

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Thomas Kent Wetherell, II

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.

First District Court of Appeal  
2000 Drayton Drive  
Tallahassee, Florida 32399

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

1970; Daytona Beach, 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.

1992-95, Florida State University College of Law; J.D. (high honors), 1995

1988-92, Florida State University; B.S. (*magna cum laude*), 1992

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  
First District Court of Appeal  
2000 Drayton Drive  
Tallahassee, Florida 32399  
Judge

2002-09  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399  
Administrative Law Judge

1999-2002  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399  
Deputy Solicitor General

1995-99  
Hopping Green Sams & Smith  
123 South Calhoun Street  
Tallahassee, Florida 32301  
Associate

Spring 1995  
Florida House of Representatives Judiciary Committee  
402 South Monroe Street  
Tallahassee, Florida 32399  
Law Clerk

Summer 1994  
Gray Harris & Robinson  
301 East Pine Street - Suite 1400  
Orlando, Florida 32801  
Law Clerk

1993-94  
Florida House of Representatives Judiciary Committee  
402 South Monroe Street  
Tallahassee, Florida 32399  
Intern

Summer 1992  
Hopping Boyd Green & Sams  
123 South Calhoun Street  
Tallahassee, Florida 32301  
Runner

Other Affiliations (uncompensated):

2013 – 2015  
National Association of Workers' Compensation Judiciary

No physical address  
Board Member

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 did not serve in the military. I registered for selective service upon turning 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.

Top 8% of law school class (17<sup>th</sup> out of 222)

Order of the Coif

Florida State University Law Review

Book awards: Federal Income Taxation; Property; Real Estate Development and Finance

Best Student Legislative Article, 1994

Florida State University Honors Court Justice, 1992-93

Florida State University Journal of Land Use and Environmental Law (invited)

Florida Scholars (now, Bright Futures) full undergraduate academic scholarship

Florida State University Honors Program

Phi Eta Sigma Honor Society

Golden Key Honor Society

Beta Gama Sigma Honor Society

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.

American Bar Association, 1995-99, 2016

Appellate Court Technology Committee, 2010-present

Appellate Court Website Redesign Workgroup, 2015-16

Colorado Bar Association, 1997-2016

Conference of Florida District Court of Appeal Judges, 2009-present

eFACTS Change Advisory Board, 2014-present

Florida Bar, 1995-present

    Criminal Procedure Rules Committee, 2016-present

        Rules of Appellate Procedure Liaison, 2016-present

        Subcommittee V Chair, 2017-18

    Appellate Practice Section, 2010-present

    Administrative Law Section, 1995-present

        Executive Council, 2006-10

    Appellate Court Rules Committee, 2010-16

        Chair, 2015-16

        Vice-chair, 2014-15

        Criminal Law Subcommittee Chair, 2013-14

        Criminal Law Subcommittee Vice-chair, 2012-13

    Administrative Practice Manual Steering Committee, 2008-09

    Environmental and Land Use Law Section, 1995-99

        Legislative Committee Chair, 1998-99

    Student Education and Admissions to the Bar Committee, 1996-99

Jefferson County Bar Association, 2010-11

Judicial Branch Legal Research Workgroup, 2012

Tallahassee Bar Association, 1997-2000, 2002-present

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, 1995

Colorado, 1997

There have been no lapses in membership. My license in Colorado is inactive because I do not practice there.

- 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 Supreme Court, 2001  
United States Court of Appeals for the Eleventh Circuit, 2001

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.

Capital City Country Club, approximately 1995-2004

Chiles High School Spirit Club, 2015-present

First District Appellate Inn of Court, 2011-18  
Executive Committee, 2011-15

The Federalist Society, 2016-present

FSU Alumni Association, intermittent since 1992

Maclay School Athletics Boosters, approximately 2010-17

National Association of Workers' Compensation Judiciary, 2013-15  
Board of Directors, 2013-15

Seminole Boosters, intermittent since 1992

Sigma Phi Epsilon ("SigEp") fraternity, 1990-present

- 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.

Sigma Phi Epsilon ("SigEp") is an all-male fraternity that is part of the co-ed Greek system at Florida State University that also includes all-female sororities.

Capital City Country Club was racially segregated until the 1950s, but it had been fully integrated for decades by the time my wife and I became members. To my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or nation 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.

*Annual Report of the Appellate Court Rules Committee*, Florida Bar Journal, June 2016. Copy supplied.

*The Top 10 Cases Since the 1996 APA Amendments*, Florida Bar Administrative Law Section Newsletter, March 2007. Copy supplied.

*The Clocks at DOAH are No Longer Three Minutes Fast*, Florida Bar Administrative Law Section Newsletter, June 2006. Copy supplied.

*Florida Law Because of and According to Mickey: The "Top 5" Florida Cases and Statutes Involving Walt Disney World*, 4 FLA. COASTAL L.J. 1 (2002). Copy supplied.

*Rulemaking Authority*, Florida Bar Journal, December 2000 (letter to the editor). Copy supplied.

*Sour Grapes Make Sweet Wine: The Impact of the 1999 Amendments to the Administrative Procedure Act on the Water Management Districts' Basin-specific Permitting Rules*, Florida Bar Environmental and Land Use Law Section Reporter, October 1999. Copy supplied.

*1999 ELULS Legislative Report: A Summary of Environmental and Land Use Legislation Considered in the 1999 Regular Session*, Florida Bar Environmental and Land Use Law Section Reporter, May 1999. Copy supplied.

*Small Scale Plan Amendments: Legislative or Quasi-judicial in Nature?*, Florida Bar Journal, April 1999. Copy supplied.

*1999 Legislative Preview*, Florida Bar Environmental and Land Use Law Section Reporter, March 1999. Copy supplied.

*Another View on Challenges to Proposed Rules*, Florida Bar Journal, February 1999 (letter to the editor). Copy supplied.

*The New Burdens of Proof in Ad Valorem Tax Valuation Cases*, 25 FLA. ST. U. L. REV. 185 (1998). Copy supplied.

*The Clocks at DOAH are Three Minutes Fast: A True Story*, Florida Bar Administrative Law Section Newsletter, December 1998. Copy supplied.

*Florida Caselaw Update*, Florida Bar Environmental and Land Use Law Section Reporter, November 1998 (co-author with Robert Manning and Gabriel Nieto). Copy supplied.

*What is the Burden of Proof in Cases Involving Challenges to Proposed Rules, and Who Has It?*, Florida Bar Administrative Law Section Newsletter, September 1998. Copy supplied.

*Florida Caselaw Update*, Florida Bar Environmental and Land Use Law Section Reporter, July 1998 (co-author with Robert Manning and Gabriel Nieto). Copy supplied.

*Florida Caselaw Update*, Florida Bar Environmental and Land Use Law Section Reporter, April 1998 (co-author with Robert Manning). Copy supplied.

*Florida Caselaw Update*, Florida Bar Environmental and Land Use Law Section Reporter, January 1998 (co-author with Robert Manning). Copy supplied.

*Florida Caselaw Update*, Florida Bar Environmental and Land Use Law Section Reporter, September 1997 (co-author with Robert Manning)

*The Practitioner's "Road Maps" to the Revised APA*, Florida Bar Journal, March 1997 (co-author with Deborah Kearney). Copy supplied.

*Rulemaking Reforms and Restrictions on Agencies' Use of Non-Rule Policy in the New APA: A "Catch 22" for State Agencies?*, Florida Bar Journal, March 1997 (co-author with Wade Hopping and Lawrence Sellers). Copy supplied.

*The Legislature Tweaks McDonald Again: The New Restrictions in Florida's Administrative Procedure Act on the Use of "Unadopted Rules" and "Incipient Policies" by State Agencies*, 48 FLA. L. REV. 135 (1996) (co-author with Wade Hopping). Copy supplied.

*Private Property Rights Legislation: The "Midnight Version" and Beyond*, 22 FLA. ST. U. L. REV. 525 (1994). 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.

Report and Recommendations of the Florida Supreme Court's Website Redesign Workgroup, August 2016. Copy supplied.

Joint Out-of-Cycle Report of the Rules of Judicial Administration Committee, Rules of Criminal Procedure Committee, and Appellate Court Rules Committee, Case No. SC16-1062, June 16, 2016. Copy supplied.

Letter to the Honorable Lisa T. Munyon, Chair of Florida Courts Technology Commission, April 1, 2016. Copy supplied.

Joint Report of the Select Committee on Claims of Ineffective Assistance of Counsel in Termination of Parental Rights Proceedings, the Appellate Court Rules Committee and the Juvenile Court Rules Committee, Case No. SC16-553, March 31, 2016. Copy supplied.

Response of the Criminal Procedure Rules Committee and the Appellate Court Rules Committee, Case No. SC15-1582, March 28, 2016. Copy supplied.

Criminal Procedure Rules Committee and Appellate Court Rules Committee's Fast Track Report, Case No. SC15-1582, August 28, 2015. Copy supplied.

Response to Comment of the Criminal Procedure Rules Committee and the Appellate Court Rules Committee, Case No. 15-290, August 25, 2015. Copy supplied.

Comment of the Appellate Court Rules Committee, Case No. SC15-765, July 27, 2015. Copy supplied.

Florida Judicial Branch Legal Research Workgroup Report, February 6, 2012. Copy supplied.

In 2002, while I was at the Division of Administrative Hearings (DOAH), I assisted with the drafting and adoption of a new set of procedural rules for workers' compensation cases. I also attended a public workshop with fellow judges to receive comments on the proposed rules in Ft. Lauderdale, Florida on



September 29, 2002. I have no notes, transcript, or recording, but a copy of the proposed rule that resulted from the workshop is 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.

As a member of the Appellate Court Rules Committee of the Florida Bar from 2010 to 2016 and Chair from 2015 to 2016, I participated in meetings of the Committee. Copies of meeting minutes that I have been able to locate are supplied.

As a member of the Criminal Procedure Rules Committee of the Florida Bar from 2016 to present, I participated in meetings of the Committee. Copies of meeting minutes that I have been able to locate are supplied.

As a member of the Executive Council of the Administrative Law Section of the Florida Bar from 2006 to 2010, I participated in meetings of the Council. Copies of meeting minutes that I have been able to locate are supplied.

During my employment at the Office of the Attorney General from 1999 to 2002, the Office occasionally commented on proposed rule changes to the Florida Supreme Court. Copies that I have been able to locate are 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.

April 6, 2018: Panelist, "Collegiality Panel," New Appellate Judges' College, Tallahassee, Florida. Outline supplied.

March 1, 2018: Panelist, "Questions for Panel of 1st DCA Judges," First District Appellate Inn of Court, Tallahassee, Florida. Outline supplied.

January 11, 2018: I was on a panel discussing the establishment and operation of the Florida Solicitor General's Office at the First District Appellate Inn of Court in Tallahassee, Florida. I have no notes, transcript, or recording. The address of the First District Appellate Inn of Court is 2000 Drayton Drive, Tallahassee, Florida 32399.

October 19, 2017: Panelist, "FSU Law Moot Court Panel," Florida State University College of Law, Tallahassee, Florida. Outline supplied.

May 17, 2017: Speaker, "Building a Complete and Persuasive Record in Administrative Hearings," Florida Department of Health, Tallahassee, Florida. Presentation supplied.

April 7, 2017: Panelist, "Collegiality Panel," New Appellate Judges' College, Tallahassee, Florida. Outline supplied.

January 31, 2017: Panelist, "Judicial Panel," Florida State University College of Law, Tallahassee, Florida. Outline supplied.

November 3, 2016: Panelist, "Ethical Dilemmas in the Appellate Arena—Perspectives from Bench and Bar," First District Appellate American Inn of Court, Tallahassee, Florida. Outline supplied.

October 27, 2016: Speaker, "Proposed Amendments to the Florida Rules of Appellate Procedure," First District Court of Appeal Law Clerk Lunch-and-Learn Program, Tallahassee, Florida. Outline supplied.

July 27, 2016: Panelist, "Sidebar Lunch," Jacksonville Bar Association Appellate Practice Committee, Jacksonville, Florida. Outline supplied.

April 15, 2016: Speaker, "Appellate Review of Administrative Orders," Florida Bar Administrative Law, Environmental and Land Use Law, and Government Lawyer Sections, Tallahassee, Florida. Presentation supplied.

April 8, 2016: Panelist, "Collegiality Panel," New Appellate Judges' College, Tallahassee, Florida. Outline supplied.

April 1, 2016: Panelist, "DCA Appeals of Agency Final Orders in Employment and Labor Cases," Florida Bar Labor and Employment Law Section. Outline supplied.

March 23, 2016: Panelist, "Rules Potpourri," Tallahassee Bar Association Appellate Practice Section, Tallahassee, Florida. Outline supplied.

July 28, 2015: Panelist, "Sidebar Lunch," Jacksonville Bar Association Appellate Practice Section, Jacksonville, Florida. Outline supplied.

June 18, 2015: I spoke to a group of students from the Volusia County 4-H Club who were visiting the First District Court of Appeal courthouse. I gave the group a general overview of the Florida court system and the appellate process. I have

no notes, transcript, or recording. The address of the Volusia County 4-H Club is 310 E. New York Avenue, Deland, Florida 32724.

May 29, 2015: Panelist, "Practicing with Professionalism," Florida Bar Young Lawyers Division, Tallahassee, Florida. Outline supplied.

April 10, 2015: Panelist, "Decision Making and Decision Writing," Florida Bar Appellate Practice Section, Tallahassee, Florida. Outline supplied.

April 9, 2015: Panelist, "Collegiality Panel," New Appellate Judges' College, Tallahassee, Florida. Outline supplied.

March 12, 2015: I spoke to a group of third-grade and fourth-grade students who were visiting the First District Court of Appeal courthouse. I gave the group a general overview of the Florida court system and the appellate process. I could not locate any records reflecting where the students were visiting from, and I have no notes, transcript or recording.

October 2, 2014: Panelist, "Appellate Judges Panel," Florida Bar Administrative Law Section, Tallahassee, Florida. Outline supplied.

October 2, 2014: Speaker, "Keynote Speech," Florida Bar Administrative Law Section, Tallahassee, Florida. Text supplied.

June 3, 2014: Panelist, "2014 Legislative Session and the Practice of Appellate Law," Tallahassee Bar Association Appellate Practice Section, Tallahassee, Florida. Outline supplied.

April 10, 2014: Speaker, "A Second Look: Appellate Review of Administrative Orders," Florida Bar Administrative Law and Government Lawyer Section, Tallahassee, Florida. Presentation supplied.

February 28, 2014: Panelist, "Hot Appellate Issues: Perspective from Counsel and Judge," Workers' Compensation Institute and Office of the Judges of Compensation Claims, Tallahassee, Florida. Outline supplied.

October 24, 2013: I spoke to a legal writing class at the University of Florida College of Law about the appellate decision-making process. I have no notes, transcript or recording. The address of the University of Florida College of Law is 309 Village Drive, Gainesville, Florida 32611.

October 4, 2013: Speaker, "10 Tips for Effective Appellate Writing," Walton County Bar Association, DeFuniak Springs, Florida. Presentation supplied.

September 20, 2013: Speaker, "10 Tips for Effective Appellate Writing," Tallahassee Bar Association, Tallahassee, Florida. Presentation supplied.

June 25, 2013: Speaker, "Commencement Address," Pat Thomas Law Enforcement Academy, Havana, Florida. Text supplied.

June 6, 2013: Panelist, "Discussion on Ethical Responsibilities in Appellate Advocacy," Florida Bar Government Lawyer Section, Tallahassee, Florida. Outline supplied.

February 8, 2013: Panelist, "Appellate Practice Panel," Workers' Compensation Institute, Tallahassee, Florida. Outline supplied.

November 7, 2012: Panelist, "Making Your Case at DOAH and Preserving Your Record for Review," Florida Bar Administrative Law Section, Tallahassee, Florida. Outline supplied.

August 15, 2012: Speaker, "Administrative Appeals," Florida Department of Financial Services, Tallahassee, Florida. Outline supplied.

April 26, 2012: I spoke to a seventh grade class at Maclay School about careers in the legal profession and the judicial process. I have no notes, transcript, or recording. The address of Maclay School is 3737 North Meridian Road, Tallahassee, Florida 32312.

April 10, 2012: Speaker, "Be an Involved Father," DeSoto Trail Elementary School, Tallahassee, Florida. Text supplied.

March 2, 2012: I was on a panel of judges fielding questions from the audience at the E. Earl Zehmer Appellate Practice Seminar presented by the Florida Bar Appellate Practice Section. The seminar focused on practice before the First District Court of Appeal. I have no notes, transcript, or recording. The address of the Florida Bar Appellate Practice Section is 651 East Jefferson Street, Tallahassee, Florida 32399.

February 16, 2012: Panelist, "Evidentiary Issues," William H. Stafford American Inn of Court, Tallahassee, Florida. Outline supplied.

February 11, 2012: Speaker, "Overview of Technology in the State Courts," Florida Employment Lawyers Association, Daytona Beach, Florida. Outline supplied.

February 2, 2012: Presenter, "Survey of 1st DCA Judges," First District Appellate American Inn of Court, Tallahassee, Florida. Presentation supplied.

November 8, 2011: I spoke to a legal writing class at the Florida Coastal School of Law about appellate practice. I have no notes, transcript, or recording. The

address of the Florida Coastal School of Law is 8787 Baypine Road, Jacksonville, Florida 32256.

November 2, 2011: I was on a panel of judges speaking to an appellate advocacy class at the Florida State University College of Law about judicial opinion writing. I have no notes, transcript, or recording. The address of the Florida State University College of Law is 425 West Jefferson Street, Tallahassee, Florida 32301.

October 24, 2011: Guest Lecturer, "First District Court of Appeal History and Statistics," Florida State University College of Law, Tallahassee, Florida. Notes supplied.

August 17, 2011: Speaker, "Administrative Appeals," Florida Department of Financial Services, Tallahassee, Florida. Outline supplied.

June 20, 2011: Speaker, "Judicial Discretion," Florida State University College of Law, Tallahassee, Florida. Outline supplied.

April 19, 2011: Speaker, "6th Grade Career Day," Maclay School, Tallahassee, Florida. Outline supplied.

March 4, 2011: Speaker, "Electronic Filing in the Appellate Courts: eDCA and Beyond," Florida Bar Appellate Practice Section, Jacksonville, Florida. Presentation supplied.

February 24, 2011: Speaker, "Order Writing Tips and Other Musings from a Former ALJ," Florida Division of Administrative Hearings, Tallahassee, Florida. Presentation supplied.

October 21, 2010: Speaker, "Comments from the Castle: Administrative Law at the 1st DCA," Florida Bar Administrative Law Section, Tallahassee, Florida. Presentation supplied.

October 4, 2010: Speaker, "New Lawyer Induction Ceremony," Florida Supreme Court, Tallahassee, Florida. Text supplied.

May 5, 2010: Speaker, "5th Grade Career Day," Maclay School, Tallahassee, Florida. Outline supplied.

April 27, 2010: Speaker, "1st DCA News, Notes, and Cases of Interest to Government Lawyers," Florida Government Bar Association, Tallahassee, Florida. Outline supplied.

February 16, 2010: I spoke to a judicial externship seminar at the Florida State University College of Law about statutory interpretation. I have no notes,

transcript, or recording. The address of the Florida State University College of Law is 425 West Jefferson Street, Tallahassee, Florida 32301.

December 3, 2009: Speaker, "T. Kent Wetherell, II, Investiture," First District Court of Appeal, Tallahassee, Florida. Text supplied.

October 13, 2009: I spoke to a judicial externship seminar at the Florida State University College of Law about statutory interpretation. I have no notes, transcript, or recording. The address of the Florida State University College of Law is 425 West Jefferson Street, Tallahassee, Florida 32301.

2009: I spoke to a labor and employment law class at the Florida Coastal School of Law about the Florida Commission on Human Relations and employment discrimination claims under section 760.11, Florida Statutes. Notes supplied.

2009: I spoke to the prosecuting attorneys at the Florida Department of Health about practicing before the Division of Administrative Hearings with professionalism. I have no notes, transcript, or recording. The address of the Florida Department of Health is 4052 Bald Cypress Way, Tallahassee, Florida 32399.

2008: I spoke to a judicial externship seminar at the Florida State University College of Law about statutory interpretation. I have no notes, transcript, or recording. The address of the Florida State University College of Law is 425 West Jefferson Street, Tallahassee, Florida 32301.

2008: I spoke to an administrative law class at the University of Florida College of Law about the administrative hearing process. I have no notes, transcript or recording. The address of the University of Florida College of Law is 309 Village Drive, Gainesville, Florida 32611.

2006: I spoke about prehearing best practices at an education conference for administrative law judges and judges of compensation claims presented by the Florida Division of Administrative Hearings. I have no notes, transcript, or recording. The address of the Florida Division of Administrative Hearings is 1230 Apalachee Parkway, Tallahassee, Florida 32399.

October 20, 2006: Speaker, "The Top 10 Cases Since the 1996 Amendments to the APA," Florida Bar Administrative Law Section, Tallahassee, Florida. Notes supplied.

2003: Speaker, "Florida Law Because of and According to Mickey: The 'Top 5' Florida Cases and Statutes Involving Walt Disney World," Tallahassee Kiwanis Club, Killlearn Chapter, Tallahassee, Florida. Notes supplied.

April 2000: I was on a panel discussing legislative oversight of administrative agency rulemaking at the Pat Dore Conference presented by the Florida Bar Administrative Law Section. I have no notes, transcript, or recording. The address of the Florida Bar Administrative Law Section is 651 East Jefferson Street, Tallahassee, Florida 32399.

Summer 1997: I spoke at the National Association for Industrial and Office Parks (NAIOP) of Florida conference in Celebration, Florida, about the bills and issues of interest to the association that were considered in the 1997 legislative session. I have no notes, transcript, or recording. The address of NAIOP of Florida is P.O. Box 841, Pensacola, Florida 32591

1996: I spoke to a property law class at the University of Florida College of Law about the history of the 1995 private property rights legislation. I have no notes, transcript, or recording. The address of the University of Florida College of Law is 309 Village Drive, Gainesville, Florida 32611.

- 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.

Doug Blackburn, *The Lion in Winter*, Tallahassee Democrat, February 2, 2014. Copy supplied.

Wendy Loquasto, *Two New Judges at the First DCA: T. Kent Wetherell, II, and Lori Sellers Rowe*, The Record, Spring 2010. Copy supplied.

Susan Wright, *Some Lament 'Crazy Quilt of Standards' Separation of Church, State Limits Regulations*, Daytona Beach News Journal, August 19, 2001. Copy supplied.

Henry Frederick, *Family Feelings Often in Conflict with Official Policies*, Daytona Beach News Journal, June 14, 2001. Copy supplied.

*Opening Doors to Legal Practice*, Florida State University College of Law Alumni Magazine, 1998/1999. Copy supplied.

Ludmilla Lelis, *Disputed River-Protection Rules Go Ahead*, Orlando Sentinel, November 20, 1998. Copy supplied.

Ludmilla Lelis, *St. Johns Board Strikes Back in Rules Fight*, Orlando Sentinel, October 24, 1998. Copy supplied.

Carol Cole, *Landowners Appeal Decision Over River Buffer Zones*, Daytona Beach News Journal, August 14, 1998. Copy supplied.

Mark Schlueb, *Shoreline Buffer Rule Tossed*, Daytona Beach News Journal, July 2, 1997. Copy supplied.

Robert P. King, *'Lemon' Vehicles May Be Branded*, Sarasota Herald-Tribune, March 30, 1996. Copy supplied.

Lucy Morgan, *Critics Slow Property Rights Bill, But Can't Stop It*, St. Petersburg Times, March 18, 1994. Copy supplied.

Sean Savage, *Whom Do You Trust?*, Palm Beach Post, August 9, 1993. 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.

2002-09

Administrative Law Judge

Division of Administrative Hearings (DOAH)

I was appointed to this position in 2002 by DOAH's director and chief judge. DOAH has jurisdiction over cases arising under the Florida Administrative Procedure Act in which there are disputed issues of fact, including cases involving professional licenses, environmental permits, employment and housing discrimination claims, bid protests, rule challenges, hospital certificates of need, and special education plans.

2009-present

Judge

First District Court of Appeal

I was appointed to this position in 2009 by Governor Charlie Crist and I was retained by the voters in merit retention elections in 2010 and 2016. The First District Court of Appeal is an intermediate appellate court with jurisdiction over 32 counties, from Escambia County (Pensacola) in the west to Duval County (Jacksonville) in the east and Alachua County (Gainesville) in the south. The court hears civil and criminal appeals from the circuit courts and appeals of final orders in administrative and workers' compensation cases.

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

As an appellate judge, I have been on the panel for more than 6,500 cases decided by an opinion and I have written more than 150 authored opinions and a similar number of *per curiam* opinions. As an administrative law judge, I presided over more than 375 cases that went to a formal hearing and culminated in the issuance



of a recommended or final order. While sitting by designation as a temporary circuit judge, I presided over 9 felony jury trials that went to verdict and several additional criminal cases in which I accepted the defendants' pleas and imposed their sentences.

i. Of these, approximately what percent were:

jury trials:	3%
bench trials:*	97%
civil proceedings:*	97%
criminal proceedings:	3%

\* formal administrative hearings

These percentages only include the trial-level cases I presided over as an administrative law judge or a temporary circuit judge. The percentages do not include my caseload as an appellate judge, which in 2017 was approximately 58% criminal, 27% civil, and 15% administrative and workers' compensation.

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

Citations for the opinions I authored as an appellate judge, including concurrences and dissents, and citations for the recommended and final orders I wrote as an administrative law judge are provided in Appendix 13b.

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. *Levy v. Dep't of Health*, 2002 Fla. Div. Adm. Hear. LEXIS 1443 (Dec. 3, 2002), *aff'd*, 861 So. 2d 28 (Fla. 1st DCA 2003) (table).

This case involved a challenge to the validity of an administrative rule restricting the practice of "telemedicine" by osteopathic physicians. I held a formal hearing on the rule challenge petition and issued a final order concluding that the rule fell within the agency's clear statutory authority to establish practice requirements and standards of care for osteopathic physicians. My final order contained a detailed analysis of the statutes and cases governing administrative rule challenges and was affirmed on appeal without opinion.

Attorney for Petitioner:

Fred Dudley  
3522 Thomasville Road - Suite 301  
Tallahassee, Florida 32309  
(850) 294-3471

Attorney for Respondent:

Ed Bayo  
2022 Raymond Deihl Road - #2  
Tallahassee, Florida 32308  
(850) 385-1314

2. *Fla. Home Builders Ass'n v. City of Daytona Beach*, 2003 WL 2009107 (Fla. Div. Admin. Hear. Apr. 29, 2003)

This case involved a challenge to the amendments to the Statewide Building Code adopted by several local governments. It was the first case litigated after the Code was adopted by the Legislature to preempt the myriad of local building codes around the state. My recommended order contained a detailed analysis of the text and history of the Code and narrowly construed the statutory authority granted to local governments to adopt amendments to the Code. The analysis in my recommended order was adopted *in toto* by the Florida Building Commission and established the framework used to evaluate the validity of subsequent local amendments to the Code.

Attorney for Petitioner:

Steve Pfeiffer  
1123 Martin Street  
Tallahassee, Florida 32303  
(941) 356-1667

Attorney for Respondent:

Jay Adams  
215 South Monroe Street - Suite 400  
Tallahassee, Florida 32301  
(850) 681-6810

3. *Granite Constr. Co. of Cal. v. Dep't of Transp.*, 2003 WL 22014761 (Fla. Div. Admin. Hear. Aug 25, 2003)

This bid protest case involved a \$148 million construction contract for a highway widening project in Tampa. The second-ranked bidder claimed that the contract award was contrary to the bid specifications and the agency's governing statutes

because the award was based on an error in the estimated quantity for the project's noise-reducing wall. My recommended order rejected this claim and recommended that the agency award the contract to the first-ranked bidder. The agency adopted my recommended order in all material respects in its final order.

Attorneys for Petitioner:

Bill Williams  
301 South Bronough Street - Suite 600  
Tallahassee, Florida 32301  
(850) 577-9090

Andy Bertron  
3600 Maclay Boulevard South - Suite 202  
Tallahassee, Florida 32312  
(850) 907-2507

Attorney for Respondent:

Robert Downie  
4030 Esplanade Way - Suite 115  
Tallahassee, Florida 32399  
(850) 559-4344

Attorney for Intervenor:

Chris McRae  
2612 Centennial Place  
Tallahassee, Florida 32308  
(850) 386-8000

4. *Lee Cnty. Sch. Bd. v. Sanders*, 2004 WL 44069 (Fla. Div. Admin. Hear. Jan. 7, 2004)

The issue in this case was whether a local school board had "just cause" to terminate its appointed school superintendent. The case was followed closely by the local media and was the first case to apply the code of ethics and principles of professional conduct for teachers to a school superintendent. I presided over a contentious week-long formal hearing at which numerous local officials testified and voluminous documentary evidence was presented. I issued a detailed recommended order finding that the school board had sufficient grounds to terminate the superintendent. The school board adopted this recommendation in a final order that was affirmed on appeal without opinion.

Attorney for Petitioner:

Tom Gonzalez  
201 North Franklin Street - Suite 1600  
Tampa, Florida 33602  
(813) 273-0050

Attorney for Respondent:

Richard Johnston, Jr.  
7370 College Parkway - Suite 207  
Ft. Myers, Florida 33907  
(239) 600-6200

5. *Wellington Regional Med. Ctr., Inc. v. Agency for Health Care Admin.*, 2004 WL 2203513 (Fla. Div. Admin. Hear. Sep. 29, 2004)

This case involved competing requests for a certificate of need (CON) for a new hospital in western Palm Beach County. It was the first CON case tried after the legislative “deregulation” of hospital beds under the CON law, and my decision established the framework for analyzing new-hospital CON cases going forward. The case involved contentious litigation between five parties and culminated in a 19-day formal hearing at which numerous expert witnesses testified and voluminous documentary evidence was presented. I issued a lengthy recommended order detailing why the need for a new hospital had not been established. My recommended order was adopted in all material respects by the agency in a final order that was affirmed on appeal with an opinion reported at 945 So. 2d 574 (Fla. 4th DCA 2006).

Attorneys for Petitioners/Intervenors:

Steve Ecenia  
Steve Menton  
119 South Monroe Street - Suite 202  
Tallahassee, Florida 32301  
(850) 681-6788

Bob Newell  
817 North Gadsden Street  
Tallahassee, Florida 32302  
(850) 681-3883

John Parker  
303 Peachtree Center NE - Suite 3600  
Atlanta, Georgia 30308  
(404) 523-5300

Karen Putnal

118 North Gadsden Street  
Tallahassee, Florida 32301  
(850) 681-3828

Mike Glazer  
123 South Calhoun Street  
Tallahassee, Florida 32302  
(850) 224-9115

Attorney for Respondent:

Brian Mulligan  
12470 Telecom Drive - Suite 300  
Temple Terrace, Florida 33637  
(813) 871-8401

6. *City of Lakeland v. Southwest Fla. Water Mgmt. Dist.*, 2008 WL 189564 (Fla. Div. Admin. Hear. Jan. 4, 2008)

This case involved a city's application for a consumptive water use permit and determined the amount of water the city would be able to pump to serve its citizens and accommodate growth for the decade following the application. The primary issues in the case were the total amount of water needed by the city and the volume that it could pump from a wellfield in an environmentally-sensitive area. The parties presented voluminous documentary evidence and the testimony of numerous expert witnesses during a ten-day formal hearing. I issued a lengthy recommended order with detailed factual findings and a recommendation that the permit be granted with specific limitations and conditions on the pumping at the wellfield in the environmentally-sensitive area. My recommended order was adopted *in toto* by the water management district in its final order.

Attorney for Petitioner:

Segundo Fernandez  
Tim Atkinson  
P.O. Box 1110  
Tallahassee, Florida 32302  
(850) 521-0700

Attorneys for Respondent:

Dominick Graziano  
1000 South Ashley Drive - Suite 1400  
Tampa, Florida 33602  
(813) 204-2847

Joe Ward  
23314 June Bug Trail  
Brooksville, Florida 34602  
(352) 573-7809

7. *Tsolkas v. Gulfstream Natural Gas Sys., LLC*, 2008 WL 382373 (Fla. Div. Admin. Hear. Feb. 8, 2008)

This case involved a challenge to the environmental resource permit for a natural gas pipeline in southeast Florida. The challengers asserted that the pipeline and the power plant that it would serve would harm the environment. After a contentious three-day formal hearing, I issued a detailed recommended order finding that the pipeline met all of the applicable permitting requirements and that it would not harm the environment. The agency adopted my recommended order *in toto* in its final order. The final order was appealed, but the appeal was voluntarily dismissed.

Attorney for Petitioner:

Barry Silver  
18624 Cape Sable Drive  
Boca Raton, Florida 33498  
(561) 302-1818

Attorneys for Respondents:

Richard Brightman  
P.O. Box 6526  
Tallahassee, Florida 32314  
(850) 222-7500

Francine Ffolkes  
1230 Apalachee Parkway  
Tallahassee, Florida 32399  
(850) 488-9675

8. *Bonita Bay Properties v. City of Bonita Springs*, 2008 WL 1778239 (Fla. Div. Admin. Hear. Apr. 17, 2008)

This was an administrative appeal of the denial of a proposed amendment to a development-of-regional-impact development order in southwest Florida. It was the first case in Florida involving the appropriate protection zones for bald eagles after they were removed from the list of species protected under the federal Endangered Species Act. The case was followed closely by the local media, and my recommended order finding that the proposed amendment adequately protected

the impacted eagle habitat was adopted in all material respects by the Governor and Cabinet sitting as the Florida Land and Water Adjudicatory Commission.

Attorney for Petitioner:

Ken Oertel  
P.O. Box 1110  
Tallahassee, Florida 32302  
(850) 521-0700

Attorney for Respondent:

Craig Varn  
204 South Monroe Street - Suite 201  
Tallahassee, Florida 32301  
(850) 583-0007

9. *State v. Danny Webster*, 2nd Jud. Cir. Case No. 2013-CF-2434, *aff'd*, 183 So. 3d 154 (Fla. 1st DCA 2016) (table)

This was a criminal case in which the defendant was charged with kidnapping and multiple counts of sexual battery for raping an elderly homeless woman. I presided over the jury trial at which the defendant was found guilty of one count of sexual battery and lesser included offenses on the other counts, and I sentenced the defendant to 30 years in prison. The defendant's convictions and sentence were affirmed on appeal without opinion. A copy of the judgment and sentence is supplied.

Attorney for State:

John Hutchins  
Office of the State Attorney  
301 South Monroe Street  
Tallahassee, Florida 32301  
(850) 606-6000

Attorney for Defendant:

Deborah Whisnant  
Office of the Public Defender  
301 South Monroe Street  
Tallahassee, Florida 32301  
(850) 606-1000

10. *State v. Michael Johnson*, 2nd Jud. Cir. Case No. 2014-CF-1481

This criminal case garnered local media attention because the defendant was a college student charged with aggravated battery for an incident in which he became enraged and bit off part of his ex-girlfriend's bottom lip. I presided over the jury trial at which the defendant was found guilty as charged. Then, after denying the defendant's motion for a new trial and presiding over a sentencing hearing at which considerable mitigating evidence was presented, I sentenced the defendant to five years in prison followed by ten years of probation. The defendant filed an appeal, but voluntarily dismissed it. Copies of the judgment and sentence and the order denying the defendant's motion for a new trial are supplied.

Attorney for State:

Adrian Mood  
305 South Gadsden Street  
Tallahassee, Florida 32301  
(850) 222-2107

Attorney for Defendant:

Kevin Alvarez  
522 East Park Avenue - Suite 100  
Tallahassee, Florida 32301  
(850) 559-0050

- 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. *Fla. Pulp & Paper Ass'n Envtl. Affairs, Inc. v. Dep't of Envtl. Prot.*, 223 So. 3d 417 (Fla. 1st DCA 2017)

Attorney for Appellant:

Greg Munson  
215 South Monroe Street - Suite 601  
Tallahassee, Florida 32301  
(850) 521-1980

Attorney for Appellee:

Francine Ffolkes  
1230 Apalachee Parkway  
Tallahassee, Florida 32399  
(850) 488-9675



2. *Fla. A&M University v. Bruno*, 198 So. 3d 1040 (Fla. 1st DCA 2016)

Attorney for Appellant:

Laura Beth Faragasso  
P.O. Box 14079  
Tallahassee, Florida 32317  
(850) 222-2920

Attorney for Appellee:

Mutaqee Akbar  
P.O. Box 10143  
Tallahassee, Florida 32304  
(850) 383-0000

Attorneys for Amici:

Richard Mitchell  
301 East Pine Street - Suite 1400  
Orlando, Florida 32801  
(407) 843-8880

Justin Hemlepp  
6904 North River Boulevard  
Tampa, Florida 33604  
(813) 438-6103

3. *Wilder v. State*, 194 So. 3d 1050 (Fla. 1st DCA 2016)

Attorney for Appellant:

Courtenay Miller  
Office of the Public Defender  
33 Commerce Street  
Apalachicola, Florida 32320  
(850) 653-9506

Attorney for Appellee:

Thomas Duffy  
1021 Piney Z Plantation Road  
Tallahassee, Florida 32311  
(850) 251-5476

4. *Dade County Police Benevolent Ass'n v. Miami-Dade Cnty.*, 160 So. 3d 482 (Fla. 1st DCA 2015)

Attorney for Appellant:

Tom Brooks  
131 North Gadsden Street  
Tallahassee, Florida 32301  
(850) 878-5212

Attorney for Appellee:

Eric Rodriguez  
111 NW 1st Street - Suite 2810  
Miami, Florida 33128  
(305) 375-5151

5. *Westphal v. City of St. Petersburg*, 122 So. 3d 440 (Fla. 1st DCA 2013) (dissent)

Attorneys for Appellant:

Jason Fox  
13031 West Linebaugh Avenue - Suite 102  
Tampa, Florida 33626  
(866) 245-8977

Richard Sicking  
2030 South Douglas Road - Suite 217  
Coral Gables, Florida 33134  
(305) 442-2318

Attorneys for Appellees:

Allen Winsor  
2000 Drayton Drive  
Tallahassee, Florida 32399  
(850) 487-1000

Kimberly Proano  
1000 North Ashley Drive - Suite 830  
Tampa, Florida 33602  
(813) 223-4001

Attorneys for Amici:

William Rogner  
1560 Orange Avenue - Suite 500  
Winter Park, Florida 32789  
(407) 571-7400

Richard Ervin  
1201 Hays Street - Suite 100  
Tallahassee, Florida 32301  
(850) 425-1333

Bill McCabe  
1250 South US Hwy 17/92 - Suite 210  
Longwood, Florida 32750  
(407) 403-6111

Dan Nordby  
400 South Monroe Street - Suite 209  
Tallahassee, Florida 32399  
(850) 717-9310

George Levesque  
301 South Bronough Street - Suite 600  
Tallahassee, Florida 32301  
(850) 577-9090

Geoffrey Bichler  
541 South Orlando Avenue - Suite 310  
Maitland, Florida 32751  
(407) 599-3777

Andre Mura  
505 14th Street - Suite 1110  
Oakland, California 94612  
(510) 350-9717

6. *Fla. House of Representatives v. Romo*, 113 So. 3d 117 (Fla. 1st DCA 2013)

Attorney for Petitioners:

Raoul Cantero  
200 South Biscayne Boulevard - Suite 4900  
Miami, Florida 33131  
(305) 371-2700

Attorney for Respondents:

John Devaney  
700 13th Street NW - Suite 600  
Washington, D.C. 20005  
(202) 654-6200

7. *Mendoza v. State*, 93 So. 3d 441 (Fla. 1st DCA 2012)

Attorney for Appellant:

David Gauldin  
P.O. Box 142  
Tallahassee, Florida 32302  
(850) 566-4578

Attorney for Appellee:

Brooke Poland  
1961 Quail Grove Lane  
Tallahassee Florida 32311  
(888) 472-5996

8. *R.J. Reynolds Tobacco Co. v. Townsend*, 90 So. 3d 307 (Fla. 1st DCA 2012)  
(concur in part, dissent in part)

Attorney for Appellant:

Greg Katsas  
333 Constitution Avenue NW  
Washington, D.C. 20001  
(202) 216-7220

Attorney for Appellee:

Steve Brannock  
111 West Cass Street - Suite 200  
Tampa, Florida 33606  
(813) 223-4300

9. *Graham v. Haridopolis*, 75 So. 3d 315 (Fla. 1st DCA 2011)

Attorney for Appellant:

Robin Gibson  
299 East Stuart Avenue  
Lake Wales, Florida 33853  
(863) 676-8584

Attorney for Appellee:

Daniel Brown  
5121 Golf Club Lane  
Spring Hill, Florida 34609  
(352) 799-7974

10. *R.J. Reynolds Tobacco Co. v. Hall*, 67 So. 3d 1084 (Fla. 1st DCA 2011)

Attorney for Appellant:

Greg Katsas  
333 Constitution Avenue NW  
Washington, D.C. 20001  
(202) 216-7220

Attorney for Appellee:

John Mills  
315 North Calhoun Street  
Tallahassee, Florida 32301  
(850) 765-0897

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

To the best of my knowledge, certiorari was not requested or granted in any of the cases I presided over as an administrative law judge or in any of the cases for which I authored the panel opinion as an appellate judge.

- 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.

Appellate cases: The Florida Supreme Court quashed the opinions I authored as an appellate judge in the following cases:

*Griffis v. State*, 133 So. 3d 650 (Fla. 1st DCA 2014), *quashed*, 2016 WL 1664979 (Fla. Apr. 27, 2016). The issue in this case was whether the constitutional prohibition against double jeopardy barred the defendant's dual convictions for use of a computer to solicit a minor for sex and traveling to meet a minor after solicitation. I authored the panel opinion affirming the defendant's convictions and rejecting the double jeopardy claim based on a prior decision of my court.

After the prior decision was quashed by the Florida Supreme Court, the Court summarily quashed the opinion in this case and remanded for reconsideration.

*Headley v. City of Miami*, 118 So. 3d 885 (Fla. 1st DCA 2013), *quashed*, 215 So. 3d 1 (Fla. 2017). The issue in this case was whether the City of Miami committed an unfair labor practice by unilaterally modifying the collective bargaining agreement with the police union under the “financial urgency” statute. I authored the panel opinion agreeing with the state labor agency’s interpretation of the statute and affirming its determination that the city did not commit an unfair labor practice. The Florida Supreme Court construed the statute differently and remanded to the agency for reconsideration.

*Fla. House of Representatives v. Romo*, 113 So. 3d 117 (Fla. 1st DCA 2013), *quashed sub nom, League of Women Voters of Florida v. Florida House of Representatives*, 132 So. 3d 135 (Fla. 2013). The issue in this case was whether legislators and legislative staff could be deposed by the parties challenging the 2012 congressional reapportionment plan. I authored the panel opinion holding that the common law legislative privilege protected the legislators and legislative staff from being compelled to testify about the drafting and enactment of the plan. The Florida Supreme Court disagreed and held that the legislative privilege did not protect the legislators because their intent was relevant in determining whether the plan complied with the standards in the Florida Constitution. However, in his dissent, Justice Canady agreed with my view and stated that he would have approved my “cogent decision.”

Trial-level cases: None of the judgments and sentences I entered while sitting as a temporary circuit judge were reversed on appeal, nor were any of the final orders I issued as an administrative law judge. More than 90% of the recommended orders I issued as an administrative judge were adopted *in toto* or with only minor modifications by the agency in its final order. The only cases in which the agency rejected my recommendation or a significant portion of the legal analysis in my recommended order are:

*Clark v. Homeq Servicing Corp.*, 2008 Fla. Div. Adm. Hear. LEXIS 855 (DOAH June 18, 2008), *recommendation rejected* by Order No. 08-50 (FCHR July 29, 2008). The issue in this housing discrimination case was whether the petition challenging the agency’s “no cause” determination was timely. I recommended that the agency dismiss the petition as untimely based on the plain language of the agency rule requiring petitions to be filed within 30 days after service of a “no cause” determination. The agency rejected my recommendation based on a statute requiring petitions to be filed within 30 days after receipt of a “cause” determination. A copy of the agency’s final order is supplied.

*Dep’t of Children & Family Servs. v. C. Family Daycare Home*, 2007 Fla. Div. Adm. Hear. LEXIS 647 (DOAH Nov. 26, 2007), *recommendation rejected* by Order No. DCF-08-067-FO (DCF Apr. 30, 2008). This case was a disciplinary

action against a day care. I found in my recommended order that the agency proved its allegations against the day care, but based on my interpretation of agency precedent, I recommended only a fine and probation. The agency rejected my recommendation and revoked the day care's license. A copy of the agency's final order is supplied.

*Dep't of Business & Professional Regulation v. Walker*, 2006 WL 3775333 (DOAH Dec. 21, 2006), *recommendation rejected in part* by Order No. BPR-2007-04362 (Real Estate Comm'n May 23, 2007). This case was a disciplinary action against a real estate sales associate for failing to disclose a 1972 criminal conviction on his 2001 license application. I found that the associate's failure to disclose the conviction was a violation of the applicable statutes and rules, but I recommended a reduced penalty based on the passage of time and other mitigating circumstances. The agency imposed a more severe penalty than I recommended. A copy of the agency's final order is supplied.

*Parkinson v. Reily Enters., LLC*, 2007 WL 475638 (DOAH Feb. 12, 2007), *recommendation rejected in part* by Order No. 06-1418 (DEP Mar. 29, 2007). The threshold issue in this environmental permit case was whether the petitioners had standing to challenge the permit. I recommended that the agency dismiss the petition for lack of standing, but the agency rejected this recommendation and concluded that one of the three petitioners had standing. The agency did, however, accept my alternative recommendation that if any of the petitioners had standing then the permit should be denied because the potential impacts to the wetlands adjacent to the proposed project were not adequately assessed. The agency's final order was affirmed on appeal in an opinion reported at 990 So. 2d 1248 (Fla. 4th DCA 2008). A copy of the agency's final order is supplied.

*V.N. v. Dep't of Children & Family Servs.*, DOAH Case No. 03-4047 (DOAH Feb. 18, 2004), *recommendation rejected* by Order No. DCF-04-106-FO (DCF May 24, 2004). This case involved an application for a day care license. I recommended that the agency grant the application because even though the prospective licensee's substitute caregiver had a criminal history he had passed the required background screening. The agency rejected my recommendation and denied the application based on its view that the substitute caregiver lacked good moral character. Copies of my recommended order and the agency's final order are supplied.

*Lee Cnty. Sch. Bd. v. Sanders*, 2004 WL 44069 (DOAH Jan. 7, 2004), *legal analysis rejected in part* by Final Order (Lee Cnty. Sch. Bd. Mar. 22, 2004). The issue in this case was whether the school board had "just cause" to terminate its appointed school superintendent. I found that the school board proved most of its allegations against the superintendent, but that it did not prove the allegation that the superintendent failed to comply with the Sunshine Law. The school board disagreed with my analysis of the Sunshine Law in its final order and found that allegation to have been proven as well. The school board's final order was

affirmed without opinion on appeal. A copy of the agency's final order is supplied.

*Ambroise v. O'Donnell's Corp.*, 2002 WL 31003006 (DOAH Sep. 5, 2002), *recommendation rejected by* Final Order No. 02-100 (FCHR Jan. 2, 2003). The issue in this employment discrimination case was whether the employee's petition challenging the agency's "no cause" determination was timely filed. I recommended that the agency dismiss the petition because it was not filed within the timeframes established in the statute and the uniform rules, but the agency rejected my recommendation based on one of its procedural rules. The employer appealed the agency's order, but the appeal was dismissed in a decision reported at 858 So. 2d 1138 (Fla. 5th DCA 2003) because the court determined that the order was not an appealable final order. However, in his dissent, Judge Orfinger extensively quoted from and expressed his agreement with the legal analysis in my recommended order. *Id.* at 1142-47. A copy of the agency's final order is supplied.

*Holland v. Dep't of Mgmt. Servs.*, 2002 WL 1592381 (DOAH June 24, 2002), *recommendation rejected by* Order No. DMS-02-0024 (DMS Sep. 27, 2002). This case involved the state pension agency's efforts to recover an alleged overpayment of a law enforcement officer's retirement contributions from 1975. I found that the officer received the overpayment, but I concluded that the applicable statutes and rules did not allow the agency to condition the payment of the officer's retirement benefits for his current service on his repayment of an overpayment related to his prior service. The agency rejected my legal conclusions and required the officer to repay the overpayment before he could collect any of his pension. A copy of the agency's final order is supplied.

*Fla. Engineer Mgmt. Corp. v. Hansen*, 2002 WL 569472 (DOAH Mar. 21, 2002), *recommendation rejected in part by* Order No. BPR-2002-02158 (Bd. of Prof. Engineers June 14, 2002). This case was a disciplinary action against a professional engineer. I found that the engineer violated several statutes and rules, but I recommended a reduced penalty based on mitigating circumstances. The agency rejected the mitigating circumstances and imposed a more severe penalty than I recommended. A copy of the agency's final order is supplied.

- 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 the opinions I have written as an appellate judge are published in the Southern Reporter and are available on Westlaw and Lexis. The opinions are also available on the court's website, [www.1dca.org](http://www.1dca.org).

The recommended and final orders I wrote as an administrative law judge are not published in an official reporter, but they are available on Westlaw and Lexis.



The orders are also available on the Division of Administrative Hearings' website, [www.doah.state.fl.us](http://www.doah.state.fl.us).

- 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.

*Dade County Police Benevolent Ass'n v. Miami-Dade Cnty.*, 160 So. 3d 482 (Fla. 1st DCA 2015) (Fla. Const. art. VIII, §§ 6, 11)

*United Faculty of Fla. v. State Bd. of Educ.*, 157 So. 3d 514 (Fla. 1st DCA 2015) (Fla. Const. art. II, § 3)

*Fla. Carry, Inc. v. Univ. of North Fla.*, 133 So. 3d 966 (Fla. 1st DCA 2013) (specially concurring) (Fla. Const. art. IX, § 7)

*Fla. House of Representatives v. Romo*, 113 So. 3d 117 (Fla. 1st DCA 2013) (Fla. Const. art. III, § 20)

*Mendoza v. State*, 93 So. 3d 441 (Fla. 1st DCA 2012) (U.S. Const. Amend. 6)

*Graham v. Haridopolis*, 75 So. 3d 315 (Fla. 1st DCA 2011) (Fla. Const. art. IX, § 7)

*R.J. Reynolds v. Hall*, 67 So. 3d 1084 (Fla. 1st DCA 2011) (Fla. Const. art. III, § 11, art. V, § 2)

- 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.

Throughout my judicial career, I have utilized the standards in Canon 3E(1) the Florida Code of Judicial Conduct in determining whether I should recuse myself. That Canon provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”

As an administrative law judge, I recused myself in a few cases in which a close friend was counsel of record, but I did not maintain a list of the cases in which I did so. Additionally, based on my recollection and a review of the Division of Administrative Hearings’ online docket, the only motions seeking my disqualification were filed in *Tsolkas v. Gulfstream Natural Gas System, LLC*, DOAH Case No. 07-3151 and *Hope of Southwest Florida v. Agency for Health Care Administration*, DOAH Case No. 03-4066CON.

The motions filed in *Tsolkas* alleged that I was biased against the parties challenging the proposed natural gas pipeline permit because of rulings I made during the case, because my step-mother had once been the head of the state environmental permitting agency, and because my father was the president of a state university that conducted research funded by industry groups. The motion filed in *Hope of Southwest Florida* alleged that I was biased against the hospice organization challenging the denial of its application for a certificate of need because I ruled against the organization in a prior case. In each case, I denied the motions because they were not “legally sufficient” under the applicable rule of judicial administration and controlling case law.

As an appellate judge, I provided the clerk of the court a “recusal list” identifying my significant stock holdings and attorneys with whom I am close friends, and the clerk is responsible for ensuring that I am not assigned to any case involving entities or individuals on the list. The clerk is also responsible for ensuring that I am not assigned to the appeal of any case I presided over as an administrative law judge or a temporary circuit judge. I have no way of knowing what cases the clerk did not assign me based on my recusal list.

Based on my recollection and a review of the court’s files, the only cases from which I recused myself as an appellate judge were *R.J. Reynolds Tobacco Co. & Philip Morris USA, Inc. v. Allen*, Case No. 1D15-4197, *Shands-Jacksonville v. Dept. of Health*, Case Nos. 1D17-1713/1D17-1717, *Scott v. Hinkle*, Case No. 1D18-966, and *Heid v. State*, Case No. 1D17-2932. I was not initially assigned to the panel in the *Allen* case because Philip Morris is on my recusal list due to stock ownership, but after a judge on the court requested *en banc* consideration of the case, I recused myself from the *en banc* vote and all further proceedings in the case. I recused myself from the *Shands-Jacksonville* case when an attorney on my recusal list filed a notice of appearance after the case was set for

oral argument. I recused myself from the *Scott* case because of the close relationship between my father and the family of one of the parties in the case. I recused myself from the *Heid* case because I presided over the defendant's first trial, which ended in a mistrial when the jury could not reach a verdict.

Additionally, based on my recollection and a review of the court's files, the only motions seeking my disqualification as an appeals judge were filed in *Ardis v. Ardis*, Case No. 1D13-4489, *Wood v. Childers*, Case No. 1D13-2322, *Dixon v. State*, Case No. 1D12-3371. In each of these cases, the appellant filed a blanket motion to disqualify every judge on the court but the controlling case law required each judge to individually consider the motion and decide whether to recuse himself or herself. The motions in *Ardis* and *Wood* were based on prior rulings against the appellant, and I denied the motions because an adverse prior ruling is not a legally sufficient basis for disqualification. The motion in *Dixon* was based on the fact that the appellant was convicted of vehicular manslaughter of a deputy clerk who worked for the court, and I denied the motion because I did not believe that my impartiality could reasonably be questioned since the deputy clerk was killed shortly after I joined the court and I did not know her or work directly with her.

**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 my current judicial office. I have not been an unsuccessful candidate for elective office, but I was an unsuccessful applicant for appointment to several judicial positions:

In 2005, I applied for a vacancy on the Leon County Circuit Court. I was one of the 12 applicants interviewed by the judicial nominating commission, but my name was not sent to the Governor.

In 2008, I applied for a vacancy on the First District Court of Appeal. There were 31 applicants for the position, and I was one of 6 whose names were sent to the Governor by the judicial nominating commission.

In 2015, I applied for a vacancy on the United States District Court for the Northern District of Florida. I was one of the 12 applicants interviewed by the judicial nominating commission established by Senators Nelson and Rubio, but I was not one of the 3 finalists recommended to the Senators.

- 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.

I campaigned for my father, T.K. Wetherell, in his 1980 election to the Florida House of Representatives and his subsequent reelections in 1982, 1984, 1986, 1988, and 1990. I did not hold a position in any of the campaigns, nor did I have a title. My responsibilities included distributing campaign materials, making and delivering yard signs, and holding signs on street corners.

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 did not serve as a clerk for a judge.

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

I did not practice 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.

2009-present  
First District Court of Appeal  
2000 Drayton Drive  
Tallahassee, Florida 32399  
Judge

2002-09  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, Florida 32399  
Administrative Law Judge

1999-2002  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399  
Deputy Solicitor General

1995-99  
Hopping Green Sams & Smith  
123 South Calhoun Street  
Tallahassee, Florida 32301  
Associate

- 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 an arbitrator or mediator.

b. Describe:

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

From 1995 to 1999, as an associate with Hopping Green Sams & Smith, my practice focused on land use and administrative law matters along with some legislative lobbying. My land use practice primarily involved representing landowners and developers seeking approval of large-scale development projects that required comprehensive plan amendments or were subject to review under Florida's development-of-regional-impact law. My administrative law practice involved monitoring rulemaking activities of various state agencies and representing clients in bid protests, rule challenges, and other proceedings at the Division of Administrative Hearings. My lobbying practice focused on state legislation impacting the timeshare industry, the Administrative Procedure Act, and the motor vehicle Lemon Law.

From 1999 to 2002, as a Deputy Solicitor General, I helped establish the practices and procedures for the newly-created Solicitor General's office and I represented the State and its agencies in civil appeals involving constitutional issues and other significant public policy matters. I briefed cases in the United States Supreme Court, the Eleventh Circuit Court of Appeals, the Florida Supreme Court, and several of the state district courts of appeal, and I helped coordinate the State's amicus participation in cases at the United States Supreme Court. I also provided trial support in select cases, such as the case involving the media's efforts to obtain NASCAR driver Dale Earnhardt's autopsy photographs.

Since 2002, I have been a judge.

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

The clients I represented while in private practice (1995-99) were primarily landowners, developers, corporations, and trade associations whose activities were regulated by the state of Florida. Representative clients include The St. Joe Company, Welaunee Plantation, Avatar Properties, American Resort Development Association, Resort Condominium International, Association of International Automobile Manufacturers, National Marine Manufacturers Association, MCI Telecommunications, and Sea Ray Boats.

My client as a Deputy Solicitor General (1999-2002) was the State of Florida and its agencies.

- 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.

I appeared in court occasionally as an attorney, but I have had extensive courtroom experience over the past 16 years as a judge.

As an attorney, I appeared in court infrequently while in private practice (1995-99) because most of my work involved land use matters before local governments and the state Department of Community Affairs. I appeared in court more frequently while serving as a Deputy Solicitor General (1999-2002) because I handled civil appeals and trial support in select cases.

More recently, as judge, I have been in court regularly. As an administrative law judge (2002-09), I presided over several hundred formal administrative hearings and innumerable motion hearings, and as an appellate judge (2009-present), I have been on numerous oral argument panels and I have also presided over felony jury trials while sitting by designation as a temporary circuit judge.

- i. Indicate the percentage of your practice in:

1. federal courts:	20%
2. state courts of record:	60%
3. other courts:	0%
4. administrative agencies:	20%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	100%
2. criminal proceedings:	0%

- 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 3 civil cases to judgment (one in county court and two in circuit court) and 4 administrative cases to final order at the Division of Administrative Hearings. I was sole counsel in the county court case and associate counsel in the circuit court and administrative cases.

- i. What percentage of these trials were:
  - 1. jury: 0%
  - 2. non-jury: 100%

- 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.

My practice before the United States Supreme Court was limited to my tenure as a Deputy Solicitor General from 1999 to 2002. I helped coordinate Florida's amicus participation in cases pending at the Court and I reviewed and edited briefs prepared by other attorneys in the Attorney General's office. I was counsel of record in only one case, *Bernard Egan & Co. v. Fla. Department of Revenue*, No. 01-357. A copy of the brief I filed in that case is supplied.

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. *Consolidated-Tomoka Land Co. v. St. Johns River Water Mgmt. Dist.*, DOAH Case No. 97-870RP (Administrative Law Judge Don Alexander); 1st DCA Case No. 97-2996 (Judges Phil Padovano, Anne Booth, and William Van Nortwick)

This administrative case involved a challenge to the rules adopted by a water management district to protect wildlife habitat along two rivers in Volusia County. It was the first rule challenge case litigated under the more restrictive rulemaking standards enacted by the Florida Legislature in 1996, and I was co-counsel for the landowners challenging the rules. I drafted the rule challenge petition, conducted discovery,

examined and cross-examined witnesses at the three-day formal hearing at the Division of Administrative Hearings, and drafted our proposed final order. Then, after the administrative law judge issued a final order [1997 WL 1052995 (6/27/97)] invalidating the proposed rules and the district appealed, I was the primary author of our answer brief. Although the appellate court reversed the final order and held that the rules were valid because they fell within the “class of powers” delegated to the district, see 717 So. 2d 72 (Fla. 1st DCA 1998), the interpretation of the rulemaking standard advocated in our brief was vindicated the following year by statutory amendments that explicitly rejected the “class of powers” test created by the court.

Co-counsel:

Frank Matthews (deceased)

Opposing counsel:

Bill Congdon  
414 Camelia Trail  
St. Augustine, Florida 32086  
(904) 501-3007

*2. 241 Development Corp. v. Dep't of Juvenile Justice*, DOAH Case No. 97-4370BID  
(Administrative Law Judge Ella Jane Davis)

This administrative bid protest case involved a challenge to the proposed award of a \$30 million construction contract for a juvenile detention facility in St. Johns County. I was co-counsel for the second-ranked bidder challenging the proposed contract award. I drafted various pleadings and motions, conducted depositions and other discovery, examined and cross-examined witnesses at the three-day formal hearing, and drafted a substantial portion of our proposed recommended order. The administrative law judge issued a recommended order [1997 WL 1053209 (12/11/97)] concluding that the contract should be re-bid because the proposed award violated the bid specifications and controlling statutes. This allowed our client to negotiate a favorable financial settlement with the winning bidder prior to entry of the final order.

Co-counsel:

Cheryl Stuart  
David Powell  
119 South Monroe Street - Suite 300  
Tallahassee, Florida 32301  
(850) 222-7500

Opposing counsel:

Scott Wright



2737 Centerview Drive  
Tallahassee, Florida 32399  
(850) 717-2445

Chris Bryant  
P.O. Box 1110  
Tallahassee, Florida 32302  
(850) 521-0700

William Brinton (deceased)

3. *D.F. v. Dep't of Revenue*, Fla. S. Ct. Case No. 96,288

The issue in this case was whether the former husband could obtain relief from his child support obligation after obtaining DNA evidence that the child was not biologically his. I authored the brief filed on behalf of the State of Florida as *amicus curiae* in the Florida Supreme Court. The brief argued that in order to promote the finality of judgments and protect the financial well-being of children around the state, the Court should hold that a former husband who failed to challenge the child's paternity during the divorce proceeding in which his child support obligation was established is estopped from raising the issue post-judgment except in very limited circumstances. Consistent with this argument, in an opinion reported at 823 So. 2d 97 (Fla. 2002), the Court held that the establishment of a child support obligation constitutes a paternity judgment that can only be challenged based on the narrow grounds contained in the relief-from-judgment rule.

Aligned counsel:

Jon J. Johnson  
800 East Twiggs Street - Suite 407  
Tampa, Florida 33602  
813-276-2335

Opposing counsel:

Peter Meros  
P.O. Box 27  
Saint Petersburg, Florida 33731  
727-822-4929

4. *Fish and Wildlife Conservation Comm'n v. Caribbean Conservation Corp.*, 1st DCA Case Nos. 00-1389, 00-1804 (Judges Richard Ervin, Anne Booth, and Michael Allen)

This case involved a constitutional challenge to the Florida statutes regulating manatees and sea turtles. The plaintiffs claimed that the statutes were preempted by a newly-enacted constitutional provision granting the Fish and Wildlife Conservation Commission "exclusive authority" over marine life. After the trial court invalidated the statutes, I

handled the appeal to the First District Court of Appeal on behalf of the State. I drafted the initial and reply briefs and presented oral argument. The court ruled in our favor and upheld the statutes in an opinion reported at 789 So. 2d 1053 (Fla. 1st DCA 2001). That decision was subsequently approved by the Florida Supreme Court in a unanimous opinion reported at 838 So. 2d 492 (Fla. 2003).

Aligned counsel:

Jim Antista  
3058 Hawks Glen  
Tallahassee, Florida 32312  
(850) 668-1029

Opposing counsel:

Ansley Samson  
230 Jay Street - Apartment 3G  
Brooklyn, New York 11201  
(718) 403-9442

5. *Cook v. City of Jacksonville*, Fla. S. Ct. Case No. 00-1745

The issue in this case was whether the 8-year term limit established by a local government for its clerk of court was constitutional. I authored the brief filed on behalf of the State of Florida as *amicus curiae* in the Florida Supreme Court. The brief argued that the Court should exercise judicial restraint and dismiss the appeal because the term-limit provision would not be implicated for eight years and then only if several contingencies occurred. Alternatively, the brief argued that the Court should uphold the term-limit provision as a proper exercise of the local government's home-rule authority. In a 4-3 decision reported at 823 So. 2d 86 (Fla. 2002), the Court held the term-limit provision unconstitutional. However, the position I advocated in the amicus brief was vindicated 10 years later when, in *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012), the Court unanimously receded from *Cook* and "allow[ed] the counties to govern themselves, including term limits of their officials, in accordance with their home rule authority."

Aligned counsel:

Loree French  
117 W. Duval Street - Suite 480  
Jacksonville, Florida 32202  
(904) 630-1700

Opposing counsel:

Scott Makar  
2000 Drayton Drive

Tallahassee, Florida 32399  
(850) 487-1000

6. *Kainen v Harris*, Fla. S. Ct. Case No. 00-1644

This case involved a petition for writ of mandamus filed in the Florida Supreme Court challenging the ballot language adopted by the Legislature to implement the constitutional provision requiring a statewide referendum on whether to replace elections for circuit and county judges with merit selection and retention. I was the primary author of the response to the petition filed on behalf of the Secretary of State. The response argued that the mandamus petition should be denied because the ballot language was clear and consistent with the intent of the framers, as reflected in the transcripts and records of the 1997-98 Constitution Revision Commission. The Court denied the mandamus petition in an opinion reported at 769 So. 2d 1029 (Fla. 2000).

Co-counsel:

Richard Hixson  
227 Chapel Drive  
Tallahassee, Florida 32304  
(850) 575-3075

Deborah Kearney  
7615 Buck Lake Road  
Tallahassee, Florida 32317  
(850) 559-1222

Opposing counsel:

Bruce Rogow  
100 NE 3rd Avenue - Suite 1000  
Ft. Lauderdale, Florida 33301  
(954) 767-8909

Counsel for amici:

Joe Little  
University of Florida College of Law - Box 117625  
Gainesville, Florida 32611  
(352) 273-0954

Kimberly Boldt  
160 West Camino Real - #262  
Boca Raton, Florida 33432  
(561) 316-6531

John Shubin  
46 SW 1st Street - Floor 3  
Miami, Florida 33130  
(305) 381-6060

John DeVault  
101 East Adams Street  
Jacksonville, Florida 32202  
(904) 353-0211

7. *Earnhardt v. Volusia Cnty. Medical Examiner*, 7th Jud. Cir. Case No. 2001-30373 (Judge Joseph Will); 5th DCA Case No. 01-2419 (Judges Thomas Sawaya, Earle Peterson, and Jacqueline Griffin)

This case involved the media's efforts to obtain the autopsy photos of NASCAR driver Dale Earnhardt after he died in an on-track crash in the 2001 Daytona 500. The case garnered international media attention and involved the validity of the statute enacted shortly after Mr. Earnhardt's death to retroactively exempt autopsy photos from the Public Records Law. Then-Solicitor General Tom Warner and I represented the State of Florida as an intervenor in the trial court to defend the constitutionality of the statute. Solicitor General Warner was lead counsel and I was associate counsel, and we were aligned with the Earnhardt family. My primary role at the trial court was to ensure that an adequate record was made so we would be in the best possible position to defend the statute on appeal. Then, after the trial court upheld the statute, I authored the State's answer brief in the appeal filed by the media. The appellate court affirmed the trial court's ruling that the statute was constitutional in a decision reported at 821 So. 2d 388 (Fla. 5th DCA 2002).

Co-counsel:

Tom Warner  
525 Okeechobee Boulevard - Suite 1200  
West Palm Beach, Florida 33401  
(561) 659-7000

Aligned Counsel:

Thom Rumberger (deceased)

Jon Mills  
2727 NW 58th Boulevard  
Gainesville, Florida 32606  
(352) 273-0835

Daniel Eckert

123 West Indiana Avenue  
Deland, Florida 32720  
(386) 736-5950

Opposing Counsel:

Tom Julian  
600 Brickell Avenue - Suite 3500  
Miami, Florida 33131  
(305) 376-6007

8. *Bernard Egan & Co. v. Fla. Dep't of Revenue*, U.S. Sup. Ct. Case No. 01-357

This case involved a constitutional challenge to the tax assessment imposed by the Florida Department of Revenue on a citrus company's foreign-subsiary dividends. After the Florida Supreme Court denied review of the district court of appeal's decision upholding the tax assessment, the company filed a petition for writ of certiorari in the United States Supreme Court. I was counsel of record for the Department and drafted the brief in opposition to the petition. The brief argued that constitutional claim raised in the petition lacked merit and that the case was not a good vehicle to decide the issue in any event. The Court denied the petition without comment. *See* 534 U.S. 995 (2001).

Opposing counsel:

Robert O. Rogers (deceased)

9. *State v. Fla. Consumer Action Network*, 1st DCA Case No. 01-787 (Judges Richard Ervin, William Van Nortwick, and Edwin Browning)

This was an appeal of the summary declaratory judgment invalidating the 1999 Tort Reform Act enacted by the Florida Legislature. I was the primary author of the portions of the State's initial and reply briefs arguing that the plaintiffs lacked standing to bring the suit and that the "State of Florida" was not a proper defendant because it was not responsible for administering or enforcing the Act. The appellate court reversed the judgment on those grounds in an opinion reported at 830 So. 2d 148 (Fla. 1st DCA 2002).

Co-counsel:

Tom Warner  
525 Okeechobee Boulevard - Suite 1200  
West Palm Beach, Florida 33401  
(561) 659-7000

Richard Hixson  
227 Chapel Drive  
Tallahassee, Florida 32304

(850) 575-3075

Lou Hubener  
528 Moss View Way  
Tallahassee, Florida 32312  
(850) 668-0238

Aligned counsel:

Frank Shepard  
333 SE 2nd Street - Suite 2300  
Miami Florida 33131  
(305) 416-6880

Joe Hatchett  
P.O. Box 1877  
Tallahassee, Florida 32202  
(850) 224-9634

George Meros  
315 South Calhoun Street - Suite 600  
Tallahassee, Florida 32301  
(850) 224-7000

Opposing counsel:

Wayne Hogan  
223 East Bay Street - Suite 804  
Jacksonville, Florida 32202  
(904) 722-2228

10. *Sjuts v. State*, Fla. S. Ct. Case No. 01-95

The issue in this case was whether the public defender could file a § 1983 “counterclaim” for money damages on behalf of a defendant against the state-contracted doctor whose examination was being used to designate the defendant as a sexually violent predator. The case was assigned to the Solicitor General’s office after the Florida Supreme Court granted review of the district court of appeal’s decision affirming the dismissal of the counterclaim. I drafted the answer brief, which argued that the counterclaim claim was properly dismissed because the public defender has no authority to file a civil action on behalf of a criminal defendant, and even if the public defender had such authority, a § 1983 claim for money damages could not be filed as a counterclaim in the quasi-criminal proceeding to designate the defendant as a sexually violent predator. After briefing was completed, the Florida Supreme Court dismissed review as “improvidently granted,” *see* 800 So. 2d 235 (Fla. 2001), which had the effect of leaving in place the favorable district court of appeal decision.

Opposing counsel:

Deborah Brueckheimer (deceased)

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.)

In 1998 and 1999, while I was an associate at Hopping Green Sams & Smith, most of my time was spent working on development-of-regional-impact (DRI) projects for The St. Joe Company, including SouthWood in the City of Tallahassee and WaterColor in Walton County. A DRI is a large-scale land development project that is subject to coordinated review by numerous state and regional agencies. The review process culminates in the local government's approval of a DRI development order that serves as the master plan for the project. I was responsible for working with various consultants to compile the information required by the DRI statutes and rules and I drafted substantial portions of the DRI applications. I also assisted in the negotiations with the reviewing agencies and local governments on the conditions included in the DRI development orders. Additionally, after the SouthWood DRI development order was approved, I worked with St. Joe's land planning consultant and the local government staff to draft the Planned Unit Development ordinance that serves as the zoning and land development code for the project.

I also assisted in the firm's state lobbying efforts for various clients, including Resort Condominium International and American Resort Development Association (timeshare issues), the Association of International Automobile Manufacturers (motor vehicle Lemon Law issues), Avatar Properties (property rights, growth management, and environmental issues), and Travelers Express (money order issues). My lobbying activities consisted primarily of monitoring and tracking bills impacting the clients, but I also met with legislators and legislative staff on occasion. For example, in 1996, when a bill was filed to amend the unclaimed property statutes to shorten the statutory escheat period for money orders from 7 years to 5 years, I was primarily responsible for lobbying legislators and legislative staff to get the language changing the escheat period for money orders removed from the bill. And, in 1998, when a bill was filed to repeal the statute authorizing the Governor to appoint "commissioners of deeds," I met with legislators, legislative staff, and the Governor's office on behalf of several of the firm's timeshare clients to explain the importance of the commissioners to the timeshare industry and I helped work out a compromise pursuant to which the general authorization for commissioners of deeds was repealed and the Timeshare Act was amended to include specific authorization for "timeshare commissioners of deeds."

In 2000, while I was a Deputy Solicitor General, our office was asked by the Statewide Prosecutor to seek Florida Supreme Court review of *Miami-Dade Cnty. v. State*, 754 So.2d 115 (Fla. 3d DCA 2000), which held that the State, not the county, bears the costs of prosecutions brought by the Office of Statewide Prosecution (OSP). We suggested that the better course of action would be to seek a statutory amendment and we worked with the Statewide Prosecutor to persuade the Legislature to enact statutory language clarifying that counties are responsible for the costs of prosecutions filed by the OSP. See ch. 2000-237, § 1(3), Laws of Fla. Shortly after this legislation was enacted, I handled an appeal for the OSP in another case in which the trial court denied a motion for the county to pay the costs of a prosecution brought by the OSP. The appeal was voluntarily dismissed before the initial brief was filed because the defendant entered a plea, but I condensed the substance of my draft brief into a form motion that assistant statewide prosecutors around the state used in subsequent cases to secure orders requiring counties to pay the OSP's prosecution costs.

In 2002, while I was at the Division of Administrative Hearings (DOAH), I assisted with the drafting and adoption of a new set of procedural rules for workers' compensation cases. Although the rulemaking process was initially contentious because this was the first time DOAH was charged with adopting the workers' compensation procedural rules, we successfully worked with the various stakeholders throughout the process to develop a consensus set of rules that streamlined and simplified the adjudicatory process. The rules are still in use today. See ch. 60Q-6, Fla. Admin. Code.

In the 2007, 2008, and 2009 legislative sessions, I was one of three administrative law judges designated to serve as Special Masters for claim bills under a contract between DOAH and the Florida Senate. Claim bills seek payment for damages in excess of the amounts provided in the statute waiving the state's sovereign immunity for tort claims. My responsibilities as a Special Master included reviewing the record of the judicial proceedings on the claim; conducting a *de novo* fact-finding hearing on the claim; preparing a report summarizing the factual, legal, and equitable grounds for the claim; and presenting my report and recommendation to Senate committees and the full Senate. I considered approximately 20 different claim bills—including several multimillion-dollar claims—arising out of personal injury, wrongful death, and medical malpractice cases.

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.

When I turn 65, I will be eligible for a pension from the State of Florida based on my 18 years of state employment. The amount of the pension is indeterminable at this point.

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 two brothers-in-law are attorneys in Jacksonville, Florida, but they do not regularly practice in the Northern District of Florida. If either of them appeared as counsel in a case to which I was assigned, I would recuse myself.

My wife and I own stock in numerous publicly traded companies. If I was assigned to a case involving any of those companies, I would either recuse myself or sell the stock pursuant to 26 U.S.C. § 1043.

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

I will resolve any potential conflict of interest by adhering to the Code of Conduct for United States Judges, 28 U.S.C. § 455, and the decisions construing the Code.

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 (1995-2002), I handled several pro bono Legal Aid cases as part of my membership in the Tallahassee Bar Association, and I also periodically volunteered at the monthly free legal advice clinics hosted by the Tallahassee Neighborhood Justice Center.

As an administrative law judge and an appellate judge (2002-present), I cannot provide pro bono legal services, but I routinely volunteer my time to promote and enhance the legal system by speaking at continuing legal education programs, judging moot court and mock trial competitions, and speaking to civic and community groups about the rule of law and the judicial branch. For example, in addition to the speaking engagements listed in response to Question 12d, I judged the regional mock trial competition hosted by Florida A&M University from 2005 to 2007, and I have judged the moot court competition put on by the Young Lawyers Division at the Florida Bar annual convention nearly every year since 2010.

**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.

On September 6, 2017, the judicial nominating commission established by Senators Rubio and Nelson published notice that it was accepting applications for the vacancies on each of the District Courts in Florida. On October 9, I submitted my application for one of the vacancies in the Northern District. On November 15, I interviewed with the judicial nominating commission in Tallahassee, Florida, and I was notified that evening that I was one of the four finalists whose names were being sent to the Senators. On November 29, I interviewed with Senators Rubio and Nelson in Washington, D.C., and on December 8, I interviewed with attorneys from the White House Counsel's Office and the Justice Department's Office of Legal Policy in Washington, D.C. On December 12, Senator Nelson called to tell me that the President was considering me for one of the vacancies in the Northern District. Since then, I have communicated regularly with the Office of Legal Policy in the preparation of my answers to this questionnaire and the completion of other related materials. On May 7, 2018, the President sent 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.