defendant to be in violation of probation having committed an armed robbery, and sentenced Defendant to life in prison at the age of 24. Initially, the First District Court of Appeal affirmed, rejecting Defendant's argument that the sentence was cruel and unusual because he was a minor at the time he committed the underlying offenses. *Garland v. State*, 28 So. 3d 925 (Fla. 1st DCA 2010). Thereafter, on its own motion and in light of the Supreme Court's decision in *Graham v. Florida*, ___ U.S. ___, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), which was released after its original opinion issued, the First District Court of Appeal quashed the sentence and remanded for resentencing. The State sought certiorari from the United States Supreme Court, which was denied.

State v. Deluca, 40 So. 3d 120 (Fla. 1st DCA 2010). Defendant, a college student, was charged with possession of cocaine. Defendant moved to suppress the cocaine arguing that his stop and subsequent search were based solely on an anonymous tip. I granted the motion to suppress, concluding that the tip was anonymous and there was insufficient corroboration. Copy supplied in response to 13d. The State appealed, arguing that the call initiating the stop was made by a citizen informant and not an anonymous tipster. The First District Court of Appeal reversed, concluding that the call was made by a citizen informant. On remand, Defendant pled to my successor, Judge Dodson, and was given county jail time.

Doctor v. State, 68 So. 3d 335 (Fla. 1st DCA 2011). Defendant moved for discharge, arguing that the speedy trial time had run. He also argued that the statute of limitations had run on all counts. My predecessor, Judge Dekker, denied the Defendant's motions. On the eve of trial, after the case had been reassigned to me, Defendant sought to plea to the court but wished to preserve his rights to appeal Judge Dekker's rulings. I accepted Defendant's plea with his reservation of appellate rights. Defendant appealed. The First District reversed, concluding that the speedy trial had run and that the statute of limitations barred twelve of fourteen counts. My name appeared on the reversal because the Defendant appealed the Final Judgment and Sentence, which I signed, and not those orders denying his motion to discharge and motion to dismiss entered by Judge Dekker.

I am not aware of any decision where my judgment was affirmed with criticism of my substantive or procedural rulings.

- 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.

As a circuit judge, none of my orders are published. However, I have signed hundreds of orders which are contained in individual court files maintained by the Leon County Clerk of Court.

- 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.

I have not written any significant opinions on federal or state constitutional issues.

- 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:

- 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*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- 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.

In determining whether I should grant a motion to disqualify or whether I should recuse myself, I follow Chapter 38, Florida Statutes, Canon 3E of the Code of Judicial Conduct, Judicial Ethics Opinions, and applicable case law.

While I was assigned to the criminal bench from 2009 through 2010, I denied one motion to disqualify and recused myself *sua sponte* from nine cases involving seven defendants. I have not recused or been asked to recuse since returning to the criminal division in January 2012.

State v. Muldrow, Case No. 2009 CF 1164. Defendant was tried for Felony DUI. During closing arguments in a bifurcated proceeding, his lawyer alluded

to his prior DUI stops. While the jury was deliberating, I directed the parties to brief the issue of whether the ineffective assistance of counsel under these facts could serve as a basis for ordering a new trial. The State moved to disqualify me from hearing Defendant's motion for new trial, arguing that I had prejudged the issue. I granted a new trial and denied the motion for disqualification, citing Rule 3.580, Florida Rules of Criminal Procedure, which provides that a trial court can grant a new trial *sua sponte*. The State appealed. The First District Court of Appeal affirmed. *State v. Muldrow*, 53 So. 3d 1031 (Fla. 1st DCA 2011).

State v. Mims, Case Nos. 2009 CF 1495 & 2578. Defendant was charged with burglarizing a law firm, and he voiced concerns about being treated differently because the "victim" was a law office. Members of the firm at issue contributed to my campaign and knew me personally. Moreover, my former law firm shared a parking lot with the law firm at issue. I recused myself to avoid even the appearance of impropriety.

State v. Duque, Case No. 2007 CF 1948. Defendant was charged with violating probation. I represented him on the underlying charges prior to taking the bench. I recused myself because I previously represented the Defendant on the matter pending before the court.

State v. Rupert, Case No. 2009 CF 3679. The father of the victim mistook me for another judge who set a low bond for the Defendant, and made various threats against me. The situation was extremely unusual. Given a potential plea to the court, I recused myself to avoid even the appearance of impropriety.

State v. Linder, Case No. 2009 CF 3106 & *State v. Hepburn*, Case Nos. 2004 CF 1221 & 2946. In both cases, there were improper *ex parte* communications by counsel with my office to which I did not respond. I recused myself. Thereafter, I instituted new policies with respect to accepting emails from counsel.

State v. Martin, Case No. 2008 CF 2948. I recused myself because the putative victim was a personal friend.

State v. Lamar, Case No. 2008 CF 4334. I was forced to repeatedly admonish defense counsel much to the chagrin of the Defendant. I recused myself to avoid even the appearance of impropriety.

While assigned to the family law division from 2011 to 2012, I did not receive any motions to disqualify. I recused myself *sua sponte* from five cases.

Gallagher v. Gallagher, Case No. 2011 DR 265. I recused myself because I, along with my former law partner, represented the parties on a number of matters before taking the bench.

DOR v. Daly, Case No. 2005 DR 2962 & *Hambrecht v. Hambrecht*, Case No. 2011 DR 2120. I recused myself from both of these cases because my wife and/or her law firm represented one of the parties in both cases.

Davant v. De La Portilla, Case No. 2009 DR 3440. I recused myself because I unwittingly overheard a conversation at Starbucks that related to the details of a home sale which I later learned was the subject of a motion pending before the court. Further, I learned that my former law partner represented the third party who sought to purchase the home.

Pullen v. Bauer, Case No. 1997 DR 2748. In a paternity action spanning some 14 years, I addressed the limited issue of whether a parenting coordinator would be discharged and, if so, the scope of the new parenting coordinator's duties. I reserved on the issue of attorney's fees. One of the parties was upset that I signed the other party's proposed order and moved for rehearing. I denied the motion for rehearing. The aggrieved party attended my Judicial Nominating Commission interview but said nothing. In order to avoid even the appearance of impropriety, I recused myself and one of my colleagues resolved the remaining issue of attorney's fees.

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 any public office other than judicial office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- 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.

Excluding my own campaign, I do not recall holding any position or playing any role in a political campaign, political party or election committee.

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;

I served as a law clerk to Judge Emmett Ripley Cox, United States Court of Appeals for the Eleventh Circuit, from 1993 to 1994.

I served as a law clerk to Justice Stephen H. Grimes, Chief Justice of the Florida Supreme Court, from 1994 to 1996.

I served as a law clerk to Judge Robert L. Hinkle, United States District Court for the Northern District of Florida, from 1996 to 1997.

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

I practiced alone from April 2006 to December of 2008.

The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301

- 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.

1996
Cummings, Lawrence & Vezina
(currently known as Vezina, Lawrence & Piscitelli, P.A.)
The Walker-Lee House
413 East Park Avenue
Tallahassee, Florida 32301
Associate

1997
Berger, Davis & Singerman
(currently known as Berger Singerman)
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
Associate

1997 – 1999
The Office of Public Defender, Second Judicial Circuit

Leon County Courthouse
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
Assistant Public Defender

1999 – 2000
The Law Offices of Steven R. Andrews, P.A.
822 North Monroe Street
Tallahassee, Florida 32303
Associate

2000 – 2004
Andrews & Walker, P.A.
(currently known as Law Offices of Steven R. Andrews, P.A.)
822 North Monroe Street
Tallahassee, Florida 32303
Shareholder

2004 – 2005
Broad and Cassel
Sun Trust Bank Bldg., Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
Of Counsel

2005 – 2006
Pelham, Andrews & Walker
(currently known as The Pelham Law Firm)
2502-2 Barrington Circle
Tallahassee, Florida 32308
Partner

2006 – 2008
The Law Offices of Mark E. Walker, P.L.
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Sole Practitioner

- 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 never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

After clerking, I worked as an assistant public defender for approximately a year and a half. I divided my time between the appellate section and the trial section of the Public Defender's Office with the bulk of my work in the appellate section. During the course of my employment, I handled approximately 40 appeals, including several oral arguments at the First District Court of Appeal and an oral argument at the Florida Supreme Court, as well as two jury trials and one non-jury trial.

I left the Public Defender's Office in 1999 to join Steven R. Andrews as an associate. Within a year, I became a named shareholder. The overwhelming majority of my work involved criminal defense and civil claims arising from employment disputes, nursing home liability, medical malpractice, automobile accidents, premises liability and a variety of other matters involving serious injury or wrongful death. I practiced in both state and federal court and had several jury trials in state court.

During my last five years of private practice, my work became even more varied with less of an emphasis on personal injury and more of an emphasis on general civil litigation. I continued to practice in both state and federal court and had several jury trials in state and federal court.

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

When I worked for the Public Defender's Office, I represented indigent defendants charged with state crimes.

After I left the Public Defender's Office and joined Steven R. Andrews in private practice, I represented individuals bringing a variety of civil claims. On occasion, I represented individuals charged with crimes who could afford to retain counsel. Finally, I accepted CJA appointments for indigent defendants charged with federal crimes.

During my last five years of private practice, my clients became more varied. While I continued to represent the same sorts of clients as I had during my time with Steven R. Andrews, I also began to do civil defense work representing both individuals and businesses.

Other than my time with the Public Defender's Office, I never specialized.

- 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.

As an Assistant Public Defender assigned to the trial division, I appeared in court frequently. During this time, 100% of my court appearances were in state court and all such appearances were related to criminal cases.

In private practice, I appeared in court frequently. My court appearances were more frequent in criminal cases than in civil matters. Similarly, I appeared more frequently in federal court than state court because federal judges often decide issues on the papers and without hearings.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 30% |
| 2. state courts of record: | 68% |
| 3. other courts: | 1% |
| 4. administrative agencies: | 1% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 95% |
| 2. criminal proceedings: | 5% |

- 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.

I tried 23 cases to verdict including four non-jury matters. I was sole counsel in five trials, lead counsel in four trials and co-counsel in fourteen trials. Of the non-jury trials, two were arbitrations and one was a hearing at the Florida Division of Administrative Hearings.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 83% |
| 2. non-jury: | 17% |

- 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 practiced 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. *State v. Bush*, 98 MM 594, Second Judicial Circuit, Leon County, Florida (Modesitt, J.) (1998).

Defendant was charged with domestic battery and resisting an officer without violence. I represented the defendant and handled every aspect of his case. Through my cross examination, I established that my client acted in self-defense and that he did not resist the officers but complied with their commands. The jury returned a verdict of not guilty.

Opposing counsel: Collin Cherry
The Cherry-Pichard House
1114 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1100

2. *State v. Ervin*, 97 CF 4234, Second Judicial Circuit, Leon County, Florida (Agner, J.) (1999).

Defendant, a college student, was charged with aggravated battery. Steven Andrews and I represented him. While Mr. Andrews served as lead trial counsel, I narrowed and otherwise defined the issues in the case before trial. First, I successfully moved to exclude statements purportedly made by Defendant. Second, I renewed our motion to disqualify the original judge and the case was transferred to Judge Agner for trial. Third, I successfully argued several defense motions including a renewed motion to introduce evidence of secondary gain to impeach the putative victim. At trial, I argued for judgment of acquittal. Defendant was found not guilty.

Opposing counsel: Alberto Dominguez
4143 North Meadow View Drive
Fayetteville, Arkansas 72703
(479) 277-1236

Stephen M. Lampasso
McConnaughy Duffy et al.

500 West Cypress Creek Road, Suite 460
Fort Lauderdale, Florida 33309
(954) 332-0050

Co-counsel: Steven R. Andrews
822 North Monroe Street
Tallahassee, Florida 32303
(850) 681-6416

3. *State v. Johnson*, 01 CF 2526, Second Judicial Circuit, Leon County, Florida (Sjostrom, J.) (2002).

Defendant was charged with public assistance fraud. I represented her and handled every aspect of her case *pro bono*. After investigating the matter and taking depositions, we proceeded to trial. The State claimed that Ms. Johnson committed public assistance fraud by claiming children who lived with her only part-time. I established that Ms. Johnson included those children because she had been instructed to do so by the state worker to whom she submitted the paperwork seeking public assistance. The jury returned a verdict of not guilty.

Opposing counsel: Ginger Boyd
Broad & Cassel
Regions Bank Building, Suite 205A
200 Grand Boulevard
Destin, Florida 32550
(850) 269-0148

4. *White v. Walmart Stores, Inc.*, 01 CA 348, Seventh Judicial Circuit, Putnam County, Florida (Hedstrom, J.) (2003).

Plaintiff, a minor, sought to recover damages for injuries sustained when he fell and struck his head at Walmart. I, along with co-counsel, represented him. I prepared the case for trial and handled most of the discovery, which included some video depositions used at trial. At trial, I called one of our experts and examined several lay witnesses. The jury returned a verdict in favor of Plaintiff, awarding damages to compensate him for post-traumatic migraines.

Opposing counsel: John Tucker
Foley & Lardner LLP
P.O. Box 240
Jacksonville, Florida 32301
(904) 359-2000

Co-counsel: Steven R. Andrews
822 North Monroe Street

Tallahassee, Florida 32303
(850) 681-6416

5. *Rashid v. Nationwide Property & Casualty Ins. Co.*, 02 CA 1327, Second Judicial Circuit, Leon County Florida (Sjostrom, J.) (2003).

Plaintiff, a college student, sought to recover damages for injuries sustained when he was struck by an automobile while walking across a parking lot. I represented the Plaintiff and handled every aspect of his case. While Plaintiff sustained a serious fracture, he had a remarkable recovery. At trial, we faced the difficult task of conveying the extent of his damages given that he recovered better than expected. We succeeded in that endeavor in that the jury awarded Plaintiff full and fair compensation for his injuries.

Opposing counsel: John Herndon
Conroy, Simberg, et al.
325 John Knox Road, #105
Tallahassee, Florida 32303
(850) 383-9103

6. *The Estate of Dixon-Hinkle v. Brual*, 02 CA 287, Eighth Judicial Circuit, Alachua County, Florida (Pierce, J.) (2004).

The decedent was killed in her apartment. I, along with co-counsel, represented her estate. We sued the landlord for negligence, claiming the perpetrator secured access by way of an inadequate exterior door. There were issues with respect to liability in that the housing authority had repeatedly approved the door at issue. There were also issues regarding damages inasmuch as the sole measure of damages was the pain and suffering of a husband who had abandoned the decedent years before her murder. I handled *voir dire*, gave the opening and divided the witnesses with co-counsel. The jury returned a verdict finding the Defendant liable but awarding limited damages.

Opposing counsel: Michael Rywant
Rywant, Alvarez, Jones, Russo & Guyton
P.O. Box 3283
Tampa, Florida 33601
(813) 229-7007

Co-counsel: Gilbert Schaffnit
Law Offices of Gilbert Schaffnit
719 NE First Street
Gainesville, Florida 32601
(352) 378-6593

7. *Starling & McKown v. Slawsby*, 04 CA 2698, Second Judicial Circuit, Leon County, Florida (Lewis, J.) (2005).

Plaintiffs sought to recover damages for injuries sustained in a two-car automobile accident. I, along with co-counsel, represented them. I handled *voir dire*, gave the closing, and divided the witnesses with co-counsel. The case was challenging because both Plaintiffs continued to excel at work in spite of their injuries. Through the effective presentation of expert testimony, we were able to convey to the jury that the Plaintiffs could only maintain their employment with ongoing medical care. The jury awarded fair compensation for past and future medical care, and one Plaintiff was awarded attorney's fees.

Opposing counsel: David Heath
Heath & Rasky, P.A.
261 Pinewood Drive
Tallahassee, Florida 32303
(850) 386-2500

Co-counsel: Maureen Daughton
Broad and Cassel
215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

8. *Bear Stearns v. Magnolia Capital Partners*, NASD Dispute Resolution Arbitration No. 03-07010, Atlanta, Georgia (Richards, Harris, Castro) (2005).

This was a complex securities case involving mortgage backed securities. I, along with co-counsel, represented the Defendants. Bear Stearns sued Magnolia Capital Partners and its members for more than a million dollars in deficiencies. Magnolia Capital Partners and its members, in turn, counterclaimed for the loss of millions of dollars based on Bear Stearns' failure to price the securities at issue and properly set and call margin. Initially, my role was limited. As the arbitration progressed, I assumed more responsibility, presenting the defense experts and ultimately delivering the closing argument. Neither Bear Stearns nor Magnolia Capital Partners were awarded anything save a fine imposed against one of the witnesses in favor of Bear Stearns. Essentially, the claims canceled each other out.

Opposing counsel: Arthur D. Felsenfeld,
Andrews & Kurth, LLP
450 Lexington Avenue
New York, New York 10017
(212) 850-2823

Co-counsel: Stephen Turner
Broad and Cassel

215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

Kelly O'Keefe
Berger Singerman
125 South Gadsden Street, Suite 300
Tallahassee, Florida 32301
(850) 561-3010

9. *Isaac v. Gibbs*, 06 CA 383, Second Judicial Circuit, Leon County, Florida (Lewis, J.) (2007).

Plaintiff sought to recover damages for injuries sustained in a two-car automobile accident. I, along with co-counsel, represented her. Co-counsel, who was new to personal injury work, sought my assistance in a number of automobile cases including this one. I did so pro bono. Each of the cases settled with the exception of this case. I deposed the defense expert in Jacksonville and examined the Plaintiff's experts live at trial. The jury found for the defense.

Opposing Counsel: George Rasky
Heath & Rasky, P.A.
261 Pinewood Drive
Tallahassee, Florida 32303
(850) 386-2500

Co-counsel: Collin Cherry
The Cherry-Pichard House
1114 East Park Avenue
Tallahassee, Florida 32301
(850) 224-1100

10. *Aspen Licensing International v. Omni et al.*, Case. No. 32 133 Y 01006 07, AAA Arbitration, West Palm Beach, Florida (Peter) (2008).

This was a complex trademark/breach of contract case that originated in federal court in the Northern District of Florida. I was lead counsel for the Defendant, Omni, which had discharged its original counsel. I promptly got the case dismissed in federal court and Omni was awarded attorney's fees. The matter proceeded to arbitration. I handled the arbitration by myself on behalf of Omni. After I closed my practice upon my election as a circuit judge, co-counsel took the lead and the matter was subsequently resolved to the satisfaction of Omni.

Opposing Counsel: William Holliman
Holliman, P.A.
118 North Gadsden Street

Tallahassee, Florida 32301
(850) 320-8515

Co-counsel: Moshe Katlowitz
Katlowitz & Associates
270 Madison Avenue, Suite 1203
New York, New York 10016
(212) 271-7600

Martin Fitzpatrick
Broad & Cassel
Sun Trust Bank Building, Suite 400
215 South Monroe Street
Tallahassee, Florida 32301
(850) 681-6810

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.)

My legal activities have focused almost entirely on litigation. On occasion, however, I have pursued legal activities that either did not involve litigation or did not progress to trial. I have provided advice to clients that involved counseling rather than litigation. For example, I represented clients that cooperated with the State during criminal investigations.

I also represented clients who resolved matters before the commencement of litigation. For example, I represented M.P., a minor, who emigrated from Poland and was repeatedly sexually abused by a coach while attending a local parochial school. Several other law firms turned down the case because it was difficult to understand the victim and her mother's broken English. After a short but extensive investigation, I prepared a detailed complaint to file in federal court predicated upon the Violence Against Women Act and forwarded the proposed complaint to the local Diocese. We settled the case in less than sixty days, thereby substantially reducing the victim's attorney's fees and costs and the potential emotional trauma attendant to protracted litigation given the sensitive nature of her claims. Thereafter, M.P. testified at the criminal trial involving her rape and the local television station played the most salacious portions of her testimony, showing her face from the nose down without disguising her voice. I filed a second action against the station alleging the tort of outrage. I argued that the First Amendment did not preclude an action for "outing" a child rape victim. This second matter also settled. With the settlements, the minor and her family were able to move to another state, secure their citizenship and start a new life.

I have also been active in the legal community outside the practice of law. Most significantly, I have committed significant time to mentoring youth interested in pursuing a legal career as well as young lawyers seeking to chart their own course.

I have never performed any lobbying activities for any client or organization.

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.

I have not taught any courses.

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.

Upon retirement, I will receive payments from the Florida Retirement System.

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.

No.

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.

My wife is a partner in the law firm of Holland & Knight and currently serves as Executive Partner of the firm's Tallahassee office. If confirmed, I would recuse myself from any case involving my wife or her firm.

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

I would resolve any potential conflict of interest in accordance with 28 U.S.C. §455, the Code of Conduct for United States Judges, and all other pertinent statutory provisions or ethical canons.

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.

As an attorney, I performed pro bono hours through the legal aid program associated with the Tallahassee Bar Association, accepting three to four family law cases each year. In addition, on my own initiative, I have accepted many pro bono cases over the years. I note just a few examples:

In 2001, I handled the defense of a public assistance fraud case on a pro bono basis. After investigating the matter and taking depositions, the case proceeded to trial where the defendant was found not guilty. *State v. Johnson*, Case No. 01 CF 2526, Second Judicial Circuit, Leon County, Florida.

In 2002, a local county commissioner was charged with felonies and removed from office by the Governor pending action by the Florida Senate. In the meantime, the Governor appointed a temporary replacement to fill the vacancy created by the commissioner's removal. Despite the fact that the felony charges were later dismissed, the Florida Senate refused to act so as to ensure that the Governor's appointee would retain the seat. I accepted the case pro bono and filed an Emergency Petition for Writ of Mandamus with the Florida Supreme Court. *Maloy v. McKay*, Case No. 02,856, Florida Supreme Court, Tallahassee, Florida. The Supreme Court denied the petition.

On another occasion in 2006, I handled pro bono the defense of a Bulgarian national charged with rape. After conducting a thorough investigation, my client pled to misdemeanor simple assault and he was permitted to return to Europe. *State v. Nedelchev*, Case No. 05 CF 4204, Leon County, Florida.

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.

By letter dated April 15, 2011, Senators Nelson and Rubio requested that the Florida Federal Judicial Nominating Commission undertake its selection process and identify finalists for U.S. District Judge for the Northern District of Florida. The Commission posted a notice soliciting applications on or about May 2, 2011. On June 1, 2011, I forwarded my application to all 64 members of the statewide Commission. By notice dated June 20, 2011, the Commission acknowledged receipt of all applications and by notice dated July 13, 2011, I was notified that I along with six other applicants would be interviewed by the Northern District Conference of the Florida Federal Judicial Nominating Commission. I was interviewed by the Northern District Conference on July 29, 2011, and notified that same day that I was one of the three finalists. By letter dated August 1, 2011, Senators Nelson and Rubio were provided with the names of the three finalists. I interviewed with Senators Nelson and Rubio on October 5, 2011, in Washington, D.C.

Since November 2, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 9, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On February 16, 2012, 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.

AFFIDAVIT

I, Mark E. Walker, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/17/2012
(DATE)

Mark E. Walker
(NAME)
Mark E. Walker

Lilly M. Crockett
(NOTARY)

